

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS : CRIMINAL TERM : PART 37

3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK,

5 - against -

Ind. No.
6797-07

6 LEE WOODS,

7 Defendant

8 -----X
320 Jay Street
9 Brooklyn, New York 11201

10 February 25, 2009

11 B E F O R E:

12 HONORABLE PLUMMER E. LOFT

13 Justice

14
15 A P P E A R A N C E S:

16 OFFICE OF CHARLES HYNES
17 District Attorney, Kings County
18 BY: ANNA-SIGGA NICOLAZZI, ESQ.
19 MARK HALE, ESQ.
Assistant District Attorneys

20 PATRICK MICHAEL MEGARO, ESQ.
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23 Bayside, New York 11361

24 ENIKA BODNAR CSR, RPR
25 Official Court Reporter

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1 * * * * A F T E R N O O N S E S S I O N * * * *

2 THE COURT CLERK: Case on trial, People
3 versus Lee Woods. All parties are present.

4 THE COURT: Counsel, Mr. Woods,
5 Ms. Gleason, she is the first alternate, over
6 lunch she spoke with her employment she works
7 for a hedge fund. Remember, she's the hedge
8 fund manager. She told the employer the
9 expected length of the trial and he said in no
10 uncertain terms, I'm not sure you'll have a
11 job. And in these times she is a bit concerned
12 about that. I'll bring her out and you could
13 speak to her if you like, but she's available.

14 Let's get Ms. Gleason.

15 THE COURT OFFICER: Juror entering.

16 THE COURT: Ms. Gleason, good afternoon.

17 JUROR GLEASON: Good afternoon.

18 THE COURT: You spoke to your employer
19 over lunch; is that correct?

20 JUROR GLEASON: Yes.

21 THE COURT: What specifically did he tell
22 you once you told him you've been selected to
23 be on the jury?

24 JUROR GLEASON: That he was concerned that
25 the office would not function with my absence

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1 for three weeks. I explained to him the
2 schedule and he said he needs a permanent
3 solution. So even if we brought in a
4 temporary, it would not suffice. And he's
5 concerned and he couldn't guarantee that my job
6 would still be there.

7 THE COURT: He could not guarantee. And
8 that is of some concern to you?

9 JUROR GLEASON: Yes.

10 THE COURT: Given that, do you think you
11 can focus on this case at all?

12 JUROR GLEASON: I don't think I could,
13 sir.

14 THE COURT: Any questions, either side?

15 MS. NICOLAZZI: No, your Honor.

16 THE COURT: Do I have consent?

17 MR. MEGARO: We consent. Thank you. Good
18 luck.

19 JUROR GLEASON: I apologize.

20 THE COURT: Best of luck, ma'am.

21 (Whereupon the juror exits)

22 THE COURT: We'll excuse her and let's get
23 the other jurors in.

24 (Whereupon the jury enters) :

25 THE COURT: All right, folks, good

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1 afternoon. If you will listen to Mr. LaRose.

2 THE COURT CLERK: Case on trial. All
3 parties are present.

4 Ladies and gentlemen of the jury, will you
5 all please rise and raise your right hand and
6 face me.

7 Do you and each of you sincerely and
8 solemnly swear or affirm to fairly try this
9 case in a just and impartial manner to the best
10 of your ability and render a verdict according
11 to the law and the evidence?

12 THE JURY: Yes.

13 THE COURT CLERK: Both sides waive the
14 reading of the roll?

15 MS. NICOLAZZI: Yes.

16 MR. MEGARO: Waived.

17 THE COURT: All right, members of the
18 jury, you have been selected to perform one of
19 the most important and solemn duties of
20 citizenship. You are here to sit in judgment
21 on criminal charges made by the People of the
22 State of New York of one of your fellow
23 citizens. The services you render as jurors in
24 this case are as important to the
25 administration of justice as those rendered by

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1 me as the judge and by the lawyers.

2 Pay very close attention to everything
3 that is said and everything that occurs
4 throughout this trial so that you can
5 faithfully perform your sworn duties.

6 As this trial begins, let me make a few
7 observations as to how the trial will proceed
8 and give you some instructions about the case
9 and about your duties as jurors. At the end of
10 the trial I'll give you further instructions.
11 I may also give you instructions during the
12 course of the trial.

13 Now, unless I specifically tell you
14 otherwise, all such instructions, both those
15 given now and those given later are equally
16 binding on you and must be followed by you.

17 As you know, this is a criminal case which
18 has been brought by the People upon indictment
19 accusing the defendant of various crimes.
20 Please understand that the indictment is simply
21 a written accusation. It is not evidence of
22 anything, but merely a device used by the law
23 to bring charges against the accused at trial.
24 The defendant entered a plea of not guilty to
25 the indictment and is presumed innocent unless

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1 proven guilty beyond a reasonable doubt.

2 Now, the trial will proceed in the
3 following manner: First, this case will open
4 with a statement by the assistant district
5 attorney in which she will outline the People's
6 case against the defendant. The law requires
7 the People to make an opening statement. Next
8 counsel for the defense may, but does not have
9 to, make an opening statement.

10 Now, opening statements as with any other
11 statements by the attorneys do not constitute
12 evidence. You are not to consider any opening
13 statement as an established fact. The only
14 purpose of the opening statement is to give you
15 a general outline what the case is about so
16 that you can have a better understanding how
17 each piece of evidence fits, subject of course
18 to your determination of the evidence as to its
19 credibility, its accuracy and the weight to be
20 given the evidence. Moreover, you are not to
21 conclude that any attorney will necessarily be
22 able to prove what he or she says what he or
23 she expects to prove. Nor I as the judge will
24 necessarily permit such evidence to be
25 introduced.

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1 Now, I mention the word evidence. The
 2 evidence upon which you will base your decision
 3 will come from the testimony of witnesses under
 4 oath, exhibits which have been introduced and
 5 admitted into evidence, and any facts that have
 6 been stipulated to that has been formerly
 7 agreed to by the parties.

8 After the opening statements of the
 9 district attorney and defense, if any, the
 10 People will then present its evidence. The
 11 People may call witnesses to testify and may
 12 offer exhibits such as documents or physical
 13 objects.

14 Counsel for the defendant, of course, has
 15 the right to cross-examine any witness called
 16 by the People and may do so. Then there may be
 17 further questions, what we call redirect and
 18 recross.

19 At the close of the People's case, the
 20 attorney for defendant may present evidence for
 21 the defendant. But the defendant has no
 22 obligation to offer evidence or to testify.
 23 Under the law, the defendant is presumed
 24 innocent and has the right to remain silent and
 25 any silence may not be used against him.

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1 The burden of proof is on the People to
2 establish the defendant's guilt beyond a
3 reasonable doubt. It's not up to the defendant
4 to prove he's not guilty. If the defendant
5 does present any evidence, the assistant
6 district attorney may cross-examine any
7 witnesses called by the defense and there may
8 be redirect and recross.

9 Folks, keep in mind that questions put to
10 a witness by an attorney are not themselves
11 evidence. Again, questions which counsel put
12 to a witness are not themselves evidence. It's
13 the witness' answer coupled with the question
14 that provides evidence for you. Also, you
15 should not speculate or guess that a fact may
16 be true merely because one lawyer asked a
17 question which assumes or suggests a fact is
18 true.

19 Exhibits such as photographs, documents
20 and other tangible objects presented by either
21 side during the course of the trial will be
22 first marked for identification. Now, such
23 exhibits are not evidence until and unless they
24 are received in evidence by order of the Court
25 and have been properly marked received. Then

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1 and only then does it become evidence for your
2 consideration.

3 Now, at times during the trial a lawyer
4 may make an objection to a question asked by
5 another lawyer or to an answer given by a
6 witness. This simply means that the lawyer's
7 requesting that I make a decision on a
8 particular rule of law. Do not take any
9 objections or my rulings on the objections,
10 they only relate to legal questions that I must
11 determine and should not influence your
12 thinking. If I sustain an objection to a
13 question, you must ignore the question and you
14 must not try to get what answer might have been
15 given. Similarly, if I tell you not to
16 consider a particular statement, you must put
17 that statement out of your mind. You must not
18 refer to that statement later in your
19 deliberations. Do not resent the fact that the
20 lawyers make objections and motions during the
21 course of the trial; that's their job. And, of
22 course, you must not hold it against any
23 attorney if and when I rule against him or her.

24 After the presentation of evidence is
25 completed, the attorneys for each side will get

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1 an opportunity to address arguments to you in
2 which they will summarize and interpret the
3 evidence. And under our system of law, defense
4 counsel sums up first followed by the assistant
5 district attorney. Just as opening statements,
6 the closing statements do not constitute
7 evidence.

8 Following closing arguments, I will
9 instruct you on the law which applies to this
10 case. You will then retire to the jury room to
11 deliberate and decide upon your verdict in this
12 case.

13 Now, in terms of the job that you and I
14 will perform, it's my responsibility to decide
15 all questions of law. Therefore, as I told you
16 earlier, you must accept and follow my rulings
17 and instructions on matters of law. I am not,
18 however, the judge of the facts. It is not for
19 me to decide what the true facts are concerning
20 the charges against Mr. Woods.

21 You, the jury, are the sole judges of the
22 facts. It's for you -- it's your
23 responsibility, I should say, to weigh the
24 evidence and to find the facts from that
25 evidence. You will then apply those facts to

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1 the law which I give you my other instructions
2 and in that way decide whether or not the
3 defendant's guilt has been proven beyond a
4 reasonable doubt with respect to any crime
5 charged.

6 In deciding what the facts are, you will
7 have to decide what testimony you believe or
8 what testimony you do not believe. You may
9 believe all what the witness had to say, only
10 part of it, or none of it. The choice is
11 yours. In deciding what testimony to believe,
12 consider the witness' intelligence, their
13 opportunity to have seen or heard things about
14 which they are testifying, their memories, any
15 motive they may have for testifying a certain
16 way, their manner while testifying, whether
17 they said something different at an earlier
18 time, the extent to which their testimony is
19 consistent with other evidence you believe. In
20 short, observe each witness carefully as he or
21 she testifies. Be alert for anything in the
22 witness' words, the meaning, the behavior on
23 the witness stand or from anything, any other
24 evidence in the case which might help you judge
25 the truthfulness, accuracy and weight of that

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1 witness' testimony.

2 Now, you will not be permitted to take
3 notes on evidence during the course of the
4 trial. When you deliberate on your verdict,
5 you will have to rely on your own recollection
6 of the evidence. Therefore, you must listen
7 attentively to every witness so that the
8 testimony and evidence will be clear in your
9 minds. Do not rely on your fellow jurors to
10 refresh your memory. Each of you must have a
11 clear, independent recollection and
12 understanding of everything that was said.

13 If during the course of a witness'
14 testimony when the witness is being asked a
15 question you fail to hear the question asked or
16 answer given, please raise your hand
17 immediately. We have a court reporter, one of
18 the better ones, who is making a record of the
19 testimony here and I will instruct the reporter
20 to read back whatever you have missed. Also,
21 keep in mind after you go into the jury room to
22 deliberate on the verdict, if you find your
23 recollection of particular testimony or
24 evidence has become uncertain or confused, I
25 will, at your request, permit the reporter to

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1 read back that evidence to you. But don't rely
2 on getting that type of help from the reporter.
3 I repeat again, you must listen attentively to
4 every witness so that the testimony and
5 evidence is clear in your mind and you have an
6 independent recollection and understanding of
7 everything that was said and everything that
8 occurred.

9 Keep an open mind during the trial. Do
10 not decide any fact until you heard all the
11 evidence, the closing arguments and my
12 instructions. Do not allow sympathy or
13 prejudice to influence you. The law demands of
14 you a just verdict uneffected by anything
15 except the evidence, your common sense and the
16 law as I give it to you.

17 Now, finally, to ensure fairness, you as
18 jurors must obey the following rules which will
19 govern your conduct during the entire trial.
20 Now, I may not repeat these rules before every
21 break or recess, but please keep them in mind
22 throughout the trial.

23 First, you must keep an open mind and not
24 form or express any opinion as to the guilt or
25 nonguilt of the defendant until all the

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1 evidence is received, you heard my instructions
2 on the law, you've gone to the jury room to
3 deliberate on the verdict. Then and only then
4 will you be in a position to discuss this case
5 intelligently and fairly.

6 Second, you must not, during the course of
7 trial, discuss this case with anyone not even
8 your fellow jurors, nor permit anyone to speak
9 with you or in your presence about any subject
10 connected to this trial.

11 Third, during the course of the trial you
12 will receive all the evidence you may properly
13 consider to decide this case. Because of this,
14 do not try to investigate any fact on your own.
15 Do not conduct any experiment of any kind or
16 visit any location mentioned including the
17 location where this crime is alleged to have
18 occurred.

19 Fourth, you must not read, view or listen
20 to any accounts or discussions about this case
21 by news media, and that would include any
22 efforts to surf the Internet trying to get
23 information about the trial. If anybody
24 connected with the trial approaches you, you
25 must promptly report any incidents within your

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1 knowledge involving any attempts to approach
2 you or your fellow jurors and tries to
3 improperly influence you or your fellow jurors.
4 Hold yourself completely apart from the people
5 involved in this case, the defendant, the
6 witnesses, the attorneys, and any persons
7 associated with them. It's important that you
8 not only be fair and impartial, but that they
9 also appear to be fair and impartial.

10 Finally, until you are discharged, you may
11 not accept or agree to the acceptance of any
12 compensation for supplying information about
13 this trial. Once it's over you can talk with
14 whomever you wish.

15 With that, we move to the next phase of
16 the trial which is the opening statement by the
17 People.

18 Ms. Nicolazzi.

19 MS. NICOLAZZI: Thank your, Honor.

20 Good afternoon, everyone.

21 THE JURY: Good afternoon.

22 MS. NICOLAZZI: July 9th of 2007 should
23 have been just another routine night on patrol
24 for two young police officers. Instead, that
25 night ended in an almost unthinkable tragedy.

Opening - People

1 One of them was left fatally wounded. The
2 second just narrowly escaped that same fate.

3 Police Officer Hermann Yan, 26 years old,
4 and Police Officer Russell Timoshenko, only 23,
5 stopped a car that night for having a bad
6 license plate. And as they walked up to that
7 car, the two of them were met with a hail of
8 gunfire.

9 Officer Yan's life was saved because of
10 the bullet-resistant vest that he wore.
11 Officer Timoshenko was not as lucky. He fought
12 for his life for much of the next week until he
13 ultimately succumbed to his injuries.

14 This defendant, Lee Woods, together with
15 his two partners, is responsible for the
16 execution of New York City Police Officer
17 Russell Timoshenko and for the attempted
18 execution of his partner, New York City Police
19 Officer Hermann Yan. The evidence that we will
20 present to you during the course of this trial
21 will prove that to each and every one of you
22 beyond any reasonable doubt.

23 Over the course of the next couple of
24 weeks you'll be taken back to that night,
25 July 9, 2007. That night Officers Timoshenko

Opening - People

1 and Yan were working within their precinct, the
2 71 Precinct which covers the Crown Heights
3 section of Brooklyn, Kings County. They were
4 working the midnight shift.

5 And a little after 2 o'clock a.m., the two
6 of them were out on patrol in the blue and
7 white cars that you're used to seeing with the
8 lights on top. And as they drove around in
9 that area, as they were on Lefferts Boulevard
10 in that precinct, from the computer that was
11 mounted on the inside of their patrol car, they
12 ran a routine, random license plate check of a
13 vehicle that was traveling in front of them,
14 which was a green BMW sport utility vehicle or
15 SUV.

16 And when they ran that plate, the
17 information they got back was that that plate
18 belonged to a Mitsubishi Outlander not the
19 green BMW that the officers saw in front of
20 them. So they put on their overhead lights,
21 got over the loud speaker and told the car to
22 pull over. But as you will learn, the car
23 didn't pull over.

24 Inside that car were three men, this
25 defendant and his two partners, Dexter Bostic

Opening - People

1 and Robert Ellis. And as you will learn, there
2 was a lot more going on inside of that car at
3 that time other than just the bad license plate
4 the officers were pulling that car over for.
5 So they ordered the car stopped. It didn't.

6 This defendant, you will learn, was the
7 driver of the BMW. He kept on going ahead,
8 stopped at the light that turned red, waited
9 for the light to change to green and this
10 defendant turned the BMW, made a right onto
11 Rogers Avenue at that intersection. It was
12 only then that he stopped the car.

13 As you will learn, ladies and gentlemen,
14 there was a lot more going on than just a bad
15 license plate because that car that they were
16 traveling in, the BMW, had been stolen. It had
17 been stolen that same night from the dealership
18 that Dexter Bostic worked in. And it had been
19 stolen earlier that night by Robert Ellis, one
20 of the men inside that car. And you will learn
21 that because you will see videotape footage
22 during the course of this trial that will show
23 you Ellis going to the car, getting inside and
24 driving away.

25 As you will learn, he didn't need to break

Opening - People

1 into the car to get inside because he had the
2 keys. And the reason he had the keys is
3 because he had been given those keys. And the
4 person who had access to those keys that was
5 inside that BMW with them that night was Dexter
6 Bostic, the one of the three of them that
7 worked there.

8 But there was still more because also
9 inside the car with those three men were not
10 one, not two, but three loaded handguns. So if
11 the police pulled them over and found out any
12 of that, bad license plate, which, by the way
13 was stolen from another vehicle, a Mitsubishi
14 Outlander at the dealership, stolen car, loaded
15 guns not one, not two, but three. If the
16 police found out any of that, these three were
17 going right to jail.

18 As you will see, Officers Timoshenko and
19 Yan were walking into a much more dangerous
20 situation than the one they envisioned when
21 they put on their lights and told the car to
22 pull over.

23 So as you will learn, the car didn't stop.
24 The defendant took his time. As you will see
25 through all the evidence, that unwillingness to

Opening - People

1 stop was the buying of time, the making of the
2 plan, discussion amongst three of them what to
3 do, how to get away without being held
4 responsible for whether it was the plates, the
5 car, and certainly the guns. You will see the
6 decision they made to try to do just that.

7 When the officers pulled up their patrol
8 car behind, Officer Timoshenko, who was the
9 driver, got out of his side and -- excuse me,
10 Officer Yan, who was the driver, got out of his
11 side of the car and began to walk up to the
12 driver's side of the BMW. His partner, Officer
13 Timoshenko, according to procedure, began to
14 follow going at the same time as his partner
15 but proceeding on the other side of the car,
16 the passenger side. Both of them still had
17 their guns strapped in their holster. Keep in
18 mind it's supposed to be nothing more than a
19 routine stop to investigate why it was that the
20 license plate on that vehicle was coming
21 back -- was on that vehicle but was coming back
22 to a different car, according to the Department
23 of Motor Vehicles.

24 When the two officers got up to the BMW,
25 they were met with a hail of bullets. Bullets

Opening - People

1 came, were fired at both police officers from
2 inside that car at the exact same time. And
3 within seconds this defendant drove away the
4 car helping his partners flee.

5 Officer Timoshenko collapsed immediately.
6 He had been shot in the face. His partner,
7 Police Officer Yan, he too had been shot, but
8 he was able to unholster his gun and fire back
9 at the car that the officers were being
10 attacked from. But this defendant, according
11 to, as you will see, the plan, was able to get
12 away and drive away into the night.

13 Officer Yan got over his police radio and
14 radioed for emergency assistance. And as you
15 will learn, by coincidence other officers
16 happened to be nearby. So much so that they
17 actually heard the barrage of gunfire and
18 immediately came back to the scene. As soon as
19 they got there, what they saw was two fellow
20 officers, one laying on the ground
21 unresponsive, bleeding from his face, the other
22 dazed and also wounded. That was Police
23 Officer Yan.

24 The officers put Officers Yan and
25 Timoshenko into the responding police cars and

Opening - People

1 had them taken away immediately to Kings County
2 Hospital to be treated.

3 You're going to see videotape taken within
4 moments just a couple of blocks away. And in
5 that footage you're going to see this defendant
6 together with his partners fleeing from that
7 BMW. As you're going to learn, the police
8 found, recovered that BMW just a few blocks
9 away on Kingston Boulevard to where the
10 shooting had occurred. And there was
11 surveillance footage in the area. There is
12 surveillance footage that is going to show you,
13 first of all, the officers attempting to stop
14 the BMW and part of that resulting shooting.

15 Then there's going to be footage showing
16 you these defendants together fleeing that BMW
17 trying to make their escape. And in this,
18 defendant's hand you will see the bag that you
19 will learn held the guns that were used that
20 was ultimately found just a couple of blocks
21 away.

22 So how are you going to know who it was
23 that was responsible for this outright
24 execution? Because you're going to learn that
25 while still alive, Officer Timoshenko, once he

Opening - People

1 got to the hospital, he never regained
2 consciousness. He lay in his hospital bed
3 comatose, very little brain function. He only
4 survived with the help of life support and he
5 fought for his life until unfortunately on
6 Saturday, July 14, he lost his fight for life.

7 Officer Yan remained hospitalized for a
8 few days having been treated for the gunshot
9 wound received to his arm which ultimately he
10 had to undergo additional treatments for much
11 of the next year. He also received treatment
12 for a contusion or bruise that he got right on
13 his chest, right by his heart which would have
14 been a bullet entering into his heart if it
15 hadn't been for the bullet-proof vest.

16 So how are you going to decide who was
17 responsible for this attack? You're going to
18 know from a variety of different types of
19 evidence: Witness testimony, forensic
20 evidence, the physical evidence, the
21 surveillance footage that you will see in this
22 case. And what will be made abundantly clear
23 to you all is that it was the three of them,
24 Bostic, Ellis and Woods that are collectively
25 responsible for it all.

Opening - People

1 This defendant's role was that of the
2 driver. This crime could not have happened
3 without him. He was the one who drove the car.
4 He was the one who drove it and did not stop
5 when the police originally tried to pull him
6 over, giving this group time to form their
7 plan. He is the one that turned that car on to
8 the different street of Rogers where ultimately
9 that attack occurred. And he is the one that
10 held that car still just long enough to give
11 his partners time to fire their guns. And then
12 he sped that car away into the night letting
13 them make their escape. And he is the one who
14 then hid those three guns in the garage nearby
15 where they were ultimately recovered.

16 Robert Ellis' role was that of a shooter.
17 As the evidence will show you, he shot at
18 Officer Yan from the back seat, the driver's
19 side. Dexter Bostic was the other shooter. He
20 fired his gun at Russell Timoshenko's face from
21 the front passenger's seat of the car. Each
22 three of them was part and parcel of this plan.
23 Each one of them is equally responsible under
24 the law.

25 Now, you will learn that Dexter Bostic and

Opening - People

1 Robert Ellis were roommates and that Lee Woods
2 was their friend. You will learn that it
3 didn't take very long for the police to
4 determine that it was the three of them that
5 had been inside that car that night. Because
6 as you will learn, as soon as other officers
7 made sure that Officers Yan and Timoshenko were
8 taken to the hospital to be treated for their
9 injuries, then the police investigation
10 started. And part of that investigation
11 concerned the Crime Scene Unit. And Crime
12 Scene processed first the scene of the shooting
13 where the officers had been shot. And as I
14 said before, it didn't take long for the BMW to
15 be found abandoned just a few streets away.
16 That area was safeguarded and that vehicle
17 itself, inside and out, was processed as well.

18 Part of that processing included the
19 taking of samples to be tested for DNA, dusting
20 for fingerprints. And you'll be given all that
21 evidence and you will see that fingerprints,
22 DNA, will make it abundantly clear that it was
23 this defendant, together with Bostic and Ellis,
24 that were inside that car.

25 Now, after the police found the BMW, one

Opening - People

1 of the first things that they did was track it
2 and they were able to track it to the
3 dealership where they learned that Dexter
4 Bostic worked. And while that was going on,
5 Crime Scene was expanding their search into the
6 surrounding areas. There was a surveillance
7 camera footage showing people fleeing from the
8 car. And when they searched those areas, in
9 the garage right around the corner they found
10 not one, not two, but three handguns. And you
11 will learn those guns, by DNA, are linked to
12 this defendant.

13 And those three guns were a .45 calibre
14 Llama, semi-automatic pistol, a 9 millimeter
15 High Point semi-automatic pistol and another 9
16 millimeter Intratec automatic pistol. They
17 took those firearms and they compared it to the
18 various ballistics evidence that were found
19 both at the scene and in the BMW. You will
20 learn that some of the ballistics found at the
21 scene came back matching Officer Yan's gun,
22 which makes sense because you know he fired
23 back at the attackers. And the rest of the
24 ballistics evidence came back to two other
25 firearms, the .45 calibre Llama and the 9

Opening - People

1 millimeter High Point. Those were the two guns
2 that were used, that will also be shown to you
3 by ballistics evidence, that were used to shoot
4 Officer Yan, that was the 9 millimeter High
5 Point and .45 that was used to take Russell
6 Timoshenko's life.

7 So what happened to the defendants after
8 they fled from the scene? You will learn that
9 they parted company in an attempt to get away
10 to be less conspicuous. But not for long.

11 Robert Ellis went back to the apartment that he
12 shared with Dexter Bostic and began to gather
13 up items that potentially could be used against
14 him at a later time. And you were learn that
15 inside the apartment he wasn't alone when that
16 he did that. There was a young lady staying in
17 the apartment by the name of Tamika Buggs.

18 Now, Ms. Buggs had been having trouble with her
19 landlord, so at this defendant's request,
20 Dexter Bostic let her stay in the apartment.

21 So Ellis woke her up, come on, we have to go.
22 He gathered his things and the two of them left
23 together. You will see they went to
24 McDonald's. And you are going to see that on
25 the surveillance tape. They went there at 6

Opening - People

1 o'clock in the morning because that's where
2 there was a TV so that Ellis could see what was
3 on the 6 o'clock news in an attempt to find out
4 what was known. You will see the two of them
5 inside the McDonald's.

6 You will learn that the 6 o'clock breaking
7 story was that two police officers in Brooklyn
8 had been shot. At that point their assailants
9 were unknown. You will see Ellis get up and go
10 to the TV and try to change the channel. And
11 then he got on the phone repeating what had
12 been said on the television to whoever was on
13 the other line.

14 Then he and Ms. Buggs left the McDonald's,
15 went to another location where they were picked
16 up. They were picked up there by Nicole Bostic
17 who is Dexter Bostic's sister. She drove in
18 her Ford Explorer and the two of them got
19 inside. Now, also inside her sport utility
20 vehicle was her teenage daughter and this
21 defendant, Lee Woods, because this defendant
22 was not only Dexter Bostic's friend, but he was
23 a long-time boyfriend of Dexter Bostic's
24 sister, Nicole Bostic.

25 Once inside that car, this defendant began

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1 to explain to Ellis that he and Nicole had
2 tried to go back to get the guns but there were
3 too many police in the area. So they had to
4 abandon their attempts and leave.

5 The group drove around for a little while
6 and ultimately found Dexter Bostic. And now he
7 too got inside the car. Once he was inside,
8 this defendant again began to explain to Dexter
9 Bostic that he and Nicole had gone back over to
10 try to get back the guns but there were too
11 many officers in the area and they had to leave
12 them there.

13 And here they are, the team of three now
14 back together. Now they began to discuss some
15 of what they had done. This defendant said
16 that although he had moved the guns, he hadn't
17 actually fired them at the officers so he
18 wasn't going to get out of town. And you will
19 learn that Bostic and Ellis didn't say
20 anything. Quite to the contrary. They began
21 at that point to talk about how they had
22 actually shot the officers. And the two of
23 them, their plan was to actually leave and go
24 not only just out of town but out of state.

25 After a little while, Bostic and Ellis

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1 were dropped off with Ms. Buggs and this
2 defendant left with his girlfriend, Nicole
3 Bostic, and he went back to her apartment.

4 Now, as I said before, one of the first
5 things the police investigation recovered was
6 the BMW had come back from the dealership from
7 Dexter Bostic's work and that Dexter Bostic
8 hadn't shown up for work that morning. So one
9 of the first things the police tried to do now
10 is try to locate Dexter Bostic. They went to
11 his home. He wasn't there. So they began to
12 visit his friends and family members. And one
13 of those places they went was his sister's
14 home, Nicole Bostic. And she wasn't there at
15 the time. I think it was between 10 and 11
16 o'clock that same morning, the morning of the
17 9th of July. But inside was this defendant
18 along with a younger member of the Bostic
19 household. And when they encountered this
20 defendant, one of the officers asked him if he
21 had seen Dexter Bostic since the night before,
22 the 8th going into the 9th. And the defendant
23 said no, he, Lee Woods, had been home all night
24 sleeping on the couch. And, in fact, he hadn't
25 seen Dexter Bostic in a few days.

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1 The police officers asked him at that
2 point if he'd be willing to go back with them
3 to the precinct to help them find Dexter
4 Bostic. Keep in mind the police had no idea
5 what, if any, role at that point this defendant
6 played. As far as they knew, he was just
7 someone who was a friend of Dexter Bostic that
8 could maybe help them find him.

9 The defendant in this conversation with
10 the police told them, oh, by the way, I'm a
11 confidential informant, which you will learn
12 that he was. Haven't seen Dexter. I'd be
13 happy to go back with you to the precinct to
14 help you find him. He asked that when he was
15 taken out to be put handcuffs so he didn't
16 appear to be snitch. The police officers
17 agreed and put him in cuffs and off they went.

18 Now, you might wonder and ask yourself if
19 he was involved why would he be so cooperative
20 with the police? So as you listen to the
21 evidence, keep in mind the motivation he would
22 have to do just that in an attempt to one, be
23 right there to find out what, if any,
24 information the police had and knew. And two,
25 be in the best position to talk and put his

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1 spin on whatever it was that they had.

2 Because remember, in his experience as a
3 confidential informant he had learned that was
4 what benefited him the most. Because remember,
5 that's what confidential informants do; they
6 help themselves by talking to the police. But
7 what you're going to learn here is that what
8 the defendant told the police from that moment
9 on wasn't truthful. The evidence will show you
10 that it was lie after lie in an effort to
11 protect himself.

12 He went back to the precinct and once he
13 sat down, one of the lead detectives, Detective
14 Yero, Brooklyn South Homicide, said, I hear
15 you're a friend of Dexter Bostic. Have you
16 seen him? Do you know where we might find him?
17 The defendant said no, I hadn't seen him in a
18 few days. In fact, the last I saw him he said
19 he was going to North Carolina to be with,
20 using the defendant's words, "stripper bitch"
21 that he knew. And that was last he had seen of
22 him.

23 As you can imagine, there was a lot going
24 on that morning with the police investigation.
25 So Detective Yero said, you know what, I got to

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1 go do something else on this case. Would you
2 mind sticking around in case you can be of
3 assistance and talk to me later. The defendant
4 said sure, no problem. He stayed at the
5 precinct. Detective Yero left and was gone for
6 much of that day.

7 So later that same night, Detective Yero
8 came back. In the interim he had conducted
9 some interviews and when he came back to the
10 defendant he said, listen, Mr. Woods, some
11 information has come to light that leads me to
12 believe that you may actually have seen and
13 been with Dexter Bostic the night of the 8th
14 into the 9th.

15 And the defendant, now given this new
16 information, changed his story. You're right,
17 I was. And the defendant admitted that not
18 only had he been with Bostic and Ellis all that
19 night, but he went on to say that he had
20 actually been with them at the time of the
21 shooting. Yet, he was claiming that he had
22 been in a completely separate car. At that
23 point Detective Yero stopped the interview, the
24 defendant having placed himself there or near
25 the shooting and said it was time give the

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1 defendant his Miranda rights. The defendant
2 was given his Miranda warnings. He
3 acknowledged he understood them and he agreed
4 to continue speaking. And then he went on to
5 tell Detective Yero that he and Ellis and
6 Bostic had been together that night, the night
7 of the 8th. They had gone to a brother of
8 Bostic, Frederick Bostic's home. And there
9 Bostic's brother had given Bostic three guns;
10 That after they had left there, then the
11 defendant had gone into a separate car which
12 you will learn through the evidence was a lie;
13 that they had taken now these two cars and gone
14 to a club. After they had gone to the club,
15 they had gotten hungry so this group, again in
16 two cars, had gone to Popeye's to get chicken,
17 to get something to eat in the middle of the
18 night. And then, although he was traveling in
19 a separate car, the defendant said that for
20 some reason he got into the BMW at that point
21 to the back seat to eat with them before he
22 left.

23 And as you will learn, ladies and
24 gentlemen, just a way to put a spin on any of
25 the DNA or fingerprints that may and ultimately

Opening - People

1 did come back leading right to this defendant.
2 He then went on to stay after eating he got out
3 of the car and got back in this separate car
4 that you will learn is nothing but
5 make-believe. But then he followed the BMW
6 with Bostic and Ellis and he was there when he
7 saw, in his words, the cops flag that car and
8 that he stayed behind and watched the car turn
9 onto Rogers; that he parked on a separate
10 corner; and that he watched as the officers
11 approached. He heard the gun fire. He saw one
12 of the officers shoot back claiming that he
13 left and had not seen or heard from Ellis or
14 Bostic after that time.

15 The defendant then wrote out his version
16 of that story which you will see during the
17 course of this trial. Detective Yero left.
18 After he left the room, Detective Yero reviewed
19 the videotape, which I told you you will see,
20 of the actual car stop and the shooting. And
21 when it was clear to Detective Yero that there
22 was no second car at all, he came back in the
23 room. And now at about 4:45 in the morning of
24 the 10th, he spoke again with this defendant
25 and said listen, there's some information that

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1 leads me to believe that you're not being
2 straight with us, that there may not or that
3 there was never a second car. So you're
4 playing games. Now is the time to stop.

5 And now, getting more new information, the
6 defendant changes his story again. And he
7 says, first of all, I'm not the one playing
8 games, you guys are the ones playing games
9 because that cop on the driver's side looked me
10 right in the eye. He knows I was the driver.
11 So you all know that I'm the driver of that
12 car. But now that you know, let me tell you
13 what really happened.

14 So the defendant at that point went on to
15 say that as they drove down Lefferts, the
16 police car had begun to pull them over, the
17 lights and sirens came on and that he was
18 willing to pull over. He, Lee Woods, had
19 nothing to hide, so he claimed. But that
20 Bostic and Ellis, the other two, they didn't
21 want to stop the car. So the defendant went on
22 to tell Detective Yero, hey, listen, I told
23 them no problem, I'll just tell the cops I'm a
24 confidential informant. And they said no, no,
25 no, don't do that. But I pulled over the car

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1 anyway.

2 The defendant claimed that he pulled over
3 the car, the officers approached and then out
4 of nowhere Bostic and Ellis, both with guns in
5 their hands, fired at the police. And then the
6 defendant went on to claim that then and only
7 then because in his claim his friend Robert
8 Ellis now put a gun to this head and ordered
9 him to drive away, that at that point the
10 defendant drove away because of that.

11 He got out of the car as quickly as he
12 could. He claimed he had never gone into any
13 driveway where you will learn those guns with
14 the defendant's DNA were recovered. And then
15 he said that he got into the train with Ellis
16 and Bostic, but hadn't heard or seen from him
17 since.

18 So when you listen to those statements,
19 ladies and gentlemen, and after he said that he
20 wrote another version of that which you will
21 also see.

22 Now, we didn't talk during jury selection
23 about the law about when and how you can use
24 statements. And that's something Justice Lott
25 will explain to you at the end of the trial.

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1 But when you listen to that evidence, when you
2 listen to the words spoken to the defendant,
3 how it was they were taken, watch and listen
4 for just how voluntarily this defendant spoke.
5 And then look and analyze those statements in
6 conjunction to the other evidence that you will
7 be given to determine what parts are true and
8 what parts are false.

9 As you listen to the defendant's words,
10 keep in mind the other evidence that you will
11 be given which will show you where it is the
12 defendant is clearly trying to put his best
13 foot forward to minimize his role in this.
14 Okay, now you've got me. I was there, but let
15 me put my spin on it and try to explain why it
16 wasn't really me, just them.

17 You will be given the tools, the evidence
18 coupled with your common sense to do just that.
19 As you already know from jury selection,
20 testimony is evidence, the forensics in this
21 case is evidence, and the evidence in this case
22 from the videotapes, to the forensic work that
23 was done, to the testimony of Ms. Buggs and
24 other people that you will hear from will make
25 it clear to you what it was that happened.

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1 When you combine the defendant's statement
2 together with all of the other evidence, it
3 will show you what was true and what was lies.
4 And it will be clear to each of you that this
5 defendant was an active and willing participant
6 in this crime from beginning to end. In for a
7 penny, in for a pound.

8 The defendant is responsible for each and
9 every act not just for himself, but his
10 partners as well. His guilt will be proven to
11 you all beyond a reasonable doubt. After all
12 the evidence has been presented to you, at that
13 time I will come back before you again and
14 address you at that time because you've heard
15 all the evidence and I will ask you at that
16 time, based on the evidence, coupled with the
17 law that Justice Lott will give to you, to hold
18 the defendant responsible for his acts for the
19 choices he made. And that based on the
20 evidence, to hold him guilty for his role of
21 being part and parcel of the execution of
22 Russell Timoshenko and the attempted execution
23 of Hermann Yan.

24 Thank you, ladies and gentlemen.

25 THE COURT: Mr. Megaro.

Opening - Defense

1 MR. MEGARO: Good afternoon, ladies and
2 gentlemen. How are you?

3 THE JURY: Good afternoon.

4 MR. MEGARO: It must be a very, very
5 difficult thing to sit in judgment of a fellow
6 human being.

7 MS. NICOLAZZI: Objection.

8 THE COURT: Sustained. That was my
9 instruction about --

10 MR. MEGARO: I'm sure a lot of you are
11 asking yourselves, how could I have gotten
12 picked to sit as a juror in this case? How can
13 I be fair and impartial without being
14 cold-hearted? How can I be merciful and still
15 be just? How can I not be oblivious to the
16 fact that a police officer has been murdered in
17 such a horrible, ruthless, vicious fashion?
18 How can I put that out of my mind that a mother
19 has lost her son, that people have lost
20 friends, New York City has lost a police
21 officer?

22 You are going to be affected by that. I
23 don't think it's humanly possible for anyone to
24 put that out of their minds. We're all human
25 beings. And I'm not going to ask you to put

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1 that out of your minds. I'm going to ask you
2 only to fulfill the promises that everybody
3 made here not only to the district attorney,
4 not only to the judge, not only to me, but to
5 Mr. Woods.

6 THE COURT: Just keep your voice up,
7 counsel.

8 MR. MEGARO: And that promise, ladies and
9 gentlemen, is to decide this case only on the
10 evidence not on speculation, not on strong
11 feelings you might have about murder, not on
12 strong feelings you might have on sympathy or
13 empathy for the officer or his family or his
14 loved ones, but on the evidence and the
15 evidence alone.

16 Now, I know we joked around a bit during
17 jury selection. But right now we're going to
18 get serious, and I mean serious, because you're
19 going to hear evidence of this horrible murder
20 in this trial. And remember, when we started
21 jury selection, ladies and gentlemen, there was
22 a lot of people in this courtroom, a lot of
23 people were being questioned and not everybody
24 was able to make the same promises that each
25 one of you promised that young man over there

Opening - Defense

1 that you would do. Not everybody was able to
2 sit here as a fair and impartial juror.

3 Now, you're going to notice throughout
4 this trial that I'm not going to object to
5 every piece of evidence that the district
6 attorney brings in. I'm not even going to
7 cross-examine every single witness that is
8 called by the district attorney in this case.
9 And I don't want you to think that just because
10 I'm not arguing with them like you might see on
11 TV or fighting with the judge or fighting with
12 the witnesses that I'm not fighting for that
13 young man over there. I don't want you to
14 think that for a minute because the reality of
15 the situation is I'm going to agree with a lot
16 of their evidence. I'm going to agree with a
17 lot of what the witnesses say. I'm going to
18 agree with large parts of the theory of their
19 case.

20 Now, I agree that Dexter Bostic shot
21 Officer Russell Timoshenko in the face. That
22 happened. I agree that Robert Ellis, also
23 known as Roger Ellis, shot Officer Yan and
24 tried to kill him. I agree that those things
25 happened. I agree that Mr. Woods was the

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1 driver of that car. I agree. And I also
2 agree, ladies and gentlemen, that this was an
3 unthinkable tragedy that absolutely should
4 never have happened.

5 However, that's not what I want you to
6 focus on. Where the disagreement occurs is
7 where the district attorney calls my client a
8 murderer. The disagreement occurs when they
9 tell you that my client was partners with those
10 other two. That is where our thinking parts
11 ways. That is where this disagreement occurs
12 and that is the central question that I want
13 each and every one of you to focus on here.

14 Now, a lot of what the district attorney
15 told you was absolutely, 100 percent correct.
16 July 9, 2007 Lee Woods was driving that SUV.
17 In the front seat of that car was Dexter
18 Bostic. In the back seat of that car was
19 Robert Ellis, Roger Ellis, whatever name he
20 wants to go by. And, yes, they did have a car
21 with a bad license plate on it. And, yes, the
22 police did pull them over because of this bad
23 license plate.

24 However, this is what the evidence is
25 going to show you. You're going to see a video

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1 in just a few minutes that tells you, that
2 proves to you everything I'm about to tell you
3 is correct. Videos don't lie. When the police
4 put on their lights to pull over this car that
5 Mr. Woods was driving, there was nowhere for
6 him to pull over. He was stopped at a red
7 light. There was oncoming traffic on the other
8 side of the street and parked cars preventing
9 him from pulling over right then and there.
10 Did he blow the red light? No. Did he pull
11 over into the parked cars? No. As soon as
12 that light changed, he made that right and
13 pulled over as close to the curb as he possibly
14 could have without leaving the police car
15 sticking out into the intersection. And at
16 that point in time you're going to hear
17 evidence, testimony that the police said, put
18 the car in park, over the loud speaker.

19 And you're going to see on this video in
20 just a few minutes, he put the car in park,
21 just as he was ordered to do. Not setting up
22 an ambush. Setting up an ambush would have
23 kept that car in drive. He put that car in
24 park. He was doing everything he was supposed
25 to do. He's getting his license out. At that

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1 point in time, Dexter Bostic and Robert Ellis
2 shoot the police officers. A decision that
3 they took on their own, a decision for which he
4 had nothing to do with, no responsibility
5 whatsoever.

6 Because, ladies and gentlemen, the
7 evidence is not going to show you what was
8 going on inside that car. The evidence is not
9 going to prove to you that it was his idea to
10 shoot police officers. The evidence is not
11 going to show you that he helped Dexter Bostic
12 shoot Officer Timoshenko. The evidence is not
13 going to show you that he helped Robert Ellis
14 shoot Officer Yan. The evidence is not going
15 to show you that he even knew that was what
16 they were planning on doing. The evidence is
17 not going to show you that he knew of any plan
18 whatsoever or that this even was a plan or an
19 orchestrated team effort or whatever you want
20 to call it. The evidence is not going to show
21 any of those things.

22 The evidence is also not going to show you
23 that he even knew that the BMW was stolen or
24 that it had bad license plates on it. It's not
25 going to show you that.

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1 The evidence is not going to show you that
2 these were his guns. As a matter of fact, the
3 evidence will prove to you that those guns were
4 the other two guys' guns. The evidence is not
5 going to show you that he helped to hide the
6 guns because you're going to see video of him
7 running away from those other two without the
8 guns. You're going to see video of the other
9 two men running with guns. The evidence is not
10 going to show you that he helped to hide those
11 guns. If anything, the evidence is going to
12 disprove that notion.

13 Now, also, one last thing. Despite what
14 the district attorney has said, the evidence is
15 not going to prove to you that he ever tried to
16 go back and retrieve those guns, not going to
17 prove that to you. 100 percent not true.

18 I'm going to put this out here now because
19 in the district attorney's opening statement
20 they said a lot about the statements my client
21 allegedly made to the police. Some police
22 officers are going to come into this courtroom.
23 They're going to come on to this witness stand,
24 they're going to take an oath and swear to tell
25 the truth. And they're going to say to you Lee

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1 Woods said this, Lee Woods said that, Lee Woods
2 said this, Lee Woods said that. But ladies and
3 gentlemen, they're not going to tell you the
4 whole truth and nothing but the truth. And it
5 is going to be your job to figure out where
6 they make things up and fabricate things that
7 my client said and where the things that my
8 client actually said, which is the truth,
9 actually happened, okay?

10 You are going to use the same tools that
11 you use in everyday life in assessing whether
12 someone's telling you the truth. And you are
13 not going to find that those police officers
14 are telling you the unadulterated truth. After
15 cross-examination of those police officers,
16 you're not going to be convinced that they told
17 you the entire truth.

18 Now, the evidence in this case, the
19 evidence is going to show you that if there was
20 any team, it was a two-man team, not a
21 three-man team. And that two-man team did not
22 include Lee Woods. That is what the evidence
23 is going to show you. Everything that he does
24 before, during and after this shooting shows
25 you that he is not part of this three-man team.

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1 Now, throughout this trial I want you to
2 constantly question the district attorney's
3 theory of this case as she has just given it to
4 you. Constantly question this and keep these
5 questions in the back of your mind with every
6 witness that takes the witness stand, every
7 piece of video that you will see which will
8 back up everything I'm telling you, every piece
9 of forensics evidence. Think to yourselves
10 these questions: If Lee Woods was part of this
11 so-called team, then why did he ditch Bostic
12 and Ellis as soon as he was able to? Why did
13 he ditch them just a couple of blocks away and
14 try to leave them behind?

15 Now, if he's part of this so-called
16 three-man team, why doesn't he run to
17 Pennsylvania with Bostic and Ellis? Why
18 doesn't he leave town? If he's part of this
19 so-called team, why would he go right back to
20 Nicole Bostic's apartment in Far Rockaway,
21 Queens, a place where he was certainly going to
22 be found by the police? If he's part of this
23 so-called team, then how do you explain
24 everything that he does before, during and
25 after the shooting that separates him from

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1 those two?

2 Remember the theory of this case, the
3 district attorney's theory in this case is that
4 these guys were driving around in a stolen car
5 and they had guns so they could shoot police
6 officers as if they knew they would get pulled
7 over, so they can escape arrest for a stolen
8 car, commit a murder of a police officer to
9 escape an arrest of the stolen car.

10 Ladies and gentlemen, the evidence
11 throughout this entire trial is going to
12 disprove that theory.

13 Now, the evidence, however, will lead you
14 to the conclusion that Lee Woods is not part of
15 this team, the conclusion that Lee Woods did
16 not assist in the shooting of any police
17 officers, the conclusion that he did not act in
18 concert with Dexter Bostic and Robert Ellis,
19 the conclusion that he was not part of this
20 two-man team, that he is not responsible for
21 this crime. And that is going to be your
22 verdict.

23 Pay close attention, folks. The video is
24 coming right up and you're going to see
25 everything I have told you will come to bear.

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1 Thank you very much.

2 THE COURT: Jurors, we'll a five-minute
3 break. I'll have you back. The case is not
4 given to you. Adhere my warnings.

5 Take the jury out, please, and the
6 audience will remain seated until the jury
7 leaves the courtroom.

8 (Whereupon the jury exits)

9 THE COURT: How long is the video
10 Ms. Nicolazzi?

11 MS. NICOLAZZI: The video goes about three
12 minutes, your Honor. And I've spoken to
13 Mr. Megaro before and we're putting on the
14 detective from TARU to lay the ground to put in
15 the video. We have one photograph that will go
16 on the projector, and we will also stipulate
17 just to the 911 tech and then we'll play that
18 radio run which is two minutes and 30 seconds
19 and then we're done.

20 MR. MEGARO: Your Honor, I don't plan to
21 cross-examine the detective from TARU, so this
22 could be done.

23 THE COURT: Five minutes, folks, five
24 minutes.

25 Take Mr. Woods in if you have to.

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1 (Whereupon a recess is taken)

2 (Whereupon the jury enters)

3 THE COURT: Mr. LaRose.

4 THE COURT CLERK: Case on trail. All
5 parties are present.

6 Do both sides waive the reading of the
7 roll of the jury?

8 MS. NICOLAZZI: Yes.

9 MR. MEGARO: Yes.

10 THE COURT: People, call your witness.

11 MR. HALE: People call Detective Stuart
12 Goldstein.

13 D E T E C T I V E S T U A R T G O L D S T E I N,
14 called as a witness on behalf of People, having
15 been first duly sworn, was examined and
16 testified as follows:

17 THE COURT CLERK: For the record, state
18 your name, spell the last name, shield number.

19 THE WITNESS: Detective Stuart,
20 S-T-U-A-R-T, Goldstein G-O-L-D-S-T-E-I-N, NYPD
21 Technical Assistance Response Unit.

22 THE COURT CLERK: Shield number?

23 THE WITNESS: 866.

24 THE COURT: Please speak into the
25 microphone.

Det Goldstein - People - Direct

1 You may inquire.

2 MR. HALE: Thank you.

3 DIRECT EXAMINATION

4 BY MR. HALE:

5 Q Sir, you are a New York City police
6 officer?

7 A Yes, I am.

8 Q How long have you been a New York City
9 police officer?

10 A 22 years.

11 Q You currently hold what rank?

12 A Detective Second Grade.

13 Q How long have you held that rank, sir?

14 A Approximately since March of '06.

15 Q And, sir, you work in which unit with the
16 New York City Police Departments?

17 A The Technical Assistance Response Unit,
18 TARU.

19 Q How long have you been working with that
20 unit?

21 A 11 years.

22 Q Sir, if you can, what are the general
23 functions of a detective in the Technical Assistance
24 Response Unit?

25 A We assist NYPD detectives in their cases

Det Goldstein - People - Direct

1 by helping them on any technical aspect, wiretaps
2 downloading media, audio tapes, stuff like that.

3 Q And, sir, have you received training in
4 that particular function?

5 A Yes, I have.

6 Q What sort of training?

7 A I've been taught to go out and download
8 various media from various video systems basically
9 over the last six years.

10 Q During that time, sir, have you acquired
11 some expertise or knowledge of various video
12 surveillance systems?

13 A Yes, I have.

14 Q Sir, when you are called out for those
15 investigations, do you, yourself, initiate it or is
16 it the initiation of the police officers
17 investigating other matters?

18 A Something will take place in the city that
19 requires TARU's response and the investigators call
20 to have TARU respond.

21 Q Sir, I want to draw your attention and
22 talk to you about a particular day and that date
23 would be July 9, 2007. Do you recall that day?

24 A Yes, I do.

25 Q On that day, sir, were you employed as a

Det Goldstein - People - Direct

1 detective in the TARU Unit of the New York City
2 Police Department?

3 A Yes, I was.

4 Q During the early morning hours of that
5 day, sir, did you receive any sort of notification
6 that your particular expertise or duties were
7 required?

8 A They woke the TARU detectives at home and
9 asked us to respond in Brooklyn in a cop shooting
10 case.

11 Q Do you recall about what time you got that
12 notification?

13 A The call came in around 2:30, between 2:30
14 and 2:45.

15 Q And, sir, did you have occasion to go to
16 your command then?

17 A Yes, I immediately went into Queens to my
18 command and picked up our command post and responded
19 to Brooklyn.

20 Q Now, your command post, what sort of
21 equipment did this involved?

22 A Our command post is a forward command post
23 that has various tools that we use, VCRs, radio,
24 audio-capable recovery systems.

25 Q Sir, after you picked up that equipment,

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1 where did you respond to?

2 A We responded to the corner of Lefferts
3 Avenue and Rogers Avenue.

4 Q Now, sir, when you arrived at that
5 location, what did you observe?

6 A When I pulled up, I observed a lot of
7 police activity. I observed a frozen area with
8 yellow police tape and a bunch of things just going
9 on.

10 Q Now, sir, maybe you can explain what you
11 mean by frozen zone. What does that mean?

12 A A frozen area is when there's a crime that
13 takes place somewhere and what they do is they
14 freeze the area so nobody can go in or mess around
15 with anything in sight. Everything is left alone.

16 Q Now, sir, when you arrived there, I think
17 you already stated there were other police officers
18 already there; is that correct?

19 A That is correct.

20 Q When you went to that particular location,
21 again, about what time was this?

22 A I arrived approximately 4 a.m.

23 Q Still dark at that time?

24 A Yes.

25 Q When you arrived, sir, did you arrive by

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1 yourself or with other technical assistance response
2 unit members or your supervisors?

3 A I arrived with a partner, David Harris,
4 and other people from TARU including my sergeant.

5 Q When you arrived at that location, sir,
6 besides the frozen zone, did you observe whether
7 there was any sort of buildings or business
8 establishments at or around that location?

9 A There was a day care center, The Little
10 Red Riding Hood Day Care Center which was at 237
11 Lefferts Avenue and within the yellow frozen area
12 tape. Also, I observed a police car and a bunch of
13 crime scene numbers on the floor, basically.

14 Q These are things you had seen before in
15 other crime scenes, sir?

16 A Sure.

17 Q Now, the building that you've talk about,
18 the day care center, were you able to observe at
19 that time, sir, whether there was any video
20 surveillance cameras on the exterior of that
21 location?

22 A Yes.

23 Q Where did you see video surveillance
24 cameras on the exterior of that location, sir?

25 A There were two cameras on the exterior.

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1 One was over the main entrance, a little to the
2 right which was on Lefferts Avenue and that camera
3 faced west on Lefferts. There was another camera on
4 the Rogers Avenue side that faced south toward the
5 intersection.

6 Q So, tell me if I'm wrong, you have two
7 cameras there which both covered different aspects
8 of the intersection of Lefferts and Rogers; is that
9 correct?

10 A That is correct.

11 Q Sir, what direction, if any, were you
12 given after you made those observations concerning
13 the exterior cameras?

14 A I was told by my sergeant to go inside and
15 retrieve the video inside the day care center.

16 Q Now, was that day care center, was it
17 already opened or had it been opened prior to your
18 arrival?

19 A The day care center was closed, but it was
20 opened by the superintendent of the building.

21 Q That was done in your presence, sir?

22 A It was done before.

23 Q Now, when you went in the building, what
24 did you do?

25 A I went into the building. I went into the

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1 main office and I checked out the equipment. There
2 was a DVR, a digital video recorder, DVR, and there
3 was a monitor.

4 Q Let me just show you something at this
5 point. This would be People's 1 for identification.

6 MR. MEGARO: No objection to People's 1,
7 your Honor.

8 Q Take a look at that and I'll just ask you
9 a few questions. Do you recognize what's in that
10 photograph, sir?

11 A Yes, I do.

12 Q What is that, sir?

13 A That is a picture of the Little Red Riding
14 Hood Day Care Center. It's facing north. The
15 camera's facing north on Rogers.

16 Q Sir, it's daylight in that photograph; is
17 that correct?

18 A Yes, it is.

19 Q But for that, does that fairly and
20 accurately depict the area as you observed it when
21 you arrived and while you were doing your work on
22 July the 9th, 2007?

23 A Yes, it does.

24 MR. HALE: I'll offer that in evidence as
25 1, your Honor.

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1 THE COURT: Any objection?

2 MR. MEGARO: No, your Honor.

3 THE COURT: Marked received as People's 1.

4 Put it on the monitor.

5 MR. HALE: Your Honor, if the witness can
6 join me.

7 THE COURT: Sure. Just step down.

8 Jurors, are you able to see the exhibit?

9 THE JURY: Yes.

10 Q Detective, I'm going to let you use your
11 own fingers on the item right here. If you could
12 please just identify the areas that you've already
13 discussed here in your testimony.

14 A Okay, this is Lefferts Boulevard. Right
15 here going this way is going eastbound. Going the
16 opposite way is westbound. This is Rogers Avenue.
17 Pointing this way is going northbound and the other
18 way is going southbound (indicating).

19 Q And the actual day care center is located
20 where, sir?

21 A The day care center a right over here
22 (indicating).

23 Q Sir, you indicated that you saw two
24 exterior cameras; is that correct?

25 A That's correct.

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1 Q Can you point to the approximate location
2 where they would be on the photograph, sir?

3 A The first camera facing westbound is
4 located above the door to the right. You can
5 actually not see the camera. Here's the door, the
6 entrance to the day care center. If you move over
7 this way a little, the camera is right above on the
8 other side of this little awning (indicating).

9 THE COURT: Jurors, are you able to see
10 that?

11 THE JURY: Yes.

12 Q Now, the actual camera is not depicted
13 there. You're pointing to a spot where the camera
14 would be?

15 A That is correct.

16 Q How about the other camera, the
17 approximate location?

18 A The approximate location of the other
19 camera which is facing southbound on Rogers is in
20 this area over here (indicating).

21 Q On the approximate overhang there between
22 the first and second story?

23 A Yes, sir.

24 THE COURT: Again, jurors, are you able to
25 see that?

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1 THE JURY: Yes.

2 Q You've also talked about a frozen zone or
3 frozen area. Just generally, is this whole
4 photograph within that frozen area?

5 A Yes, it is. The frozen area was coming
6 this way and then extending up Rogers Avenue
7 (indicating).

8 Q Sir, the patrol car that you talked about,
9 is it depicted there?

10 A Right there (indicating).

11 Q And the crime scene markers that you
12 talked about?

13 A Over here (indicating).

14 Q Now, you had nothing to do with placing
15 those markers?

16 A Not at all.

17 Q And you don't know what it signifies, do
18 you?

19 A No, I do not.

20 Q Thanks a lot, Detective. You can take a
21 seat.

22 Now, Detective, when you looked at the DVR
23 that was in place within the day care center, were
24 you able to review any images that were stored on
25 that DVR?

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1 A Yes, I was.

2 Q Now, those images are stored on sort of a
3 hard drive within the DVR; is that correct?

4 A That is correct.

5 Q Were those images, sir, were they able to
6 be extracted from the hard drive of the DVR into any
7 other sort of media?

8 A Yes. I extracted two images and I
9 downloaded them onto a mini-DV cassette in the
10 office.

11 Q What was it that you observed in reviewing
12 the images on the hard drive that led you to
13 download the two images and the two clips that
14 you're talking about?

15 A The first image on the camera that's over
16 the main entrance, the first image where the camera
17 is facing west on Lefferts showed a police car
18 pulling up behind another vehicle and stopping
19 behind the vehicle.

20 Q And how about the second image or second
21 clip?

22 A The second clip shows the vehicle making a
23 right-hand turn onto Rogers with the police car
24 following behind and then stopping.

25 Q Now, sir, how was it that you were able to

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1 take those images and preserve them?

2 A What I did is downloaded them to a mini-DV
3 cassette and then we took the mini-DV and we
4 transferred the media right on to a CD.

5 Q Sir, I'm going to show you an item which
6 will be People's 2 for identification and just ask
7 you to take a look at that.

8 MR. MEGARO: I've seen that. Thank you.

9 Q First of all, just looking at the exterior
10 of that, sir, do you recognize that?

11 A Yes. This is a NYPD CD. The way you can
12 tell is it says New York City Police Department on
13 the top.

14 Q Sir, is that the CD that you used to
15 download the images from the mini-DVD or from the
16 mini-DVD recorder that you got from the hard drive
17 inside the day care center?

18 A That is correct.

19 Q Sir, had you previously seen the images
20 that are contained on that particular CD?

21 A Yes.

22 Q Are those the images that were taken from
23 the DVR that you had reviewed and then downloaded at
24 the day care center.

25 A Yes, they are.

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1 Q Was there any editing or any changing from
2 when you first observed them and downloaded them?

3 A Absolutely not.

4 Q They're in substantially the same
5 condition?

6 A Absolutely.

7 MR. HALE: Your Honor, I offer that as 2
8 in evidence.

9 THE COURT: Any objection?

10 MR. MEGARO: No.

11 THE COURT: Do you want to play it?

12 MR. HALE: Yes.

13 (Whereupon Exhibit 2 is played for the
14 jury)

15 Q Now, Detective, at this point we're
16 looking at the clip from the camera above the main
17 entrance?

18 A That is correct.

19 Q The street that is depicted crossing there
20 on the left-hand side and back, what's that street?

21 A That's Lefferts Avenue.

22 Q The vehicles depicted there are going in
23 what direction?

24 A They were going west on Lefferts Avenue
25 approaching Rogers.

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1 Q Now, sir, the reason you downloaded this
2 particular clip is because of the presence of the
3 police car following the other vehicle?

4 A That is correct.

5 Q Go ahead and continue.

6 Now, Detective, this is the second clip
7 from the camera on the Rogers Avenue side?

8 A That is the camera on the Rogers Avenue
9 side.

10 Q Detective, the type of video, what is that
11 called?

12 A Streaming video.

13 Q Is that in real-time, sir?

14 A Yes, sir, it is.

15 Q Now, sir, just to back up. On the first
16 clip, and I don't know if it showed up here, but
17 with both the clips -- first of all, did you check
18 the time stamps on them to see whether they were
19 accurate in terms of time?

20 A Yes, I did. I did that before the
21 download and the times are synched.

22 Q On the first clip, sir, and I know you
23 reviewed this before, sir, there appears to be some
24 points where it skips from minute to minute. That
25 is that there are some gaps there. Did you observe

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1 that, sir?

2 A I've seen that before in motion-sensor
3 cameras where if nothing's happening it's not
4 recording, and as soon as something happens, it
5 starts recording.

6 Q It's not a by-product of any editing on
7 your part or anybody else's part?

8 A Absolutely not.

9 Q These two videos as you have them are
10 unedited and unenhanced?

11 A They're unedited, unenhanced and
12 untouched.

13 Q Sir, that completes your service that was
14 being conducted at that location on July 9, 2007?

15 A That was it. That was my job.

16 MR. HALE: Thank you. Nothing further.
17 Thank you.

18 THE COURT: Any cross-examination?

19 MR. MEGARO: I have nothing. Thank you.

20 THE COURT: You may step down, sir.

21 (Whereupon the witness exits)

22 THE COURT: Anything further,

23 Ms. Nicolazzi?

24 MS. NICOLAZZI: Yes, your Honor. I've
25 spoken with the defense and we've agreed upon

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1 to a stipulation that rather than call the
2 police communication technician, that the
3 defense will stipulate and obviously the
4 prosecution will enter into a stipulation that
5 what is going to go into evidence as People's
6 Number 3 is a portion of a radio run that was
7 received by 911 operators on the radio, police
8 communication line at approximately 2:10 a.m.
9 on July 9, 2007 as part of the police
10 transmission which is made in the regular
11 course of business by the police department.

12 THE COURT: Is that true, Mr. Megaro?

13 MR. MEGARO: So stipulated.

14 THE COURT: What that means is they've
15 agreed upon this as fact. You accept it as
16 fact and consider it along with other evidence
17 in the case.

18 This is People's what?

19 MS. NICOLAZZI: That would be People's 3
20 and we offer that in evidence. Also, your
21 Honor, I'm going to ask that we hand out
22 transcripts.

23 THE COURT: How many copies do you have?

24 MS. NICOLAZZI: I have more than enough.

25 THE COURT: Folks, look, this is going to

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1 be an aid in you listening to the exhibit. But
2 the evidence is the exhibit itself. So if
3 there is a discrepancy between what's on the
4 written words there, the transcript you have
5 and the exhibit, the exhibit itself is the
6 evidence. Okay? This is only to assist you.
7 Once we finish with the exhibit, we'll take the
8 transcript back.

9 Are you ready? Please proceed.

10 (Whereupon Exhibit People's Exhibit 3,
11 audiotape, is played for the jury)

12 THE COURT: All right, ladies and
13 gentlemen of the jury, that concludes the
14 evidence for today. We will be in recess until
15 Monday. Please be in the jury room Monday at
16 9:30.

17 In the interim, while we're in recess,
18 keep my admonitions in mind. I'm going to tell
19 you this now, there may be some media coverage
20 about some aspects of this case. Please don't
21 read it. Don't watch it. Don't listen to it.
22 Okay. Keep my warnings in mind. See you
23 Monday, 9:30 in the jury room.

24 (Whereupon the jury exits)

25 THE COURT: What do we expect for Monday?

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1 MS. NICOLAZZI: Full day, Judge. I think
 2 it is Police Officer Yan, Detective McDermott
 3 and then the initial -- actually, I can tell
 4 you exactly if you'll give me one second.

5 THE COURT: You're saying a full day?

6 MS. NICOLAZZI: Yes. I've already told
 7 defense which witnesses I expect to testify.
 8 It's basically the responding officers.

9 THE COURT: Okay. With that, I'll see you
 10 all Monday. Try to get here by 9:45.

11 MR. MEGARO: Judge, one request that I
 12 have. Mr. Woods' family members have done the
 13 best they could to retain me. However, to get
 14 daily copies of the minutes, they would not
 15 have the funds. Would the Court indulge me a
 16 daily copy of the transcript with the 18B rate.

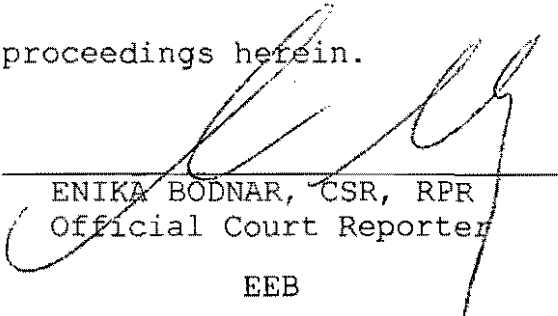
17 THE COURT: Yes, sir, counsel.

18 MR. MEGARO: Thank you. With that in
 19 mind, have a nice weekend.

20 THE COURT: So ordered.

21 * * * * *

22 Certified to be a true and accurate record
 23 of the proceedings herein.

24
 25 

 ENIKA BODNAR, CSR, RPR
 Official Court Reporter
 EEB

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM: PART: 37

3 -----X

4 PEOPLE OF THE STATE OF NEW YORK, :
5 : Indictment
6 : No. 6797/07

-against-

6 LEE WOODS, :
7 :
8 Defendant. :
8 -----X

9 320 Jay Street
10 Brooklyn, New York
11 March 2, 2009

11 B E F O R E:

12 HONORABLE PLUMMBER LOTT,
13 Justice of Supreme Court

14 A P P E A R A N C E S:

15 CHARLES J. HYNES, ESQ.
16 DISTRICT ATTORNEY KINGS COUNTY
17 BY: ANNA-SIGGA NICOLAZZI, ESQ.
18 MARK HALE, ESQ.
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20 PATRICK M. MEGARO, ESQ.
21 47-03 Bell Boulevard
22 Bayside, New York 11361
23 Attorney for the Defendant

24 PHYLLIS PRICE
25 OFFICIAL COURT REPORTER

1 THE CLERK: Case on trial. People versus Lee
2 Woods. All parties are present. Defendant being present in
3 court.

4 THE COURT: Good morning. What do we have for
5 today, Miss Nicolazzi?

6 MS. NICOLAZZI: Your Honor, I have three of the
7 six that we talked about from last week. First witness is
8 Detective Yan, then Detective McDermott, who was one of
9 the first responders and the first crime scene run, which
10 is some photographs and recovery of ballistics.

11 THE COURT: All right.

12 Given your opening, can I expect extensive cross?

13 MR. MEGARO: No. You can expect an abbreviated
14 cross. And, to make matters even quicker, Miss Nicolazzi
15 pre-marked People's four through 31, which I told her I
16 would stipulate to them coming into evidence, at this
17 time.

18 THE COURT: Okay.

19 MR. MEGARO: And I have gone over them with my
20 client as well.

21 THE COURT: All right. Let's see if we can get
22 the jury in.

23 MS. NICOLAZZI: Your Honor, if it is all right
24 with the Court, and I spoke to Mr. Megaro about it, I will
25 approach with the photographs and he can explain them

1 briefly, since there is quite a few to go in through crime
2 scene.

3 THE COURT: Yes, ma'am.

4 COURT OFFICER: Ready for the jury?

5 THE COURT: Please bring them in.

6 COURT OFFICER: Jury entering.

7 (Whereupon, the jury enters the courtroom, and
8 is seated in the jury box.)

9 THE CLERK: Case on trial. All parties are
10 present.

11 Both sides waive a reading of the roll of the jury?

12 MR. MEGARO: Yes.

13 MS. NICOLAZZI: Yes.

14 THE COURT: Good morning, ladies and gentlemen.

15 JURORS: Good morning.

16 THE COURT: I want to thank you. I understand
17 three of you were able to come in fairly close to the
18 time. We are going to try to make this a short day. But
19 famous last words, when I say that, it will probably be
20 long.

21 In any event, let's proceed.

22 MS. NICOLAZZI: Thank you.

23 People call Detective Hermann Yan.

24 D E T H E R M A N N Y A N, called as a witness on
25 behalf of the People, having been first duly sworn, was

1 examined and testified as follows:

2 THE CLERK: For the record, Detective, please
3 state your name, spelling your last name, shield number,
4 and command please.

5 THE WITNESS: Name is Detective Hermann Yan.
6 Last name Y-A-N, shield number 878.

7 THE CLERK: And your current command?

8 THE WITNESS: Currently working in the
9 Intelligence Division.

10 THE COURT: Detective, continue to talk into
11 the microphone. Project your voice as if you are talking
12 to the back wall, and to the people over to your left.

13 You may inquire.

14 MS. NICOLAZZI: Thank you, your Honor.

15 DIRECT EXAMINATION

16 BY MS. NICOLAZZI:

17 Q Good morning, Detective Yan.

18 A Good morning.

19 Q How are you today?

20 A Good.

21 Q How long have you been employed by the New York City
22 Police Department?

23 A I have been employed over four and a half years.

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

25 A Approximately a year and a half.

1 Q Was it shortly after the events of July 9th of 2007
2 that you were promoted to detective?

3 A Yes.

4 Q For the time that you have worked with the New York
5 City Police Department, prior to you being assigned to the
6 Intelligence Division, where were you assigned to?

7 A I was assigned to the 71st Precinct.

8 Q What neighborhood, or what area does the 71st
9 Precinct cover?

10 A 71st covers, primarily covers the area called Crown
11 Heights in Brooklyn.

12 Q And that is Kings County?

13 A Correct.

14 Q Back in July of 2007, how long had you been assigned
15 to the 71st Precinct, approximately?

16 A Just under two years.

17 Q And for the two years that you were working in the
18 71st Precinct, did you work in uniform, or in regular civilian
19 clothing?

20 A In uniform.

21 Q And the type of work that you did there, did you do
22 basically patrol?

23 A Correct.

24 Q And when you worked on patrol, were you assigned,
25 primarily, to a foot post, or to a car?

1 A To a car.

2 Q And was that car marked or not?

3 A It was marked.

4 Q I am going to direct your attention, specifically,
5 now to the date of July 9th of 2007.

6 Did you work on that date?

7 A Yes, I did.

8 Q What were the hours that you were assigned to work on
9 that day?

10 A I was assigned to work the midnight tour, which is
11 23:15 to 07:50, or 11:15 p.m. to 7:50 a.m.

12 Q And who were you assigned to work with on that date?

13 A I was assigned to work with Police Officer Russell
14 Timoshenko.

15 Q Were you working in uniform on that date?

16 A Yes.

17 Q And, I am quite sure the members of the jury know
18 what that is, but can you describe to the jury what that
19 uniform consisted of by the way it appeared?

20 A Uniform consists of dark blue shirt, dark blue pants,
21 a duty belt with the radio and gun, and my shield on my upper
22 left chest area.

23 Q And did you wear any sort of protective clothing or
24 gear?

25 A Yes. Under my dark blue shirt I have a bulletproof

1 vest.

2 Q And were you wearing that on that date?

3 A Yes, I was.

4 Q And the way you just described your dress, was your
5 partner on that date, Police Officer -- or withdrawn.

6 Yes, on that date the partner that you just testified
7 that you were assigned to work with, Police Officer Russell
8 Timoshenko, was he dressed the same way as you were dressed by
9 way of uniform?

10 A Yes.

11 Q I am going to direct your attention, on that date, to
12 the hour, a little bit after 2:00 in the morning, about 2:15
13 to 2:20 a.m.

14 Where were you, at that time?

15 A I was at the 71st Precinct.

16 Q Where is the 71st Precinct located?

17 A The address of the 71st Precinct was 421 Empire
18 Boulevard, corner of New York Avenue and Empire Boulevard.

19 Q And what happened at that time, approximately?

20 A I was -- we were refilling gas into our marked
21 vehicle, and we received a radio run of a 1010.

22 Q Radio run of a 1010. What does that code stand for?

23 A Stands for call for help.

24 Q Did that direct you to a specific location?

25 A Yes.

1 Q What was the location that that call directed you to?

2 A I don't recall the exact address, but it was on
3 Parkside Avenue, between Rogers and Nostrand.

4 Q And when you received that communication, how did you
5 get that information?

6 A Through our radio.

7 Q And was that a hand-held radio, or some other type?

8 A It was a hand-held radio.

9 Q And did you have a radio with you on that day?

10 A Yes, I did.

11 Q And how about your partner, Russell Timoshenko?

12 A Yes, he did.

13 Q After you received that communication, what did you
14 do?

15 A Finish gassing up the vehicle, and proceeded to head
16 towards the location.

17 MR. MEGARO: Your Honor, I am sorry. Can he
18 move the microphone closer. I am having a hard time.

19 THE COURT: Miss Price read the last answer
20 back.

21 (Whereupon, requested portion of the record
22 was read by the reporter.)

23 THE COURT: Detective, if you will keep your
24 voice up.

25 And jurors, if you can't hear raise your hand and let

1 us know.

2 Please proceed.

3 Q Now, Detective Yan, when you left in your police car
4 with Officer Timoshenko, the police car you both were
5 traveling in, is that the type that is typically seen, the
6 blue and white marked NYPD with the lights on top, the turret
7 lights?

8 A That is correct.

9 Q What other instrument is the interior of the vehicle
10 that it is equipped with?

11 A It is also equipped with a mobile digital computer.

12 A And where is that computer located in the patrol car?

13 A Right between the middle of the front passenger
14 seats, in the middle.

15 Q And when you left the 71st Precinct at that time, who
16 was driving the patrol car?

17 A I was driving.

18 Q And where was Officer Timoshenko?

19 A He was sitting next to me in the front passenger.

20 Q And when the two of you left, where did you go?

21 A We proceeded to head westbound on Empire Boulevard,
22 and then southbound on Nostrand -- make a left turn south on
23 Nostrand Avenue.

24 Q And what happened when you did that?

25 A I realized Parkside Avenue actually runs west to

1 eastbound. So, I had to decide to try to head westbound on
2 Lefferts, to go towards Bedford Avenue so I could go
3 southbound.

4 Q And, at that time, were you proceeding in the
5 direction of where that radio call that you had gotten had
6 directed you to?

7 The radio call that had come in, is that the
8 direction you were heading towards?

9 A Yes, I was heading towards that radio call.

10 Q And what happened when you changed your direction, or
11 the way that you were driving as you just described?

12 A As I was travelling southbound on Nostrand Avenue, I
13 proceeded to make a right turn on Lefferts Avenue. And I
14 observed a vehicle in front of us.

15 Q The vehicle that you observed in front of you, what
16 portion of the vehicle were you able to see?

17 A The rear.

18 Q And how, or what type of vehicle did it appear to
19 you, based on what you could see at that time?

20 A Appeared to be a dark colored SUV.

21 Q And that is a Sports Utility Vehicle?

22 A Yes.

23 Q And what did you do when, now, that vehicle was in
24 front of you?

25 A Once I observed that vehicle, I just decided to

1 randomly run the license plate check.

2 Q And what does that mean, you did a random license
3 plate check? How did you do that?

4 A I observed the license plate on the rear of the
5 vehicle, and I proceeded to input the license plate into my
6 computer.

7 Q At the time that you put that information into your
8 computer, were you able to see how many people were inside?

9 A No, I cannot.

10 Q Were you able to see anything about the people
11 inside?

12 A No, I cannot.

13 Q Had you run other license plates that day?

14 A Yes, I did.

15 Q Now, when you input that information, what is the
16 information that you input into your computer?

17 A The license plate.

18 Q And did you do that?

19 A Yes, I did.

20 Q Did you receive information back after you input the
21 license plate number of that vehicle?

22 A Yes, I did.

23 Q And what was the information that you received back?

24 A I received a green Mitsubishi Outlander, I believe.

25 Q When you say you received that, basically, the

1 computer indicated that the information you inputted in, that
2 is the vehicle that it is associated with?

3 A Correct.

4 Q And a green Mitsubishi, was that the type of vehicle
5 you observed that license plate attached to?

6 A No, it wasn't. It was a BMW in front of us.

7 Q And, Officer Yan, do you recall what the license
8 plate number was?

9 A Yes. DCY-3504.

10 Q And after you got the information back that that
11 license plate came back to a different vehicle than you
12 observed it affixed to, what did you do at that time?

13 A I proceeded to attempt to pull the car over, and by
14 turning on my lights and sirens.

15 Q And where were you when you turned on the lights in
16 an attempt to pull over that vehicle?

17 A Approximately mid block on Lefferts Avenue between
18 Nostrand and Rogers.

19 Q And where was that SUV in relation to you,
20 approximately, when you did that?

21 A It was right in front of us. Probably three car
22 lengths.

23 Q Was there any sort of verbal command given; if you
24 recall?

25 A I don't recall.

1 Q But the lights and sirens were on?

2 A Yes.

3 Q And when that happened, did the car travelling in
4 front of you, did it pull over?

5 A No, it did not.

6 Q What did it do?

7 A It kept proceeding, heading westbound on Lefferts
8 Avenue.

9 Q And what happened then?

10 A Eventually stopped on the red light at the corner of
11 Lefferts and Rogers.

12 Q So that would be, if I am correct, at the end of that
13 block?

14 A At the end of the block, correct.

15 Q And were there any vehicles in between you and the
16 BMW, at that time?

17 A No, never.

18 Q What did you do when the car then stopped at the red
19 light?

20 A I proceeded to pull right behind him also.

21 Q And what happened then?

22 A Very shortly after the red light turned green, and
23 the BMW made a right turn to go northbound on Rogers.

24 Q Had you or your partner given any sort of direction
25 for the car to turn onto Rogers Avenue?

1 A No, we did not.

2 Q And when that BMW turned onto Rogers Avenue, what did
3 you do then?

4 A I proceeded to follow him.

5 Q And what happened when you now turned onto Rogers
6 Avenue?

7 A Once we turned, once they turned, they immediately
8 started veering towards the right to a parking spot.

9 Q And did that vehicle pull over at that time?

10 A Yes.

11 Q What did you do?

12 A I proceeded to pull right behind him also, in the
13 second open parking spot.

14 MR. MEGARO: I couldn't hear the last part, I am
15 sorry.

16 A I proceeded to make a right turn also, and park right
17 behind him.

18 Q After you stopped your car, what happened then?

19 A I directed Russell to go over the loud speaker to
20 tell the black -- to tell the BMW to put the car in park.

21 Q And was that done?

22 A Yes, I believe so.

23 Q And when you say directed to, how is that done? Is
24 there a loud speaker system in your patrol car?

25 A Yes.

1 Q And after that direction was given, what did you and
2 your partner, Officer Timoshenko do?

3 A Once the vehicle was parked, we decided to exit the
4 vehicle to walk towards the BMW.

5 Q And what was your purpose in stopping that vehicle,
6 at that time?

7 A Just to check why there was irregularities between
8 the BMW which I observed, and the information I got from the
9 computer.

10 Q And you say, to check. How would you do that? How
11 would you get that information?

12 A Normally we would -- I would try to obtain the
13 driver's license, vehicle's information, the registration.

14 Q And you get that from an occupant of the vehicle?

15 A Correct.

16 Q So, what did you and your partner do then?

17 A We -- as we approached the vehicle, I approached on
18 the left side towards the driver's side of the BMW, Russell
19 approached the right side on the passenger side of the BMW.

20 Q Just so it is clear. You both basically approached
21 from the side you were on? You from the driver's side, he
22 from the passenger side?

23 A Correct.

24 Q And as you are approaching, or walking towards the
25 vehicle, are the two of you in step, or in line with each

1 other approaching at the same time?

2 A Yes. Simultaneously, yes.

3 Q Is there any reason you did it that way, or just part
4 of normal procedure?

5 A It is part of normal procedure, part of our training.

6 Q Now, you said, on that date as part of your uniform,
7 you had your weapon with you?

8 A Correct.

9 Q What type of weapon is it that you were issued?

10 A My service weapon is a .9mm Six-hour.

11 Q And when you approached the BMW, where was your gun?

12 A My gun was still holstered on my duty belt, on my
13 right side.

14 Q And how about your partner, Officer Timoshenko, could
15 you see, whether or not, he had his gun out or not?

16 A I didn't observe him with his gun out. So, I would
17 assume it was still holstered.

18 Q And what happened when the two of you now walked up
19 to the BMW?

20 A As I approached the driver's side door, I heard
21 approximately four shots.

22 Q You said, that when you approach the BMW by the
23 driver's door, you heard four shots. Where were you, as best
24 you can recall, when you first heard the sound of gunfire?

25 A Right in the middle of the two doors on the left

1 side.

2 Q The two doors being, I guess, on the left side of the
3 car, the driver's side and the passenger side?

4 A Rear passenger side, yes.

5 Q Could you tell where those gunshots were coming from?

6 A Yes.

7 Q Where were they coming from?

8 A From inside the vehicle.

9 Q At the point in time that you heard those gunshots,
10 were you able to see your partner, Officer Timoshenko?

11 A No, I cannot.

12 Q Where was the last place that you were able to
13 physically see him, at that time?

14 A Right on the rear of the BMW.

15 Q So once you both got past the bumper area, you were
16 out of view?

17 A The bumper area, yes.

18 Q And what happened when you heard those -- what
19 sounded like four gunshots to you?

20 A Once I heard those four gunshots, I felt pain in my
21 arm, and I retreated a little bit before withdrawing my weapon
22 before I proceeded to fire.

23 Q When you say retreat a little, do you mean you
24 stepped back?

25 A Yes.

1 Q And were you able to return fire?

2 A Yes.

3 Q At the time -- when you heard the gunfire and you
4 were up between the two doors of that car, first, with respect
5 to the passenger door on your side, which would be the left
6 side, were you able to see if there was anyone in that back
7 seat area at the time?

8 A No, I cannot.

9 Q Do you recall whether that window, the passenger
10 window on the left side, whether it was up or down?

11 A It was up.

12 Q And what about the driver's door?

13 A I believe the driver's door was down. The window was
14 down.

15 Q When you heard the gunfire, stepped back, were you
16 able to see the person that was sitting in that position at
17 that time?

18 A Repeat the question?

19 Q When you heard the gunfire, from where you were, were
20 you able to see who was in the driver's side, who was sitting
21 there?

22 A No, I cannot.

23 Q Now, going back to where you were.

24 After you retreated and began to fire your weapon,
25 what happened to the BMW?

1 A As I was still firing at the BMW, I observed the BMW
2 pull out to travel northbound on Rogers.

3 Q What streets, or street would that be heading in the
4 direction of when the BMW pulled away?

5 A Northbound on Rogers, towards Empire Boulevard.

6 Q And what did you do now, once the car has left, the
7 BMW?

8 A Once the vehicle got to a distance where I couldn't
9 fire my weapon anymore, I proceeded to go over the radio and
10 transmit a code.

11 Q Once the BMW pulled away, were you able to see your
12 partner, Russell Timoshenko?

13 A Yes.

14 Q Where was he when you first observed him after the
15 BMW pulled off?

16 A He was lying on the floor right by the curb.

17 Q Did he appear to be conscious, or was he able to say
18 anything to you at that time?

19 A No, he could not.

20 Q And you said you went over the radio at that point?

21 A Yes.

22 Q And, just basically, what did you put over, or say on
23 to your radio?

24 A Transmitted a code of a 1013, and location of where
25 we were, which is Lefferts and Rogers

1 Q The code you transmitted, 1013, what does that mean
2 or stand for?

3 A That stands for officer down.

4 Q What happened next, based on your recollection?

5 A I observed, right after that, I observed a regular
6 vehicle pull right behind us, pulling up northbound. And one
7 of the occupants of the vehicle was a bald headed guy, and I
8 observed -- I remember he was a detective from the 71st squad,
9 and he proceeded to help Officer Timoshenko.

10 Q When you are saying, a regular vehicle, basically an
11 unmarked car, once you realized it was a detective, a police
12 officer inside?

13 A Yes.

14 Q And did other units arrive after that?

15 A Yes.

16 Q And what did you do, or where did you go after that?

17 A Another vehicle also travelled to the location -- and
18 it was a marked vehicle -- and the two officers in that
19 vehicle assisted me into their vehicle, and started heading
20 southbound on Rogers Avenue, against traffic, probably towards
21 Kings County Hospital, which is what they did.

22 Q Is that where you were taken to at that time?

23 A Correct.

24 Q And once you got to the hospital, did you go to the
25 emergency room initially?

1 A Yes, I did.

2 Q And while you were there that day, did you then
3 receive treatment?

4 A Yes, I did.

5 Q You said that as soon as you heard the gunfire, that
6 you felt pain in your arm.

7 Which arm was it that you had felt the pain in?

8 A On my left arm.

9 Q And while you were at the hospital, was it determined
10 that you had any injuries?

11 A Yes.

12 Q First, with respect to that arm, what was your
13 injury?

14 A I had two holes on my left arm.

15 Q And just by pointing, at this point, if you could,
16 point to the members of the jury approximately where it was
17 that you had been shot, where those injuries appeared.

18 A There was a hole right here and --

19 THE COURT: Why don't you stand up, sir.

20 A There was a hole right here, and also another hole
21 right here.

22 THE COURT: Jurors, are you able to see that?

23 JURORS: Yes.

24 MS. NICOLAZZI: Let the record reflect,

25 Detective Yan indicated on his left arm, the lower part of

1 the left arm, the interior and outer portion of that arm.

2 Q Was your clothing removed by you, by medical
3 personnel while you were there that day?

4 A Yes, it was.

5 Q Was there any other injuries to your body that were
6 noted by you when your clothing was taken off?

7 A Yes, there was also another abrasion on my chest,
8 upper left chest area.

9 Q If you can, just point where that other injury was,
10 approximately, that you are referring to as an abrasion, or
11 cut, or bruise?

12 A Right here.

13 MS. NICOLAZZI: Let the record indicate, the
14 witness is indicating center, maybe a little bit to the
15 left over the heart area.

16 Q Now, when that injury -- had you had that injury
17 before you heard the gunshots?

18 A No, I did not.

19 Q And did you observe anything when your bullet
20 resistant vest was removed from you?

21 A Yes.

22 Q What did you see?

23 A There was a shell casing on my vest.

24 THE COURT: Shell casing, or ballistics?

25 THE WITNESS: Ballistics, sorry.

1 Q And you saw that -- and is that based on your
2 observation, approximately the same area where the injury was
3 noted to your chest, the same area where the bullet was in
4 your vest?

5 A Yes, approximately.

6 Q Now, Detective Yan, what was the treatment that you
7 received initially for the gunshot wound to your left arm?

8 A I said -- the doctor told me I had something called
9 compartment syndrome which, I think, is swelling in my arm.
10 And it was -- the muscles were swelling, and it was pushing up
11 against my blood vessels and my nerves.

12 So, they had me sign the form to cut open the area to
13 release the swelling.

14 Q And what were you experiencing in terms of symptoms,
15 what did you feel?

16 A I had numbness on my left arm. And I started losing,
17 I guess, mobility on my fingers.

18 Q And how long did you remain hospitalized at that
19 initial time from July 9th to receive the treatment you just
20 described?

21 A I believe I received treatment at approximately 6:00
22 in the morning. And I was discharged from the hospital the
23 following Tuesday afternoon.

24 Q So, by about 6:00 in the evening, you received the
25 operation that you just described for treatment to your left

1 arm?

2 A Correct.

3 Q At that point and time, had you been able to see your
4 partner, Officer Timoshenko, since you arrived at the
5 hospital?

6 A No, I did not.

7 Q How about after that procedure was finished?

8 A After the procedure, I woke up from the anesthesia,
9 and I did try to attempt to see my partner.

10 Q Were you able to see him at some point after that?

11 A Yes.

12 Q And was that in Kings County Hospital?

13 A Yes.

14 Q And, at any point you saw him after that, did he ever
15 regain consciousness?

16 A No.

17 Q Now, Detective Yan, after those initial treatments,
18 that you were discharged sometime the next day, did you have
19 to receive subsequent treatment for the gunshot wounds to your
20 arm?

21 A Yes, I had two more operations after the initial
22 treatment.

23 Q And what about -- was there any sort of home
24 treatment that you were instructed to perform?

25 A Yes. Before those two operations I was given

1 medication for pain killers. And also I had like some type of
2 machine that, it was like a vacuum, it had two sponges on both
3 sides, and my arm was wrapped in plastic which kept it air
4 tight. And that vacuum machine was supposed to absorb the
5 water, or blood to try and keep my wound dry, and stop the
6 infection, I guess.

7 Q So, it was basically, remained an open wound that was
8 protected by protective bandaging?

9 A Right.

10 Q And what was the subsequent procedures you received
11 afterwards?

12 A In about, in August, I'd say, I had a skin graft done
13 from the skin from my left thigh to cover the open patch of
14 area on my arm.

15 And in, I would say, mid November, late November I
16 had a surgery done on my wrist area, my left wrist area to fix
17 the mobility of my fingers.

18 Q Once you were discharged from the hospital initially,
19 were you able to go back to work right away?

20 A No.

21 Q So, were you out with what is commonly referred to as
22 line of duty?

23 A Yes.

24 Q At some point, were you able to resume your duties as
25 a police officer?

1 A Yes.

2 Q How long was it before you went back to work,
3 approximately?

4 A I went back to work on a limited basis, I believe in
5 September.

6 Q What does that mean, you went back on a limited
7 basis?

8 A It's more of a desk duty job.

9 Q And, at some point, were you given the medical
10 clearance to resume full duty, or active duty?

11 A Eventually, yes.

12 Q And where were you assigned after that?

13 A I was -- for the time I was still on a limited basis,
14 I was still assigned to the 71st Precinct in unit court comp
15 status.

16 Q And afterwards, you were ultimately transferred to
17 where you told us now?

18 A Ultimately I was transferred, late March of '08.

19 Q Detective Yan, I am going to ask you to take a look
20 at a couple of things. The first is a map that we've had
21 pre-marked People's number four.

22 MS. NICOLAZZI: And I believe, your Honor, based
23 on stipulation, we will offer that into evidence.

24 MR. MEGARO: Stipulated.

25 MS. NICOLAZZI: All these items have previously

1 been shown to defense.

2 MR. MEGARO: Yes.

3 (People's 4, marked in evidence.)

4 Map

5 MS. NICOLAZZI: Your Honor, may I ask Detective
6 Yan to approach the document camera with me?

7 THE COURT: Detective, approach with the
8 exhibit.

9 Jurors, are you able to see the exhibit?

10 JURORS: Yes.

11 THE COURT: At any time if your view is blocked
12 let me know. Also, this is an exhibit that is in
13 evidence, so you will be able to see this later on.

14 Q Now, Detective Yan, I will just ask if there is any
15 markings -- you can turn, face it to them, and resume with
16 your back to the Court and speak into the microphone so it
17 doesn't block any of the jurors' views.

18 First, if you could show the members of the jury, on
19 that map, does that show the area where the 71st Precinct is,
20 where you and Officer Timoshenko was when you first received
21 the radio communication?

22 A Yes.

23 Q If you could just, first, by pointing, and put a 71
24 designating where the 71st Precinct is located? You can just
25 write a 71, and make a small circle around it.

1 (Witness complying.)

2 Q Just using your finger, if you could please trace on
3 the map, showing the members of the jury the basic route that
4 you took, and then where it was that you first observed the
5 BMW in front of you?

6 A After we got of the car, we proceeded to travel
7 westbound on Empire Boulevard towards Nostrand Avenue. And
8 then southbound, made a left turn southbound on Nostrand
9 Avenue.

10 THE COURT: Jurors, are you able to see that?

11 JURORS: Yes.

12 Q Where was the BMW when you first saw it? Was that on
13 Nostrand or Lefferts?

14 A On Lefferts.

15 Q And then, if you can now show the members of the
16 jury, on that map, the direction that you travelled, first
17 indicating once you turned your lights on, and where the red
18 light was located, where the BMW was stopped at?

19 A Right here. And then the vehicle stopped right here.

20 Q Basically where that red star is?

21 A Correct.

22 Q And you said that then, after the light changed the
23 BMW, on its own, turned onto Rogers Avenue. If you could
24 please show that to the members of the jury?

25 And is that approximately where the car stopped,

1 where it -- ultimately, you were fired at from?

2 A Correct.

3 Q So, if you could please write BMW there, indicating
4 the area, approximately, where it was that it stopped and
5 where you were shot?

6 (Witness complies.)

7 THE COURT: Again, jurors, are you able to see
8 that.

9 JURORS: Yes.

10 Q So it is clear, make a small arrow on Lefferts,
11 marking a direction of travel, and also the direction that the
12 BMW turned on Rogers.

13 (Witness complies.)

14 Q You could have a seat, Detective Yan.

15 MS. NICOLAZZI: Your Honor, at this time I have
16 two photographs which I previously discussed offering into
17 evidence with Defense. The first being People's number
18 five, which is a photograph of Hermann Yan in the
19 hospital. And one of his wound, a close up, which would
20 be People's six. And he has seen them.

21 MR. MEGARO: Stipulated.

22 MS. NICOLAZZI: If we could offer them into
23 evidence?

24 And if I may approach the document camera, your
25 Honor?

1 THE COURT: Yes, ma'am.

2 (People's 5 and 6, marked in evidence.)

3 Photos

4 Q Now, Detective Yan, the photograph that is being
5 shown to the members of the jury now, People's number five,
6 was that taken of you while you were still in the emergency
7 room the early morning hours of July 9, 2007?

8 A Yes.

9 Q Now these small cuts, or abrasions which I am using a
10 pen to point at on your face, did you have any of those
11 injuries prior to you being shot at on Rogers Avenue?

12 A No, I did not.

13 Q And did you know how you received those?

14 A No, I do not.

15 Q Did you ever fall on to your face on the ground, or
16 anything like that?

17 A No, I did not.

18 Q Now the next photograph that is being displayed to
19 the jury, People's number six in evidence. What is that, that
20 the members of the jury are looking at?

21 A That's the abrasion on my chest area.

22 Q So that is a close up of the way that appeared,
23 again, that same morning that you were treated in the
24 emergency room, July 9th?

25 A Yes.

1 MS. NICOLAZZI: Now, your Honor, if I may?

2 THE COURT: That abrasion was caused by the
3 bullet in your vest?

4 THE WITNESS: Yes.

5 THE COURT: Yes, ma'am.

6 MS. NICOLAZZI: Your Honor, I am going to play
7 two items already in evidence, asking Detective Yan.

8 Q First I am going to ask you some questions, Detective
9 Yan, about some video already in evidence as People's number
10 two.

11 Have you previously had an opportunity to look at the
12 surveillance tape that captured portions of your attempt to
13 stop the vehicle, and then the ultimate car stop on Rogers?

14 A Yes, I did.

15 Q I am just going to show this to you, and ask you some
16 questions while it is playing.

17 (Whereupon, People's number two is being
18 displayed in open court.)

19 Q Now, I just paused it on part of People's two,
20 Detective Yan.

21 The RMP, or the patrol car that is in that view, is
22 that the car that you and Officer Timoshenko were traveling
23 in?

24 A Yes.

25 Q And is that the BMW in front of you?

1 A Yes.

2 Q And, again, Detective Yan, now that we are looking at
3 the viewpoint of Rogers, Lefferts to the left, is that the BMW
4 that you are attempting to stop?

5 Now, I am going to pause it here for a moment. If you
6 can just tell the members of the jury, who is that, which
7 would be to their left, coming from the passenger side right
8 of the patrol car?

9 A That is Russell.

10 Q And then, would you be the person just coming from
11 the driver's side, which is to the jurors' right, of the
12 patrol car?

13 A Yes, that would be me.

14 Q And is that you, the person who just showed returning
15 the fire, stopping now to the right side of the screen?

16 A Yes.

17 Q And, Detective Yan, if you could just indicate the
18 portion that you could see in the very bottom far right corner
19 of the screen there, what the jury is looking at there?

20 A That should be Russell's foot.

21 Q Now, I am just going to play a small portion of the
22 radio communication that is already in evidence as People's
23 number three for you, Detective Yan, and ask you if you can
24 recognize your voice on that communication.

25 (Whereupon, People's number three is played in

1 open court.)

2 Q Now, Detective Yan, listening to the initial portion
3 of that radio communication, People's number three, do you
4 recognize your voice in any part of that communication?

5 A Yes, I do.

6 Q And what is it that you hear yourself saying on the
7 radio?

8 A 1013, Rogers and Lefferts, 85.

9 Q And what is the code 85? What does that stand for?

10 A It stands for officer needs assistance.

11 Q What about 1013?

12 A Officer down.

13 Q Now, I am going to ask you to take a look at an item
14 that we have already pre-marked, and I have already shown it
15 to the Defense as People's number seven.

16 MR. MEGARO: Stipulated, your Honor.

17 MS. NICOLAZZI: Offering that into evidence.

18 THE COURT: Okay.

19 (People's 7, marked in evidence.)

20 Bulletproof vest

21 Q Detectives Yan, what is that, People's number seven
22 now in evidence?

23 A It's my bulletproof vest.

24 Q Is that the one you were wearing that night?

25 A Yes.

1 Q Now looking at that, you had indicated to the members
2 of the jury, that when that vest was removed from you, that a
3 bullet was actually taken from your vest.

4 Are you able to see where that item was lodged?

5 A Yes.

6 Q I am going to ask if you can turn it towards the
7 members of the jury, with the Court's permission, walk in
8 front of them pointing to where it is that the bullet was
9 lodged.

10 (Witness complies.)

11 THE COURT: Jurors, are you able to see the
12 exhibit where he is pointing?

13 JURORS: Yes.

14 THE COURT: If you will, sir, show it to the
15 Defense, please.

16 MR. MEGARO: I see it. Thank you.

17 MS. NICOLAZZI: And lastly, your Honor, with the
18 Court's permission, I am going to ask Detective Yan --

19 Q Now, Detective Yan, you had indicated the two wounds
20 that you received, both to the arm and then to your chest
21 area, is there still visible injuries, or visible markings to
22 the wounds to your arm?

23 A Yes.

24 Q And the same thing to your chest area, scarring?

25 A Yes.

1 Q And, with the Court's permission, if it is not too
2 much trouble, Detective Yan, I am going to ask you to show the
3 jury both the scarring and the wounds that you have.

4 THE COURT: If it is not too much trouble.

5 (Whereupon, the witness showing wounds and scars
6 to the jury.)

7 THE COURT: Jurors, are you able to see the
8 witness displaying the injuries?

9 JURORS: Yes.

10 MS. NICOLAZZI: Let the record reflect the
11 witness indicated both sides of his arm where there is a
12 circular area on the outer side, and larger area on the
13 inner portions of his forearm.

14 And now, let the record indicate, the witness is
15 indicating where the scarring remains to his chest area.

16

17 THE COURT: Mr. Megaro, do you need to see it?

18 MR. MEGARO: I am okay, thanks.

19 MS. NICOLAZZI: I have nothing further, your

20 Honor.

21 THE COURT: Any cross-examination, sir?

22 MR. MEGARO: Yes, briefly, thank you.

23 CROSS-EXAMINATION

24 BY MR. MEGARO:

25 Q Good afternoon, Detective. How are you?

1 A Good afternoon.

2 Q Detective, you testified on direct examination that
3 you randomly -- I'm sorry, let me back up for a second.

4 You testified on direct examination, that you were
5 responding to a call for assistance at approximately 2:15 to
6 2:20 a.m. on July 9, 2007, correct?

7 A Correct.

8 Q What was the nature of that call?

9 A It was a call for help.

10 Q Was it an emergency call?

11 A No, it was not --

12 THE COURT: Do you know?

13 THE WITNESS: Not a direct emergency, no.

14 THE COURT: Next question.

15 Q Now, you testified you then left the 71st Precinct to
16 respond to this call which was on Parkside Avenue, correct?

17 A Correct.

18 Q Where is Parkside Avenue in relation to the 71st
19 Precinct?

20 A Its south of it.

21 Q Now, you have seen -- I am showing you People's four
22 in evidence. Where is Parkside Avenue on this, on People's
23 four?

24 THE COURT: If you have to step down, please.

25 Keep your back to me.

1 A Sure.

2 Right here. That is north, basically.

3 Q Show me where Parkside Avenue is in relation to the
4 71st?

5 A Right here.

6 Q With that pen, can you draw, again, the route that
7 you testified on direct examination that you took to get to
8 Parkside Avenue, between Nostrand and Rogers, was it?

9 THE COURT: You mean, once he left the
10 precinct?

11 Q Yes, once you left the precinct?

12 A Here, start going this way, and this way.

13 Q Now, at any time on your way to this call to Parkside
14 Avenue, did you receive any further information that told you
15 to disregard the call?

16 A No, I did not.

17 Q On your way to Parkside Avenue, you turned and
18 started going back in the direction towards the 71st Precinct,
19 correct?

20 A Not correct.

21 Q You started traveling on Lefferts Boulevard, correct?

22 A Correct.

23 Q And you got behind a car that is a BMW, right?

24 A Correct.

25 Q And, at this point and time, you decided to randomly

1 run the license plate, correct?

2 A Correct.

3 Q What was the purpose of that?

4 A Just a random plate, just did my duty.

5 Q Now, that vehicle had not committed -- you had not
6 seen that vehicle commit any traffic violations, or anything
7 at the time?

8 A No, I didn't.

9 Q And that vehicle was just driving along as you were
10 behind him, right?

11 A Yes.

12 Q Now, when that vehicle is approximately three car
13 lengths from the corner of Rogers and Lefferts, that's when
14 you activated your overhead lights, right?

15 A Repeat the question?

16 Q When the BMW was about three car lengths from the
17 intersection of Rogers and Lefferts, that's when you activated
18 the overhead lights on the police car that you were in,
19 correct?

20 A That is not correct. I operated the lights around mid
21 block on Lefferts. In the middle between Rogers and Nostrand.

22 Q You recall testifying at a prior proceeding in this
23 particular case, correct?

24 A Yes.

25 Q And that would have been last December, 2008?

1 A Yes.

2 Q At that prior proceeding you were sworn to tell the
3 truth?

4 A Yes.

5 Q At that prior proceeding, you took an oath in this
6 particular courtroom?

7 A Yes.

8 Q And isn't it true, you were asked this question and
9 you gave this answer.

10 "Question? --

11 MS. NICOLAZZI: Can you indicate for the record
12 what page you are on?

13 MR. MEGARO: 487, lines one through 5.

14 Q "Question: Would I be correct in saying, when you
15 put on the lights, and Officer Timoshenko came over the
16 loud speaker, the BMW is approximately three car lengths
17 from the intersection at Rogers?

18 Answer: Correct."

19 Do you remember being asked that question and giving
20 that answer?

21 A Can I see it?

22 MR. MEGARO: Sure.

23 THE COURT: Step outside for a moment.

24 (Whereupon, a side bar conference ensued outside
25 the presence of the jury.)

1 THE COURT: Mr. Megaro, I am not in any way
2 trying to curtail your cross-examination. But, the
3 question that he was asked in December is a bit different
4 from the question you are asking.

5 His statement is, that the first time he put his
6 lights on mid block between Lefferts and whatever. The
7 question that you are seeking to impeach him on relates to
8 when Timoshenko first made his statement, which is, he is
9 about three blocks from the corner. In my mind it is two
10 different things.

11 What I am saying is, you are seeking to impeach him
12 as to when, for the first time, did he put lights on? And
13 he is saying it was mid block.

14 The statement you have is when, for the first time,
15 were lights on, and Timoshenko made any statement? They
16 are two different things.

17 MR. MEGARO: Your Honor, the reason I believe
18 they are one in the same, because also in the grand jury
19 he said pretty much the same thing. In the grand jury he
20 said, "Where was the BMW in relation to you when you did
21 those things?" Which the previous question was, "When did
22 you put your lights and sirens on?" And he said in the
23 grand jury, "Approximately three car lengths before going
24 westbound."

25 THE COURT: Then it may be more appropriate for

1 you to elicit the grand jury testimony.

2 MR. MEGARO: Absolutely.

3 THE COURT: And we are talking about when, for
4 the first time, you put your lights on? The impeachment
5 is fine, let's just be fair. I am not saying you are not,
6 but I want to make it clear.

7 So, if you are asking him when, for the first time
8 did he put his lights on, and you can then have him read
9 the response to the grand jury minutes, which is probably
10 more pertinent to your cross-examination.

11 MR. MEGARO: Okay.

12 What was the date of the grand jury presentation?

13 MS. NICOLAZZI: I don't remember the exact date.
14 But, if you just say July of 2007.

15 MR. MEGARO: Okay.

16 THE COURT: All right, let's proceed.

17 MR. MEGARO: Should I have these marked?

18 THE COURT: No, I am sure she will stipulate.

19 MS. NICOLAZZI: Yes.

20 THE COURT: I just want to make sure the
21 impeachment is accurate.)

22 (Whereupon, the following was held in open court
23 before the jury.)

24 THE COURT: Just for clarity, I am going to ask
25 you to rephrase your questions, please.

1 Q Detective, you said on direct examination that the
2 first time that you put your lights on was in the middle of
3 the block between, on Lefferts Avenue, before you approached
4 Rogers, the intersection of Rogers?

5 A Correct.

6 Q Now, you also recall testifying in the grand jury
7 with this particular case, July 2007, correct?

8 A Correct.

9 Q And in the grand jury, again, you were sworn just
10 like you were here today?

11 A Yes.

12 Q And, in the grand jury you were asked questions by
13 the District Attorney about this particular incident?

14 A Yes.

15 Q And in the grand jury, were you asked the following
16 questions, and give the following answers? Page nine, 14
17 through 22.

18 "Question: When you said that you put on your
19 lights and sirens, were the lights located in your car?

20 Answer: It's right in the middle between, near
21 the radio between me and Officer Timoshenko.

22 Question: And where was the BMW in relation to
23 you when you did those things?

24 Answer: Approximately three car lengths before
25 going westbound. Approximately three car lengths before

1 Rogers Avenue."

2 THE COURT: Do you recall being asked those
3 questions and giving those answers?

4 THE WITNESS: Yes.

5 Q Thank you.

6 Now, Detective, I am going to show you People's two
7 in evidence, the video of the car stop. And this is the view
8 on Lefferts Boulevard, correct?

9 A Correct.

10 Q Now, at the top of the screen, that's the red traffic
11 light right above where the BMW is, correct?

12 THE COURT: Do you have a ruler or something he
13 could use to point with?

14 Q Detective Yan, directly underneath the red laser, is
15 that the traffic light at the corner of Lefferts and Rogers?

16 A I really don't know.

17 THE COURT: Why don't you step down to the
18 exhibit, and point out where the traffic light was
19 generally.

20 If you could walk over to the exhibit, and point to
21 the area where you think the light would be?

22 (Witness complies.)

23 Q Do you see the traffic light on this?

24 A Not the full traffic light. I would assume it is over
25 there.

1 Q Now in People's two, in this particular frame, that's
2 the BMW pulling up to the traffic light, or pulling up to the
3 intersection rather, correct?

4 A Not yet, but, yeah.

5 Q Not yet, you're right. Now there it is, right?

6 A Yes.

7 Q And directly above that BMW is a red blimp on the
8 screen which is the traffic light, right?

9 A I don't think it is red, but could be the traffic
10 light. Could be a street lamp.

11 Q That's your police cruiser behind that BMW about one
12 car length, correct, in that image?

13 A Correct.

14 Q Now, this is northbound on Lefferts?

15 A Westbound on Lefferts.

16 Q There is a parked car in this image on your right-
17 hand side, correct?

18 A Correct.

19 Q There is a parked car in this image on your right-
20 hand side, closer to the intersection, immediately to the
21 right of that BMW, correct?

22 A Correct.

23 Q Now, Lefferts Boulevard is a one-way street or
24 two-way street?

25 A Two-way.

1 Q And it is one lane or two lanes?

2 A One lane, I believe.

3 Q On the left of your police car, and the left of that
4 BMW car, is that oncoming traffic? Or where oncoming traffic
5 would be?

6 A From a two-way street, yes.

7 Q Now, if you could take a look, and if you could watch
8 the red blimp on the screen. That is the BMW stopped at the
9 red light, right?

10 A Yes.

11 Q And that's the light changing to green?

12 A I see it now, okay.

13 Q In that portion of the video, the BMW makes a right
14 turn onto Rogers, correct?

15 A Correct.

16 Q Next I am going to show you the camera on Rogers at
17 the corner of Lefferts.

18 Now, what I am showing you in this portion of
19 People's two in evidence, that is the view from Rogers Avenue,
20 the intersection of Rogers and Lefferts, correct?

21 A Correct.

22 Q Now, this white line on the pavement, that's the
23 crosswalk?

24 A Correct.

25 Q For that particular intersection on Rogers Avenue,

1 correct?

2 A Yes.

3 Q And in this portion of the video, the BMW is pulling
4 over onto the side of Rogers Avenue, as you testified on
5 direct examination, correct?

6 A Correct.

7 Q Now you testified, on direct examination -- I'm
8 sorry, the witness can return to his seat.

9 A Thank you.

10 Q You testified, on direct examination, that after the
11 BMW makes the right, he pulls over immediately, just as he is
12 doing in this video, right?

13 A Yes.

14 Q And at that point and time, Officer Timoshenko goes
15 over the loud speaker and orders that vehicle to go into park,
16 correct?

17 A Yes, I recall that.

18 Q And you pulled the police car right behind the BMW,
19 correct?

20 A Yes.

21 Q And that's in this video. That's you and Officer
22 Timoshenko about to get out of that police car, correct?

23 A Correct.

24 Q Now, you're close enough to the corner that you are
25 actually in the crosswalk, correct?

1 A Correct.

2 Q And as you testified on direct examination, when
3 Officer Timoshenko orders that vehicle to go into park, that
4 car actually does go into park, right?

5 A Yes.

6 Q Now, can you watch the taillights of the BMW. Do you
7 see the taillights on the BMW changing, going into park? Does
8 that show the BMW going into park?

9 A I can't see.

10 Q Now you and Officer Timoshenko approach the car,
11 right?

12 A Yes.

13 Q And it is about 10 to 15 feet between your car and
14 the BMW, right -- I'm sorry, let me back up.

15 How many feet are between your car and the BMW,
16 approximately?

17 A 10 to 15, I guess.

18 Q And you and Officer Timoshenko are in this vehicle
19 walking up to the car, right?

20 A Yes.

21 Q Within a couple of seconds of you approaching the
22 driver's side of that vehicle, that's when you start hearing
23 gunshots, right?

24 A Yes.

25 Q Happens almost immediately, correct?

1 A Correct.

2 Q And as you testified on direct examination, you
3 retreated, and drew your weapon to return fire to that BMW,
4 right?

5 A Yes.

6 Q After you started returning fire to that BMW, that's
7 when it went back into gear and took off?

8 A Right.

9 Q Now when you started to return fire at this BMW,
10 could you see anybody in the car?

11 A No.

12 Q What were you aiming at, what was your target?

13 A I was aiming at the driver.

14 Q Say that again?

15 A At the driver.

16 Q You are aiming at the spot where the driver would be,
17 correct?

18 A Correct.

19 Q And let me ask you this.

20 Had the driver had gotten out of that BMW, would you
21 have shot him?

22 MS. NICOLAZZI: Objection.

23 THE COURT: Sustained.

24 MR. MEGARO: Nothing further. Thank you.

25 THE COURT: Any redirect, ma'am?

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MS. NICOLAZZI: Nothing, your Honor.

THE COURT: Detective, thank you very much, sir.
You may step down.

THE WITNESS: Thank you, sir.

(Whereupon, the witness is excused.)

THE COURT: Jurors, enjoy your lunch. Try to get
back in the jury room two p.m.

Keep my warnings in mind. See you two p.m.

(Jury exits the courtroom.)

THE COURT: Both sides, let's be ready to go at
two p.m. We are down until then.

(Whereupon, a luncheon recess was taken.)

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

2 THE CLERK: Case on trial. All parties are
3 present.

4 THE COURT: Before we proceed, either side want
5 to put anything on the record?

6 MS. NICOLAZZI: No, your Honor.

7 MR. HALE: No.

8 THE COURT: Let's get the jury in, please.

9 COURT OFFICER: Jury entering.

10 (Whereupon, the jury enters the courtroom, and
11 is seated in the jury box.)

12 THE CLERK: Case on trial. All parties are
13 present.

14 Both sides waive a reading of the roll?

15 MS. NICOLAZZI: Yes.

16 MR. MEGARO: Yes.

17 THE COURT: People?

18 MR. HALE: People call Michael McDermott.

19 M I C H A E L M C D E R M O T T, called as a witness on
20 behalf of the People, having been first duly sworn, was
21 examined and testified as follows:

22 THE CLERK: Please speak into the microphone.
23 Adjust it to your height.

24 For the record, please state your name.

25 THE WITNESS: Michael J. McDermott.

1 M-C-D-E-R-M-O-T-T.

2 THE COURT: Continue, sir, to speak into the
3 microphone.

4 You may inquire.

5 MR. HALE: Thank you.

6 DIRECT EXAMINATION

7 BY MR. HALE:

8 Q Sir, how old are you?

9 A 44 years old.

10 Q What do you do for a living?

11 A I am currently a police officer in Maryland.

12 Q Where in Maryland, sir?

13 A Annearundel County, Maryland.

14 Q And how long have you been working there as a police
15 officer?

16 A A little over a year.

17 Q Before that time, sir, where were you employed?

18 A I was employed by the New York City Police
19 Department.

20 Q And how long had you worked for the New York City
21 Police Department?

22 A 21 years of service.

23 Q What were the circumstances of your leaving the
24 police department?

25 A I had a lot of issues with this case, and some family

1 issues that I felt it was time to retire.

2 Q You retired after how many years on the job?

3 A 21 years.

4 Q And what was your rank upon retiring, sir?

5 A Second grade detective.

6 Q Before you retired, sir, were you assigned to a
7 specific unit within the New York Police Department?

8 A I was a police investigator assigned to the 71st
9 squad.

10 Q And how long had you been a detective in the 71st
11 Precinct, sir?

12 A A little over six years.

13 Q Sir, basically, what is the job of a detective, when
14 you were a detective in the 71st Precinct?

15 A Investigate all misdemeanor and felonies in the New
16 York State penal code, or any other issue that the police
17 department deemed that required further investigation.

18 Q Now, sir, I want to talk to you about July the ninth
19 of 2007, early morning hours.

20 Do you remember that day?

21 A Yes, I do.

22 Q Were you working as a police detective during the
23 early morning hours of July the ninth of 2007?

24 A Yes, I was.

25 Q Can you tell the jury, just in general terms, what

1 was it that you were doing? What were you investigating, or
2 what were you working on?

3 A I was helping the 69th squad investigate an unrelated
4 double homicide.

5 Q And, sir, at or around, or between the hours of, say,
6 2:15 and 2:30 a.m., on the ninth of July, were you doing
7 anything specific in furtherance of that investigation?

8 A I had a civilian in an unmarked police car that we
9 were bringing back to his residence where, possibly, the
10 subject of our ongoing investigation was.

11 Q Now, were you by yourself with this civilian witness,
12 or with any other police officer?

13 A I was with two other detectives. Detective Phil
14 Thomas, who was driving the car, and Detective Paul Enrique,
15 who was the passenger in the front seat.

16 Q You were in the back seat?

17 A I was in the back seat, behind Detective Thomas.

18 Q And the civilian?

19 A He was behind Paul Enrique.

20 Q Sir, between 2:15 and 2:30, do you remember,
21 physically, where you were located?

22 A We were driving on Lefferts Avenue, from Nostrand to
23 Rogers.

24 Q Now, sir, you were assigned to the 71st Precinct; is
25 that correct?

1 A Yes, sir.

2 Q That was an area you were familiar with?

3 A Yes, sir.

4 Q Just in general terms, Lefferts one-way, two-way,
5 what is that?

6 A Lefferts is a two-way street.

7 Q And at or around that time, sir, did you notice
8 whether, what the volume of the vehicle traffic was, at that
9 time?

10 A There wasn't a lot of traffic, very little traffic. I
11 didn't notice any traffic.

12 Q Did you take any notice whether there was any
13 individual pedestrian traffic, anybody on the sidewalk, or
14 anything?

15 A I didn't notice any.

16 Q Sir, while you were travelling on Lefferts Avenue,
17 between Nostrand and Rogers, was there anything that you saw,
18 or you heard that drew your attention?

19 A Well, about midpoint in the block, I heard gunfire.

20 Q Describe what exactly was it that you heard, sir?

21 A I heard a loud bang that I knew was gunfire. After
22 working 21 years for the New York City Police Department, you
23 know the difference between gunfire and fireworks.

24 Q How many loud bangs did you hear at first?

25 A First it was a very loud distinctive shot. Then not

1 even seconds later, a second shot.

2 Q Also loud?

3 A Not as loud, but loud. And then there was several
4 shots after that.

5 Q Now the vehicle you are in, it is in motion at this
6 time; is that correct?

7 A Yes, it is.

8 Q From what you were able to hear, sir, were you able
9 to put any sort of direction where those shots were coming
10 from?

11 A The shots sounded like they were in front of us,
12 towards Rogers.

13 Q Now, sir, did you direct your attention toward that
14 intersection in front of you, that is Lefferts and Rogers?

15 A Yes.

16 Q At that time, were you able to see anything at that
17 moment?

18 A No.

19 Q What, if anything, occurred at that point?

20 A Well, I gave directions to the civilian to get down
21 on the floor, and stay in the vehicle until I came back and
22 got him, until it was safe.

23 Q When you were giving him that direction, how far were
24 you up the block?

25 A We started to excellerate as soon as we heard the

1 second shot.

2 So, three quarters of the way down the block.

3 Q After you heard that second shot, did you hear any
4 other firearms, sir?

5 A Yes. It was rapid gunfire after that.

6 Q Are you able to say how many rounds, sir, you heard
7 at that time?

8 A 15 to 20 rounds..

9 Q Are you able to say, sir, whether those appeared to
10 you to be from one firearm, or multiple firearms?

11 A To be honest with you, it sounded like it was an
12 ensuing gun battle, but I couldn't be a hundred percent sure.

13 Q Sir, did there come a time that you actually
14 approached, in the vehicle, the intersection of Rogers and
15 Lefferts?

16 A Well, we came to a stop at the building line, just
17 prior to the corner. Detective Thomas exiting the front seat,
18 left his door open. I swung right around his door, and came
19 through the intersection.

20 Q At that time, what you believe to observe in the
21 intersection?

22 A I noticed a marked police car with its overhead
23 lights activated.

24 Q Where was that patrol car located, sir?

25 A Just past the building line on the corner on Rogers.

1 Q And, sir, would that be on the eastside, or west side
2 of Rogers?

3 A It would be the eastside of Rogers.

4 Q To your right as you go out?

5 A Yes.

6 Q At that time, sir, did you take note of the markings
7 on the police vehicle, as to what precinct, or unit that
8 vehicle belonged to?

9 A It was a 71st police car.

10 Q Now, sir, at or about that time, did you observe any
11 individuals at or around that police vehicle?

12 A I saw no civilians on the street. But I did see a
13 uniform officer in the street.

14 Q Can you describe for the jury what it was you
15 observed that uniform officer doing?

16 A Well, I saw his handgun in the air, and he turned,
17 and he spun around, and I saw him looking around the ground.
18 And he began yelling, I'm shot, I'm shot.

19 Q The officer, had you ever seen him before?

20 A Probably saw him in the precinct. I didn't personally
21 know him.

22 Q What did you do when you made that observation, sir?

23 A I ran towards him.

24 Q As you ran towards him, sir, did you observe whether
25 there was any other uniform officers in the area?

1 A Well, as I indicated, he was looking down at the
2 ground, and I kind of followed my eyes around on the ground,
3 and that's when I saw another uniform officer.

4 Q Where did you see that second uniform officer?

5 A He was laying in the street.

6 Q When you say, he was laying in the street, sir, can
7 you give us, to the best of your memory, a little bit more
8 exactitude where he was in relation to the curb line, or any
9 other landmark that you can remember, at this time?

10 A He was face up. His head was on the curb, his left
11 leg was bent unnaturally beneath him.

12 THE COURT: You need a moment?

13 THE WITNESS: No, I am okay.

14 Q What did you do, at that point and time, sir?

15 A Well, I saw another marked car coming down the
16 street, lights going, sirens blaring. I stopped that car, and
17 I put Hermann Yan, the uniform officer who was standing, in
18 the back of that police car.

19 Q Now, you have learned he was Hermann Yan afterwards;
20 is that correct?

21 A Yes.

22 Q And, again, were you able to see anything, at that
23 point and time, that told you from what unit he was?

24 A I just saw his collar breast. It was 71 collar
25 breast.

1 Q We are talking the insignia on the collar?

2 A Yes.

3 Q At that time, sir, did you observe whether Officer
4 Yan was in possession of his firearm at all?

5 A Only thing I saw in his hand was a radio. And as I
6 say, on the ground, I did see his firearm on the ground.

7 Q Where was it that you saw his firearm, sir?

8 A It was a little in front of the police car, in the
9 street. It would be on the driver's side of the police car,
10 in the street.

11 Q Now, the unit that you flagged down, that was a
12 marked or unmarked vehicle?

13 A That was a marked car. That was a Brooklyn South Task
14 Force car.

15 Q Somebody that you knew?

16 A Somebody who I knew, yes.

17 Q Who was it?

18 A Unfortunately, his name escapes me right now. But,
19 he is a uniform guy who I used to work with.

20 Q What did you do, at that time, with regard to Officer
21 Yan?

22 A Put him in the back seat of the car. I told them to
23 get him over to KCH, which is Kings County Hospital.

24 Q How far is KCH from that intersection of Lefferts and
25 Rogers?

1 A They were probably there in about 20 seconds, 25
2 seconds.

3 Q It's close?

4 A It's close.

5 Q While you were making your observation of Officer
6 Yan, did you observe whether he had any injuries that you
7 could see?

8 A He was holding his arm, and he had blood on his left
9 arm, I believe it was.

10 Q Did Officer Yan say anything further about the
11 incident, at that point and time, sir?

12 A No.

13 Q Now, sir, you indicated that you had seen the other
14 officer laying on the ground; is that correct?

15 A Yes.

16 Q After you had assisted Officer Yan to the marked
17 police vehicle, did you do anything with regard to the other
18 officer who was laying in the street?

19 A I ran to him. I got on my knees. I tried to render
20 him some care.

21 Q At that time, sir, were you able to observe whether
22 he had any injuries on his person that you were able to see?

23 A Yes.

24 Q Can you describe for the jury what it was you saw?

25 A Initially, when I got down next to him, I saw thick

1 blood coming from his right eye, his lip was torn, his tooth
2 was missing, and he had a hole in his upper lip.

3 Q Conscious, or unconscious?

4 A I don't believe he was conscious. I was talking to
5 him, kind of get a response, but I didn't get a response. His
6 eyes just flickered.

7 Q Did you observe, at that time, whether he was
8 breathing, or not breathing?

9 A Well, I put my hand on his chest looking for other
10 injuries, and his breathing was very shallow.

11 Q You didn't know who he was, at that point?

12 A No, I did not.

13 Q Somebody who you had seen before, or you don't
14 remember?

15 A I am sure I saw him in the precinct.

16 Q You later learned his identity?

17 A Yes, I did.

18 Q As what?

19 A Russell Timoshenko.

20 Q Now, sir, at that time, were you able to observe the
21 state of Officer Timoshenko's equipment? That is, whether he
22 had all his equipment?

23 A Well I noticed, as I was looking, that his gun was
24 locked in the holster.

25 Q Explain what that means to the jury?

1 A Well, police officers have a locking mechanism on
2 their firearm so civilians, or people who are unauthorized,
3 touch their weapon can't remove it from the holster.

4 So, I believe it is a three-point locking system they
5 have. They have to physically unlock the gun, then you have to
6 manipulate the gun, then you have to physically remove the
7 gun.

8 Well, his was never even unlocked. It was locked and
9 holstered.

10 Q How about his radio, sir, do you remember?

11 A Well, I remember when we picked him up, his radio
12 fell to the ground.

13 Q Now, you just said you picked him up.

14 Can you tell the jury how that came about?

15 A Well, the next unit that pulled up was the unmarked
16 unit that was backing us up, me and Phil Thomas. In that car
17 was Timmy -- Detective O'Brien, Sergeant Jenkuski, Peter
18 Manceri, and Detective Jimmy Coffee.

19 Jimmy Coffee got out of the back seat, Peter stayed
20 in the back, Pete man see I stayed in the back seat. Me and
21 Jimmy lifted Russell off the ground and placed him in the back
22 seat of the unmarked police car.

23 Q What became of Officer Timoshenko then? Where was he
24 taken?

25 A He was taken to Kings County Hospital.

1 Q Now, sir, at this point, both of the officers are off
2 the scene; is that correct?

3 A Yes.

4 Q At that time, did you look around the scene at all to
5 see what was on the ground there?

6 A Yes.

7 Q Tell the jury what it was that you saw on the ground?

8 A I secured Russell's radio. I picked up Hermann Yan's
9 firearm. And I also grabbed Hermann's radio, and I picked up
10 the two radios and threw them in a police car, in a marked
11 car. And I secured the firearm on my person.

12 Q What did you eventually do with that firearm, sir?

13 A I told the supervisor that I had the gun. And then
14 told crime scene that I had the gun.

15 Q Now, sir, from your description, you were the first,
16 or among the first police officers to arrive at that location
17 after the incident; is that correct?

18 A Yes.

19 Q By this point and time that you are talking about
20 now, you talked about your supervisor. There is a lot more
21 people who are showing up; is that correct?

22 A Yes.

23 Q Did you do anything at that point and time, sir, to
24 establish what is called a crime scene?

25 A Yes, that was paramount with us.

1 Q Tell the jury what you mean by establishing a crime
2 scene?

3 A Okay.

4 Isolating a specific area so physical evidence can't
5 be moved, tampered, or altered in any way. We established
6 that from the point where we were all the way up to Empire
7 Boulevard, to make sure that we didn't lose any evidence.

8 Q That is Rogers up to Empire?

9 A Yes. And we did that by physically placing police
10 officers on the street so that nobody could come down, you
11 know, civilian personnel, or unauthorized people could come
12 into that crime scene.

13 Q Now, before doing that -- and I think you already
14 testified to it -- there was a lot of police officers who had
15 initially responded to the incident; is that correct?

16 A Yes.

17 Q Including the two units that had taken Officer Yan
18 and Timoshenko off the scene; is that correct?

19 A Yes.

20 Q After that point in time, sir, did you work to make
21 sure that there were no other police officers there who were
22 not authorized?

23 A Yes.

24 Q Now, did there come a time, sir, where there were --
25 first of all, investigators, detectives who were assigned to

1 investigate this shooting, and then later crime scene
2 detectives who showed up at that scene?

3 A Yes.

4 Q And when those detectives showed up, sir, what if
5 anything did you do with those articles that you had talked
6 about, that you had picked up from the ground, the two radios
7 of the two officers, and Officer Yan's handgun?

8 A Well, I let crime scene know I put the radios in a
9 car. And then I had them, I gave crime scene the firearm, and
10 crime scene asked me to put it back, roughly, in the location
11 where I found it.

12 Q And did you attempt to do so, sir?

13 A Yes, I did.

14 Q After that morning, or on that date, July 9th of
15 2007, did there come a time that you responded to Kings County
16 Hospital to check on the status of Officers Yan and
17 Timoshenko?

18 A Yes, I did.

19 Q Officer Yan, had he been treated at Kings County
20 Hospital, sir?

21 A Yes, he was.

22 Q And Officer Timoshenko, was he in the process of
23 being treated at Kings County Hospital?

24 A Yes, he was.

25 Q From your observation, sir, did Officer Timoshenko,

1 was he still in the same condition that you had found him,
2 that is, unconscious, unresponsive?

3 A Yes.

4 Q And did there come a time, sir, during the four or
5 five days following, where you again went to Kings County
6 Hospital to check on the status of Officer Timoshenko?

7 A Yes.

8 Q Did the status change at all during the times that
9 you visited him?

10 A That last evening it changed, yes.

11 Q Sir, I want to talk to you about that last evening,
12 and that would be Saturday the 14th of July.

13 You remember that date, sir?

14 A Yes.

15 Q Tell the jury where you were at that time, and what
16 it was that you did?

17 A We were at Kings County Hospital, and we were
18 honoring him outside his hospital room.

19 Q And what, if anything, occurred with regard to
20 Officer Timoshenko at that time, sir?

21 A They took him off life support.

22 A And at that time, sir, did Officer Timoshenko past
23 away after being removed from life support?

24 A Yes.

25 Q Sir, the following day, did you have a last function

1 to perform with regard to Officer Timoshenko?

2 A Yes.

3 Q Tell the jury what that was, please?

4 A Well, I had to go to the medical examiner's office in
5 Manhattan.

6 Q And, at that time, sir, did you identify the body
7 that was at the Manhattan Medical Examiner's Office as Russell
8 Timoshenko, the same officer that you had seen in the street
9 by the curb at the corner of Rogers and Lefferts on July the
10 ninth of 2007?

11 A Yes.

12 Q Thank you, sir.

13 MR. HALE: I don't have any further questions.

14 THE COURT: Any questions at all?

15 MR. MEGARO: Nothing, your Honor.

16 THE COURT: Thank you very much, sir.

17 (Whereupon, the witness is excused.)

18 MS. NICOLAZZI: People call Detective Anzalone.

19 D E T G R E G O R Y A N Z A L O N E, called as a witness
20 on behalf of the People, having been first duly sworn, was
21 examined and testified as follows:

22 THE CLERK: For the record, state your name,
23 spelling your last name, shield number, and command
24 please.

25 THE WITNESS: Detective Gregory Anzalone,

1 A-N-Z-A-L-O-N-E. 3305. Command Crime Scene Unit.

2 THE COURT: You may inquire.

3 MS. NICOLAZZI: Thank you, your Honor.

4 DIRECT EXAMINATION

5 BY MS. NICOLAZZI:

6 Q Good afternoon, Detective Anzalone.

7 A Good afternoon.

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

10 A Next month will be 19 years.

11 Q How long have you been assigned to the Crime Scene
12 Unit?

13 A Three and a half years.

14 Q If you can, just tell the members of the jury what
15 the basic duties and responsibilities you have as a member of
16 the Crime Scene Unit?

17 A Our responsibilities are to photograph crime scenes,
18 document crime scenes, and collect evidence at the crime
19 scenes.

20 Q And, what type of crime scenes is it, in general
21 terms, that you respond to?

22 A We respond to homicide, felony assaults, robberies,
23 burglaries, whatever the precinct detective determines our
24 assistance would be required at.

25 Q And do you have any sort of specialized training that

1 you have received in crime scene investigation?

2 A Yes, I have.

3 Q What type of specialized training have you received?

4 A I have the Nikon photography course, cross shooting
5 reconstruction course, homicide course, crime scene evidence
6 collection course, DNA collection course, DNA refresher
7 course, and various other courses given by the department.

8 Q I am going to direct your attention back to the date
9 of July 9th of 2007.

10 Did you work on that date?

11 A Yes, I did.

12 Q And how long had you been a member of the Crime Scene
13 Unit at that time, approximately?

14 A Approximately two and a half years.

15 Q On that date, were you directed to respond to the
16 scene of a shooting where two officers had been shot here in
17 Kings County, at Rogers and Lefferts?

18 A Yes, I was.

19 Q How was it that you were notified to respond to that
20 scene?

21 A I was notified -- I was at home, it was actually my
22 day off -- and a call came in approximately 3:30 in the
23 morning, to my residence, requesting that I respond in for two
24 officers shot in Brooklyn.

25 Q And after receiving that phone call, did you go into

1 work and then respond to the direction you were directed to?

2 A Yes, I did.

3 Q And when you work processing a crime scene, do you
4 work alone, or with another member of the Crime Scene Unit?

5 A I work with another Crime Scene Unit.

6 Q And who was assigned to work with you on that date?

7 A Police Officer Brian Shelton.

8 Q So what time was it, approximately, that you arrived
9 over at the scene of Rogers Avenue and Lefferts?

10 A I am going to refer to my crime scene report.

11 THE COURT: Very well.

12 A I was dispatched at approximately 5:15 in the
13 morning, and I arrived at 6:15.

14 Q When you first arrived at the location, what did you
15 observe when you got out there, initially?

16 A When I initially got out there, the midnight crime
17 scene sergeant was on the scene. And there was a crime scene
18 roped off with crime scene tape.

19 Q And were there other members of law enforcement in
20 the general vicinity of that location?

21 A Yes, there was.

22 Q At the time that you arrived there, other than your
23 sergeant, were there, or had there been, to your knowledge,
24 any other members of crime scene that had responded there
25 before you?

1 A Yes, there was.

2 Q And if you could tell the members of the jury what
3 was that, or who was there?

4 A That was Detective Karen Newman, and Detective Robert
5 Nat.

6 Q The scene that you were requested to process, would
7 that be the scene of the actual shooting over on Rogers
8 Avenue, near the intersection of Lefferts?

9 A Yes, it was.

10 Q Had any work been done at that particular location by
11 crime scene, at the time that you arrived there about, I
12 believe you said five something, or six something in the
13 morning, I believe you said you were there?

14 A Yes, they started putting out yellow markers on the
15 scene.

16 Q And were those two other members of crime scene, were
17 they still working in that vicinity when you got there?

18 A No, they were not.

19 Q Where had they gone; if you know?

20 A They were redirected to a vehicle that was found,
21 possibly, in connection with --

22 Q In connection with this same case?

23 A With this incident, yes.

24 Q So, they were then sent over to respond to other work
25 to be done in this case?

1 A That's correct.

2 Q Was there any visible signs of crime scene work, or
3 processing done at the time you got there?

4 A Just the markers being out at specific locations
5 where evidence was.

6 Q What do you mean when you use the term, the markers?

7 A The yellow markers, it's numbers one through one
8 hundred. You place them out at the evidence so you can
9 identify it when you photograph it.

10 Q So once you arrived, and were given the assignment to
11 process that scene, or pick up where the other detectives had
12 left off, what did you do?

13 A I did a walk through with the case detective,
14 Detective Margraf, in regard to the evidence that was on the
15 scene, plus additional evidence.

16 Then I prepared a sketch, a handwritten sketch. Then
17 I documented my evidence, photographed the scene, collected
18 and packaged the evidence.

19 Q And when you say, do a walk through, is that
20 basically doing just that, walking through the vicinity and
21 getting a hands on what, if anything, information is known, or
22 believed to be known at that point and time?

23 A That's correct.

24 Q Now the area that was being processed, where the
25 markers had already been laid down, was that all within the

1 area that you refer to as having been roped off physically
2 with crime scene tape?

3 A Yes, it was.

4 Q And as part of your process, you said you prepared a
5 sketch, or crime scene diagram?

6 A That's correct.

7 Q Before I show this to you, Detective Anzalone, what
8 did you observe, generally, in the area, specifically, that
9 you were processing when you did the walk through?

10 A I observed discharged shell casings on the floor,
11 possible blood, and deformed bullets, and copper jackets.

12 Q I am going to ask you to take a look at two items
13 already been marked as People's eight and nine for
14 identification.

15 MR. MEGARO: Stipulated.

16 MS. NICOLAZZI: Based on stipulation, offer
17 those into evidence, your Honor.

18 THE COURT: Very well.

19 (People's 8 and 9, marked in evidence.)

20 Area diagrams

21 Q Now, Detective Anzalone, first the item that's been
22 handed to you, People's number eight, if you could look at the
23 back, it has the sticker on the back.

24 Just, generally, do you recognize one of the crime
25 scene documents that you prepared?

1 A Yes. This is a computer generated document,
2 computerized sketch was prepared by Detective Michael
3 Cunningham.

4 Q When you say, computer generated, when you are out
5 there at the scene and you are doing the diagram, that's done
6 in hand, and later transferred to a computer version?

7 A That's correct.

8 Q And nine, what is nine, generally?

9 A Nine is just an expanded view of the vicinity of
10 Rogers Avenue, and Lefferts Avenue.

11 Q So, basically, is that showing the same, or parts of
12 the same area, but a closer version?

13 A That's correct.

14 Q I am just going to ask, if you can, please step down,
15 with the Court's permission, with those two diagrams?

16 THE COURT: Please do.

17 Jurors, are you able to see the diagram?

18 JURORS: Yes.

19 Q Now, just very generally, pointing at the various
20 areas on -- that's People's number eight, Detective
21 Anzalone -- can you tell the members of the jury what they are
22 looking at generally?

23 First of all, what is the information that is listed
24 on the left side of the diagram?

25 A On the left side of the diagram, that's an evidence

1 legend.

2 Q If you could just point to it?

3 (Witness complies.)

4 Q When you say evidence legend, that is recording and
5 documenting the evidence, and where you recovered it, from
6 where?

7 A That's correct.

8 Q When you proffer various items of evidence, do you
9 number them, or letter them in anyway to help you catalog them
10 for later?

11 A Yes, I do.

12 Q And how did you catalog these in terms of numbers?

13 A I numbered them. I marked them evidence A1 through
14 my ending number A, for the first initial of my last name
15 Anzalone.

16 Q And, is there any significance to the numbers one
17 through whatever, in terms of the numerical order, other than
18 the fact that is the way you physically recovered them, one
19 being the first item you picked up, or observed, and so on and
20 so forth?

21 A No, there is not.

22 Q And what -- now looking at the general, the map area.
23 What are the jurors looking at there?

24 If you can just, as you are describing it, point with
25 your pen so they know what it is you are talking about?

1 A Are you referring to?

2 Q What are the streets? Where are the two streets?

3 A The streets you are looking at Lefferts Avenue.

4 Q Where is Lefferts, if you can just point to it?

5 (Witness complies.)

6 Q So the street that would be going?

7 A East and west.

8 Q And what about the street then that goes
9 perpendicular?

10 A This is Rogers Avenue.

11 Q And where was the focus of your processing, if you
12 could just, basically, with your finger, draw a circle around
13 the area that you primarily focused on?

14 A It was on Rogers Avenue, north of Lefferts Avenue.

15 Q I am just going to blow it up a little bit now.

16 THE COURT: Jurors, are you able to see that?

17 JURORS: Yes.

18 Q So where it says 428 Rogers, 426 Rogers, are those
19 the addresses of the buildings that you observed on that
20 block?

21 A That's correct.

22 Q And now, if you could show the members of the jury,
23 basically, when you talked about it says RMP there, what is
24 that designating?

25 A That's the marked police car.

1 Q Where is that located?

2 A (Pointing.)

3 Q And you said that you observed for possible blood.

4 Where was that that you observed, if it is shown

5 there?

6 A The possible blood is this area you are looking at

7 right here.

8 Q And the various -- it is hard to see without blowing

9 it up more.

10 Now just for example -- not all the diagram is shown

11 there -- but the various numbers A4, A3, A5, are they

12 observing what particular item they may be were observed

13 before you recovered them?

14 A That is correct.

15 Q And then the second diagram, People's number nine

16 that is in evidence, you said that was basically a close up

17 version concentrating on the main area that you concentrated?

18 A That's correct.

19 Q Just so it is clear, where it is written, basically,

20 in the middle, blood trail, is that designating where the line

21 is going around, and then down by the police car, RMP 1826,

22 and back up?

23 A That's correct.

24 Q And now, what about over where it says blood pool.

25 What did you observe over there? What was in that vicinity?

1. A That was blood on the sidewalk, and in the street, in
2 the gutter portion of the street. And that is on the eastside
3 of Rogers Avenue.

4 Q Now these areas that are documented by way of
5 diagram, you said that you also took pictures.

6 Did you take various photographs documenting these
7 areas, both showing the general vicinity, and also close up of
8 various items of evidence?

9 A Yes, I did.

10 MS. NICOLAZZI: Your Honor, just to save time.
11 I have showed them all to defense counsel. And I am going
12 to offer into evidence 18 photographs, some photographs
13 Detective Anzalone took starting People's number ten, and
14 going chronologically up and through People's 27.

15 MR. MEGARO: Stipulated, your Honor.

16 THE COURT: Okay. Marked and received.

17 (People's 10-27, marked in evidence.)

18 Crime scene photos

19 Q You might need your notes, because I am going to ask
20 you to stay there; if you can?

21 Q Starting with People's number ten, which is crime
22 scene photograph number two. If you could please tell the
23 members of the jury what they are looking at in that
24 photograph?

25 A That would be camera facing north. It is an overview

1 of Rogers Avenue, from the intersection of Rogers Avenue and
2 Lefferts Avenue, with the yellow markers.

3 Q So would this patrol car be the same patrol car that
4 is shown in your diagram?

5 A Yes, it is.

6 Q And these are some of the yellow evidence markers
7 that you referred to?

8 A That's correct.

9 Q The next photograph would be People's 11, which is
10 crime scene photograph number four.

11 What are the members of the jury looking at there?

12 A With the camera facing northeast, an overview of
13 Rogers Avenue, from the southwest corner of Rogers Avenue and
14 Lefferts Avenue, with the yellow markers.

15 Q Now, a little bit in front of the patrol car there is
16 a fire hydrant there. Where was that in relation to where you
17 said the pool of blood was, basically?

18 A It was right in the vicinity of the fire hydrant.

19 Q So that would be a little bit in front of where I am
20 pointing?

21 A That's correct.

22 MR. MEGARO: Which number is this?

23 MS. NICOLAZZI: People's number 11, which is
24 crime scene photo number four.

25 Q Next, People's number 12, crime scene photograph

1 number six.

2 A That is a camera facing east, overview of Rogers
3 Avenue from the northwest corner, showing RMP 1826 and the
4 yellow markers.

5 Q And, generally, if the markers that are there on the
6 ground, what type of evidence was it that you observed and
7 recovered there, generally?

8 A The majority of the markers was ballistics evidence.

9 Q Moving on to People's number 13, which is crime scene
10 photograph number 12.

11 A That is the camera facing southeast, overview of
12 Rogers Avenue from in front of 426 Rogers Avenue.

13 Q And the fire hydrant there, is the same photograph we
14 saw that was proceeding, so the RMP would be to the right,
15 which is off the view there?

16 A That is correct.

17 Q And now People's number 14, crime scene photograph
18 number 15.

19 A That is the camera facing southeast, overview of
20 Rogers Avenue, showing the yellow markers from the front of
21 426 Rogers area, with additional marker, marker number 22.

22 Q And Detective Anzalone, when you take these
23 photographs, is that prior to anything being moved? What I
24 mean by that, is that as to all areas of items as you first
25 observed them when you arrive there?

1 A That is correct.

2 Q Moving on to People's number 13, which is crime scene
3 photograph number 12.

4 A That is camera facing southeast, overview of Rogers
5 Avenue from in front of 426 Rogers Avenue.

6 Q Now, People's number 15, which is crime scene
7 photograph number 41.

8 A Camera facing north, it is an overview of Rogers
9 Avenue --

10 Q I'm sorry, 15, your 41?

11 A Camera facing north, overview of Rogers Avenue from
12 the intersection, showing markers with one additional marker
13 number 23.

14 Q Now, moving on to People's -- what is in evidence as
15 16, crime scene photograph 55.

16 A That is camera facing west, overview of Rogers
17 Avenue, showing the yellow markers 18 and 23.

18 Q Now, moving on to People's number 17, which is crime
19 scene photograph number 58?

20 A That is an overview from the rooftop of 237 Lefferts
21 Avenue, showing blood trail marked with blue scales on the
22 street below.

23 Q If you can just, please, with your finger, trace on
24 there where we talking about the blood trail that has the
25 markers that you just described?

1 (Witness complies.)

2 Q Now looking at People's number 18, which is crime
3 scene photograph number 62.

4 A That is an overview from the rooftop of 237 Lefferts
5 Avenue, showing blood trail marked with blue scales on the
6 street below.

7 Q And that, again, would be the same fire hydrant that
8 is shown in previous photographs. The RMP would then be to
9 the left of that photograph?

10 A That's correct.

11 Q Now, moving on to People's 19, which is crime scene
12 photograph 64.

13 A That is an overview of evidence S1. That is the
14 location of one blood swab with scale.

15 Q What about to the right there? What is that,
16 basically, there is a marker there to the right?

17 A Of number 15?

18 Q Yes?

19 A Discharge shell casing.

20 Q No, to the right on the bottom of the photograph?

21 A That's blood.

22 Q Would that be the same blood that you denoted as
23 blood pool near the fire hydrant?

24 A That's right.

25 Q Moving on to People's number 20, crime scene number

1 71.

2 A That is an overview of bullet hole number two, with
3 scale.

4 Q You are saying bullet hole number two. Can you point
5 on there where that is located, so the jurors can see where
6 you are talking about?

7 (Witness pointing.)

8 Q Now, if we are looking down from above, where would
9 the fire hydrant be, I guess, in relation to this vehicle?
10 Would it be to the left, to the right, in front, in back?

11 A It would be behind on the same side of the street,
12 eastside of the street, but heading south towards Lefferts
13 Avenue.

14 Q So this is going a little bit up to the next block,
15 which would Empire?

16 A That's right. This is facing north, this vehicle.

17 Q Now, Detective Anzalone, during your processing and
18 photographing of various locations, were you directed,
19 actually, to any buildings in particular in this case?

20 A Yes, I was.

21 Q And what was the address of the building that you
22 were directed to?

23 A 422 Rogers Avenue, on the second floor.

24 Q And where specifically on the second floor were you
25 directed to?

1 Was that an apartment, a hallway outside of the
2 building, where?

3 A It was an apartment on the second floor. I was
4 directed to a bedroom.

5 Q And, specifically, what did you observe inside that
6 bedroom on the second floor of that location, or that
7 apartment?

8 A I observed a bullet hole through the window of the
9 the bedroom window, and bullet hole in the bedroom wall.

10 Q Now, using this photograph for a moment, still
11 People's number 20 in evidence, which is Rogers Avenue.

12 Where would that apartment be, in terms of which side
13 of the street would it be, to the right in this photograph, or
14 on the other side on the left?

15 A It would be to the left, on the west side of the
16 street.

17 Q Now, looking at People's 21 which is crime scene
18 photograph 76.

19 A That's an overview of bullet hole number three,
20 inside of bedroom window of 422 Rogers Avenue, second floor,
21 with a scale.

22 Q Can you just, using your finger, where the bullet
23 hole was, or is?

24 (Pointing.)

25 Q And that is a second story window on that location?

1 A That's correct.

2 Q Now, using crime scene photograph 78, People's 22 in
3 evidence.

4 What is this?

5 A That's an overview of bullet hole number three,
6 re-entry number two inside of bedroom wall. That's the north
7 wall of the bedroom.

8 Q So, again, starting at the vantage point of the
9 window in the previous photograph that the bullet hole, where
10 is this what you termed another bullet hole in relation to the
11 hole in the window?

12 A That would be on the opposite side of the room.

13 Q So if you are looking, I guess, in the window, if you
14 were able to, on the second floor, that would be the wall that
15 is in front of you, so across the room?

16 A That's correct.

17 Q And what is it that you actually have sticking out of
18 the wall there, some sort of a rod?

19 A That is a ballistics trajectory rod.

20 Q When you say, a ballistics trajectory rod, what is
21 the purpose of using a bullet trajectory rod?

22 A To measure the trajectory of the angle that the
23 bullet impacted.

24 Q So, trying to figure out the angle of the bullet that
25 ultimately, I guess, ended up at that wall?

1 A That's correct.

2 Q And did you recover anything at that wall, Detective
3 Anzalone?

4 A Yes, we did.

5 Q What was recovered there?

6 A It was one deformed lead bullet recovered from the
7 north bedroom wall inside of 422 Rogers Avenue, second floor.
8 And that was recovered with the assistance of emergency
9 services who had to cut the wall open for me to retrieve the
10 bullet.

11 Q So, you pulled the bullet out of that wall, that was
12 across the window from where the bullet hole was observed
13 inside the window?

14 A Yes. Emergency service cut the wall open.

15 Q While you were doing your work, did any other members
16 of crime scene do any additional work in terms of examining
17 the ballistics, or trajectories, or angles as you refer to?

18 A Yes, they did. The angles of trajectory, and the
19 computerized sketch was prepared by Detective Michael
20 Cunningham.

21 Q So, with respect to your same scene, they came and
22 did other work, or analysis with respect to angles, or
23 directionality of any ballistics, or bullet damage?

24 A That's correct.

25 Q Now People's 23, which is crime scene photograph 79.

1 A That is camera facing northwest, overview of the east
2 sidewalk, showing orange string lines from angle of bullet
3 trajectories.

4 Q And is that work done by you, or Detective
5 Cunningham?

6 A The photograph was taken by me, the angles were
7 prepared by Detective Cunningham.

8 Q And this apparatus right here, the bottom left, is
9 that part of the analysis that he was doing, trying to
10 ascertain directions and angles of ballistics?

11 A That's correct. That is the string line attached to
12 a tripod.

13 MR. MEGARO: Excuse me. String line, or stream
14 line?

15 A String.

16 Q And the, I guess the string line that I am pointing
17 to right here, which is going up, is that leading into where
18 the bullet went through the window, and recovered in the wall,
19 or someplace else?

20 A That's correct. That is the string going through the
21 bullet hole to the second floor window.

22 Q Now People's number 24, which is crime scene
23 photograph 81.

24 A That is camera facing east, overview from bullet hole
25 number one, towards the intersecting point of the orange

1 string lines.

2 Q So would that be, basically, what we saw in the
3 photograph before, but now facing?

4 A East.

5 Q The apparatus that was being used for the string line
6 for the trajectory analysis?

7 A That's correct.

8 Q Now People's 25, which is crime scene photograph 83.

9 A Camera facing south, overview from front of 420
10 Rogers Avenue, towards the orange string lines.

11 Q And again, just so it is clear, the same RMP would be
12 the one that is here, that I am pointing to on the block with
13 the fire hydrant right here?

14 A That's correct.

15 Q Now, did you make any observations within the RMP
16 itself? Did you do any processing on that vehicle?

17 A Yes, I did.

18 Q Now, did you observe, or see the computer that was
19 mounted inside that patrol car?

20 A Yes, I did.

21 Q And were you able to actually see the screen?

22 A Yes, I was.

23 Q And was there information on the screen at the time
24 that you looked at it?

25 A Yes, there was.

1 Q Did you have to do anything to bring that information
2 up, or was it actually still on the screen when you observed
3 it?

4 A It was still on the screen.

5 Q And did you photograph that?

6 A Yes, I did.

7 Q I am going to ask you to take a look at People's --

8 MS. NICOLAZZI: Can we dim the lights on this,
9 it is a lot of glare on there, just for this one picture.
10 -- People's 26.

11 Now, did you previously make these markings, these
12 circles on this photograph?

13 A Yes, I did.

14 Q Technical difficulties.

15 Although there is a lot of glare there -- obviously,
16 members of the jury, you will be able to look at it closer if
17 you choose to later -- is this the actual screen, or
18 photograph?

19 A Yes, it is.

20 Q Now, what is the information that is contained where
21 you made the larger circle there?

22 A The larger circle is the information regarding the
23 vehicle, Mitsubishi Outlander.

24 Q So that's where it actually says on the screen
25 Mitsubishi Outlander?

1 A That is correct.

2 Q And what is the information that is contained below
3 that, where you mark the smaller circle in black?

4 A That is the vehicle license plate number.

5 Q And what was the license plate number? If you have it
6 printed somewhere in your paperwork that is easier for you to
7 read, that's fine too. Or you could just read it off of
8 there.

9 MR. MEGARO: If you want, you can give it to the
10 jury now. I have no objection to that.

11 Q DCY-3504?

12 A Yes, that is correct. That is correct, DCY-3504.

13 Q And just the last photograph People's number 27,
14 which is crime scene photograph 89.

15 What is shown in that photograph?

16 A That's camera facing west. It is an overview into
17 the front compartment passenger side of RMP 1826.

18 Q So that's the same computer that we just had the
19 close up on the screen in People's number 26?

20 A That's correct.

21 Q You could have a seat, Detective Anzalone.

22 Now, Detective Anzalone, obviously, in various
23 photographs that we have seen, there were various yellow
24 markers that you explained to the jury was evidence markers
25 denoting objects that you observed and then recovered. You

1 said a lot of that was ballistics.

2 If you could tell the members of the jury, and we can
3 start with A1, go through the ballistics evidence. And I
4 think, maybe the easiest and most expeditious way to do that,
5 A1, what it was and where you recovered it.

6 And you could just go right through the list.

7 THE COURT: Do you have the diagram again?

8 MS. NICOLAZZI: Yes, sure. And maybe, Judge, if
9 I could stand here while he is there.

10 THE COURT: That's fine.

11 THE COURT: Jurors, are you able to see the
12 diagram?

13 JURORS: Yes.

14 Q First with A1.

15 A A1 is going to be one Six-hour Colt P-226 .9mm
16 handgun, serial number UU3611765. That is a firearm, member of
17 service, PO Hermann Yan.

18 Q Where was that recovered from?

19 A On the street on Rogers Avenue, in front of 237
20 Lefferts Avenue, at marker number one.

21 Q And then moving on to A2?

22 A That's one Speer Luger +P nine shell casing recovered
23 in front of 237 Lefferts Avenue, under RMP 1826, at marker
24 number two.

25 Q A3?

1 A A3 is one Speer Luger +P .9mm shell casing that was
2 recovered from the street on Rogers Avenue, in front of 237
3 Lefferts Avenue, marker three.

4 Q A4?

5 A A4, one Speer Luger +P .9mm shell casing recovered on
6 the street, Rogers Avenue, in front of 428 Rogers Avenue, at
7 marker number four.

8 Q A5?

9 A A5, one Speer Luger +P .9mm shell casing recovered on
10 Rogers Avenue, in front of 428 Rogers Avenue, at marker five.

11 Q A6?

12 A A7?

13 Q A6?

14 A A6 is going to be one flashlight, black finish
15 extreme light recovered on the street in front of 428 Rogers
16 Avenue, at marker number six.

17 Q Now, moving back to ballistics with A7?

18 A That is one Speer Luger +P .9mm shell case recovered
19 on the street, on Rogers Avenue, in front of 428 Rogers
20 Avenue, marker number seven.

21 Q A8?

22 A One Speer Luger +P nine shell casing recovered on the
23 street, Rogers Avenue, in front of 237 Lefferts Avenue, at
24 marker number eight.

25 Q A9?

1 A That is one Speer Luger .9mm shell casing recovered
2 on Rogers Avenue, in front of 237 Lefferts Avenue, at marker
3 number nine.

4 Q A10?

5 A One Speer Luger shell casings recovered on the east
6 sidewalk of Rogers Avenue, in front of 237 Rogers Avenue, at
7 marker 10.

8 Q A11?

9 A One Speer Luger .9mm shell casing recovered on the
10 street on Rogers Avenue, in front of 237 Lefferts Avenue, at
11 marker number 11.

12 Q A12?

13 A One Speer Luger .9mm shell casing recovered on the
14 street on Rogers Avenue, in front of 237 Lefferts Avenue, at
15 marker 12.

16 Q A13?

17 A One RP 45 auto shell casing that was recovered on the
18 street, in front of 237 Lefferts Avenue, at marker number 13.

19 Q A14?

20 A A14 is one Speer Luger .9mm shell casing recovered on
21 the street on Rogers Avenue, in front of 237 Lefferts Avenue,
22 at marker number 14.

23 Q A15?

24 A One RP 45 auto shell casing recovered on the street
25 on Rogers Avenue, in front of 237 Lefferts Avenue, at marker

1 number 15.

2 Q So, there were two 45 caliber shell casings recovered
3 by you, the one you marked A13 and A15?

4 A That's correct.

5 Q A16?

6 A One deformed lead bullet recovered on the sidewalk on
7 Rogers Avenue, in front of 423 Rogers Avenue, at marker number
8 16.

9 Q A17?

10 A One Speer Ruger +P shell casing recovered on the
11 street on Rogers Avenue, in front of 237 Lefferts Avenue, at
12 marker number 17.

13 Q A18?

14 A One deformed lead bullet recovered on the street,
15 Rogers Avenue, in front of 428 Rogers Avenue, underneath van
16 at marker 18.

17 Q Now jumping, sticking with ballistics, A22?

18 A One Speer Ruger +P shell casing recovered on Rogers
19 Avenue, in front of 237 Lefferts Avenue, at marker 22.

20 Q Can you just guide me where that one is -- I see,
21 A22 here. A23?

22 A One deformed copper jacket recovered on the street,
23 Rogers Avenue, in front of 428 Rogers Avenue, at marker 23.

24 Q A24?

25 A One Speer Ruger +P shell casing recovered from the

1 windshield wiper well, on the windshield of RMP 1826, marker
2 number 24.

3 Q Again, sticking with ballistics, jumping to A27?

4 A One deformed lead bullet recovered from the north
5 bedroom wall, inside of 422 Rogers Avenue on the second floor.

6 Q And then A28?

7 A One piece of a copper jacket recovered from the rear
8 driver's side bumper of a Nissan Exterra, which was parked in
9 front of 417 Rogers Avenue.

10 Q Is that shown on this document, or is this a
11 different one?

12 A That is the vehicle that was all the way up north.

13 Q It is just not in this diagram?

14 A That's correct.

15 Q It would be in the vehicle that now I am using the
16 diagram, People's eight up in here?

17 A Right, that is the one in front of 417 Rogers.

18 Q So, the one that is here in front of 417?

19 A That's correct.

20 Q Now when you recovered each of those items, whether
21 they be deformed bullets, or shell casings, what did you do
22 with them after you recovered them?

23 A Well, when I recovered them, I recovered them, I
24 ascribed the inside of the shell casings with my evidence
25 number. I packaged it, sealed it, signed across the seal, then

1 I turned it off to -- there were different vouchering officers
2 on this particular incident -- I handed them off to the
3 vouchering officers.

4 Q And were all those various pieces of ballistics
5 evidence then sent down to the ballistics section, or firearm
6 analysis section to be tested and analyzed?

7 A Yes, they were.

8 Q Now, in terms of ballistic damage. Did you note any
9 ballistic damage that you marked with respect to various areas
10 within this crime scene?

11 A Yes, I did.

12 Q And if you could go through those areas of ballistic
13 damage, also indicating anything that you may have marked
14 them, and explain that to the members of the jury, beginning
15 with, I believe your first one is BH1.

16 What does BH1 stand for?

17 A Bullet hole.

18 Q Going back using People's number nine, if you can
19 just tell the members of the jury what you observed and where?

20 A That was bullet hole number one, in the rear fender,
21 on the passenger side of a white van, New York registration
22 19553.

23 Q So --

24 A John Victor.

25 Q So the bullet hole would be where the arrow is

1 pointed to on this vehicle?

2 A That's correct.

3 Q Moving on to BIM, or BIML. What does BIM stand for?

4 A Bullet impact mark.

5 Q Now, where did you observe that bullet impact mark?

6 A That was on the rear fender, on the passenger side of
7 the white van.

8 Q So that is on this same van, just not marked because
9 it was not an actual hole?

10 A That's correct.

11 Q When you are talking impact mark, is it literally
12 just that, something that appears to be the mark left on
13 impact with a piece of ballistic bullet?

14 A That's correct.

15 Q Now BH2?

16 A That was on the rear bumper, driver's side of the red
17 Nissan Exterra.

18 Q So that would be the one that's up this way off of
19 you from the diagram?

20 A That's correct.

21 Q And if there was an actual photograph in some of the
22 proceeding photographs we looked at?

23 A That's correct.

24 Q Looking at BH3?

25 A That is the bedroom window on the east wall of 422

1 Rogers Avenue on the second floor.

2 Q And then there is another BH3 noted. What does that
3 mean?

4 A That's BH3 re-entry. Meaning, it went through the
5 bedroom window curtain.

6 Q And that is the same window and bedroom that we are
7 talking about?

8 A That's correct.

9 Q Of 422 Rogers?

10 Now, with respect to the various items of ballistics
11 that you recovered. I am going to hand you up what's already
12 been marked, I have already shown defense counsel, People's 28
13 and 29, 30 and 31?

14 MR. MEGARO: Stipulated, your Honor.

15 MS. NICOLAZZI: We have already gone through
16 them. Offer them into evidence..

17 THE COURT: Okay. Marked and received in
18 evidence.

19 (People's 28, 29, 30, and 31, marked in
20 evidence.)

21 Ballistics envelopes

22 Q First, Detective Anzalone, starting with People's 28.
23 First of all, have you previously had the opportunity to
24 actually look inside each of those envelopes and make sure
25 what is listed on them is what is, in fact, inside each one?

1 A Yes.

2 Q First of all, People's 28, what is contained within
3 that envelope?

4 A It's 10 .9mm Luger +P Speer shell casings.

5 Q And those were some of the .9 millimeter shell
6 casings that you recovered at the various locations outside
7 the vicinity of Rogers?

8 A That's correct.

9 Q Now what about People's number 29?

10 A That is one deformed piece of copper jacket lead.

11 Q Now, what was the voucher number assigned to that
12 piece of ballistics when it was packaged, before it was sent
13 down to the firearm analysis section?

14 A For Exhibit 29?

15 Q Yes?

16 A That is voucher number N, as in Nancy, 737346.

17 Q Moving back to 28 for the moment. What was the
18 voucher number given to those items before they went down to
19 the firearms analysis section?

20 A N, as in Nancy, 737347.

21 Q And just so it is clear, Detective Anzalone, explain
22 to the members of the jury what we mean when we use the term
23 vouchering?

24 A What was with vouchering, that is a way of securing
25 the evidence I collect. I package it, and I turned it over to

1 be vouchered, which would be placed into a security envelope,
2 and documented on a voucher to be taken into evidence.

3 Q And now the next item, People's number 30.

4 A That is four .9mm shell casings, one deformed piece
5 of lead, one deformed piece of lead, one deformed piece of
6 copper jacket, and one deformed lead.

7 Q And what was the voucher number that those pieces of
8 ballistics evidence went to the firearms analysis section
9 under?

10 A That is N, as in Nancy, 737346.

11 Q And now, lastly, moving on to People's number 31.
12 What is contained in that item?

13 A That's two 45 RMP shell casings.

14 Q Are those the same shell casings that you identified
15 now, using People's number nine, as 15 and 13 right here?

16 A That's correct.

17 Q And what voucher number did those items go down to
18 the firearms analysis section under?

19 A N, as in Nancy, 737320.

20 Q And rather than taking them all out now, if you could
21 take one of them out and walk it in front of the jury so we
22 know what you are talking about in terms of shell casings?

23 MS. NICOLAZZI: Your Honor?

24 THE COURT: Yes, ma'am.

25 If you could take them and put them on the monitor

1 first.

2 Jurors, are you able to see the exhibit?

3 JURORS: Yes.

4 Q You said those are 45's?

5 How are you able to tell those are 45's as opposed to
6 all the ones that you are able to identify as the .9mm from
7 the others you found in the street?

8 A It is written on the base of the shell casings.

9 Q If you can just use the document camera, turn it in a
10 way to show the jurors the back.

11 (Witness complies.)

12 THE COURT: Are you able to see that exhibit?

13 JURORS: Yes.

14 Q That is the head stamp, or back of each shell casing
15 that you are looking at?

16 So, when you are saying it is a RP 45, because it
17 actually says RP 45. And the same thing if we look at all the
18 .9mm, they would say just that?

19 A That's correct.

20 Q You can return back to your seat with that,
21 Detective.

22 Now during your work with processing that scene, did
23 you also observe and recover various items for potential
24 investigation, you know, some slips you already said one
25 flashlight, miscellaneous objects, cell phone, or something

1 somewhere?

2 A Yes, I did.

3 Q Did you know, at that time, whether they had any
4 significance with respect to this investigation, or basically
5 picking up anything that may have had significance?

6 A No, I did not.

7 Q Now the patrol car that you observed at the corner
8 there on Rogers near Lefferts, did you make any observations?
9 What was the status, or condition of that car when you got
10 there?

11 A The engine was running, and the lights were on, the
12 emergency lights.

13 Q And what about the keys?

14 A The keys were in the ignition.

15 Q Now, Detective Anzalone, how long did you spend
16 processing this scene? What time did you finish your work
17 there that day?

18 A At approximately 9:45 hours, p.m.

19 Q 15 hours, give or take?

20 A That's correct.

21 Q And while you were there, did you make the various
22 notations of what it was you observed where, which you have
23 now testified to, that you ultimately prepared a report from
24 handwritten notes?

25 A That's correct.

1 Q And what was the crime scene run number associated
2 with your work?

3 A That was 07/0807.

4 Q And when the term, crime scene run number, does that
5 refer to a number designation that is given to any time that
6 you go out and do work on a scene, able to use that number to
7 identify a specific location or work later?

8 A That's correct.

9 Q Now, if subsequent work is done on the same case but
10 for a different piece of evidence, or different police
11 officer, for example, how is that marked as far as a number
12 designation?

13 A You keep the same run number, you just add letters to
14 it. You would have an A run. If there was an additional run,
15 like a car, you would make that an A run, if it was a second
16 car, a B run.

17 Q The detectives that were dispatched from this
18 location to process a car, as you said earlier, that would be
19 an additional run, whether it be A, B, C, something like that
20 for the same number you would use?

21 A That's correct.

22 MS. NICOLAZZI: I have nothing further.

23 THE COURT: Any cross-examination?

24 MR. MEGARO: Very, very brief, your Honor.

25 CROSS-EXAMINATION

1 BY MR. MEGARO:

2 Q Good afternoon, Detective, how are you?

3 A Good afternoon.

4 Q Showing you People's number 15 in evidence. That's
5 looking northbound on Rogers?

6 A Yes. Could you just tell me what my crime scene photo
7 number is?

8 Q Sure, 41.

9 A Thank you.

10 Q And on the right side of the photo is the right side
11 of the street where the cars are parked, correct?

12 A The right side of the street would be the eastside of
13 the street.

14 Q That's what I mean, thank you.

15 All of those cars in that photograph, on the eastside
16 of the street, were all there when you first arrived?

17 A From my understanding, they should have been there,
18 because they are inside the crime scene tape.

19 Q And when you say, they are inside the crime scene
20 tape, that means nobody marked those cars before -- I'm
21 sorry -- nobody parked those cars after crime scene was
22 established?

23 THE COURT: Did you see any? Question is, did
24 he see any?

25 Q Did you see those cars when you first arrived at the

1 crime scene, that had already been taped off?

2 A Yes.

3 Q Now the parked car on the right side of the picture,
4 that black car on the east side, that's a black Maxima on the
5 bottom corner?

6 A Okay.

7 Q Did you photograph that black car, a close up?

8 A No, I did not.

9 Q Did you inspect that black car for any damage?

10 A Yes, I did.

11 Q And did you notice damage on the rear quarter panel
12 of that vehicle, near the rear of that car?

13 A No, I did not.

14 Q Is that a dent in the picture that I see?

15 A I am not sure.

16 Q Thank you.

17 MR. MEGARO: I have nothing further.

18 THE COURT: Any redirect?

19 MS. NICOLAZZI: No, your Honor.

20 THE COURT: Thank you very much, sir.

21 You may step down.

22 (Whereupon, the witness is excused.)

23 THE COURT: Members of the jury, I want to thank
24 you for your patience and time today. That concludes the
25 evidence for today.

1 Keep an open mind. Do not form, or express any
2 opinion as to the guilt, or non-guilt of the defendant
3 until all the evidence is presented, the closing arguments
4 have been made to you by counsel, you have been instructed
5 on the law by me, and you go into the jury room to begin
6 jury deliberations. You must reach your decision as to the
7 guilt, or non-guilt of the defendant only during jury
8 deliberations with your fellow jurors at the end of the
9 case.

10 You must not discuss this case with anyone, including
11 your fellow jurors during the course of the trial. Nor
12 permit anyone to speak with you about this case.

13 And, if anyone attempts to approach you about this
14 case, you are to report it immediately, whether you are in
15 the courtroom or outside.

16 Again, you are not to talk to the attorneys, the
17 witnesses about anything, even to say hello or just pass
18 the time.

19 Do not read, watch, listen to any accounts of this
20 case, should there be any news media. And that includes
21 surfing the net to get information about this case.

22 You are not to visit any scene allegedly involved
23 here, or any scene discussed during the testimony, or
24 investigate any facts on your own.

25 And, until you are discharged, you are not to

1 request, accept, or agree to accept, or discuss the
2 acceptance of any compensation for supplying information.

3 With those warnings in mind, see you all tomorrow.
4 Be in the jury room at 10:00. Tomorrow morning, 10:00
5 please.

6 (Jury exits the courtroom.)

7 THE COURT: What kind of a day tomorrow?

8 MS. NICOLAZZI: Tomorrow we'll have the few
9 officers left, initial responders, who will be pretty
10 quick.

11 I told Mr. Megaro to call me later, whether we do the
12 crime scene of the car, or Tamika Buggs, both lengthy
13 cross-examinations. And then we have the TARU detective to
14 put in the defendants fleeing. I have it back in the
15 office, Judge.

16 But, basically, that is the day tomorrow.

17 THE COURT: If Ms. Buggs testifies, is there
18 bound to be some cross-examination of her?

19 MR. MEGARO: Yes.

20 THE COURT: Extensive, you think?

21 MR. MEGARO: Relatively extensive. The same with
22 Detective Newman.

23 MS. NICOLAZZI: So, I will do one or the other,
24 and let Mr. Megaro know ahead of time.

25 THE COURT: That would be fine.

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With that, tomorrow morning 10:00 please.

(Whereupon, the trial proceedings were adjourned
until March 3, 2009.)

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
5 - against - INDICTMENT#
6 6797/2007

7 LEE WOODS,
8 Defendant.

-----X
9 TRIAL 320 Jay Street
10 Brooklyn, New York
11 March 3, 2009

12 B E F O R E :
13 HONORABLE PLUMMER E. LOTT,
14 Justice and jury.

15 A P P E A R A N C E S :
16 OFFICE OF CHARLES J. HYNES, ESQ.
17 District Attorney, Kings County
18 For the People
19 BY: ANNA-SIGGA NICOLAZZI, ESQ.
20 MARK HALE, ESQ.
21 Assistant District Attorneys

22 18-B CRIMINAL DEFENSE DIVISION
23 BY: PATRICK M. MEGARO, ESQ.
24 Attorney for Defendant
25 47-03 Bell Boulevard, 1st Floor
Bayside, New York 11361

24 MONICA WALKER BAILEY, RPR, CSR
25 PHYLLIS PRICE
Official Court Reporters

COLLOQUY

1 COURT CLERK: Case on trial. People versus
2 Lee Woods. All parties are present. Defendant being
3 present in the courtroom.

4 THE COURT: All right. What is the schedule
5 for today?

6 MS. NICOLAZZI: The first four witnesses we
7 have are quick. They are, Detective O'Brien, who found
8 the bullet in Yan's vest; Detective O'Gorman, who found
9 the BMW; Detective Viola, from TARU, who found video of
10 the BMW on 451 Kingston; Detective Jean-Pierre, from
11 TARU, to put in the various videos of the BMW, and then
12 if we could take a break and then we have Tamika Buggs.

13 THE COURT: You have the jurors?

14 COURT OFFICER: Yes.

15 THE COURT: Are we ready to proceed?

16 MR. MEGARO: Judge, I'm prepared to stipulate
17 to People's 32, 33, 34 and 35, photos of the BMW. I've
18 gone over that with my client.

19 THE COURT: We'll get to that.

20 Bring the jury in.

21 (Whereupon, the jury enters the courtroom.)

22 COURT CLERK: Case on trial. All parties are
23 present. Do both sides waive the reading of the roll
24 of the jurors?

25 MS. NICOLAZZI: Yes.

COLLOQUY

1 MR. MEGARO: Yes.

2 THE COURT: Good morning.

3 THE JURY: Good morning, your Honor.

4 THE COURT: People.

5 MS. NICOLAZZI: People call Detective Tim
6 O'Brien.

7 THE COURT: The young lady is my Court
8 Attorney, Judge Judy, the original Judge Judy. I'll
9 never hear the end of that.

10 COURT ATTORNEY: That's true.

11 (Whereupon, the witness enters the courtroom
12 and takes the witness stand.)

13 COURT CLERK: Raise your right hand. Do you
14 solemnly swear or affirm that the statements you are
15 about to make in these proceedings, will be the truth,
16 so help you God?

17 THE WITNESS: I do.

18 COURT CLERK: Thank you. Please, be seated.
19 You could adjust the microphone to your height.
20 Please, speak into the microphone.

21 For the record, state your name, spell your
22 last name, shield and command.

23 THE WITNESS: Timothy O'Brien, O-'-B-R-I-E-N,
24 Shield Number 2610, Command is Brooklyn South Homicide
25 Squad.

NICOLAZZI - DIRECT - DET. O'BRIEN

1 COURT CLERK: Thank you.

2 THE COURT: Detective O'Brien, continue to
3 speak into the microphone.

4 You may inquire.

5 MS. NICOLAZZI: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MS. NICOLAZZI:

8 Q Good morning, Detective O'Brien.

9 A Good morning.

10 Q How long have you been employed by the New York
11 City Police Department?

12 A I guess 26, 27 years.

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

14 A Um, approximately 15, 16 years.

15 Q And how long have you been a member of the
16 Brooklyn South Homicide Squad?

17 A About 12 years.

18 Q I'm going to direct your attention back to the
19 date of July 9th of 2007; did you work on that date?

20 A Yes, I did.

21 Q And were you working in the early morning hours of
22 that date?

23 A Yes, I was.

24 Q On that date, at approximately close to the hour
25 of 2:20 a.m., where were you?

NICOLAZZI - DIRECT - DET. O'BRIEN

1 A I was on Empire Boulevard, between Rogers Avenue
2 and Nostrand Avenue in Brooklyn.

3 Q What were you doing at that time?

4 A I was working on a homicide case.

5 Q And when you say, "working on a homicide case,"
6 were you speaking with anyone? Were you in a car? What
7 were you doing at that time?

8 A I was in an unmarked police car with a Sergeant
9 Jenkuski.

10 Q And what occurred at that time, at about
11 2:20 a.m., while you were over at Empire?

12 A I heard a radio transmission of a 1013, police
13 officer shot.

14 Q And when you heard that communication of a police
15 officer having been shot, did it direct you to any
16 particular location?

17 A Yes, it did. The location was on Rogers Avenue
18 and Lefferts, which was approximately about a
19 block-and-a-half away from where we were.

20 Q And when you got to that location, after hearing
21 that call, what did you do?

22 A I responded to the scene. I drove down Empire
23 Boulevard. I made a left-hand turn on Rogers Avenue and
24 went down to the end of the block.

25 Q When you got down there, what did you see?

NICOLAZZI - DIRECT - DET. O'BRIEN

1 A Um, I pulled up to the corner, jumped out of the
2 car and I observed a police officer laying in the street on
3 his back faced up.

4 Q And when you got there, were there any other law
5 enforcement -- was there any other law enforcement there,
6 any other police cars?

7 A Yes, there were. There were several officers
8 already there and other cars were pulling up.

9 Q So, what did you do after you pulled up and saw
10 the police officer laying on the ground?

11 A Um, as we got out of the car, the officer was
12 pretty much right next to us, so we picked him up. We put
13 him in the back seat of our car, and I started to drive to
14 Kings County Hospital. On the way there, I called our radio
15 dispatcher and asked her to inform the hospital that we were
16 coming with a gunshot victim. And when we arrived at the
17 hospital, there were some medical personnel, doctors and
18 nurses, waiting with a stretcher outside. We assisted
19 putting the officer on the stretcher and brought him into
20 the treatment room.

21 Q Just backing up for a moment.

22 The officer that you observed laying on the ground
23 over on Rogers, did you know him when you first saw him?

24 A No, I didn't.

25 Q Did you later learn who that was, what his name

NICOLAZZI - DIRECT - DET. O'BRIEN

1 was?

2 A Yes, I did.

3 Q And who was that that you helped to take to Kings
4 County Hospital?

5 A It was Police Officer Russell Timoshenko.

6 Q When you observed him, and when you were putting
7 him into your car, was he conscious?

8 A No, he wasn't.

9 Q Did you know of any injuries that you could see?

10 A Yes, it appeared he had been shot in the face.

11 Q Did he ever regain consciousness during his time
12 with you?

13 A No, he did not.

14 Q After you assisted medical personnel in physically
15 bringing Officer Timoshenko into Kings County Hospital, what
16 did you do after that?

17 A We helped bring him into the treatment area, and
18 within seconds there were doctors and everybody running into
19 that room. We were kind of pushed outside the room. Once
20 outside the room, I learned there had been another police
21 officer shot, and he was in a separate room ten-,
22 fifteen-feet away.

23 Q Did you then go in to that officer that you
24 learned about while you were already at Kings County
25 Hospital?

NICOLAZZI - DIRECT - DET. O'BRIEN

1 A Yes, I did.

2 Q And the person that you came into contact in that
3 room with, did you learn who that was by name?

4 A Yes, I did. I later learned it was Police Officer
5 Hermann.

6 Q Hermann Yan?

7 A Hermann Yan, sorry.

8 Q When you first saw him, what was he doing when you
9 got there?

10 A He was on the stretcher. He was kind of half
11 sitting up, half laying down; it was kind of a slanted
12 position. He was still dressed in everything, but he
13 appeared to have an injury to his arm. I went over to him
14 to ask him what had happened and to see what had happened,
15 and he informed me they were trying to stop a car.

16 MR. MEGARO: Objection to what he said.

17 THE COURT: Sustained.

18 Q Just backing up.

19 When you observed Officer Yan, when you began
20 speaking to him, how did he appear to you by way of his
21 demeanor?

22 A Um, he appeared to be in pain, very shaken up, a
23 little stressed out.

24 Q And so, then, you said that you asked him what had
25 happened?

NICOLAZZI - DIRECT - DET. O'BRIEN

1 A Yes.

2 Q And what did he say to you then?

3 MR. MEGARO: Objection as to what he said,
4 your Honor.

5 THE COURT: Unless there is a non-hearsay
6 basis.

7 MS. NICOLAZZI: Can we approach, your Honor?

8 THE COURT: Yes, ma'am, please.

9 (Whereupon, a discussion was held outside the
10 presence of the jury.)

11 THE COURT: Is McDermott the officer or
12 detective who finds the bullet in the vest?

13 MS. NICOLAZZI: No, that is Detective
14 O'Brien.

15 THE COURT: O'Brien, sorry.

16 MS. NICOLAZZI: Yes, Judge.

17 THE COURT: What else are you trying to
18 elicit with respect to what Yan may have said?

19 MS. NICOLAZZI: Sure. Again, for the record,
20 this testimony was admissible at the last trial as an
21 excited utterance, he's shaken up, he's just been shot,
22 within minutes. He asks him what happened, and what he
23 says, they had tried to stop a car. He actually gives
24 him the license plate number, which Detective O'Brien
25 wrote down. He says that the plate was no good. At

COLLOQUY

1 that point, Detective "O'Brien leaves, transmits that
2 plate number over the radio, comes back in and is not
3 able to interview him further because of the medical
4 treatment. And that's when he finds the bullet in the
5 vest.

6 THE COURT: Yan gives him the plate that was
7 on the car?

8 MS. NICOLAZZI: And he also said it is a bad
9 plate, which they transmit over.

10 MR. HALE: That communication is with the
11 next witness.

12 MR. MEGARO: I have no objection to the
13 transmission of the information of the plate. It is
14 just the other stuff, which I would have the objection
15 to.

16 THE COURT: For purposes of this witness, I
17 think he had conversations with Yan and then you can
18 ask specifically did Yan give him some information
19 relating to a plate.

20 MR. MEGARO: I have no problem with that.

21 MR. HALE: That is fine.

22 THE COURT: That is the information you want?

23 MS. NICOLAZZI: It comes in as an excited
24 utterance. Here is an officer that had just been shot,
25 who said he was trying to stop a car. He gives a plate

COLLOQUY

1 number, and it is a bad plate number. And those things
2 came in --

3 THE COURT: Please, do not try to suggest to
4 me that a ruling that I'm making now may be
5 inconsistent with a previous ruling.

6 MS. NICOLAZZI: For now, that is my basis.

7 THE COURT: I'm giving you essentially what
8 you want, but what you want is Yan's statements about
9 the plate. There is no objection to that going into
10 evidence.

11 MR. MEGARO: That's correct.

12 THE COURT: You could ask him did he give
13 you, and clearly what he may have done with the plate
14 explains the actions of the police. It is a
15 non-hearsay purpose. I have no problem with that.
16 Let's not leave it to this witness' devise to talk
17 about things that maybe really aren't relevant to what
18 is going on here. If you want the plate in, "Did you
19 speak to Yan? Did Yan in fact give you a plate number?
20 What did you do with that plate number?" "I ran it. I
21 found out ultimately it was not a valid plate."

22 MS. NICOLAZZI: No, he didn't do that, Judge,
23 just so it is clear.

24 THE COURT: If that is where you are trying
25 to go, you could get that in.

NICOLAZZI - DIRECT - DET. O'BRIEN

1 MS. NICOLAZZI: So it is clear, I'll say,
2 "Did you have a conversation with him?" Yes --

3 THE COURT: I'll tell the jury at this point
4 it is offered for a non-hearsay purpose to explain the
5 actions of the police. But, you could ask him: "What
6 did you do?" "I spoke to Yan. Yan gave me a plate
7 number. That plate number was given to someone else to
8 run."

9 MS. NICOLAZZI: If I don't lead him, he's
10 going to say the rest of it.

11 MR. MEGARO: Lead him.

12 (Whereupon, the following discussions were
13 held in open court before the jury.)

14 THE COURT: Ms. Nicolazzi, please rephrase
15 the question.

16 MS. NICOLAZZI: Sure, Judge.

17 DIRECT EXAMINATION

18 BY MS. NICOLAZZI (Continued):

19 Q Detective O'Brien, when you first came into
20 contact with Officer Yan, you said that he appeared injured
21 and that you had a conversation with him; is that correct?

22 A Yes.

23 Q And during your conversation with him, did he tell
24 you some of what had occurred, just yes or no?

25 A Yes.

NICOLAZZI - DIRECT - DET. O'BRIEN

1 Q And while he was speaking with you, did he give
2 you a specific license plate number of the vehicle that was
3 involved in the incident?

4 A Yes, he did.

5 Q And what was the license plate number that Officer
6 Yan gave to you while you were in the emergency room with
7 him?

8 THE WITNESS: If I may refresh my memory,
9 your Honor.

10 THE COURT: Yes. What are you looking at?

11 THE WITNESS: It is actually a suture packet.

12 THE COURT: You made a note on it?

13 THE WITNESS: Yes.

14 THE COURT: Do you have a copy of that?

15 MR. MEGARO: Yes, I do.

16 THE COURT: All right.

17 A It was a New York license plate D, as in David, C,
18 as in Charlie, Y, as in yellow, 3504.

19 Q After you got that information from Detective Yan
20 or Officer Yan, including that specific plate number, what
21 did you do with that information?

22 A Well, I was inside Kings County Hospital, which
23 the radio and cell phones don't really work, so I took the
24 radio and I walked outside the doorway where we came in and
25 I transmitted the plate number over to Central so she could

NICOLAZZI - DIRECT - DET. O'BRIEN

1 put it out to the other units.

2 THE COURT: The statement about the plate
3 numbers are offered for a non-hearsay purpose. It
4 explains the actions of the police, this detective,
5 once he heard it.

6 Okay.

7 MS. NICOLAZZI: Thank you, your Honor.

8 Q So, after you went out and transmitted that
9 information and the plate number to your Central, I guess
10 Communication Division, what did you do after that?

11 A I went back inside the treatment room where Police
12 Officer Yan was.

13 Q And what was happening with respect to Officer Yan
14 at that point?

15 A By then, there was some medical personnel in a
16 room with him. I realized he was still dressed in uniform.
17 He had his gun belt on and everything else, so I was just
18 trying to help. I helped him take his gun belt off, his
19 shirt. He was complaining about his arm and he was also
20 complaining about, like, a pain to his chest and everything.
21 So, just when I was helping him take off his bullet
22 resistant vest, I noticed --

23 THE WITNESS: If I may stand up, your Honor.

24 THE COURT: Sure.

25 A -- the vest would stop about here (indicating).

NICOLAZZI - DIRECT - DET. O'BRIEN

1 MS. NICOLAZZI: Let the record reflect the
2 witness is indicating in the upper-portion, midway in
3 the chest area.

4 A Pretty much below I noticed a bullet lodged in the
5 vest.

6 Q And after you noticed the bullet lodged in the
7 vest, did you help in the removal of that bullet resistant
8 vest still containing that bullet in it?

9 A Yes, I helped with his gun belt, his shirt, his
10 vest, yes.

11 Q And were those items together, the bullet, the
12 vest and the clothing, later given to other members of the
13 Police Department to be vouchered?

14 A Yes. There was a supervisor in the room. I
15 believe it was a sergeant or lieutenant. I handed all the
16 belongings to him.

17 Q Were you able to interview Officer Yan further at
18 that point?

19 A No, I wasn't.

20 Q Was he receiving medical treatment after that?

21 A Yes.

22 MS. NICOLAZZI: I have nothing further.

23 THE COURT: Any cross examination?

24 MR. MEGARO: No questions, thank you.

25 THE COURT: Thank you, Detective.

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1 (Whereupon, the witness leaves the witness
2 stand and exits the courtroom.)

3 THE COURT: Next witness, please.

4 MR. HALE: Detective Timothy O'Gorman.

5 (Whereupon, the witness enters the courtroom
6 and takes the witness stand.)

7 COURT CLERK: Raise your right hand, please.
8 Do you solemnly swear or affirm that the statements you
9 are about to make in these proceedings, will be the
10 truth, so help you God?

11 THE WITNESS: Yes.

12 COURT CLERK: Please, be seated. Thank you.
13 Please speak into the microphone. For the record,
14 please state your name, spell your last name, shield
15 number and command.

16 THE WITNESS: Detective Timothy O'Gorman,
17 last name, O-'-G-O-R-M-A-N, Joint Terrorist Task Force,
18 Shield Number 5632.

19 THE COURT: Continue to speak into the
20 microphone.

21 You may inquire.

22 DIRECT EXAMINATION

23 BY MR. HALE:

24 Q Sir, you are a New York City police officer?

25 A Yes, sir.

HALE - DIRECT - DET. O'GORMAN

1 Q How long have you been a police officer?

2 A Eighteen years.

3 Q How long with the rank of detective?

4 A Eleven years.

5 Q You currently work where?

6 A Joint Terrorist Task Force.

7 Q And how long have you been in that assignment?

8 A Approximately four months.

9 Q Before that time, what was your assignment in the
10 New York City Police Department?

11 A Seventy-Third Precinct Detective Squad.

12 Q How long did you work in the Seventy-Third
13 Precinct?

14 A Seven years.

15 Q Did that include the month of July, the year of
16 2007?

17 A Yes.

18 Q Sir, the Seventy-Third Precinct, what neighborhood
19 is that in in Brooklyn?

20 A Brownsville.

21 Q Are you aware of the other precincts in Brooklyn
22 and their geographical locations?

23 A Yes.

24 Q For instance, the Seventy-First Precinct, do you
25 know where that is?

MWB

HALE - DIRECT - DET. O'GORMAN

1 A Yes.

2 Q Where is that in relation to the Seventy-Third
3 Precinct?

4 A Approximately two-and-a-half miles west.

5 Q Does the Seventy-Third Precinct border on the
6 Seventy-First Precinct?

7 A Yes.

8 Q I want to talk to you about a specific date,
9 Detective. That day would be July the 9th of 2007, in the
10 early morning hours. Do you remember that time, on that
11 date?

12 A Yes.

13 Q I'm going to draw your attention specifically,
14 sir, to about 2:30 -- well, between 2:15 and 2:30 a.m., on
15 that date; do you remember those particular times, on that
16 date?

17 A Yes.

18 Q Do you recall where it was you were at that time,
19 sir?

20 A I was inside the Seventy-Third Precinct Detective
21 Squad.

22 Q And what, if anything, was your assignment at that
23 particular time, sir?

24 A Investigational.

25 Q Sir, within the Seventy-Third Precinct Detective

HALE - DIRECT - DET. O'GORMAN

1 Squad, was there a radio that was connected to the central
2 dispatcher and radio frequencies that are used by the
3 precincts in Brooklyn?

4 A Yes.

5 Q At that particular time, sir, were you monitoring
6 that radio for news or information that might be helpful to
7 you in your investigations?

8 A Yes.

9 Q At or around 2:30 a.m., sir, did you hear anything
10 on the radio that drew your particular interest?

11 A Yes.

12 Q What was that?

13 A That a cop was shot.

14 Q Sir, was there a specific location or a specific
15 number of police officers that that radio transmission
16 indicated had been shot at that time?

17 A Location.

18 Q What was the location, sir?

19 A Rogers Avenue and Lefferts Boulevard.

20 Q Now, when you heard that particular location, was
21 that someplace that you were familiar with, sir?

22 A Yes.

23 Q How was it that you were familiar with that
24 location?

25 A I know the Brooklyn area.

HALE - DIRECT - DET. O'GORMAN

1 Q What did you do after you heard that
2 communication, sir?

3 A We immediately jumped into our unmarked vehicle
4 and headed to that location.

5 Q Who is "we"?

6 A Sergeant Lasko and myself.

7 Q Who is Sergeant Lasko?

8 A My immediate supervisor.

9 Q When you go from the Seventy-Third Precinct
10 heading to Rogers and Lefferts, what approximate route would
11 you be taking?

12 A East New York Avenue westbound to Empire
13 Boulevard.

14 Q Now, Empire Boulevard, that is also an east and
15 west?

16 A That's correct.

17 Q And you would be going, I guess, westerly to go to
18 the Seventy-First Precinct; is that right?

19 A That's correct.

20 Q While you were doing that, sir, were you also in
21 possession of a handheld radio that, again, was connected to
22 the radio transmissions and the central dispatcher?

23 A Yes.

24 Q And, sir, were you also listening to that radio
25 for further information about this police shooting that you

HALE - DIRECT - DET. O'GORMAN

1 were responding to?

2 A Yes.

3 Q During that time, sir, while you were in transit
4 on Empire Boulevard, did you receive any more information
5 over the radio concerning the shooting of the police
6 officer?

7 A Yes.

8 Q What sort of information did you get, sir?

9 A They gave a description of a vehicle and the
10 license plate number.

11 Q Do you recall, now, what the description of the
12 vehicle was and the license plate number?

13 A At the time, they said it was a dark-colored
14 Outlander Mitsubishi.

15 Q And the license plate number, sir?

16 THE WITNESS: If I could refresh my memory.

17 THE COURT: Please do so. Do you have
18 something?

19 MR. HALE: Yes, I do. This is a DD5
20 (handing).

21 THE COURT: Again, this is offered for
22 non-hearsay purpose. It explains the actions of the
23 police leading up to whatever actions they may have
24 taken.

25 Q Detective, you are looking at a police report you

HALE - DIRECT - DET. O'GORMAN

1 filed after this incident?

2 A Yes.

3 Q And, sir, does that refresh your recollection as
4 to what the license plate number that was communicated over
5 the air was?

6 A Yes.

7 Q Can you tell us what that was, please?

8 A It was a New York plate D, as in David, C, as in
9 Charlie, Y, as in Young, 3504.

10 MR. HALE: Okay. You could give me that
11 back.

12 (Handing.)

13 Q Now, Detective, as you were traveling along Empire
14 Boulevard, was there anything that drew your attention on
15 any of the sidestreets of Empire Boulevard?

16 A Yes.

17 Q What sidestreet was that, sir?

18 A Kingston Avenue.

19 Q What was it that you saw?

20 A I observed a vehicle near the corner of Kingston
21 and Lefferts Boulevard, pointing in the south direction, and
22 the Kingston Avenue direction of traffic would be north.

23 Q When you saw this vehicle, sir, can you describe
24 the vehicle, generally?

25 A It was a dark-colored SUV at that time.

HALE - DIRECT - DET. O'GORMAN

1 Q At that time, sir, was it illuminated, that is,
2 with the headlights on?

3 A At that time, the rear taillights were on.

4 Q What aspect of the car were you looking at?

5 A I saw the rear.

6 Q That is going the opposite way traffic should be
7 going on Kingston?

8 A Yes.

9 Q Were you a driver or passenger in the vehicle you
10 were traveling in?

11 A I was the driver.

12 Q What did you do when you made that observation,
13 sir?

14 A I went down the wrong way on Kingston Avenue
15 southbound until I came to the rear of the vehicle.

16 Q Now, the communication that you initially received
17 back at the Seventy-Third Precinct was at or around
18 2:30 a.m. About what time was it that you saw the SUV on
19 Kingston Avenue?

20 A Approximately 15 minutes afterwards, after the
21 initial radio.

22 Q That is after the first communication, before you
23 jumped into the car and started heading over there, right?

24 A Yes.

25 Q Now, you said before you are familiar with Rogers

HALE - DIRECT - DET. O'GORMAN

1 and Lefferts; is that correct?

2 A Yes.

3 Q When you were talking about this vehicle, you are
4 saying it's on Kingston, but near the intersection of
5 Kingston and Lefferts; is that correct?

6 A Yes.

7 Q Now, how far is that intersection, Kingston and
8 Lefferts, away from the intersection of Rogers and Lefferts?

9 A Approximately four blocks.

10 Q When you turned down Kingston Avenue, sir, were
11 you able to observe this vehicle more fully?

12 A Yes.

13 Q And what, if anything, did you observe about the
14 vehicle first, sir?

15 A That it was a dark-colored BMW.

16 Q And, sir, at that time did you take notes of the
17 license plate that was affixed to the vehicle at that time?

18 A Yes.

19 Q Did you recognize that vehicle identification
20 plate from anything that you had seen or heard in relation
21 to the investigation you were pursuing?

22 A Yes, the New York plate number matched the plate
23 number we were looking for.

24 Q Let me show you what has been marked as People's
25 Number 32 for identification (handing).

HALE - DIRECT - DET. O'GORMAN

1 MR. MEGARO: This is stipulated to.

2 MR. HALE: This is in evidence as People's
3 Exhibit 32. And let me use the viewer right here, if
4 it is already in evidence.

5 (Whereupon, People's Exhibit 32 was displayed
6 for the witness and jury.)

7 Q Detective, do you recognize what is displayed
8 there in People's Exhibit Number 32?

9 A Yes.

10 Q What is that?

11 A That is the BMW that I pulled up behind.

12 Q Now, sir, it appears that the taillights are
13 illuminated. Were there any directional signals that were
14 illuminated on the vehicle?

15 A Yes, the left-turn signal was blinking when I
16 pulled up.

17 Q The vehicle was running or was it stopped?

18 A It was running.

19 MR. HALE: Let me get a little closer to see
20 if we could make out that plate number.

21 THE COURT: Jurors, are you able to see that?

22 THE JURY: Yes.

23 THE COURT: Okay. Again, this is an exhibit
24 that will be in evidence. You'll be able to handle it.

25 Q Sir, that was the subject plate that you had heard

HALE - DIRECT - DET. O'GORMAN

1 broadcasted over the air?

2 A Yes.

3 Q Now, when you observed the vehicle with the
4 taillights on and the blinker, with the license plate, what
5 did you do?

6 A I exited my vehicle and approached the vehicle.

7 Q All right.

8 From what aspect of the vehicle did you approach,
9 sir?

10 A I was on the sidewalk coming up behind the cars to
11 make sure there was no one in the vehicle.

12 Q Was there anyone in the vehicle?

13 A The vehicle was empty.

14 Q Now, you said it was parked against traffic; is
15 that correct?

16 A Yes.

17 Q Was it parked in what would be the parking lane or
18 was it in the traffic lane?

19 A It was in the traffic lane.

20 Q When you approached the vehicle from the
21 passenger's side, sir, were there --

22 A The driver's side.

23 Q Sorry, from the driver's side.

24 You approached from the driver's side?

25 A Yes.

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1 Q What, if anything, did you observe about the
2 vehicle when you approached from the driver's side, sir?

3 A I observed the driver's side door open.

4 Q Was there anything at or around the driver's side
5 of the vehicle, sir?

6 A Yes, there was a box of Popeye's Chicken laying on
7 the ground by the driver's side door.

8 Q Now, the vehicle, were the windows up or were the
9 windows down in the vehicle?

10 A The driver's side window was down and the driver's
11 side rear passenger's window was tinted, but it had holes in
12 it.

13 Q When you say, "holes," what are you talking about?

14 THE COURT: How did it appear?

15 A The rear passenger window was shattered, but since
16 it was tinted, the window stayed together. So, there were
17 punched holes in it.

18 Q Were there any other holes that you observed on
19 the driver's side of the car?

20 A Yes.

21 Q Where did you observe those holes?

22 A The vehicle, on the driver's side, had two marks
23 on the vehicle.

24 MR. HALE: This is People's Exhibit 33 in
25 evidence.

HALE - DIRECT - DET. O'GORMAN

1 MR. MEGARO: Stipulated.

2 (Whereupon, People's Exhibit 33 was displayed
3 for the witness and jury.)

4 Q Sir, People's 33 in evidence, is that the vehicle
5 as you observed it?

6 A Yes.

7 THE COURT: Again, jurors, are you able to
8 see the photo?

9 THE JURY: Yes.

10 Q Detective O'Gorman, with the Court's permission,
11 if you could approach the photograph.

12 THE COURT: Keep your back to me and speak
13 into the microphone, sir.

14 (Whereupon, the witness leaves the witness
15 stand.)

16 Q Now, sir, does this photograph fairly and
17 accurately represent what you saw, except that the door is
18 now closed; is that correct?

19 A Yes.

20 Q The door, was it partially open? Wide open? What
21 was it?

22 A It was all the way open.

23 Q If you can, just with your finger, point to the
24 Popeye's Chicken bag you said you observed?

25 A This right here (indicating).

HALE - DIRECT - DET. O'GORMAN

1 THE COURT: Jurors, are you able to see that?

2 THE JURY: Yes.

3 Q When you talk about the damage to the window, the
4 holes in the window, where are you talking about?

5 A This location right here (indicating).

6 THE COURT: Jurors, are you able to see that?

7 THE JURY: Yes.

8 MR. HALE: Maybe we could get a little closer
9 in there.

10 Q Now, sir, I think you pointed right up here in
11 this area, and it's actually multiple holes; is it not
12 (indicating)?

13 A Yes.

14 Q Now, the other marks, or holes that you say you
15 saw, where did you see those on the vehicle, sir?

16 A One is located approximately here (indicating)..

17 Q You are indicating on the bottom panel of the
18 driver's side door?

19 A Yes.

20 Q Okay.

21 A The mark was back here (indicating).

22 Q You are talking about another mark that is in the
23 vicinity of the -- over here on the rear door; is that
24 correct (indicating)?

25 A That's correct.

HALE - DIRECT - DET. O'GORMAN

1 Q And the window was as you saw it right here; is
2 that correct?

3 A Yes.

4 Q Now, sir, it's fair to say, seeing right through
5 this photograph, you could see that the opposite window,
6 that is the one on the passenger's side front compartment,
7 is also open; is that correct?

8 A Yes.

9 Q Is that as you observed it also, sir?

10 A Yes.

11 MR. HALE: You could take a seat.

12 (Whereupon, the witness resumes the witness
13 stand.)

14 Q Detective, I'm going to show you another one.
15 This is People's Exhibit 34 in evidence, as stipulated.

16 MR. MEGARO: Stipulated.

17 (Whereupon, People's Exhibit 34 is displayed
18 for the witness and jury.)

19 Q Again, we're talking about the front aspect of the
20 car; is that right?

21 A Yes.

22 Q Now, this was the part that was facing away from
23 you when you first saw it. You first saw the rear; is that
24 right?

25 A That's correct.

HALE - DIRECT - DET. O'GORMAN

1 Q Okay.

2 And the same license plate, the subject license
3 plate that you had been looking for, it is also affixed on
4 the front of the vehicle, is it not?

5 A I don't recall.

6 Q All right. Let's take a look. I'll tell you
7 what, Detective, I'm going to hand you the exhibit because
8 it is not showing up there real well. Could you just take a
9 look at that (handing)?

10 A Yes, it is the same plate number.

11 Q So, the subject plate you were looking for is
12 affixed to both the front and the back of the vehicle; is
13 that right?

14 A Yes (handing).

15 Q Thank you.

16 And last one, Detective, this is People's Exhibit
17 35.

18 MR. MEGARO: Stipulated as well.

19 MR. HALE: Thank you, sir.

20 (Whereupon, People's Exhibit 35 was displayed
21 for the witness and jury.)

22 Q People's Exhibit 35 stipulated into evidence, this
23 would have been the aspect from the sidewalk going south
24 towards Lefferts Avenue; is that correct?

25 A That's correct.

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1 Q And as we talked about with the other exhibit, the
2 passenger window appears to be open; is that correct?

3 A Yes.

4 Q Now, is this the way you observed it on that day,
5 sir?

6 A Yes.

7 Q With regard to the positions of the seats and
8 everything else in the vehicle, did you disturb the setup of
9 the vehicle on the inside at all when you got to the
10 vehicle?

11 A No.

12 Q What did you do with this vehicle after you made
13 your initial discovery of it, sir?

14 A I safeguarded the entire scene.

15 Q How did you do that?

16 A I made sure that no one touched the car, or the
17 chicken box, or anything surrounding the vehicle.

18 Q And that includes not messing around with anything
19 in the entire vehicle at all; is that correct?

20 A Yes.

21 Q Did you in fact look into the interior of the
22 vehicle, sir?

23 A No.

24 Q Is there anything that you took note of when you
25 looked into the interior of the vehicle?

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1 A I just saw there was an additional Popeye's
2 package inside the car.

3 Q Now, was this just a cursory look or was this a
4 full scale examination?

5 A Just a cursory look.

6 Q Was it in fact somebody whose job it was to make a
7 full scale examination of that vehicle?

8 A Yes.

9 Q Who is that?

10 A Crime Scene Unit.

11 Q Not your job, right?

12 A No.

13 Q Were you there when the Crime Scene Unit arrived?

14 A Yes.

15 Q Did you interfere with their particular work or
16 assist in their work at all?

17 A No.

18 MR. HALE: Detective O'Gorman, thank you,
19 very much.

20 THE COURT: Any questions --

21 MS. NICOLAZZI: Just one second.

22 THE COURT: Additional questions, Mr. Hale?

23 MR. HALE: Two more questions, actually.

24 Q Detective, have you had an opportunity, during
25 your preparation for your testimony, to look at some video

HALE - DIRECT - DET. O'GORMAN

1 images that are on a compact disk, which would be People's
2 Exhibit Number 36 for identification? Have you seen those
3 before?

4 A Yes.

5 Q Now, sir, do those images, do they reflect, in
6 addition to the vehicle that you observed on that date, do
7 they reflect you pulling up onto the scene where the vehicle
8 was at and your initial observation of the vehicle?

9 A Yes.

10 Q And they fairly and accurately do that?

11 A Yes.

12 Q Specifically, there is a couple of people who are
13 getting out the vehicle. When you were examining this
14 vehicle initially, now Kingston Avenue, I assume it is
15 illuminated by some streetlights; is that correct?

16 A Correct.

17 Q But, it is not very well lit?

18 A No.

19 Q Were you using anything to help you look around,
20 sir?

21 A Yes.

22 Q What was that?

23 A I had a flashlight with me.

24 Q And that is reflected in the tape that was
25 recovered, correct?

HALE - DIRECT - DET. O'GORMAN

1 A Yes, it is.

2 Q Besides that flashlight, sir, I assume the
3 photographs that were made, you did not make those
4 photographs; is that right?

5 A No.

6 Q Those were made by flash photography by the Crime
7 Scene Unit?

8 A I assume so.

9 Q Were you present when those photographs were made?

10 A I don't recall.

11 Q But, they fairly and accurately reflect the way
12 the vehicle looked when you were there?

13 A Yes.

14 MR. HALE: I don't have any further
15 questions.

16 MR. MEGARO: No questions.

17 THE COURT: You may step down, Detective.

18 (Whereupon, the witness leaves the witness
19 stand and exits the courtroom.)

20 THE COURT: Next witness, please.

21 MS. NICOLAZZI: Detective Viola.

22 (Whereupon, the witness enters the courtroom
23 and takes the witness stand.)

24 COURT CLERK: Raise your right hand. Do you
25 solemnly swear or affirm that the statements you are

NICOLAZZI - DIRECT - DET. VIOLA

1 about to make in these proceedings, will be the truth,
2 so help you God?

3 THE WITNESS: I do.

4 COURT CLERK: Thank you. Please, be seated.
5 Detective, please speak into the microphone. State
6 your name, spell your last name, shield and command.

7 THE WITNESS: Detective Andrew Viola,
8 V-I-O-L-A, Shield Number 7955, and I work at the
9 Technical Assistant Response Unit, TARU, T-Ä-R-U.

10 COURT CLERK: Thank you.

11 THE COURT: Detective, please continue to
12 speak into the microphone.

13 You may inquire.

14 MS. NICOLAZZI: Thank you, your Honor.

15 DIRECT EXAMINATION

16 BY MS. NICOLAZZI:

17 Q Good morning, Detective Viola.

18 A Good morning.

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

21 A Over 15 years.

22 Q How long have you been assigned to the TARU?

23 A A little over four years.

24 Q How long have you been a detective?

25 A About six-and-a-half years.

NICOLAZZI - DIRECT - DET. VIOLA

1 Q I'm going to direct your attention back to the
2 early morning hours of July 9th of 2007; did you work on
3 that day?

4 A I did.

5 Q Were you requested to respond over to the vicinity
6 in relation to where or near where there had been a shooting
7 of two New York City police officers?

8 A I was.

9 Q And, specifically, where were you requested to
10 respond to?

11 A I responded to 451 Kingston Avenue.

12 Q What was the purpose for you going over there?

13 A The purpose was to retrieve a video.

14 Q Kingston Avenue, that's in Brooklyn, Kings County?

15 A It is.

16 Q When you went and did your work there, were you
17 alone or with someone else?

18 A I was with a partner.

19 Q Who was that, if you know?

20 A Sergeant James Phelan.

21 Q Were you directed somewhere specifically on
22 Kingston Avenue?

23 A Yes.

24 Q Where?

25 A Into the basement of that location.

NICOLAZZI - DIRECT - DET. VIOLA

1 Q What was the address of that location?

2 A 451 Kingston Avenue.

3 Q What type of a location was that?

4 A It was an apartment building.

5 Q And when you observed the outside of that
6 apartment building, 451 Kingston Avenue, what, if anything,
7 did you see with respect to any video surveillance?

8 A A few video cameras on the exterior of that
9 building.

10 Q Were you and the sergeant the ones that observed
11 that or were you directed by other members of law
12 enforcement?

13 A We were directed by other members of law
14 enforcement.

15 Q And what did you do once you got over there?

16 A Upon entering the basement?

17 Q Sure?

18 A There was a lockbox containing a digital video
19 recorder.

20 Q How did you get into the basement of that
21 building?

22 A It was already secured by members of the
23 department.

24 Q When you say, "the department," you mean the New
25 York City Police Department?

NICOLAZZI - DIRECT - DET. VIOLA

1 A Correct.

2 Q And where in that basement did you go?

3 A Directly when you walk straight in on the
4 left-hand side, there was a lockbox.

5 Q And what did you do when you saw that?

6 A Upon looking inside, there is a digital video
7 recorder.

8 Q And when you observed the digital video recorder,
9 what did you do?

10 A I searched the images for that specific date and
11 time.

12 Q Were you looking for anything in particular when
13 you are viewing the images that were coming up on that video
14 image recorder?

15 A Yes.

16 Q What were you looking for, generally?

17 A There was a vehicle of interest parked in the
18 vicinity.

19 Q Is that based on information that had already been
20 conveyed to you by other members of the department?

21 A Yes.

22 Q When you observed those images on the video
23 recorder, what did you do?

24 A At this point, after we viewed them, we were going
25 to download those videos.

NICOLAZZI - DIRECT - DET. VIOLA

1 Q Did you do that?

2 A Yes.

3 Q How did you do that?

4 A We use a video cam. We take a video out while it
5 is playing and record it.

6 Q And after you recorded those images onto your
7 video cam, were they later then put onto a DVD or
8 re-recorded after that?

9 A They were.

10 Q Were they altered in any way?

11 A No.

12 Q Now, when you viewed that video recording, did you
13 notice anything with respect to any timestamp that appeared
14 on those images?

15 A Yes, I did.

16 Q What was that?

17 A There was a timestamp on all of the images. And I
18 compared that with my Verizon time on my cell phone, and I
19 found it to be 55 minutes slow.

20 Q Which one was slower, what was showing up on the
21 video images was 55 minutes slower than the actual time?

22 A Correct.

23 Q For example, if it says, "3:00 a.m.," that would
24 really be 2:05 a.m.?

25 A Yes.

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(?)

NICOLAZZI - DIRECT - DET. VIOLA

1 Q Have you previously had the opportunity to look at
2 the images that are on what's already been marked as
3 People's 36 for identification?

4 A I have.

5 Q And do the contents of People's 36, the DVD,
6 fairly and accurately reflect all of the images you
7 downloaded from that particular location, 451 Kingston, in
8 the early morning hours of July 9th of 2007?

9 A It does.

10 MS. NICOLAZZI: I offer that into evidence.

11 THE COURT: Any objection?

12 MR. MEGARO: No objection.

13 THE COURT: Marked and received, Mr. LaRose.

14 (Whereupon, the aforementioned DVD was
15 entered into evidence as People's Exhibit 36, as
16 of this date.)

17 THE COURT: You are going to play it now?

18 MS. NICOLAZZI: I'm going to play a few
19 portions of this, People's 36.

20 Q Have you also looked at the images that have
21 already been put on to People's Exhibit, which is another
22 DVD?

23 A I have.

24 Q And that's basically a compilation of some of your
25 work, along with another member of TARU?

NICOLAZZI - DIRECT - DET. VIOLA

1 A Correct.

2 Q And the portions that reflect images that you
3 downloaded, do they fairly and accurately reflect the way
4 those images appear?

5 A Yes, they do.

6 Q Going back to People's Number 36, now what is the
7 vantage point that the members of the jury are looking at
8 here?

9 (Whereupon, People's Exhibit 36 was displayed
10 for the witness and jury.)

11 A This is a camera mounted on 451 Kingston, and it's
12 facing towards Empire.

13 Q So, 451 Kingston, is that basically, when we are
14 looking at the video, the right of the street?

15 A The bottom portion of the screen.

16 Q This vehicle that is now coming down, you could
17 see the headlights, top portion, coming down the wrong way.
18 Is that the vehicle you termed as "of interest" that you
19 were looking for on the imagery?

20 A Correct.

21 Q And I note that the timestamp there now says,
22 "1:34 a.m.," and some seconds. So, that basically is 55
23 minutes off, so it would be 55 minutes later in actuality?

24 A It would.

25 Q But, the date was correct?

NICOLAZZI - DIRECT - DET. VIOLA

1 A The date was correct.

2 MS. NICOLAZZI: We're going to move ahead a
3 little now, rather than playing all of it, because I
4 believe there is about a half hour of footage here.
5 Moving on where the timestamp will say, "one hour and
6 forty-six minutes."

7 Q Detective Viola, this vehicle that is now also
8 coming the wrong way down Kingston Avenue, is that a
9 different vehicle than the one we observed?

10 A Yes.

11 Q Did you later learn what type of vehicle that was,
12 in terms of general ownership?

13 A Yes, I found it to be a police vehicle.

14 Q Now, I'm going to move ahead in Chapter 3, where
15 it comes up to one hour thirty-three or one hour
16 thirty-four. Bear with me a little bit. I'm not the best
17 in technical.

18 So, now, what is the vantage point of what the
19 surveillance footage is capturing here?

20 A This is the opposite view of the shot you saw.
21 This is on 451 Kingston, facing towards Lefferts.

22 Q So, is that from a different camera at that
23 location?

24 A Yes.

25 Q On the opposite side of the street?

NICOLAZZI - DIRECT - DET. VIOLA

1 A Right.

2 Q Now, the vehicle that just pulled up that you
3 could just see a tiny portion of the headlight on the left
4 portion, based on your calibration looking at the two video
5 images, is that the same time you had just seen the initial
6 vehicle? The vehicle you termed "of interest" going down
7 that street?

8 A Correct.

9 Q And after you finished downloading your images,
10 did that complete your work with respect to this
11 investigation?

12 A It did.

13 MS. NICOLAZZI: I have nothing further.

14 THE COURT: Any cross examination?

15 MR. MEGARO: No, thank you.

16 THE COURT: You may step down, sir.

17 (Whereupon, the witness leaves the witness
18 stand and exits the courtroom.)

19 MS. NICOLAZZI: People call Detective
20 Jean-Pierre.

21 (Whereupon, the witness enters the courtroom
22 and takes the witness stand.)

23 COURT CLERK: Detective, please remain
24 standing. Do you solemnly swear or affirm that the
25 statements you are about to make in these proceedings,

NICOLAZZI - DIRECT - DET. JEAN-PIERRE

1 will be the truth, so help you God?

2 THE WITNESS: I do.

3 COURT CLERK: Please, be seated. Speak into
4 the microphone. For the record, please state your
5 name, spell your last name, Shield Number and command.

6 THE WITNESS: Detective Ralph Jean-Pierre,
7 J-E-A-N-P-I-E-R-R-E, Shield Number 4468, TARU.

8 COURT CLERK: Thank you.

9 THE COURT: You may inquire.

10 Continue to speak into the microphone, sir.

11 DIRECT EXAMINATION

12 BY MS. NICOLAZZI:

13 Q Good morning, Detective Jean-Pierre.

14 A Good morning.

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

17 A A little over eight-and-a-half years.

18 Q How long have you been assigned to TARU or
19 Technical Assistant Response Unit?

20 A A little over two years.

21 Q How long have you been a detective?

22 A A little over six-and-a-half months.

23 Q And what are your basic duties and
24 responsibilities at the TARU?

25 A Um, my responsibilities are to go to various

NICOLAZZI - DIRECT - DET. JEAN-PIERRE

1 locations where, um, an investigative detective needs
2 basically retrieval of video information, video evidence,
3 videotapes, video records that may have caught any possible
4 crimes or of that nature.

5 Q Do you have a specialized training in that field?

6 A Yes, I do.

7 Q Were you asked to work and respond on July 9th of
8 2007 over to particular locations here in Kings County with
9 respect to a case involving the shooting of two New York
10 City police officers?

11 A Yes, I was.

12 Q And where was it that you responded to initially?

13 A Initially, we responded to 438 Kingston Avenue.

14 Q And when you went over and responded to 438
15 Kingston Avenue, were you working alone or with someone
16 else?

17 A I was with my partner.

18 Q Who was your partner?

19 A Detective Cannazzaro.

20 Q And what type of location was it that you were
21 asked to respond to at 438 Kingston Avenue?

22 A It was an apartment building.

23 Q And when you got to that location, were you able
24 to make any observations with respect to any video
25 surveillance on or in that building?

NICOLAZZI - DIRECT - DET. JEAN-PIERRE

1 A Yes. Once we reached that location, our
2 responsibility was to do a survey to make sure if we saw any
3 video cameras or any type of equipment that is outside the
4 vicinity of the area that may possibly have evidence. And I
5 did find that in front of 438 Kingston Avenue.

6 Q And when you saw that in front of that location,
7 438 Kingston Avenue, what did you do?

8 A From there, we were directed to the basement of
9 the location where the DVR, the digital video recording, was
10 held.

11 Q What time was it, approximately, that you went
12 into that basement where the DVR was?

13 A Early, about 3:30, four o'clock in the morning.

14 Q On that same night?

15 A Yes.

16 Q And how did you get into or gain entry into the
17 basement area?

18 A Um, we got entry through, I believe, the
19 maintenance worker that was able to get us in that basement
20 area.

21 Q And what did you do when you got into that
22 particular area of the basement that had the video recorder?

23 A Once we got in, um, we did find the location where
24 the DVR was. Unfortunately, at the time it was in a locked
25 metal box casing. At that point, we requested the help of

NICOLAZZI - DIRECT - DET. JEAN-PIERRE

1 the Emergency Service Unit, in which they were able to get
2 into that locked box so that we could gain access to the
3 recording.

4 Q After the Emergency Service Unit helped you by
5 getting into that locked box, what did you do?

6 A From there, there were various menus that we have
7 access to on the recorder, and we wound it back to a
8 particular timeframe so that we could see if there is
9 anything out of the ordinary that may be pertaining to the
10 investigation.

11 Q And had you been given some background or
12 preliminary information by other members of law enforcement
13 before you began to view whatever images had been captured?

14 A Yes. Yes, we were.

15 Q And when you viewed those particular images, did
16 you then download portions of what was recorded on that
17 video surveillance system?

18 A Yes. Once we found what we were looking for, I
19 was able to abstract that video and put that information on
20 a mini DVD cassette.

21 Q And after you finished your work there at 438
22 Kingston Avenue, did you then go to another location with
23 respect to this investigation?

24 A Yes, I did.

25 Q And where was that?

NICOLAZZI - DIRECT - DET. JEAN-PIERRE

1 A That was 573 Lefferts.

2 Q Where was 573 Lefferts in relation to where you
3 had just been at 438 Kingston, approximately?

4 A Approximately right around the corner from 438.

5 Q If we're standing on Kingston facing towards
6 Lefferts, which way would you go, to the left or to the
7 right?

8 A To the right.

9 Q When you went over to that particular location,
10 573 Lefferts, what type of a location was that?

11 A It looked like a storage facility for building
12 materials, like a little loading dock.

13 Q And did you do that same surveying that you just
14 described to the members of the jury that you had done at
15 438 Kingston?

16 A Yes, I did.

17 Q What did you observe when you did that?

18 A I observed three camera shots at various locations
19 within that same side of the street of 573 Lefferts.

20 Q So, what did you do after you noticed the three
21 individual cameras at that location?

22 A From there, the same thing, we gained access
23 through the loading dock and looked for that DVR, which is
24 the same instance of 438 Kingston, that locked box, same
25 lock box, same type of lock box was locked, and we requested

NICOLAZZI - DIRECT - DET. JEAN-PIERRE

1 ESU.

2 Q When you gained entry, what did you do?

3 A Looked through the time and dates we were looking
4 for. I did find video of reference that was given to me,
5 and I also downloaded that information onto a mini DVD
6 cassette.

7 Q With respect to the mini DVDs from both of those
8 locations, 438 Kingston Avenue and 573 Lefferts, were those
9 later put together on a DVD that has previously been marked
10 People's Number 37 for identification?

11 A Yes, it was.

12 Q And prior to your testimony here today, have you
13 had the opportunity to view what's on People's Exhibit 37?

14 A Yes, I did.

15 Q Does that fairly and accurately reflect the images
16 that you downloaded from those various cameras in the early
17 morning hours of July 9th of 2007?

18 A Yes.

19 MR. MEGARO: People's 37 is stipulated.

20 THE COURT: Marked and received into
21 evidence.

22 MS. NICOLAZZI: If I could play a couple of
23 portions of those -- Judge, I said the wrong number; it
24 is actually People's 38.

25 MR. MEGARO: I'll stipulate to 37 and 38 to

NICOLAZZI - DIRECT - DET. JEAN-PIERRE

1 make matters easier.

2 MS. NICOLAZZI: Thank you.

3 (Whereupon, the aforementioned DVDs were
4 entered into evidence as People's Exhibits 37 and 38,
5 as of this date.)

6 MS. NICOLAZZI: I am now playing from
7 People's Exhibit 38.

8 (Whereupon, People's Exhibit 38 was played
9 for the witness and jury.)

10 Q Now, what is the vantage point that the members of
11 the jury are looking at here, the beginning, which is
12 timestamped 1:18, on 7-9-07?

13 A That is outside of 438 Kingston Avenue.

14 Q 438 Kingston Avenue, where is that in relation to
15 451 Kingston Avenue where other members of your unit were
16 dispatched to?

17 A That should be right across the street.

18 Q The other location would have cameras. They would
19 be on buildings on the left side, and yours would be on
20 buildings on the right side?

21 A Yes.

22 Q I guess that would be Lefferts?

23 A Yes.

24 Q Now, again, I'm just using this one to get the
25 vantage points. What are the members of the jury looking at

NICOLAZZI - DIRECT - DET. JEAN-PIERRE

1 here, which the clarity is not here, timestamped 2:20,
2 7-9-07?

3 A 573 Lefferts.

4 Q This is from the second location?

5 A Yes.

6 Q And what about now, this third image here, the
7 time is 2:30?

8 A That is directly in front of the loading dock of
9 573 Lefferts.

10 Q This is facing directly to Lefferts?

11 A Yes.

12 Q So Kingston, would that be from this image to your
13 right or to your left?

14 A Kingston is to my right.

15 Q What, if anything, did you note with respect to
16 the time stamped on the earlier images, which was one
17 something?

18 A It is approximately 38 minutes, give or take, off.

19 Q How about here, where it says, this image says,
20 2:20?

21 A That showed the correct time. Everything was
22 correct on that DVR.

23 Q I'm going to go, Detective -- have you also had
24 the opportunity to view the image that is on People's 37?

25 A Yes.

NICOLAZZI - DIRECT - DET. JEAN-PIERRE

1 Q And do some of those images relate to images that
2 you downloaded with your partner of what was shown in
3 People's 38?

4 A Yes.

5 Q Does that fairly and accurately reflect those
6 images?

7 A Yes, it does.

8 THE COURT: This is 37 now?

9 MS. NICOLAZZI: This is 37. I'm going to
10 play the whole thing. It is a compilation.

11 (Whereupon, People's Exhibit 38 was played
12 for the witness and jury.)

13 Q This, again, initially this would be from 438
14 Kingston, and now from, I guess, the other side, which is
15 the work of your partner or another member of your unit?

16 A Yes.

17 Q This would be one of the cameras from 573 or is
18 this 438?

19 A I believe 438.

20 Q I'm sorry. This is from another partner?

21 A Correct.

22 Q Now, this would be one of the cameras from 573?

23 A Yes.

24 Q Is that basically the corner? If you are looking
25 up to the right, that would have been Kingston turning to

NICOLAZZI - DIRECT - DET. JEAN-PIERRE

1 the left to Lefferts?

2 A Yes.

3 Q So, here the timestamp is basically correct, 2:30?

4 A Correct.

5 Q And the switching back and forth is different
6 cameras on that same building?

7 A Yes, it is.

8 Q And now this would be facing away from Kingston?

9 A Away from Kingston, yes.

10 Q Now, I'm just going to back up a little bit there
11 and ask you a couple of questions, Detective Jean-Pierre.

12 Now, the three individuals that you see running in
13 this last portion of the video surveillance. After you see
14 the three of them there moving to the left, could you still
15 see them up in the left portion of the screen?

16 A Yes, I still see them.

17 Q Where was it that you last saw the three of them
18 in the images shown here that you downloaded?

19 A The last place where you see them on the video,
20 you see them making a left-hand turn and disappearing out of
21 the frame of the video.

22 Q When you downloaded, after you see those
23 individuals going to the left and disappearing, once they go
24 into the left from that street, do you ever see any of them
25 in any of your surveillance that was captured again?

COLLOQUY

1 A No, that was it.

2 MS. NICOLAZZI: I have nothing further.

3 THE COURT: Any cross examination?

4 MR. MEGARO: Nothing, thank you.

5 THE COURT: Thank you, sir.

6 (Whereupon, the witness leaves the witness
7 stand and exits the courtroom.)

8 THE COURT: Jurors, we're going to take a
9 break. I am going to have you back in a few minutes.
10 The case has not been given to you. Adhere to my
11 warnings.

12 Take the jury out.

13 Audience, please be seated until the jury
14 leaves.

15 (Whereupon, the jury exits the courtroom.)

16 THE COURT: Approximately how much time do
17 you need?

18 MR. HALE: About 15 minutes.

19 THE COURT: It is about 12:00, about 12:15?

20 MR. HALE: Yes.

21 THE COURT: 12:15.

22 (Whereupon, a brief recess was held.)

23 COURT OFFICER: Ready for the jury?

24 THE COURT: Bring them right in, please.

25 COURT OFFICER: Jury entering.

COLLOQUY

1 (Whereupon, the jury enters the courtroom.)

2 COURT CLERK: Case on trial. All parties are
3 present. Do both sides waive the reading of the roll?

4 MR. HALE: Yes.

5 MR. MEGARO: Yes.

6 THE COURT: I could assure you, I could tell
7 time.

8 People.

9 MR. HALE: People call Tamika Buggs.

10 THE COURT: Very well. Could I see counsel
11 at the bench, please?

12 (Whereupon, a discussion was held at the
13 bench.)

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

16 COURT CLERK: Please, raise your right hand.
17 Do you solemnly swear or affirm that the statements you
18 are about to make in these proceedings, will be the
19 truth, so help you God?

20 THE WITNESS: Yes.

21 COURT CLERK: Thank you. Please, be seated.
22 Please, speak into the microphone. For the record,
23 please state your name.

24 THE WITNESS: Tamika Buggs.

25 COURT CLERK: Please, spell your last name.

HALE - DIRECT - T. BUGGS

1 THE WITNESS: B-U-G-G-S.

2 COURT CLERK: Thank you.

3 THE COURT: Ms. Buggs, continue to speak into
4 the microphone. Don't volunteer anything. Wait until
5 the question is asked. If you don't understand the
6 question, ask the attorney to repeat the question.

7 THE WITNESS: Okay.

8 THE COURT: You may inquire.

9 DIRECT EXAMINATION

10 BY MR. HALE:

11 Q Ms. Buggs, how old are you?

12 A Twenty-two.

13 Q Are you currently employed or going to school?

14 A I'm in school.

15 Q And what are you in school for?

16 A Health information.

17 Q Were you born in New York?

18 A Yes.

19 Q You lived here all of your life?

20 A Yes.

21 Q In July of 2007, where was it that you were
22 living?

23 A Springfield Gardens.

24 Q And how long had you lived in Springfield Gardens
25 at that time?

HALE - DIRECT - T. BUGGS

1 A Two years.

2 Q That's in Queens, right?

3 A Yes.

4 Q I want you to take a look around the courtroom
5 now. Could you do that?

6 A Yes.

7 Q Do you know this gentleman who is seated over here
8 to my far left (indicating)?

9 A Yes.

10 Q Who is that gentleman?

11 A Rasheen.

12 Q Do you know his real name?

13 A Lee.

14 Q Last name?

15 A Woods.

16 Q And how long was it before July of 2007 that you
17 had known Mr. Woods?

18 A For a couple of years.

19 Q How was it that you knew Mr. Woods?

20 A He was my aunt's boyfriend.

21 Q What's your aunt's name?

22 A Kareema Jennings.

23 Q Before July of 2007, approximately how many times
24 would it have been that this gentleman was in your company
25 or that you had talked to him?

HALE - DIRECT - T. BUGGS

1 A A few times.

2 Q When you say, "a few," how many are you talking
3 about?

4 A I would see him a few times because he would come
5 around. I'm not sure.

6 Q When you said, "he would come around," come around
7 to where?

8 A To see my aunt.

9 Q Would there be occasions where he would come
10 around to see your aunt and you would be present and you
11 would also talk with him?

12 A Yes.

13 Q During the time that you did know him, did you
14 develop a relationship with him of any sort?

15 A Yes.

16 Q How would you describe that relationship?

17 A I considered him my uncle.

18 Q And did you in fact refer to him as your uncle?

19 A Yes.

20 Q Did you consider him a friend?

21 A Not too much of.

22 Q In the first week of July 2007, were you having
23 some problems at your residence at Springfield Gardens?

24 A Yes.

25 Q What sort of problems was it that you were having?

HALE - DIRECT - T. BUGGS

1 A Um, I had an altercation with my landlord to which
2 she cut up and set my stuff on fire.

3 Q Because of that, did you feel safe at your
4 apartment?

5 A No.

6 Q Did you reach out at that time for any sort of
7 assistance in your situation?

8 A Yes.

9 Q Who did you reach out to?

10 A My aunt.

11 Q As a result of that, did anybody get in contact
12 with you concerning your situation at the apartment?

13 A Rasheen.

14 Q Tell the jurors what it was that Rasheen said to
15 you about your situation?

16 A He came to help me move my stuff.

17 Q Now, would that have been that first weekend in
18 July, or specifically talking about Saturday, July the 7th,
19 or Sunday, July the 8th?

20 A It would be that Friday.

21 Q Okay.

22 The Friday going into Saturday?

23 A Yes.

24 Q Now, at that time did you express a desire to get
25 out of your apartment, go somewhere else?

HALE - DIRECT - T. BUGGS

1 A Yes -- not really until I got into the second
2 altercation.

3 Q Okay.

4 There was a second altercation?

5 A Yes.

6 Q And that involved who?

7 A Me and another guy.

8 Q That guy, was that one of your neighbors there at
9 Springfield Gardens?

10 A Yes.

11 Q And after that point in time, you wanted to get
12 out of there, right?

13 A Yes.

14 Q Did you express that to Mr. Woods?

15 A I expressed it to my brother and my brother
16 expressed it to Mr. Woods.

17 Q Did Mr. Woods get in contact with you after that
18 second altercation?

19 A Yes.

20 Q And what was it that Mr. Woods and you discussed
21 after that second altercation?

22 A Actually, he came back and got into an altercation
23 with the guy that I got into the altercation with. I
24 explained to him I didn't feel safe there, and he left and
25 sent Roger and Dexter back to come get me.

MWB

HALE - DIRECT - T. BUGGS

1 Q Now, when he said the names Roger and Dexter, did
2 those names mean anything to you? Did you know who those
3 people were?

4 A No.

5 Q All right.

6 I want to talk about, and I guess this would be
7 the Saturday going into the Sunday, this is the 7th going
8 into the 8th, probably the early morning hours of the 8th,
9 did anybody come to your apartment at Springfield Gardens at
10 that time?

11 A Yes.

12 Q Who was it that came to your apartment?

13 A Dexter Bostic and Roger Ellis.

14 Q What were the circumstances of them coming to your
15 apartment? How did it happen?

16 A It happened because I guess Mr. Woods sent them up
17 because of the altercation that occurred earlier that day.

18 Q How was it that you were aware they were at your
19 apartment?

20 A The banging on the door.

21 Q About what time was this, do you know?

22 A Like three, four in the morning.

23 Q And when they were banging on your door, you got
24 up and answered your door?

25 A Yes.

HALE - DIRECT - T. BUGGS

1 Q Who did you see?

2 A A big heavysset man at my door.

3 Q The big heavysset man, did he introduce himself at
4 that time?

5 A Yes.

6 Q As who?

7 A Dexter.

8 Q All right.

9 Can you describe him further than being big and
10 heavysset?

11 A He wears glasses. He's dark skinned. He's just
12 fat.

13 Q Okay.

14 I want you to take a look at an item here. This
15 is People's Exhibit 39 (handing)?

16 MR. MEGARO: Judge, I'm stipulating to
17 People's 39.

18 THE COURT: Okay.

19 Q Ms. Buggs, just take a look at that front and
20 back. Do you recognize who is depicted in that photograph?

21 A Yes.

22 Q And who is that?

23 A Dexter.

24 THE COURT: Can we show that?

25 (Whereupon, People's Exhibit 39 was displayed

HALE - DIRECT - T. BUGGS

1 for the witness and the jury.)

2 THE COURT: Jurors, are you able to see the
3 exhibit?

4 THE JURY: Yes.

5 THE COURT: Who is that man?

6 THE WITNESS: Dexter.

7 Q I think you had said when you met him, at that
8 time he was wearing glasses, right?

9 A Yes.

10 Q He's not wearing glasses in the photograph though?

11 A No.

12 Q But, you could still see that is Dexter?

13 A Yes.

14 Q Let me show you the other side here. I think you
15 described him as a large man?

16 A Fat.

17 Q Does that photograph depict the physical size of
18 Dexter as you remember it being back in July of 2007?

19 A Yes.

20 Q What, if anything, did Dexter indicate to you when
21 he came to your door in the early morning hours of July 8th?

22 A That Rasheen had sent him to come get me, to pack
23 my bag.

24 Q What did you do?

25 A I packed my bags and I left.

HALE - DIRECT - T. BUGGS

1 Q Specifically, what did you pack; do you remember?

2 A Some toiletries, an outfit, my curling iron, cds
3 and some movies.

4 Q Did you put that in any particular item?

5 A A big white overnight bag.

6 Q Where did you go then?

7 A Two blocks away from where I was staying, on One
8 Hundred and Eighty-Second Street.

9 Q How did you get from your apartment to the two
10 blocks over at One Hundred and Eighty-Second Street?

11 A Driving.

12 Q Now, did you go with Dexter to an automobile?

13 A Yes.

14 Q Do you remember what kind of automobile it was?

15 A No.

16 Q Was there anybody else in the automobile when you
17 got to it, you and Dexter?

18 A Yes, Mr. Ellis.

19 Q Can you describe Mr. Ellis?

20 A Light skin, average height, skinny.

21 Q Now, had you ever seen or conversed with Mr. Ellis
22 before that day?

23 A I had seen him around the neighborhood.

24 Q Had you ever had any conversations with him
25 before?

HALE - DIRECT - T. BUGGS

1 A He tried to talk to me before.

2 Q Did you have any sort of relationship with him at
3 all though?

4 A At that time, no.

5 Q And did he introduce himself at that time?

6 A Yes.

7 Q As what?

8 A Roger.

9 MR. HALE: This is going to be People's
10 Exhibit 40.

11 MR. MEGARO: Stipulated.

12 THE COURT: Just put it up.

13 (Whereupon, People's Exhibit 40 was displayed
14 for the witness and jury.)

15 Q Now, Ms. Buggs, do you recognize that gentleman
16 that is on the viewer right there (indicating)?

17 A Yes.

18 Q Who is that?

19 A Roger.

20 Q And that's the way he appeared at or around the
21 time of July 8th of 2007?

22 A Yes.

23 Q You also said in height he was average height?

24 A Yes.

25 Q But skinny?

HALE - DIRECT - T. BUGGS

1 A Yes.

2 Q Ma'am, does that depict his stature, much as you
3 remember it?

4 A Yes.

5 Q And where was it that you went with Dexter and
6 Roger at that time?

7 A To their house.

8 Q Well, were you told at that time by either of the
9 gentlemen whose house it was?

10 A No.

11 Q Can you describe the place where it was that you
12 went to with them?

13 A It was on One Hundred and Eighty-Second Street.
14 It's a two-family house. It's upstairs/downstairs.

15 Q Specifically the area that was occupied by
16 Mr. Bostic and Mr. Ellis, can you describe that area?

17 A The house?

18 Q Yeah?

19 A Well --

20 Q The layout?

21 A You have to walk up the stairs. As soon as you
22 get up the stairs, there is a living room, a kitchen, a
23 dinette area. Inside the living room, there is a T.V. and a
24 Bow flex exercise thing. Then, you walk a little further
25 back on your left-hand side is the bathroom and a bedroom.

HALE - DIRECT - T. BUGGS

1 Then, there is another bedroom. Like further down, there is
2 another room.

3 Q Now, you said this is like three, four in the
4 morning, right?

5 A Yes.

6 Q What occurred between all of you, if anything,
7 when you arrived over there at that place, three, four in
8 the morning?

9 A Well, I went to sleep.

10 Q Where was it that you went to sleep?

11 A In the third room, the last room.

12 Q Now, what was set up in that room? What was in
13 that room?

14 A A television, a bed, a radio.

15 Q Did you observe where the other two gentlemen went
16 within the apartment?

17 A Um, Mr. Bostic went to the room next to the
18 bathroom and Roger got in the bed with me.

19 Q Did you find that unusual at all?

20 A Yeah, but I didn't pay it no attention.

21 Q Did anything at that time occur between you and
22 Mr. Ellis?

23 A No.

24 Q Did you sleep through the remainder of the night?

25 A Yes.

HALE - DIRECT - T. BUGGS

1 Q About when did you wake up, do you remember?

2 A It was in the morning when Dexter Bostic told me
3 he was going to work and he's leaving me a phone.

4 Q Where did you have this conversation with
5 Mr. Bostic?

6 A I was in the bed and he was standing by the door.

7 Q Did you observe how he was dressed at that time?

8 A Like khakis and a button-down shirt.

9 Q Did he tell you where it was he was going to work?

10 A No.

11 Q Had he in fact up to that time told you anything
12 about his employment at all?

13 A No.

14 Q And at that time, you said he gave you what?

15 A A cell phone.

16 Q Did you take the cell phone?

17 A Yes.

18 Q Do you remember anything about the cell phone at
19 that point in terms of a description or the number of that
20 cell phone?

21 A No.

22 Q What occurred then?

23 A I made a few phone calls and then I went back to
24 sleep.

25 Q Where was --

HALE - DIRECT - T. BUGGS

1 MR. MEGARO: Sorry.

2 A I made a few phone calls and went back to sleep.

3 Q Where was Mr. Ellis at this time?

4 A Still sleeping.

5 Q Same bed?

6 A Yes.

7 Q What happened next?

8 A What happened next, I woke up, made a couple more
9 phone calls, ate breakfast and had sexual contact with
10 Mr. Ellis.

11 Q Whose idea was that?

12 A His.

13 Q You were a willing participant?

14 A Yes, because at that time I was vulnerable.

15 Q After you and Mr. Ellis had these relations, what
16 occurred then?

17 A He, um, he took a shower, I took a shower, and I
18 went in the living room and laid down.

19 Q What was in the living room? Can you describe the
20 living room?

21 A A television with a game system.

22 Q And were you watching the television or playing
23 with the game system? What were you doing?

24 A I was watching a movie on the game system.

25 Q Mr. Ellis, what was he doing at that point in

HALE - DIRECT - T. BUGGS

1 time?

2 A I'm not sure.

3 Q Did Mr. Ellis remain at the apartment or did he
4 leave?

5 A No, he went to the store to get me something to
6 drink, then he came back. He sat around for a little while,
7 then he left.

8 Q Do you recall about what time that was that he
9 left?

10 A No.

11 Q Was it still light outside or was it dark?

12 A It was getting dark.

13 Q Now, during this whole time, you had not seen
14 Mr. Bostic again; is that correct?

15 A No.

16 Q When Mr. Ellis left, was there anybody else in the
17 apartment at all?

18 A No, it was just me.

19 Q Now, at that time were you able to observe what
20 other items were inside the apartment?

21 A Yes.

22 Q Was there anything that you took particular note
23 of or caught your attention at all?

24 A It was a little black-like briefcase-type thing.

25 Q Do you recall where it was that you saw that black

HALE - DIRECT - T. BUGGS

1 briefcase-type thing?

2 A In the living room.

3 Q Do you recall where in the living room?

4 A Up against the wall.

5 Q And what drew your attention to it?

6 A Being noseey.

7 Q Okay.

8 I'm going to show you something at this time,

9 People's 41 for identification.

10 MR. MEGARO: Stipulated.

11 MR. HALE: Show that to the witness, please.

12 (handling).

13 Q Ms. Buggs, this is People's 41 in evidence, as
14 stipulated by counsel. Do you recognize that item?

15 A Yes.

16 Q What do you recognize that as?

17 A That was the black case that I saw.

18 Q And you saw it leaning against the wall in what
19 room?

20 A The living room.

21 Q Does it look the same as when you saw it on that
22 day?

23 A Yes.

24 Q Did you open the box at all?

25 A No.

HALE - DIRECT - T. BUGGS

1 Q You just saw it there and took note of it?

2 A Yes.

3 Q Anything else that you particularly took note of
4 in the living room at all?

5 A No.

6 MR. HALE: You can take it back.

7 (Handing.)

8 MR. HALE: Thank you.

9 Q Now, did there come a time when Mr. Bostic
10 returned to the apartment?

11 A Yes.

12 Q Can you give us an approximation, about what time
13 that was?

14 A It was later on that evening. I would say like
15 about five, maybe six o'clock.

16 Q This was before or after Mr. Ellis had left?

17 A After.

18 Q When Mr. Bostic came back, what, if anything, did
19 he do or what, if anything, did you do?

20 A I was still in the living room. He went into the
21 room to change his clothes.

22 Q Now, during the time that these two gentlemen were
23 coming and going, did they have use of their own keys to get
24 in and out of the apartment?

25 A I believe so. I'm not sure.

MWB

HALE - DIRECT - T. BUGGS

1 Q You didn't have a key, did you?

2 A No.

3 Q Nobody had given you a key?

4 A No.

5 Q The only thing that had been given to you was the
6 phone by Mr. Bostic; is that right?

7 A Yes.

8 Q Did you observe whether there was a house phone at
9 all besides the cell phone that you had been given?

10 A No.

11 Q You didn't see a house phone?

12 A No.

13 Q When Mr. Bostic came back, he changed his clothes
14 and then what?

15 A He sat around for a little while. He got a phone
16 call and he left.

17 Q Before he left, did he give you anything?

18 A He switched cell phones.

19 Q When you say, "switched cell phones," what does
20 that mean?

21 A The phone that I had prior that day, I gave him
22 that one and he gave me another cell phone.

23 Q The cell phone you had that he had given to you
24 initially, you indicated you made a number of phone calls on
25 it; is that correct?

HALE - DIRECT - T. BUGGS

1 A Yes.

2 Q Do you recall at this point in time who it was
3 that you made phone calls to on that cell phone?

4 A To my mother, grandfather, my baby father and my
5 boyfriend.

6 Q And you don't remember what number that phone was,
7 right?

8 A No.

9 Q The phone that he now exchanged with you, do you
10 remember anything about the second cell phone?

11 A No.

12 Q Do you remember anything about the number, the
13 exchange, at all, anything?

14 A No, I'm not sure.

15 Q Do you remember what carrier, Verizon, T-Mobile?

16 A I believe it was T-Mobile.

17 Q Now, did Mr. Bostic, at that time, indicate where
18 it was that he was going?

19 A Yes.

20 Q Where did he say he was going?

21 A To catch a jux, which means a robbery.

22 Q Jux, being, I guess, --

23 A A robbery, to rob somebody.

24 Q That is the term that is used in the street?

25 A Yes.

HALE - DIRECT - T. BUGGS

1 Q What did you do?

2 A I said I was hungry. He said he's coming back. I
3 laid on the floor and initially fell asleep.

4 Q That was in what room you fell asleep?

5 A The living room.

6 Q Did you see Mr. Bostic again on that date after
7 you fell asleep?

8 A No.

9 Q What's the next thing that you remember happening?

10 A I got a phone call from my aunt that morning. I
11 spoke to her. I remember getting up and going into the back
12 room because it was the only room with AC. And it was cool
13 in there, so I laid down on the bed. Then, I went back to
14 sleep. Then at five o'clock in the morning, I was being
15 awoken.

16 Q The times when you had gotten up and you switched
17 rooms to go to the air conditioning, was there anybody else
18 that you saw in the apartment?

19 A No, I was there by myself.

20 Q When you were being awoken at five in the morning,
21 what room were you in at the time you were being awoken?

22 A I believe it was in Dexter's room I was in.

23 Q That was with the air conditioning?

24 A Yes.

25 Q Who was it that was waking you up?

HALE - DIRECT - T. BUGGS

1 A Roger.

2 Q And, specifically, what was said to you at the
3 time you were being woken up?

4 A "Get up. I got to hurry up and get dressed."

5 MR. HALE: Your Honor, this might be a good
6 time to take a break.

7 THE COURT: Jurors, enjoy your lunch.
8 Please, be back in the jury room as close to two
9 o'clock as possible. 2:15, be back in the jury room.
10 Keep my warnings in mind. See you then.

11 (Whereupon, the jury exits the courtroom.)

12 THE COURT: Ms. Buggs, you follow this
13 officer. Enjoy your lunch. I'm sure Mr. Hale is going
14 to pay for it. Eat it in peace and don't discuss your
15 testimony. If he does not pay for it, you let me know.

16 (Whereupon, the witness leaves the witness
17 stand and exits the courtroom.)

18 THE COURT: 2:15.

19 Mr. Megaro, let me understand something. I
20 know she testified. A lot of the things she said was
21 hearsay. There was no objection. You are not
22 objecting because you want it in evidence?

23 MR. MEGARO: One hundred percent, your Honor.

24 THE COURT: Okay.

25 MS. NICOLAZZI: Could we approach on one

HALE - DIRECT - T. BUGGS

1 # thing?

2 THE COURT: Sure.

3 (Whereupon, a discussion was held at the
4 bench.)

5 THE COURT: Folks, we're going to be
6 breaking. It will be at 2:15. We won't start without
7 you, so we'll see you then.

8 (Whereupon, a luncheon recess was held.)

9 (Whereupon, Monica Walker-Bailey was relieved
10 by Phyllis Price as the Official Court Reporter.)

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

(Witness resumes the witness stand.)

COURT OFFICER: Ready for the jury?

THE COURT: Bring them right in, please.

COURT OFFICER: Jury entering.

(Whereupon, the jury enters the courtroom, and is seated in the jury box.)

THE CLERK: Case on trial. All parties are present.

Both sides waive a reading of the roll?

MR. MEGARO: Yes.

MR. HALE: Yes.

THE COURT: Good afternoon.

JURORS: Good afternoon.

THE COURT: As you can see my friend is now leaving. He fixed the clock, and he is now going to sneak out.

Now, if we can get the temperature together in the courtroom, we are trying. If you are warm let us know, we will take a break. But we are trying.

Ma'am, you are still under oath.

Mr. Hale.

MR. HALE: Thank you.

Q Miss Buggs, I think we left off at the part where Mr. Ellis was awakening you in the morning.

1 Do you recall that?

2 A Yes.

3 Q Now, that would have been Monday morning, the ninth
4 of July 2007; is that correct?

5 A Yes.

6 Q At about what time?

7 A 5:00 in the morning.

8 Q Can you tell the jury what it was that was said to
9 you, or how it was that you were woken up?

10 A Well, when he woke me up he was shaking me, telling
11 me to get up and get dressed.

12 Q Now, at that time, were you able to observe, I guess,
13 Mr. Ellis', his appearance, at that time?

14 A Yes.

15 Q First of all, was he wearing the same clothes that
16 you had seen him in last?

17 A I know the same jeans. I am not sure if it was the
18 same shirt.

19 Q Did his demeanor seem to be the same, or was it
20 different in any fashion?

21 A It was different.

22 Q How so?

23 A He was nervous, anxious, sweating.

24 Q And did he give you any directions, at that point and
25 time?

1 A He told me to get my stuff together, and just get
2 dressed.

3 Q Now, Miss Buggs, let me go back just a little bit.

4 You recall this morning that you testified that
5 Dexter Bostic had come to your apartment and picked you up the
6 night before, the day before?

7 You remember that?

8 A Yes.

9 Q At that time, did Mr. Bostic say to you who it was
10 that had sent him?

11 A Yes.

12 Q Who did he say?

13 A Rasheem.

14 Q Now during the course of that day, after you had
15 arrived at the apartment, or the house with Dexter Bostic and
16 Mr. Ellis, had you had any contact with Mr. Woods?

17 A No, I am not sure.

18 Q You had not seen him on the phone?

19 A No.

20 Q And he had not come there in person?

21 A No, I am not sure.

22 Q Now, what happened after Mr. Ellis told you, get your
23 stuff and you had to get out of there?

24 A Well, I got dressed, and he was putting things inside
25 my bag.

1 Q That's the bag you talked about before, the white
2 carry all?

3 A Yes.

4 Q Did you put your items in there, or did he put your
5 items in there?

6 A He did.

7 Q Did you observe whether he was putting any items that
8 weren't your's into that bag?

9 A Yes.

10 Q Can you describe what it was that he was doing?

11 A It was a little brown case, something like a man
12 would put his, like, razors for his face and shaving cream.

13 Q Like a small leather, or vinyl, what was it?

14 A I believe it was leather.

15 Q Do you know what articles were in that? Did you see
16 what articles were inside of that?

17 A No.

18 Q About how long did it take you to get your stuff
19 together?

20 A Maybe 15, 20 minutes, because I was still tired.

21 Q At that point, did you leave the apartment?

22 A Yes.

23 Q With Mr. Ellis?

24 A Yes.

25 Q And where was it that you went?

1 A To McDonalds.

2 Q Now where is the McDonalds in relation to the
3 apartment where Mr. Bostic and Mr. Ellis were staying?

4 A It is like a half an hour walk.

5 Q And on that date did you walk?

6 A Yes.

7 Q Did Mr. Ellis walk with you?

8 A Yes.

9 Q During the time that you were walking with Mr. Ellis,
10 was there any conversation going on between the two of you?

11 A I asked him what had happened? He said he couldn't
12 explain nothing to me until he watched the news.

13 MR. MEGARO: Until he watched?

14 A The news.

15 Q Did you eventually get to the McDonalds?

16 A Yes.

17 Q Now, was that a McDonalds you were familiar with?

18 A Yes.

19 Q How was it that you were familiar with that
20 McDonalds?

21 A I used to work there.

22 Q And did you know any of the other people that still
23 worked there, at that time?

24 A Yes.

25 Q Who did you know who worked there?

1 A My manager, Mrs. G.

2 Q Did you know, whether or not, that McDonalds had a
3 television set?

4 A Yes.

5 Q Where is the television set in that McDonalds?

6 A In the right-hand corner.

7 Q That is in the dining area?

8 A Yes.

9 Q So what did you do when the two of you arrived at the
10 McDonalds?

11 A We ordered orange juice and hash browns. We sat down,
12 waited for the news to come on.

13 Q Now, about what time is this?

14 A Like five minutes before six.

15 Q And did, in fact, the news come on?

16 A Yes.

17 Q Now, besides yourself and Mr. Ellis, were there other
18 patrons, or customers sitting in the dining area, or just the
19 two of you?

20 A It was just the two of us.

21 Q And did you see anybody else there at McDonalds that
22 you recognized?

23 A No.

24 Q Mrs. G, the manager, was she there?

25 A Yes.

1 Q And did you see her, at that time?

2 A Yes.

3 Q Was there, at any point, that she was engaging you or
4 Mr. Ellis in conversation?

5 A Yes, she was talking to me.

6 Q And how long did that go on, the conversation between
7 you and she?

8 A Like five minutes.

9 Q Was that before, or after the news had come on?

10 A I think it was while the news was on.

11 Q Did, in fact, the news come on?

12 A Yes.

13 Q What did you see on the news?

14 A It had breaking news, two cops just had got shot.

15 Q Didn't say where these police officers had gotten
16 shot?

17 A No.

18 Q When it came on, was Mr. Ellis' attention directed to
19 the television set?

20 A Yes.

21 Q Did he do anything with regard to the television set
22 after that had come on?

23 A He tried to change the channel.

24 Q Did he, in fact, change the channel, or did anything
25 else come in?

1 A He changed the channel, but I guess he couldn't get a
2 picture, so he turned back to the original channel we were
3 watching.

4 Q Do you remember what channel that was?

5 A No.

6 Q Was there anything further about this story, about
7 the police officers that had been shot?

8 A No.

9 Q That you remember?

10 A Not that I can recall. Just that two cops had got
11 shot.

12 Q While this story was being broadcasted, what, if
13 anything, was Mr. Ellis doing?

14 A After the story was broadcasted, he got on the phone.
15 He received a phone call.

16 Q Let's back up just a little bit.

17 You had said that your possessions between you and
18 Mr. Ellis, you had packed them in the bag that you had brought
19 over there; is that correct?

20 A Yes.

21 Q Included in that was that -- was that telephone that
22 you had had from Mr. Bostic. Did you take that with you?

23 A Yes.

24 Q You had indicated that, at some point while the
25 broadcast was on, or immediately after the broadcast, that Mr.

1 Ellis was on the phone; is that correct?

2 A Yes.

3 Q Was that the same phone that Mr. Bostic had given
4 you, or was this a different telephone?

5 A That was different telephone.

6 Q To your knowledge, was it a call that he made, or was
7 it a call that he received?

8 A That was a call that he received.

9 Q Now, were you able to hear his end of the
10 conversation? That is, what he was saying?

11 A Yes.

12 Q Can you tell the jury what was it that you remember
13 him saying on the telephone?

14 A He was talking about what had happened on the news,
15 about the cops getting shot.

16 Q As close as you can, can you remember the exact
17 words?

18 A No.

19 Q About how long did that conversation go on, the one
20 that he had gotten on the phone?

21 A Like five minutes. And then he hung up.

22 Q While he was in your presence at McDonalds, did he
23 make, or receive any other telephone calls?

24 A He received another phone call. That was right before
25 we was leaving.

1 Q Do you remember what the contents of that phone call
2 was? What you had heard him say from your end?

3 A That we were supposed to go meet somebody on Jamaica
4 Avenue.

5 Q How long, in total, did you stay at the McDonalds?

6 A Like a half an hour.

7 MR. HALE: We have this as part of People's
8 Exhibit number 37. I think that is on stipulation; is
9 that correct?

10 MR. MEGARO: Yes. Stipulated, your Honor.

11 THE COURT: Okay.

12 Q And, Miss Buggs, I just want you to take a look at
13 this, please.

14 (Whereupon People's Exhibit Number 37 is played
15 in open court.)

16 Q Now, first of all, Miss Buggs, is that the McDonalds
17 that you are talking about?

18 A Yes.

19 Q Do you recall what street that is on?

20 A Farmers and North Conduit, I believe. I am not sure.

21 Q Now the individuals that are pictured there in the
22 vestibule, who are they?

23 A That's me and Mr. Ellis.

24 Q The white bag that you talked about in which the
25 items were packed, that the bag that you observe over Mr.

1 Ellis' shoulder right there?

2 A Yes.

3 Q The shaving kit, what you thought looked like a
4 shaving kit, where was that, at that time?

5 A Inside the bag.

6 Q Ma'am, I take it, this part of the tape reflects when
7 you were placing your orders; is that right?

8 A Yes.

9 Q The woman that is depicted to the left of the screen?

10 A That's Miss G.

11 Q Now, ma'am, is this the dining area that you talked
12 about?

13 A Yes.

14 Q And the television set is in this room?

15 A Yes.

16 Q Now at that point, Miss Buggs, you can see that both
17 you and Mr. Ellis, your attention is directed towards
18 something that is off screen there to the right of the
19 diagram; is that correct?

20 A Yes.

21 Q Is that where the television set was located at?

22 A Yes.

23 Q Now, ma'am, I think you testified before, that you
24 and Miss G had engaged in a conversation.

25 Does that depict that short conversation?

1 A Yes.

2 Q Let me ask you this. Did Mr. Ellis say anything to
3 you concerning your conversation with Miss G?

4 A Yes.

5 Q What did he say?

6 A He told me to stop talking to her, and get her away.
7 Because if his picture is up on the TV, he didn't want her to
8 identify him.

9 Q Now, what we have on the screen now, ma'am, is this
10 the point in time at which Mr. Ellis attempts to manipulate,
11 or change the channels on the television set?

12 A Yes.

13 Q Ma'am, during the time that the two of you were
14 sitting in the McDonalds, besides his actions which you've
15 testified about, did Mr. Ellis say or do anything that
16 indicated to you that he may have had some involvement with
17 what you saw on the television in the breaking news?

18 A Yes.

19 Q What was it that he said, or did?

20 A Well, I asked him what did he get me into? And he was
21 like, well, I may have had something to do with the two cops
22 getting shot.

23 Q He is giving you his coat.

24 Were you cold at the time?

25 A Yes.

1 Q Now, Miss Buggs, at that point can you see what
2 appears to be Mr. Ellis communicating on a cell phone?

3 A Yes.

4 Q And that was a call he received, or a call he made?

5 A A call he received.

6 Q And is it your testimony, at that time, he was
7 relaying to whoever it was on the other end of the line, what
8 it was he had observed on the news program?

9 A Yes.

10 Q Now, Miss Buggs, how long, in total, was it that you
11 stayed at the McDonalds?

12 A Like a half an hour, maybe a little longer. I am not
13 sure.

14 Q From there, where did you go?

15 A To Jamaica Avenue.

16 Q Now, how far is Jamaica Avenue from that McDonalds?

17 A It is like a 45-minute ride on the bus.

18 Q You went on the bus?

19 A Yes.

20 Q Where did you catch the bus?

21 A Down the block from McDonalds.

22 Q And you are still with Mr. Ellis; is that right?

23 A Yes.

24 Q You still have the bag that had the possessions in
25 it; is that correct?

1 A Yes.

2 Q Mr. Ellis carrying it, or you carrying it?

3 A He is carrying it.

4 Q When you got to Jamaica Avenue, where did you get off
5 at?

6 A In front of a building. I believe it is the Social
7 Security place, right across the street from the movie
8 theatre.

9 Q And how long did you wait there?

10 A Like five minutes.

11 Q What happened after that five minutes?

12 A A green truck pulled around the corner.

13 Q And that green truck, did you recognize any of the
14 occupants of the truck?

15 A Yes.

16 Q Who did you recognize?

17 A Dexter's sister Nicole, her daughter, and Lee Woods.

18 Q Where were they within the automobile?

19 A Nicole was in the front, the driver's side. Lee Woods
20 was in the passenger side, behind the passenger side seat. Her
21 daughter was in the front seat. And I was sitting in the
22 middle of Roger and Lee Woods.

23 Q Now, how was it that you knew Nicole?

24 A I knew her through Lee Woods.

25 Q And to your knowledge, what relationship, if any, was

1 car.

2 Q Now, did the people stay in the same seats in the
3 car, or move around?

4 A No, they moved around.

5 Q Tell the jury now, how were the people positioned in
6 the automobile?

7 A Nicole was on the driver's side, Dexter was on the
8 passenger side, Nicole's daughter got in the third row, and
9 me, Rasheem, and Roger sat -- we sat the same way.

10 Q Now, you are in the middle of the second row?

11 A Yes.

12 Q Who is to your right?

13 A Rasheem.

14 Q And who is to your left?

15 A Roger.

16 Q And in the front seat is -- who is driving?

17 A Nicole.

18 Q And who is in the front passenger?

19 A Dexter.

20 Q Did the car stay where it was, or did it go into
21 motion again?

22 A No, went into motion.

23 Q Was there any conversation in the car after the car
24 went into motion?

25 A Yes.

1 Q Who said what to whom?

2 A Dexter asked Lee Woods, did they get that?

3 Q Did Lee Woods answer him?

4 A Yes.

5 Q What did Lee Woods say?

6 A That he couldn't get the guns because it was too many
7 police on the scene.

8 Q Did he say anything else, at that point and time?

9 A No.

10 Q Did Nicole say anything, at that time?

11 A Not that I can recall, no.

12 Q How about Mr. Ellis?

13 A Not until Mr. Bostic said something to him.

14 Q What was that, that Mr. Bostic said thereafter?

15 A He asked him, did he get that? And Mr. Ellis said,
16 yes.

17 Q Now, did Mr. Woods say anything else at that point
18 and time?

19 A Yes. He said something to me.

20 Q What was it that he said to you?

21 A He told me to keep my mouth shut, or I'll be next.]

22 Q Let's back up a little bit.

23 When Mr. Woods had said that he couldn't get the guns
24 because the police were all around, did he say anything else
25 at that point and time concerning the involvement of himself,

1 or the other two individuals?

2 A Yes.

3 Q What was it that he said?

4 A He said he don't have anything to worry about because
5 he didn't shoot nobody.

6 Q When he said that, he didn't have anything to worry
7 about because he didn't shoot anybody, did either Mr. Ellis or
8 Mr. Bostic, did they dispute that, or say anything about that,
9 anything about that statement at all?

10 A No.

11 Q Now, did any of the individuals -- and I guess,
12 specifically, Mr. Bostic or Mr. Ellis, say what, in fact, they
13 had done?

14 A Yes.

15 Q Tell the jury what was said by whom to whom?

16 A Well, Mr. Bostic and Mr. Ellis said, they believe
17 they shot somebody. They don't know who they shot, and what
18 condition they left them in.

19 Q Was this one of them saying this, or both of them
20 saying this? Who was it?

21 A It was Dexter saying it to Roger. And then Roger was
22 going, yeah, like answering back.

23 Q When Mr. Woods had said that he didn't have anything
24 to worry about because he didn't shoot anybody, did he, in
25 fact, say what it was he had done?

1 A Yes.

2 Q What did he say?

3 A He said, the only thing he was guilty of doing was
4 putting the guns where they were at.

5 Q Now --

6 THE COURT: I'm sorry.

7 JUROR: I am having just a little trouble
8 hearing.

9 THE COURT: Just a moment.

10 Miss Price, the last couple of questions, just read
11 them back, and answers.

12 (Whereupon, requested portion of the record
13 was read by the reporter.)

14 THE COURT: Now, Miss Buggs, try to speak into
15 the microphone.

16 Again, if you can't hear something, immediately raise
17 your hand and we will try to have her repeat it.

18 Just keep your voice up, ma'am.

19 Q Now, Miss Buggs, those conversations that you are
20 talking about, in terms of Mr. Woods saying that he had gone
21 back for the guns but couldn't get them. And that all he was
22 guilty of was him handling the guns, he didn't shoot anybody.

23 And, in fact, Mr. Bostic and Mr. Ellis talking about
24 shooting, were any of those questions, or answers, were you
25 actually part of those conversations? That is, was anybody

1 talking to you about those things?

2 A No.

3 Q The part of the conversation that you related, where
4 Mr. Woods said to you, don't say anything about the things
5 that you ever seen and heard or you will be next, was that
6 directed to you?

7 A Yes.

8 Q Did that come before, or after, or during these other
9 conversations that you related?

10 A It came after the conversations.

11 Q Was that, pretty much, the last thing that was said
12 to you in that automobile on that day?

13 A Yes.

14 Q Now, after that was said to you, did the automobile
15 come to some destination someplace?

16 A Yes.

17 Q Where was that at?

18 A We get dropped off at my old address in Springfield.

19 Q Who got dropped off?

20 A Me, Dexter, and Roger.

21 Q Now, during the entire time that you had been in the
22 automobile, and -- Nicole's automobile with Mr. Woods, Mr.
23 Bostic, Mr. Ellis, did you see any problems between the men,
24 any animosity between the men at all?

25 A No.

1 Q Did they appear to be on a friendly basis at that
2 time?

3 A Yeah.

4 Q Who got out of the car when it arrived at your old
5 apartment?

6 A Me, and -- me, Dexter, and Roger.

7 Q What about Mr. Woods, where did he go?

8 A I believe he sat in the car.

9 Q When the three men parted ways, at that point, Bostic
10 and Ellis leaving the car, Mr. Woods staying in the car, did
11 you see them parting?

12 A Yes.

13 Q What did you see them doing?

14 A Giving each other five.

15 Q Did there appear, again, to be any sort of animosity,
16 any sort of problems between the three men?

17 A No.

18 Q You had indicated that you had the white bag that had
19 your possessions in it; is that correct?

20 A Yes.

21 Q And I think you also testified, that Roger put into
22 that bag this shaving kit which had, you don't know what in
23 it; is that right?

24 A Yes.

25 Q What happened to those items when you got out of the

1 car?

2 A Well, the white bag came with me, the brown bag
3 stayed in the car.

4 Q Was there any conversations about the brown bag
5 staying in the car, or what the brown bag contained at all?

6 A Yes.

7 Q Tell the jury what that was?

8 A Well, the conversation about what was in the brown
9 bag, they said it was bullets. Roger had said that he
10 didn't -- that they didn't have anything to worry about
11 because the bullets didn't match the gun.

12 Q That brown bag, did it stay with your white bag, or
13 where did it go?

14 A It stayed in Nicole's car.

15 Q You took the white bag?

16 A Yes.

17 Q Now, at that point and time, does the car stay there,
18 or does it leave?

19 A It leaves.

20 Q Who is in the car when it leaves?

21 A Nicole, her daughter, and Rasheem.

22 Q Mr. Woods?

23 A Yes.

24 Q And, at that point on the street, it's you and Dexter
25 and Roger, right?

1 A Yes.

2 Q Did you part ways at that time, or did you hang out
3 with them for a while?

4 A Well, they sat around for five minutes until they got
5 a phone call, and they left. And then I proceeded to my boss
6 house, so I could go to work.

7 Q After that point and time, did you see Lee Woods, or
8 Roger Ellis, or Dexter Bostic in the next couple of weeks at
9 all?

10 A No.

11 Q Did you have any conversation with them on the phone
12 during that period of time after you had parted ways on the
13 morning have July the ninth?

14 A No.

15 Q The phone that Dexter Bostic had given you, that you
16 had exchanged for now, you had used that phone also; is that
17 correct?

18 A Yes.

19 Q That phone, did he take that back into his
20 possession, or you keep that, or what happened with that
21 phone?

22 A It was still inside my bag.

23 Q And did you still have that phone in your possession
24 in the days following July the ninth of 2007?

25 A I had it on July the ninth.

1 Q Now, ma'am, there came a time when you became known
2 to the police, and they wanted to talk to you; isn't that
3 correct?

4 A Yes.

5 Q When was that in relation to that Monday morning, how
6 many days afterwards?

7 A That same evening.

8 Q And where was it that you first encountered the
9 police?

10 A At my job.

11 Q Where were you working at the time?

12 A I was somebody's personal assistant on Jamaica
13 Avenue.

14 Q What sort of work was involved in that?

15 A Answering phones, dealing with customers, handling
16 the business, as far as paying bills, things like that.

17 Q What sort of business was that?

18 A It was Lashes.

19 Q So, a beautician?

20 A Like a hair salon/spa.

21 Q How was it that you encountered the police at that
22 time?

23 A They came -- they asked me a couple of questions. And
24 at first I lied about it.

25 Q Specifically, what was it that you lied about to the

1 police?

2 A About knowing them, and having the phone.

3 Q And saying, knowing them, who are you talking about?

4 A Dexter, Rasheem, and Roger.

5 Q And, at that point and time -- oh, withdrawn.

6 What did you do with the phone, at that time?

7 A It was sitting on top of my desk charging. So when

8 the police came, and he automatically picked the phone up.

9 Q The police took the phone into their custody, at that
10 time?

11 A Yes.

12 Q Now after that day at the shop, did you have another
13 occasion when the police contacted you?

14 A Yes.

15 Q When was that?

16 A The following day.

17 Q And where was that at?

18 A They had a search warrant for my old address. They
19 knocked the door down looking for me, because they said I
20 lied.

21 Q And you had, in fact, lied, right?

22 A Yes.

23 Q When the police came and talked to you on this
24 occasion, at that time, did you tell the police what it was
25 that you knew about this incident, including your

1 conversations with Mr. Woods, Mr. Bostic, and Mr. Ellis that
2 you had had on the eighth and ninth of July 2007?

3 A Yes.

4 Q And, in fact, at that time, you had been audio taped
5 by the District Attorney's Office; is that correct?

6 A Yes.

7 Q And then later testified in the grand jury?

8 A Yes.

9 Q Miss Buggs, when you had testified earlier about Mr.
10 Woods having said that he couldn't get the guns because there
11 was too many police around, did he say anything about actually
12 having gone someplace to look for the guns?

13 A I guess he went back to the crime scene of where it
14 happened.

15 Q Did he actually say it? Did he say he had gone
16 somewhere?

17 A Yes. He said he went to get the gun. That's all I
18 could remember.

19 Q He didn't say any place specifically?

20 A Nah, not specifically. Not that I can remember.

21 Q Miss Buggs, thank you very much.

22 MR. HALE: I have no further questions, your
23 Honor.

24 THE COURT: Any cross-examination?

25 MR. MEGARO: Yes, one moment, your Honor.

1 THE COURT: You want to take a break?

2 MR. MEGARO: Ask for a break of five minutes,
3 please?

4 THE COURT: Jurors, we are going to take a
5 break. We will have you back in a moment.

6 Take the jurors out.

7 (Jury exits the courtroom.)

8 THE COURT: Miss Buggs, if you will follow the
9 officer. We will have you back in a moment.

10 Don't discuss your testimony with anybody.

11 (Witness steps down from the witness stand.)

12 (Whereupon, a brief recess was taken.)

13 (Witness resumes the stand.)

14 COURT OFFICER: Ready for the jury?

15 THE COURT: Please bring them right in.

16 COURT OFFICER: Jury entering.

17 (Whereupon, the jury enters the courtroom, and
18 is seated in the jury box.)

19 THE CLERK: Case on trial. All parties are
20 present.

21 Both sides waive a reading of the roll?

22 MR. MEGARO: Yes.

23 MR. HALE: Yes.

24 THE COURT: Cross-examination.

25 Now remember, folks, if at any time you don't hear

1 the question or the answer, just raise your hand
2 immediately.

3 Miss Buggs, just try to keep your voice up.

4 THE WITNESS: Okay.

5 CROSS-EXAMINATION

6 BY MR. MEGARO:

7 Q Good afternoon, Miss Buggs, how are you?

8 A How are you.

9 Q Now you testified, on direct examination, that you
10 know Lee Woods by the name Rasheem, right?

11 A Yes.

12 Q That is his middle name, right?

13 A I don't know.

14 Q And how long have you known Mr. Woods?

15 A For a couple of years.

16 Q And you said that you knew him because he was dating
17 your aunt?

18 A Yes.

19 Q What was your relationship with Mr. Woods prior to
20 July 2007?

21 A I considered him my uncle.

22 Q You had a friendly relationship with him, almost like
23 a family relationship?

24 A Yeah.

25 Q Now you said, in July 2007, that first week you had a

1 problem with some neighbors and your landlord in your
2 apartment, right?

3 A Yes.

4 Q And you had a couple of altercations in that
5 apartment building, right?

6 A Yes.

7 Q I am not going to go into the altercations.
8 But is it fair to say, that after the second
9 altercation, you felt like your personal safety was in
10 jeopardy if you would stay there?

11 A Yes.

12 Q And you reached out to Mr. Woods to ask him to help
13 you to get out of that apartment and get into a new place,
14 right?

15 A Yes.

16 Q You also said that you reached out to your brother
17 for help as well, right?

18 A Yes.

19 Q And your brother asked Mr. Woods to help you?

20 A Yes.

21 Q And Mr. Woods did help you, right?

22 A Yes, yes.

23 Q Found a place to stay?

24 A Yes.

25 Q Even if it was going to be temporary, right?

1 A Yes.

2 Q And let me ask you, just out of curiosity. The
3 landlord tore up all your clothes, and set them on fire?

4 A Yes.

5 Q Did you call the police?

6 A Yes.

7 Q What happened?

8 A Well, they wrote her up a summons, but we both was
9 going to go to jail.

10 Q So, you had to let it drop?

11 A Yes.

12 Q Now, in July 8th, the day before, Dexter Bostic and
13 Roger Ellis came to your apartment to help you get out of
14 there, correct?

15 A I believe it was two days before that.

16 Q And who was it, Mr. Bostic, or Mr. Ellis that helped
17 you pack your stuff to go back to the apartment?

18 A I packed my own stuff. Nobody helped me.

19 Q Now, after you go to their apartment, they offered
20 you a room to sleep in?

21 A Yes.

22 Q And you testified that you had seen Mr. Ellis around
23 the neighborhood, but you hadn't really had much of a
24 relationship with him?

25 A Yeah.

1 Q And when you go back to the apartment, it's Robert
2 Ellis who you know as Roger Ellis, and Dexter Bostic that
3 lives there, right?

4 A Yes.

5 Q They each had their own bedroom?

6 A Yes.

7 Q And they each had their own personal things there?

8 A Yes.

9 THE COURT: As far as you know?

10 THE WITNESS: As far as I know.

11 Q As far as you know?

12 And then -- I'm sorry -- the next morning Mr. Bostic
13 gave you a cell phone to use to make whatever calls you had to
14 make, right?

15 A Yes.

16 Q And after you made your calls, you went back to sleep
17 for a while, right?

18 A Yes.

19 Q And as you testified on direct examination, you later
20 had an experience with Mr. Ellis, right?

21 A Yes.

22 Q Later on that day, Mr. Ellis left the apartment?

23 A Yes.

24 Q And that entire -- those two days, the night before
25 and the day of, you hadn't seen Mr. Woods at all, right?

1 A No, not that I can remember of, no.

2 Q And you had not spoken to him on the phone, or
3 anything?

4 A No.

5 Q And Mr. Ellis, and Mr. Bostic, had they given you
6 anything to eat, let you use the apartment as you needed?

7 A Yeah. Roger had made me breakfast.

8 Q Now, I want to fast forward now to the next day when
9 you went to work, and the first time that you spoke to the
10 police.

11 When they came to your job, they came to the beauty
12 salon?

13 A Yes.

14 Q How many police came to the salon?

15 A A whole lot.

16 Q 20?

17 A You could say about that many.

18 Q And, what kind of questions did they ask you when
19 they first came to you?

20 A First they didn't ask me any. First they started
21 following me.

22 Q They started following you?

23 A Yes. I walked out the salon. I walked down the
24 block, they started following me. I came back up. Then they
25 came back up, and that's when they asked me, do I know any of

1 these people, and is my name Pink, and do I know this number,
2 and that number? And I started denying everything.

3 Q Let me go back to the point they are following you.
4 Were they wearing uniforms?

5 A Suits.

6 Q So, they were plain clothes police officers?

7 A Uh-huh.

8 Q You just got the feeling they were police officers
9 though, right?

10 A Yes.

11 Q How did you feel when these police officers were
12 following you around?

13 MR. HALE: Objection.

14 THE COURT: You weren't happy about it; is that
15 correct?

16 THE WITNESS: No.

17 THE COURT: Come on, we get the message. Let's
18 move on.

19 Q And then there came a point in time when they came
20 into the salon?

21 A Yes.

22 Q And that's when they started asking you very direct
23 questions about, if you knew Mr. Woods?

24 A Yes.

25 Q Mr. Bostic, Mr. Ellis, right?

1 A Yes.

2 Q They asked if your name was Pink?

3 A Yes.

4 Q They asked you about your use of a cell phone?

5 A Yes.

6 Q And as you are having this conversation with them,
7 how many of these officers are there?

8 A Well, this is like five of them inside. Because, at
9 the time it was five different people working. So, they all
10 questioning different people.

11 Q So, they were questioning other people in the salon
12 as well?

13 A Yes.

14 Q How long were they in the salon for?

15 A No longer than 15 minutes.

16 Q And your response to these questions was?

17 A I don't know, don't ask me nothing, leave me alone.

18 Q Did they leave you alone?

19 A No.

20 Q Did they tell you that they would be back to see you
21 again?

22 A No. I left with them. I got placed in handcuffs.

23 Q So, at your job they put you in handcuffs, and they
24 took you out of the salon, right?

25 A Yes.

1 Q That was the first time that you spoke with the
2 police?

3 A Yes.

4 Q Where did they take you?

5 A They took me to a precinct in Brooklyn.

6 Q And the salon was where, in Queens?

7 A Yes.

8 Q Is it fair to say, you left against your will? You
9 didn't want to go to a precinct in Brooklyn?

10 MR. HALE: Objection.

11 THE COURT: What is the basis of the objection?

12 MR. HALE: Relevance, your Honor.

13 THE COURT: I agree with that.

14 Sustained.

15 Q How long were you with the police that particular
16 day?

17 A I would say like, around, from like three that
18 afternoon, till like 11, maybe probably a little earlier than
19 that that night.

20 Q And then, ultimately, the police released you 11 at
21 night?

22 A After they spoke to my aunt, yes.

23 Q And your aunt being Kareema Jennings?

24 A No.

25 Q A different aunt?

1 A Yes.

2 Q And you went home after that?

3 A Yes.

4 Q There came a second point in time when you spoke to
5 the police the next day, right?

6 A Yes.

7 Q Where did you speak to the police the second day?

8 A Well, the second day I received a phone call saying
9 that they were at my old address with a warrant for my arrest.
10 And they came, and picked me up from my grandmother's house
11 the second time.

12 Q They came and picked you up from your grandmother's
13 house the second time?

14 A Yes.

15 Q Who did you get the call from?

16 A My brother's father.

17 Q And that's when you said they kicked down the door?

18 A Yes.

19 Q At your old address?

20 A Yes.

21 Q When the police came to your grandmother's house the
22 second time, how many police officers came?

23 A Four.

24 Q And these were detectives in suits?

25 A They were in plain, like jeans, T-shirt type cops.

1 Q Do you know any of their names?

2 A No.

3 Q And what time of the day was this?

4 A It was early in the morning.

5 Q Were you still asleep when you first found out they
6 were coming to get you?

7 A Yes. I just had received a phone call, just jumped
8 out of bed.

9 Q Now, when the police came the second time, did they
10 put you in handcuffs again?

11 A No. Because my grandfather asked them not to, for
12 the sake of my son.

13 Q And they didn't put you in handcuffs because your son
14 was there?

15 A Yes.

16 Q How old is your son?

17 A He is now three.

18 Q Where did the police take you the second time?

19 A They escorted me and my grandfather back to a
20 precinct.

21 Q Did you want to go back to the precinct?

22 MR. HALE: Objection.

23 THE COURT: Can we just step outside for a
24 moment?

25 (Whereupon, a side bar discussion ensued outside

1 the presence of the jury.)

2 THE COURT: Again, I am not trying to curtail
3 your cross-examination, Mr. Megaro, but it is clear that
4 this witness was -- has been a reluctant witness from her
5 inception. But, whether she was in cuffs or not -- I
6 mean -- you are not -- I cannot see how you can argue any
7 inference before this jury, that her rights were violated,
8 and therefore your client is not guilty as a result of
9 that.

10 You have something in mind you are trying to
11 establish by suggesting that, we know, any number of
12 police may have shown up there, they may have been rough
13 with her. But how does that play into any argument,
14 ultimately, you are going to make with respect to the
15 guilt, or non guilt of your client?

16 MR. MEGARO: Easy, your Honor. I don't intend to
17 argue that her rights were violated at all. What I am
18 trying to establish is, the police brought an overbearing
19 presence upon her.

20 THE COURT: Yeah, but -- okay, indeed, that is
21 clear from what I think she said already. That a number of
22 police came. That she obviously was aware they were
23 police, and got up started walking out, and they started
24 questioning everybody trying to find out who, if anyone,
25 was the right person there, is no question they were

1 overbearing.

2 But how does that play into -- what are you trying to
3 suggest? Somehow what she said was not the truth?

4 MR. MEGARO: Yes, absolutely.

5 No, no, her testimony today is not a hundred percent
6 truthful. Not what she said then, that her testimony today
7 is not a hundred percent truthful.

8 THE COURT: You will forgive me sir, and I am
9 listening to this.

10 You have a witness whose testified that, really, your
11 client's only involvement with this is a statement he made
12 about not shooting anybody, and about not going back and
13 being able to get the guns out of a garage that he may
14 have placed them.

15 MR. MEGARO: That's correct.

16 THE COURT: That's the only contact, and you are
17 saying those statements that she made are somehow not the
18 truth.

19 MR. MEGARO: That her testimony today, that Mr.
20 Woods said he went back to get guns, is an untruth.

21 THE COURT: Fine. I am just trying to figure --
22 so, you saying, ultimately then, that the pressure the
23 police put on her is causing her now to testify in the way
24 she is testifying?

25 MR. MEGARO: That's correct.

1 THE COURT: All right, please proceed.

2 (Whereupon, the following was held in open court
3 before the jury.)

4 THE COURT: Mr. Megaro, I am going to allow you
5 some leeway. Make sure it is relevant.

6 MR. MEGARO: Absolutely.

7 Q The last question I asked you was, again, the second
8 time you went with the police, this was against your will?
9 This was involuntary?

10 THE COURT: How did you feel, ma'am?

11 THE WITNESS: I didn't want to go.

12 THE COURT: Next question.

13 Q Now this time, second time you were with the
14 police -- and it was your grandfather, you said?

15 A Yes.

16 Q How long were you with the police this time?

17 A Hours.

18 Q Like the whole day, hours, or?

19 A Yes.

20 Q And this time the police told you that they had a
21 warrant for your arrest, right?

22 A Yes.

23 Q They told you that you were in big trouble for lying
24 to the police?

25 A Yes.

1 Q And they told you that you could be prosecuted?

2 A Yes.

3 Q Did they say anything about taking your child away?

4 A No.

5 Q Now -- I'm sorry, you said the police came to the
6 house where you were staying at early in the morning that
7 particular day?

8 A Yes.

9 Q About what time?

10 A I don't know.

11 Q Six a.m., seven a.m. can you give us?

12 A No, it was a little later than that. It was before
13 12:00, I know that.

14 Q Definitely before 12:00?

15 A Yes.

16 Q That was July 10, 2007, right?

17 A Yes.

18 Q And that same day the police then took you to the
19 Brooklyn District Attorney's Office, right?

20 A Yes.

21 Q And that's where you met with Mr. Hale, Assistant
22 District Attorney Hale, right?

23 A Yes.

24 Q There was another Assistant District Attorney
25 present?

1 A Yes.

2 Q And Detective Margraf, New York City police was
3 present?

4 A Yes.

5 Q And that's where you gave the statement where you
6 were tape recorded, right?

7 A Yes.

8 Q And before they started recording your statements,
9 did you discuss what your testimony was going to be on that
10 tape with the district attorney and police? Did you talk
11 about what had happened?

12 A Yes.

13 Q And before the recording of that tape started, did
14 they tell you the kind of questions they were going to ask
15 you?

16 A No.

17 Q When that tape recording started, Assistant District
18 Attorney DeIngeniis administered an oath to you, swore you in?

19 A Yes.

20 Q And he identified himself as an Assistant District
21 Attorney, and a notary public?

22 A Yes.

23 Q And then Mr. Hale started asking you questions on
24 tape, right?

25 A Yes.

1 Q Now, by the way, were you ever prosecuted for lying
2 to the police?

3 A No.

4 Q What happened to that prosecution?

5 THE COURT: Well, wait. That would require her
6 to read the people's minds, sir.

7 In your mind, you were not prosecuted; is that
8 correct, ma'am?

9 THE WITNESS: That is correct.

10 THE COURT: Next question.

11 Q Now, at any time, did either the District Attorney's
12 Office, or the New York City Police pay for any lodging for
13 you?

14 A What do you mean?

15 Q Did they put you up in a hotel?

16 A Yes.

17 Q For how long?

18 A I would say about five days.

19 Q They pick up the bill for the hotel?

20 A Yes.

21 Q They ultimately help you relocate, and move to a new
22 place?

23 A No.

24 Q Did the District Attorney's Office, or the New York
25 City Police give you money?

1 A Yes.

2 Q How much money?

3 A A little under \$200.

4 Q What was that money to be used for?

5 A For me to eat, and travel back and forth to work.

6 Q Did they provide you with any transportation?

7 A Just the money that they gave me, that was it.

8 Q Now, let's back up a moment.

9 Going back to the McDonalds, at approximately six
10 a.m. on July 9, 2007. You saw that video that was played for
11 us before, correct?

12 A Yes.

13 Q And that's where you went to the McDonalds with
14 Roger -- the man you know as Rogers Ellis, right?

15 A Yes.

16 Q And while you were in that McDonalds, he was
17 receiving phone calls, right?

18 A Yes.

19 Q And he was discussing, with whoever was on the other
20 line, what he had seen on the news, right?

21 A Yes.

22 Q There came a point in time where you and Mr. Ellis
23 left the McDonalds, right?

24 A Yes.

25 Q And that entire time, Mr. Ellis was carrying that

1 white bag just as he was in the video, right?

2 A Yes.

3 Q And inside -- I'm sorry, let me back up a second.

4 When you were leaving Ellis' apartment, he was the
5 one who packed the bag, right?

6 A Yes.

7 Q And he was doing this while you were getting dressed?

8 A Yes.

9 Q You don't know what he put in that bag, right?

10 A No.

11 Q But there came a point in time later, where there was
12 a discussion about what that little brown case contained,
13 right?

14 A Yes.

15 Q And Ellis told you that it contained bullets, and a
16 Taser gun?

17 A He didn't tell me. He said to -- in the car, that the
18 bullets didn't match the gun.

19 Q Bullets didn't match the gun?

20 A Yes.

21 MR. MEGARO: Now, can I see People's 41 in
22 evidence? Can it be shown to the witness?

23 Q Miss Buggs, I am showing you People's 41 in evidence.
24 That the black case you saw in Mr. Ellis' and Mr. Bostic's
25 apartment?

1 A Yes.

2 Q And what did they tell you that case contained? What
3 did they tell you that case was for?

4 A They never told me, because I never asked.

5 Q What was your understanding that that case contained?

6 THE COURT: You mean, what did you think? Did
7 you have any thoughts about it?

8 THE WITNESS: No.

9 Q Now, Miss Buggs, on direct examination the District
10 Attorney -- I'm sorry, let me back up a second.

11 Going back to July 10, 2007, how long were you at the
12 District Attorney's Office for?

13 A It depends on which day you are talking about.

14 Q The tenth, the second time with the police?

15 A The first, I left there later on that night.

16 Q Did you have any agreement with the District Attorney
17 that you would be a witness for them?

18 MR. HALE: Objection.

19 THE COURT: No, overrule.

20 A No. I thought once I said what I said, that this was
21 going to be put behind me, and I was going to be able to go on
22 with my life without doing this.

23 Q But it wasn't?

24 A No, it wasn't.

25 Q There came a point in time, several days later, where

1 they brought you to the grand jury, right?

2 A Yes.

3 Q And before you went into the grand jury, did you meet
4 with the District Attorney and police again?

5 A Yes.

6 Q How did you get to the grand jury that time?

7 A They brought me to the grand jury.

8 Q And had they given you a subpoena prior to you going
9 to the grand jury, or just came and got you?

10 MR. HALE: Objection.

11 THE COURT: Yes, sustained.

12 Q Where did they pick you up to bring you?

13 A My grandmother's house.

14 Q And, again, did you go with them willingly, or how
15 did you feel about it?

16 A I went with them.

17 MR. HALE: Objection.

18 THE COURT: Overruled. You and who?

19 THE WITNESS: I went with them.

20 THE COURT: Next question.

21 Q How long did you spend with the District Attorney
22 before you testified in the grand jury?

23 A Five or 10 minutes.

24 Q And they told you what you were there to do?

25 A Yes.

1 Q Did they go over the kind of questions they were
2 going to ask you?

3 A No.

4 Q Did they give you any paperwork to review?

5 A Yes.

6 Q They give you a transcript of your tape recorded
7 statement?

8 A Yes.

9 Q And you were asked to read that before you went into
10 the grand jury?

11 A Yes.

12 Q I will get back to that in a moment.

13 You testified at a prior proceeding in this
14 particular case, back in November of 2008, correct?

15 A Yes.

16 Q And, again, did you go to the District Attorney's
17 Office before you were called as a witness?

18 A Yes.

19 Q And did you spend some time with the District
20 Attorney before you entered the courtroom and testified?

21 A Yes.

22 THE COURT: Mr. Megaro, let me suggest this to
23 you, sir. There is nothing inappropriate, you, the DA can
24 speak to a witness about that witness' testimony. That
25 witness can review documents before the witness testifies.

1 That is an instruction I will give the jury.

2 In fact, the lawyer would be a fool putting a person
3 on the stand without knowing what the person is going to
4 say to begin with.

5 Let's move on.

6 Q Now, Miss Buggs, you testified here today, that when
7 you entered the car with -- this was a green truck that
8 Nicole --

9 A I don't -- oh, yes.

10 Q What kind of truck was it?

11 A I am not sure.

12 Q But it was a green SUV, right?

13 A Yes.

14 Q When you first got into that truck, with Nicole
15 Bostic inside that truck, was Lee Woods, Nicole Bostic's
16 daughter, and Nicole Bostic, obviously, right?

17 A Yes.

18 Q And Nicole Bostic was the one who was driving, right?

19 A Yes.

20 Q You and Mr. Ellis got into that SUV, right?

21 A Yes.

22 Q And the first thing that was stated in that SUV was
23 by Nicole Bostic, right?

24 A Yes.

25 Q And she said to Mr. Ellis, where is my brother? Where

1 is Dexter?

2 A Yes.

3 Q And Mr. Ellis said, I don't know?

4 A Yes.

5 Q That's when now the -- after you start driving around
6 looking for Dexter Bostic, right?

7 A Yes.

8 Q Now, before you picked up Dexter Bostic, Mr. Woods
9 has no conversation with Mr. Ellis, right?

10 A No.

11 Q They are not talking to each other, right?

12 A No.

13 Q And, in fact, you are sitting in the middle of them,
14 right?

15 A Yes.

16 Q Mr. Woods is not talking to Nicole Bostic either,
17 right?

18 A Not that I can remember, no.

19 Q Now, at some point in time, picked up Dexter Bostic,
20 that's when everybody changes seats in the car, right?

21 A Yes.

22 Q Dexter Bostic is in front of the car?

23 A Yes.

24 Q When Dexter Bostic first gets in the front of the
25 car -- I'm sorry, let me withdraw that.

1 When Dexter Bostic first gets into that car,
2 something is said, right?

3 A Yes.

4 Q And the first thing that is said is, Dexter Bostic
5 asking Roger Ellis, did you get that?

6 A Yes.

7 Q Not Lee Woods, Roger Ellis, right?

8 A Yes.

9 Q And Mr. Ellis said, the bullets don't match the
10 gun -- what did Mr. Ellis say?

11 A That the bullets didn't match the gun that was at the
12 crime scene.

13 Q And Mr. -- again, that's the question that Bostic
14 asks Ellis, right?

15 A Yes.

16 A He didn't ask Mr. Woods, right?

17 A Not at that point and time, no.

18 Q Now, there is also discussion about that black case
19 between Ellis and Bostic, is that case that is right in front
20 of you, right?

21 A I don't remember.

22 Q You testified, on direct examination, that Bostic
23 asked Mr. Woods if he had gotten the guns, correct?

24 A Yes.

25 Q Now, do you recall testifying in the grand jury in

1 this case, back in July 2007, right?

2 A Yes.

3 Q And in the grand jury you were asked questions by Mr.
4 Hale and Miss Nicolazzi?

5 A Mr. Hale.

6 Q When you were asked questions before you started
7 testifying in the grand jury, you took an oath. You were sworn
8 in by a member of that grand jury, correct?

9 A Yes.

10 Q And it is pretty much the same oath you took here in
11 court today, right?

12 A Yes.

13 Q And you were asked questions by Mr. Hale about this
14 case that you are testifying about today, right?

15 A Yes.

16 Q And you gave answers to those questions, right?

17 A Yes.

18 Q And in the grand jury, back in July of 2007, isn't it
19 a fact; you were asked these questions and you gave these
20 answers. Page 14, lines 15 through 25. Page 15, line one. I'm
21 sorry, page 15, lines one through five.

22 "Question: Was there any conversation in the
23 truck between the individuals, specifically between Lee
24 Woods and Robert Ellis?

25 Answer: At that point, no.

1 Question: Is there any conversation between any
2 of the other individuals, like Dexter's sister?

3 Answer: Yes.

4 Question: Tell us what that was.

5 Answer: She said that she had went back to the
6 crime scene to pick up the guns from where it all
7 happened.

8 Question: Who is she saying this to?

9 Answer: To Roger.

10 Question: What did Roger say back to that?

11 Answer: What happened? Nicole was explaining,
12 at the time, that there was too many cops, so they
13 couldn't get the guns."

14 Do you remember giving those answer?

15 A Well, sir, it is two years ago. I am not going to
16 remember everything I said.

17 MR. MEGARO: Will the District Attorney conceded
18 that I read from the transcript correctly?

19 MR. HALE: Yes.

20 Q I know this is a while ago, right?

21 A Yes.

22 MR. MEGARO: One moment.

23 Q Now, back to -- as you said before, you gave prior
24 testimony in a prior proceeding in this particular case back
25 on November 19, 2008, about four months ago, five months ago?

1 A Yes.

2 Q And, again, you were asked questions by Mr. Hale,
3 under oath, about this particular case, right?

4 A Yes.

5 Q And do you recall being asked these questions and
6 giving these answers? Page 1125, lines 16, back on
7 November 19, 2008?

8 "Question: Do you recall what was said by Miss
9 Bostic?

10 Answer: Yes.

11 Question: What was said?

12 Answer: She said she, her, and Mr. Woods, and
13 her daughter tried to go back to the crime scene to pick
14 up the guns, but it was too many cops on the scene, so
15 they couldn't get it.

16 Question: She says that to who?

17 Answer: Her brother, Mr. Bostic.

18 Question: In the front seat?

19 Answer: Yes.

20 Question: But she was in the car with Mr.
21 Woods, and her daughter, they tried to go back to get the
22 guns, but there was too many police in the area, and they
23 couldn't?

24 Answer: Yes.

25 Question: Did Mr. Woods say anything at that

1 point and time?

2 Answer: No."

3 Do you recall being asked those questions and giving
4 those answers?

5 A Yes.

6 Q Now, that conversation wasn't all that was taking
7 place between Mr. Bostic, and Mr. Ellis in the car; is that
8 correct?

9 A Can you repeat the question?

10 Q Mr. Bostic, and Mr. Ellis were talking about other
11 things?

12 A Yes.

13 Q And one of the things that Mr. Bostic, and Mr. Ellis
14 were talking about were, they were trying to come up with a
15 story about the BMW, correct?

16 A Yes.

17 Q And what did those two discuss between themselves?

18 A That Roger was going to take the blame and say he had
19 stolen the car, but the car was stolen from him.

20 Q While Ellis and Bostic are talking about this, Mr.
21 Woods is not saying anything, right?

22 A No.

23 Q And, eventually, after discussing this for a whole --
24 for a while, Mr. Woods say something to the affect like, I
25 don't care what you guys do, because I didn't shoot anybody?

1 A Yes.

2 Q During this time, Mr. Woods does not say anything to
3 Mr. Bostic about any guns, right?

4 A Yes. He said the only thing he was guilty of doing
5 was moving the guns to where they were at.

6 Q Mr. Woods doesn't talk to Mr. Ellis about guns,
7 right?

8 A I can't really remember everything that went on in
9 the car.

10 Q And one of the things that Mr. Woods says is, I am
11 going back to Far Rockaway, I didn't shoot anybody, right?

12 A Yes.

13 Q And after he says that, Bostic says nothing, right?

14 A No.

15 Q Ellis doesn't say anything at that point, correct?

16 A No.

17 Q Now, there came a point in time where you had dropped
18 off Mr. Bostic, and Mr. Ellis, right?

19 A Yes.

20 Q And you knew that they were planning on getting out
21 of New York, right?

22 A No.

23 Q When the three of you got out of the car, Lee Woods
24 stayed in the car with Nicole Bostic and her daughter, right?

25 A Yes.

1 Q And the last thing he said to you is, keep your mouth
2 shut or you might be next, right?

3 A Yes.

4 Q You didn't feel threatened by him when he said that;
5 did you?

6 A No, not by him.

7 Q You took this as a warning?

8 A Yes.

9 THE COURT: Or advice.

10 Q Or advice?

11 A Yes.

12 Q Meaning, watch who you have contact with?

13 A Yes.

14 Q That wasn't the last contact you had with Mr. Woods
15 though, was it?

16 A After that incident, yes, until several months later.

17 Q Several month later you went to see him?

18 A Yes.

19 Q And this is with your aunt?

20 A Yes.

21 Q And when you went to see Mr. Woods, you didn't feel
22 threatened by him then?

23 A No.

24 Q Did you ever have any contact with Mr. Woods after
25 that?

1 A I don't remember, sir,.

2 Q Did you ever write him any letters?

3 A No.

4 Q Thank you. Nothing further.

5 THE COURT: Any redirect?

6 MR. HALE: Just a little bit, your Honor.

7 REDIRECT EXAMINATION

8 BY MR. HALE:

9 Q Miss Buggs, I think that you had indicated, that when
10 you first went with the police after they had come to the
11 salon, you were not being truthful with them; is that correct?

12 A No, I wasn't.

13 Q Was there a reason why you weren't being truthful
14 with them?

15 A I didn't want to get involved.

16 Q When they came back for a second time, and picked you
17 up from your grandmother's house, was it clear to you, at that
18 point, that you didn't have much choice as to whether you were
19 going to be involved or not, right?

20 A Yes.

21 Q At that time, when you talked to the police, and
22 subsequently the District Attorney's Office, were you being
23 truthful?

24 A Yes.

25 Q Does that include the occasions when you were under

1 oath and, for instance, giving the audio tape statement that
2 Mr. Megaro talked about?

3 A Yes.

4 Q As part of that audio taped statement, this is page
5 22 going over to page 23, do you remember being asked these
6 questions and giving these answers?

7 MR. MEGARO: Objection, your Honor. May we have
8 a sidebar?

9 THE COURT: Yes, sir, we certainly may.

10 (Whereupon, a side bar discussion ensued outside
11 the presence of the jury.)

12 THE COURT: Mr. Megaro, let me just say this,
13 sir. I respect your right to cross in the manner you said
14 you wanted to do.

15 Now, it was your position that, supposedly, because
16 of the police conduct towards this witness, that she came
17 in and she testified the way she testified. But it's
18 clear, sir, from what she testified to, that, yeah, to
19 what you are saying, there may have been, initially, some
20 initial friction: But, ultimately, the police gave her
21 \$200, and gave her -- I mean, gave her support.

22 So, it sort of undercuts your theory about being
23 pressured. But, in any event, you chose to go down this
24 road.

25 Mr. Hale, what do you have?

1 MR. HALE: I have a number of statements
2 predating the impeached statement in which it is
3 consistent with her trial testimony now.

4 THE COURT: My problem with impeachment is this.
5 I guess, somehow, he was trying to indicate that Lee Woods
6 never participated in that conversation.

7 MR. HALE: Correct.

8 THE COURT: But he never addressd it in that
9 fashion. What he simply said was, this is a conversation
10 that took place in the car. And then he read into the
11 record, essentially, her testimony about Nicole, statement
12 made to Nicole.

13 MR. HALE: Yes.

14 THE COURT: Go right ahead.

15 MR. HALE: Again, I am taking conversations
16 which are in a different context, where she does, in fact,
17 say, in fact, predates what he claims to be the
18 inconsistent statement, or statements that are now
19 consistent with her trial testimony, again, rehabilitating
20 what her testimony is now.

21 THE COURT: What are the statements you have?

22 MR. HALE: The statements, the first one was
23 from the audio taped statement.

24 "Question: Tell me what that was?

25 Answer: --

1 MR. MEGARO: This is 23?

2 MR. HALE: 22 into 23.

3 "After you pulled up off, was there any conversation
4 that went on in the car?

5 Answer: Yes.

6 Tell me what that was?

7 Answer: It was about two guns that was left at
8 the crime scene.

9 Question: Who said what?

10 Answer: Dexter had asked Lee what happened with
11 the guns? Lee had said to Dexter, that he tried to go back
12 and get him, and Nicole tried to go back and get them, but
13 the police were sitting on the crime scene and they
14 couldn't, they couldn't take them.

15 Question: Did Lee say anything about his
16 participation in the shooting?

17 He said, all I did was get rid of the gun. He
18 did not shoot anybody."

19 THE COURT: You want to be heard with respect to
20 that question and answer, Mr. Megaro?

21 MR. MEGARO: Yes, your Honor.

22 This is a prior consistent statement that the
23 District Attorney would like to introduce.

24 THE COURT: But you indicated somehow, that this
25 gall has come here today and purposely fabricated a whole

1 new set of -- a factual scenario that implicates your
2 client. And your impeachment of her was not what, if
3 anything, did Mr. Woods say? It was what you tried to
4 indicate was, there was conversation. Woods didn't say
5 anything, and she was talking to Nicole.

6 And, clearly, he has a reference where she is now
7 indicating, before she testified, that Mr. Woods made a
8 statement about the guns, separate and apart from
9 something that you may have asked about Nicole.

10 MR. MEGARO: Your Honor, my position is, that
11 the testimony today, the prior testimony and the testimony
12 given in the tape recorded statement was fabricated, not
13 that it was just fabricated today. I am not arguing recent
14 fabrication, I am arguing fabrication from the start. And
15 that under that circumstance, your Honor, and that's what
16 I intend to argue to the jury.

17 THE COURT: You are welcome to try to do it. All
18 I am saying at this point is, is this. You have elicited
19 from this witness, after trying to suggest she is
20 fabricated, brown nosed by the police, and the police gave
21 her \$200. And she ultimately says, just a moment ago, that
22 she realized, in the end, she lied to them initially. She
23 didn't want to have anything to do with this. But she
24 realized, ultimately, she had to tell the truth, or at
25 least what they knew was the truth. And that's where you

1 are now, at this point.

2 But that's why I asked you, initially. I was a bit
3 surprised by your efforts to suggest, somehow, that
4 because of the tact they use, that somehow it affected her
5 testimony today. And I think the People should be able to
6 respond to that by clearly indicating she has been
7 consistent all the way along.

8 MR. MEGARO: Your Honor, my position is, she
9 was -- she has been consistent all the way along from her
10 tape recorded sworn statement. But that is where the
11 fabrication occurs.

12 THE COURT: You are welcome to argue that then.
13 But, I will allow Mr. Hale to elicit that -- I mean, she,
14 in fact, said that Mr. Woods made a statement to Mr.
15 Bostic, relating to his trying to go and locate the guns.

16 MR. HALE: And just so we get this all clear.
17 There is a further thing. Margraf takes a statement from
18 her, Tamika, before the audio taped statement in which the
19 following is written.

20 "Dexter asked Lee what happened with the guns? He had
21 said that he and Nicole had tried to get gun from the
22 alley, but cops were all over the place."

23 Again consistent. There is a third point.

24 Now, Mr. Megaro had asked a question about her trial
25 testimony in November, and actually pulled something from

1 the cross-examination of Mr. Karliner's cross-examination.
2 And, again, it being out of context, and giving the wrong
3 sort of impression. Because we have, on direct
4 examination here, the following questions and answers.

5 "While in the car, did any of the people say
6 anything about any weapon at all?

7 Answer: Yes.

8 Question: Tell the jurors what that was.

9 Answer: Mr. Woods had said that him and Nicole
10 went back to get, to get the guns from the crime scene.

11 Question: And?

12 Answer: And that they were unsuccessful because
13 there was too many police."

14 Again, the impression given in his asking of the
15 question, that that was sort of a stand alone accounting
16 of what the conversation was when, in fact, it was
17 supplementing what the conversations were, because he
18 testified about this on direct.

19 In fact, Mr. Karliner's cross-examination did not
20 dispute any of this. It only supplemented it with
21 whatever else it was that Nicole had said.

22 MR. MEGARO: Your Honor, it is my position that
23 the prior inconsistent statement is completely at odds
24 with one another. Either Nicole Bostic said she went back
25 to get the guns, or Lee Woods said that he went back to

1 try to get the guns.

2 THE COURT: You are free to argue that to the
3 jury.

4 MR. MEGARO: Right. My objection is to the
5 introduction of prior inconsistent statement, without the
6 proper evidentiary foundation.

7 THE COURT: The Court disagrees. I was troubled
8 by your theory of cross-examination when you somehow said,
9 that what she is saying today implicates a fabrication of
10 some sort.

11 I mean, the Court, having sat through this trial,
12 sort of disagrees. And I didn't, at that point, say
13 anything to Mr. Hale or Miss Nicolazzi, fine what is your
14 position on it? I am simply saying, if you are going to
15 go down that road, go ahead, that's how I left it, and you
16 proceeded to do that.

17 Not only, in my mind, did you undercut this whole
18 notion about the police -- look -- clearly, the police may
19 have used some pressure. But once they realized she was
20 telling them what they knew, in fact, probably was the
21 situation as far as they were concerned, at that point
22 they went out of their way to help her.

23 Why else would they give her the money? They gave
24 her, and didn't strike any kind of agreement with her.
25 They sort of helped her. She was a young lady who was

1 vulnerable, and I am at a loss how you can suggest,
2 somehow, they exacted so much pressure on her that made
3 the testimony change where, if you read what they are now
4 offering, in my mind, it is not a change. It is not a
5 fabrication. And that's the impression you are trying to
6 leave at this point.

7 So, I mean, that is my ruling. I would allow Mr. Hale
8 to lead her and say, were you asked these questions and
9 give this answer. And you can argue whatever inference
10 you want to argue.

11 MR. MEGARO: Okay.

12 (Whereupon, the following was held in open court
13 before the jury.)

14 THE COURT: Please proceed, Mr. Hale.

15 Q Miss Buggs, I was asking you about the audio taped
16 statement that you had given at the District Attorney's Office
17 on the tenth of July 2007.

18 Do you remember that?

19 A Yes.

20 Q And I think you testified, on cross-examination by
21 Mr. Megaro, that there was an Assistant District Attorney
22 there who had sworn you to tell the truth; is that correct?

23 A Yes.

24 Q And this was after the point in time at which you had
25 decided you didn't want to be involved anymore, you were

1 stuck, being involved and you were telling the truth, right?

2 A Yes.

3 Q Do you remember being asked these questions and
4 giving these answers?

5 MR. HALE: You have a reference, Mr. Megaro?

6 MR. MEGARO: Yes.

7 Q "Question: Okay. After you pulled off, was there
8 any conversation?

9 THE COURT: Slowly.

10 Q "Question: Okay. After you pulled off, was there
11 any conversation that went on in the car?

12 Your answer: Yes.

13 Question: Tell me what that was?

14 Answer: It was about the two guns that was left
15 at the crime scene.

16 Question: Who said what?

17 Answer: Dexter had asked Lee what happened with
18 the guns? Lee had said to Dexter, that he tried to go back
19 and get him, and Nicole tried to go back and get them, but
20 the police were sitting on the crime scene and they
21 couldn't. They couldn't take them."

22 Do you remember being asked those questions and
23 giving those answers?

24 A Yes.

25 Q Now, do you also recall, that during the course of

1 that day your meeting a detective by the name of Pete Margraf?

2 A Yes.

3 Q And Detective Margraf is from the 71st Precinct; is
4 that correct?

5 A Yes.

6 Q Do you recall that Mr. Margraf, or Detective Margraf
7 also interviewed you on that date, concerning what you knew
8 about the incident. Specifically, the conversations that went
9 on in the car while you were in the presence of Mr. Woods, and
10 Mr. Bostic, and Mr. Ellis?

11 A Yes.

12 Q Do you remember when he asked you what was said, or
13 what the conversations were, that you made the following
14 statement.

15 "Dexter asked me what happened with the guns. He had
16 said that he and Nicole had tried to get the guns from the
17 alley, but the cops were all over the place."

18 Do you remember making that statement to Detective
19 Margraf?

20 A Yes.

21 Q Now, both of these statements that we are talking
22 about, the audio taped statement, that was under oath, and the
23 conversation with Detective Margraf, these took place on July
24 the tenth; is that right?

25 A Yes.

1 Q And that was before you testified in the grand jury;
2 is that right?

3 A Yes.

4 Q Now, Mr. Megaro also asked you about some testimony
5 that you had given back in November, actually in this
6 courtroom.

7 You remember that, right?

8 A Yes.

9 Q And I think he had asked you some questions that you
10 had been asked on cross-examination when you were being
11 cross-examined by another attorney in that case.

12 Do you remember that?

13 A Yes.

14 Q Do you also remember the part of your testifying that
15 it was much like it is here. That, initially, you were asked
16 questions on direct examination by myself?

17 A Yes.

18 Q All right. This is page 838, starting at line eight.
19 Do you remember being asked these questions and giving these
20 answers. This was on direct examination before the
21 cross-examination that Mr. Megaro referred to.

22 "Question: While in the car, did any of the
23 people say anything about any weapons at all?

24 Answer: Yes.

25 Question: Tell what that was?

1 Answer: Huh, Mr. Woods had said that him and
2 Nicole went back to get, to get the guns from the crime
3 scene.

4 Question: And?

5 Answer: And they were unsuccessful because
6 there was too many police."

7 Do you remember being asked those questions, giving
8 those answers?

9 A Yes.

10 Q And again, that was before the questions and answers
11 that Mr. Megaro had asked you about during that point and
12 time?

13 A Yes.

14 Q And you were under oath, at that time?

15 A Yes.

16 Q Miss Buggs, thank you very much.

17 MR. HALE: I have nothing further, your Honor.

18 THE COURT: Any further recross?

19 MR. MEGARO: Very, very brief.

20 RE CROSS-EXAMINATION

21 BY MR. MEGARO:

22 Q When you gave that statement back at the District
23 Attorney's Office, you had been with the police, and the
24 detective, and the District Attorney for how many hours that
25 day?

1 A I'm not sure, at that time.

2 Q You gave that statement, you were recorded at
3 6:45 p.m. though, right?

4 A Yes.

5 Q So, you had been with them for about seven, eight,
6 maybe even nine hours?

7 A Yes.

8 Q Were you vulnerable at that point and time?

9 MR. HALE: Objection.

10 THE COURT: Are you asking how she felt?

11 MR. MEGARO: Yes.

12 THE COURT: Then ask her how she felt.

13 Q How do you feel?

14 A Frustrated.

15 Q Thank you, Miss Buggs. Take care.

16 REDIRECT EXAMINATION

17 BY MR. HALE:

18 Q Miss Buggs, even though you were frustrated, were you
19 being truthful?

20 A Yes.

21 MR. HALE: Nothing further.

22 THE COURT: Anything further?

23 MR. MEGARO: Nothing further.

24 THE COURT: Miss Buggs, thank you.

25 You may step down.

1 THE WITNESS: Thank you.

2 (Witness excused.)

3 THE COURT: Jurors, that concludes the evidence
4 for today. We are going to break.

5 Please, tomorrow morning in the jury room 10:00.

6 Keep my warnings in mind.

7 See you tomorrow.

8 (Whereupon, the jury exits the courtroom.)

9 THE COURT: Tomorrow's schedule, what is it,
10 Miss Nicolazzi, if you have any idea?

11 MS. NICOLAZZI: Yes. Tomorrow there is a lot of
12 crime scene tomorrow. We are hoping to have both the run
13 of the BMW, and also of the recovery of the weapons.

14 We also have Dr. Kurtz, which that part is brief.

15 THE COURT: Can there be any stipulation as to
16 the crime scene evidence?

17 MR. MEGARO: Sure.

18 THE COURT: In any event, if you can work it out
19 fine, if you can't, just put the witness on. But as I
20 understood it, it was quite lengthy.

21 MS. NICOLAZZI: Yes, it was.

22 THE COURT: I cannot compel anybody to
23 stipulate. If you can't do it, you can't do it.

24 MR. MEGARO: I mean, there is one witness from
25 crime scene, I think it is Newman.

1 MS. NICOLAZZI: That is with the BMW.

2 MR. MEGARO: That I intend to cross examine:

3 The other ones, if there is any cross-examination, it will
4 be very short in length.

5 THE COURT: All right. At this point, tell you
6 what, we will make sure the temperature is down and just
7 endure it.

8 So, we have the crime scene, and maybe the medical
9 examiner?

10 MS. NICOLAZZI: Not the medical examiner, the
11 doctor.

12 MR. HALE: Treating physician.

13 MS. NICOLAZZI: But he was not long.

14 THE COURT: Is he coming first thing in the
15 morning?

16 MS. NICOLAZZI: Yes.

17 THE COURT: You want to try and put him on
18 because of his schedule?

19 MS. NICOLAZZI: If we can.

20 MR. MEGARO: I don't intend to cross-examine
21 that witness.

22 THE COURT: That would maybe be better. If he
23 can get here early, even if it is out of turn.

24 MS. NICOLAZZI: We have him coming first thing.

25 THE COURT: So, to be followed by crime scene?

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MS. NICOLAZZI: Yes.

MR. HALE: And, if there is anything to do with
crime scene, we will deal with it thereafter.

THE COURT: If you can.

With that, I will see you tomorrow.

(Whereupon, the trial proceedings were adjourned
until March 4, 2009.)

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM: PART: 37

3 -----X

4 PEOPLE OF THE STATE OF NEW YORK, : Index
: No.6797/07

5 -against- :

6 LEE WOODS, :

7 Defendant. :
8

9 -----X

10 320 Jay Street
11 Brooklyn, New York
12 March 4, 2009

13 B E F O R E:
14 HONORABLE PLUMMER LOTT
15 Supreme Court Justice

16 A P P E A R A N C E S:

17 CHARLES J. HYNES, ESQ.
18 DISTRICT ATTORNEY KINGS COUNTY
19 BY: ANNA-SIGGA NICOLAZZI, ESQ.
20 MARK HALE, ESQ.
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PHYLLIS PRICE
MONICA WALKER-BAILEY, RPR, CSR
OFFICIAL COURT REPORTERS

1 THE CLERK: Case on trial. All parties are
2 present.

3 THE COURT: Just some housekeeping matters.
4 Yesterday, Mr. Megaro, you crossed Miss Buggs on
5 matters that related to how the police treated her in
6 obtaining the information from her.

7 Now, in the back, I think your position was, that her
8 answers which implicated your client, reflected police
9 pressure exerted on her initially when she made the
10 statements to the police, and it also reflected her trial
11 testimony. And the only thing she said, really, that
12 implicated your client, any kind of involvement here, was
13 statements about him hiding the guns, or having access to
14 the guns.

15 In any event, you were allowed to pursue this notion
16 about police pressure. And, certainly, I think at the end
17 of the case you are free to argue it. But, I read the
18 transcript this morning just to make sure that -- I had
19 these flashes at night, like 3:00 in the morning -- in any
20 event, I read the transcript. And you asked Miss Buggs two
21 questions, both relating to previous statements that she
22 indicated Nicole had made about the guns. And that's on
23 page 306 of the record.

24 Now, the thrust of the questions was not -- were not
25 whether the police compelled Miss Buggs to make those

1 statements. But, you asked whether she, in fact, said
2 that to Mr. DeIngeniis, and whether she said to the grand
3 jury that Ms. Bostic made statements about the gun.

4 Now the implications, as far as I was concerned is,
5 the questions sort of implied that if this jury was to
6 believe Miss Buggs, the only thing she said about the
7 conversation in the car was that Nicole mentioned the
8 guns, and somehow Mr. Woods did not.

9 And then Mr. Hale and I, were all in the back, that's
10 why I allowed in evidence the three instances that Mr.
11 Hale rehabilitated his witness on yesterday. Because,
12 clearly, in asking those two questions, you were aware,
13 one, that she spoke to Margraf and, in fact, he had
14 extracted from her a statement that reflected that Woods
15 also mentioned that something about the guns.

16 That also in her interview with DeIngeniis, she
17 mentioned something about the guns. And at the trial when
18 Mr. Karliner represented your client, on cross-examination
19 by Mr. Hale, she mentioned that Mr. Woods had said
20 something about the gun.

21 Now, I know there was a lot of discussions about
22 whether there was a fabrication, or whatever it is. But
23 the inference you were trying to raise, in my opinion,
24 that only Nicole Bostic mentioned anything about the guns,
25 can be refuted by Mr. Hale, that's why I allowed him to

1 ultimately do what he did.

2 That is my position on it. You have your exception.
3 Let's see if we can proceed.

4 MR. MEGARO: Judge, I am going through some more
5 of the crime scene photos. I believe I have gone through
6 People's 45 through --

7 THE COURT: Do we have the doctor first?

8 MS. NICOLAZZI: The doctor is first.

9 THE COURT: I would like to get him on.

10 MR. HALE: And then break and catch up with the
11 photographs?

12 THE COURT: Yes.

13 MR. HALE: He is here.

14 MS. NICOLAZZI: If you want, we can do the
15 doctor, and plate reader, just for the license plate, and
16 then break.

17 THE COURT: Fine.

18 COURT OFFICER: Ready?

19 THE COURT: Bring them right in, please.

20 COURT OFFICER: Jury entering.

21 (Whereupon, the jury enters the courtroom, and
22 is seated in the jury box.)

23 THE CLERK: Case on trial. All parties are
24 present.

25 Both sides waive a reading of the roll?

1 MR. HALE: Yes.

2 THE COURT: Jurors, good morning.

3 JURORS: Good morning.

4 THE COURT: What is going to happen here is
5 this. We are going to put two witnesses on who are going
6 to be very short. We are going to take a break, and resume
7 with the additional testimony. You can expect a full day,
8 but we won't be working beyond 5:00.

9 Everybody understand that?

10 JURORS: Yes.

11 THE COURT: Mr. Hale?

12 MR. HALE: People call Dr. Robert Kurtz..

13 D R. R O B E R T K U R T Z, called as a witness on behalf
14 of the People, having been first duly sworn, was examined
15 and testified as follows:

16 THE COURT: If you will, give us your name.

17 THE WITNESS: Dr. Robert S. Kurtz, K-U-R-T-Z.

18 THE COURT: You may inquire.

19 MR. HALE: Thank you.

20 DIRECT EXAMINATION

21 BY MR. HALE:

22 Q Sir, you are a medical doctor?

23 A Yes, I am.

24 Q How long have you been practicing medicine?

25 A As an attending now, 32 years.

1 Q And are you licensed to practice medicine in any
2 state or jurisdiction?

3 A In New York State, sir.

4 Q Sir, where are you currently employed as a medical
5 doctor?

6 A At Kings County Hospital, and SUNY Downstate Medical
7 Center.

8 Q And what position do you hold at those institutions,
9 sir?

10 A I am visiting Associate of Surgery at Downstate
11 Medical School, and I am the Director of Service for trauma
12 and critical care at Kings County.

13 Q Sir, in doing your job at Kings County Hospital, do
14 you perform any specialty, or subspecialty of medicine?

15 A Yes, I do. Trauma, emergency, general surgery, and
16 surgical critical care.

17 Q And you have been performing those functions for how
18 long?

19 A Most of my professional lifetime. But at the County,
20 for nine, last ten years.

21 Q Sir, your position at Kings County, what all does
22 that entail?

23 A It entails responsibilities for the whole service. We
24 hire and fire people. We evaluate them, do quality
25 improvement. We do patient care, and we look to issues of

1 patient safety.

2 Q Now, sir, you talked about the term trauma. What
3 does trauma mean?

4 A Injury to the human body.

5 Q Would that include, sir, injuries that would be
6 inflicted by gunshot?

7 A Yes, it would.

8 Q Now, sir, have you ever testified before concerning
9 your work at Kings County Hospital, wherein you gave your
10 opinion as to the treatment that was given there?

11 A Yes, I have.

12 Q And how many times have you testified before, sir?

13 A I am losing count. But, it is multiple dozens,
14 probably 40'ish, something like that, 50.

15 Q On the occasions when you have testified, sir, have
16 you been deemed to be an expert in your field?

17 A Yes, I have.

18 MR. HALE: Your Honor, I would offer Dr. Kurtz
19 as an expert in trauma care, and surgical intervention
20 with regard to trauma as he explained it to the Court.

21 MR. MEGARO: Stipulated.

22 THE COURT: All right, ladies and gentlemen.
23 What this means, this witness will be allowed to give an
24 opinion. He is an expert in trauma and surgical critical
25 care. His testimony, however, is treated just like any

1 other witness. You can accept it, or reject it, it's your
2 call. But, he will be allowed to give an opinion based
3 upon what he observed, or based upon questions where the
4 lawyers is asking him to assume certain facts.

5 Please proceed.

6 Q Sir, generally, in your time working at Kings County
7 Hospital, is it the practice there that you are consulted, or
8 brought in on various trauma cases which come into the service
9 from time-to-time?

10 A Yes. I take a full rotation on my own. And I am
11 consulted when there are particular problems with other
12 patients.

13 Q And that includes cases that might be of a high
14 profile nature; is that correct?

15 A Yes.

16 Q Sir, I want to talk to you about a specific date, and
17 that date would be July the ninth of 2007.

18 On that date, sir, were you employed at the Kings
19 County Hospital in the trauma service area of the emergency
20 room?

21 A Yes, I was.

22 Q During the early morning hours of that date, sir, did
23 you receive any sort of communication concerning a case which
24 had been brought into the unit?

25 A Yes, I did.

1 Q Tell the jury what it was that you were notified
2 about?

3 A I had a phone call in the early morning hours to the
4 affect that there were two police officers had been shot, and
5 one of them had already required insertion of a medical airway
6 to keep him alive.

7 It was a major problem also in terms of patient care,
8 and what you call a high profile nature of the case. And I
9 got dressed, and came in immediately.

10 Q Now, sir, when you came to Kings County Hospital on
11 that day, you had indicated you had been notified about two
12 police officers that had been shot, correct?

13 A Yes.

14 Q Were you able, sir, at that time, to evaluate the
15 cases, or the conditions of one or both of those police
16 officers?

17 A Yes, I was.

18 Q Those two police officers were Hermann Yan and
19 Russell Timoshenko?

20 A Yes, sir.

21 Q Now, sir, I would imagine that during the course of
22 treatment for any patient, a certain amount of paperwork, or
23 records are generated; is that correct?

24 A Yes.

25 Q And was that so with the case of Officers Yan and

1 Timoshenko?

2 A It was.

3 Q Now, does that paperwork detail and make record of
4 the various treatment and care that are given to those
5 individuals while they are under the care of Kings County
6 Hospital?

7 A Yes.

8 Q And are they regularly kept in the course of
9 business?

10 A They certainly are.

11 MR. HALE: Your Honor, at this time I have two
12 items which have been marked People's 42 and 43 for
13 identification. And I would offer them into evidence at
14 this time.

15 MR. MEGARO: No objection.

16 THE COURT: Subject to your ultimate review, any
17 objection?

18 MR. MEGARO: No.

19 THE COURT: Mr. LaRose, mark and received in
20 evidence.

21 (People's 42 and 43, marked in evidence.)

22 Medical records

23 Q Doctor, the records of both Officer Yan and Officer
24 Timoshenko have been admitted into evidence.

25 Please feel free to refer to them if you need to

1 during the course of your testimony here, okay?

2 A Thank you.

3 Q Sir, let's first talk about Police Officer Yan.

4 When Police Officer Yan was brought to Kings County
5 Hospital, what were his injuries upon presenting that were
6 observed at that time?

7 A His principle injury was a through and through
8 gunshot wound of his left forearm, which had, because of the
9 size and velocity of the round, created what we call a
10 cavitating lesion.

11 In other words, the bullet blew a large hole through
12 his arm, which damaged the soft tissue, that caused bleeding,
13 and created an elevated pressure within the compartment of the
14 arm, that if untreated, would have lead to damage. In fact,
15 did lead to damage to the big nerve in the arm, the medial
16 nerve, and the blood vessels in the arm. Untreated, that would
17 have led to loss of the arm, or at least crippling.

18 Q Now, sir, you said it was through and through. By
19 that, was there any projectile that was left in the arm?

20 A No, there wasn't.

21 Q And from your observation, sir, it entered on which
22 side, and exited on which side, are you able to say?

23 A I think it entered on this side, the medial side.
24 Exited on that side, the outer side of his arm.

25 Q So, again, you are talking to the inner to the outer?

1 A Yes.

2 Q Now you said, without treatment. But, what sort of
3 treatment was provided for Officer Yan at that time?

4 A At first he needed what is called a fasciotomy, which
5 means, that the fascia, the gristle that binds the muscle of
6 the arm had been cut open so the compression of the blood clot
7 in the arm could be released, and the nerve retain a blood
8 supply, without which he would have died. And plus, we had to
9 stop the bleeding in the area.

10 Q At that time, sir, was there a substantial amount of
11 bleeding from the area?

12 A Yes, there was. Not life threatening, but it was a
13 substantial amount of bleeding.

14 Q And I take it your goal in this surgery being
15 performed was to save the arm itself, and the function of the
16 arm; is that correct?

17 A Correct

18 Q Was the surgery successful?

19 A Yes, it was.

20 Q Was there any further procedure that needed to be
21 done thereafter with regard to the injury to the arm?

22 A Yes. He needed several procedures. He needed a skin
23 graft, eventually, to close the opening created by the
24 fasciotomy, because it wouldn't have closed itself because of
25 the swelling.

1 And subsequently, down the line elsewhere, he needed
2 surgery to the nerve to restore function to the medial nerve
3 because the bullet itself had damaged the nerve.

4 Q And now, you said down the line. This was all down
5 after his initial hospitalization?

6 A Yes, he was discharged. And then, when the local
7 area healed, he had this done elsewhere.

8 Q Was there anything that he needed to do to maintain
9 the -- his health, with regard to that wound after he was
10 discharged?

11 A Yeah. He had an extensive period when the wound was
12 open, and before we grafted it, where we had the wound under
13 suction and a vacuum dressing, which required repeated
14 redressing and revisits. It sort of a torturous, meticulous
15 process, but Hermann persisted, and we kept after him, and
16 eventually had the wound strung down so we can put in a
17 relatively small skin graft.

18 Q The purpose of that was to combat infection, and
19 allow the skin graft to be made?

20 A Right. The surgery to repair the nerve could not be
21 done with him in the acute condition. You never do it in
22 those circumstances.

23 But one would have to wait until you had a normal
24 skin covering so the whole area can be kept sterile with
25 antiseptic, and do the nerve surgery in a sterile field which

1 is impossible if the wound is still open.

2 Q Just generally, in this type of injury, was there
3 also a requirement that there was some type of pain management
4 given to Officer Yan with regard to this injury?

5 A Yeah, which he needed. We didn't mention it, but he
6 had a blunt injury to the chest where a bullet had struck his
7 bulletproof vest. And from that, and the arm nerve injury, he
8 had significant pain and needed various types of pain
9 management as an inpatient and outpatient.

10 Q Let's talk about the injury to the chest.

11 Can you describe that a little bit further, sir?

12 A It was in an area of the chest that we call, in
13 trauma language, the box, which is the silhouette drawn on the
14 chest wall of where the heart is inside the chest.

15 So that if the bullet had penetrated the vest, or he
16 not been wearing a vest, he probably would have died on the
17 scene.

18 Q From a gunshot wound to the heart.

19 A By a gunshot wound to the heart, and blood vessels
20 nearby.

21 Q What sort of impact was there from the bullet to the
22 vest?

23 A Blunt trauma. Same thing like if you had been hit
24 with a baseball bat to the chest.

25 Q And the appearance of it was what, sir?

1 A It was a bad bruise. In technical language,
2 ecchymosis.

3 Q But not life threatening in and of itself?

4 A No. Could have been if those things are -- you
5 know -- it is luck of the draw. The fact is, that could have
6 created a bruise to the heart, which could have been life
7 threatening. It didn't. In this case he was lucky.

8 Q And you talked about what his prognosis was upon
9 discharge, and the further procedures he had to undergo; is
10 that correct?

11 A Well, he had one. I didn't talk about it, but he did
12 undergo corrective surgery, and he recovered merely all the
13 function of that arm.

14 Q But not completely?

15 A Virtually complete. Maybe not perfect, but pretty
16 good.

17 Q Sir, let's talk about Officer Timoshenko.

18 What other injuries did Officer Timoshenko have upon
19 presentment to Kings County Hospital?

20 A He had two bullet entry wounds, one in the right
21 upper lip, and one at the base of the left nostril which went
22 right through the upper part of the mouth, what we call the
23 oral phalanx, and to the back of the throat.

24 Now, you couldn't see until he was CAT Scanned where
25 those bullets were.

1 Q When he was CAT Scanned, where were those bullets
2 located, sir?

3 A Well, the key one had transected his spinal cord.

4 Q Transected, meaning?

5 A Cut in half his spinal cord, severed completely into
6 two parts. The spinal cord, right at the base of the brain, at
7 the cervical one, or cervical two level, first and second
8 vertebrae, at the upper part of the neck where the neck joins
9 the head. So, his spinal cord was completely disconnected
10 from his brain, and his brain from his body.

11 Q And I think you already testified, sir, that even
12 before you arrived at the hospital, Officer Timoshenko had to
13 undergo some surgical procedure; is that correct?

14 A Yes.

15 Q Can you describe what that surgical procedure was,
16 and the necessity for doing it?

17 A It is called a cricothyroidotomy. And it involved,
18 using a couple of the obvious landmarks in the neck, like just
19 below the Adams apple and the cricoid cartilage, just above
20 that where there is a soft spot where you can make an incision
21 in the airway with a 11 inch scalpel.

22 With his spinal cord disconnected from the brain, his
23 body was not getting the message to breathe, and he had not
24 been breathing since he was hit by that bullet.

25 Q Sir, what is the general prognosis for somebody who

1 has had that sort of injury, and the lack of breathing before
2 the surgical procedure?

3 A Most people with that injury would have just died
4 right at the spot, at the scene.

5 Q Officer Timoshenko did not die at the scene?

6 A He did not die because he was rescued while the dying
7 process was underway, basically.

8 Q Sir, when you evaluated the injuries to Officer
9 Timoshenko what, if any, prognosis did you foresee at that
10 time?

11 A Well, because of the acuity of the situation, neither
12 we nor anyone could have done a formal brain death
13 determination. But I have seen enough of this to know, and I
14 told both the Police Commissioner, and the Mayor at the time,
15 that it was highly unlikely that he would survive, and very
16 likely he was brain dead at the very minute, although we had
17 no way of proving it yet.

18 Q Sir, what, if any, procedures were done with regard
19 to Officer Timoshenko in the hours and days following his
20 initial admission to Kings County Hospital?

21 A He had a number of those procedures.

22 For one thing, we had no way of knowing it before we
23 operated, but I had to take him to the operating room to
24 relieve a compartment syndrome of the abdomen, same thing as
25 with the arm. Massive amounts of blood and resuscitation fluid

1 had caused enough swelling of the organs, in his abdomen
2 pressure was such that very little blood was getting back to
3 his heart. And that was making his shock from the spinal cord
4 injury, and blood loss worse.

5 In addition, he was bleeding copiously from the
6 arteries in the back of the throat and in the nose. And,
7 eventually, that bleeding amounted to about 20 units of blood
8 loss. There is about 10 units of blood in a normal size human
9 being like Officer Timoshenko. So, he had his blood supply
10 changed twice over because of the bleeding of these regions.

11 The most -- even the quickest way to cure that is to
12 have what he had interventional radiology. Wherein, the
13 radiologist outlines the blood vessels on the screen by
14 putting dye in them, seeing where the blood with the dye in it
15 leaks out the blood vessels, and put in a sealing in the blood
16 vessels. And that was done successfully.

17 However, he had a cardiac arrest in and around that
18 time, and we had to do cardiac massage, and we did resuscitate
19 his heart.

20 Q Cardiac arrest being, his heart stopped?

21 A His heart stopped.

22 Then we brought him to the operating room. Opened
23 his abdomen for the compartment syndrome, drained his fluid
24 out, left the abdomen open so the fluid could drain out.

25 And I converted his emergency airway

1 cricothyroidotomy to a standard tracheotomy, which is a safer
2 type of tube to leave him with.

3 Q Sir, after these procedures, what was done to
4 maintain Officer Timoshenko's life function, at that time?

5 A A number of things. He had to remain on a ventilator
6 because he was totally paralyzed, had no ability to breathe.

7 He had to receive fluid infusions. He needed more
8 blood, part of the 20 units to catch up.

9 And, he needed pressors, medication drugs, two
10 different types to keep his blood pressure up to a level where
11 the force of the blood pumping around the arteries was
12 sufficient to supply oxygen to his brain and other parts of
13 his body.

14 Q Sir, did there come a time, eventually, when Officer
15 Timoshenko's condition was stabilized to where he was not in
16 immediate danger of dying?

17 A I wouldn't say stabilize, but he was more stable a
18 couple days after those events then he was at the time. I
19 mean, he came in, basically, very early Monday morning,
20 finished with the surgery by 11 or 12 Monday noon. And then I
21 would say about Tuesday -- well, he was still not so stable on
22 Tuesday -- but, I believe Wednesday it looked as if we had him
23 in a condition such that we could do a brain death
24 determination.

25 Q Tell the jury what is meant by a brain death

1 determination.

2 A Brain death determination tells you that the brain is
3 not functioning at all. That it lost its blood supply, or lost
4 its oxygen, and that it's never going to revive.

5 And in New York, as in all other jurisdictions, in
6 this injury, brain death is the legal equivalent of cardiac
7 death.

8 Q Did you make a determination as to the brain function
9 of Officer Timoshenko?

10 A Yes, I did.

11 Q And what were the results?

12 A The results, after two full clinical examinations
13 aided by an angiogram to make things crystal clear, we sent
14 dye to the brain to see if there was circulation or not, was
15 that he was brain dead.

16 Q When that determination had been made, sir -- and I
17 guess we are going to talk about what happened on the 14th of
18 July the Saturday, what, if anything, was done with regard to
19 Officer Timoshenko at that time, sir?

20 A When the determination was made, and we had made the
21 results known to his parents, the time came when we
22 disconnected the ventilator.

23 Q At that point, did Officer Timoshenko pass on?

24 A Well, he passed on at the time of the second brain
25 death determination.

1 Q I guess we are talking about the cardiac?

2 A The cardiac death would have occurred within minutes,
3 or the cardiac stoppage function would have been minutes after
4 we disconnected the ventilator. But, he was already
5 pronounced dead by that time.

6 Q And you had determined, by all the testing, his brain
7 could not sustain his biological life at that point; is that
8 correct?

9 A It is not just an opinion, it is a protocol, and to
10 determine the presence or absence of brain function. I did
11 one of them, the other was done by the neurologist too. We
12 have two separate teams, doing separate examinations at least
13 12 hours apart, concurring.

14 And then, adding to that, we did the imaging studies
15 in which the angiogram showed no dye going to the brain.

16 Q I didn't ask Doctor, but during the entire period
17 that Officer Timoshenko was at Kings County Hospital before
18 his death, he was never conscious; was he?

19 A No, sir.

20 Q Thank you, Doctor.

21 MR. HALE: I don't have any further questions.

22 THE COURT: Any cross-examination?

23 MR. MEGARO: No, your Honor.

24 THE COURT: Doctor, thank you very much.

25 THE WITNESS: Thank you, sir.

1 (Whereupon, the witness is excused.)

2 THE COURT: You have one additional witness?

3 MS. NICOLAZZI: Yes. People call Police Officer
4 Gerbasi.

5 P O M I C H A E L G E R B A S I, called as a witness on
6 behalf of the People, having been first duly sworn, was
7 examined and testified as follows:

8 THE CLERK: State your name, spell your last
9 name. Shield and command.

10 THE WITNESS: Police Officer Michael Gerbasi.
11 Last name G-E-R-B-A-S-I.

12 Shield number 20502. From Highway Unit One.

13 THE CLERK: Thank you.

14 THE COURT: You may inquire.

15 MS. NICOLAZZI: Thank you.

16 DIRECT EXAMINATION

17 BY MS. NICOLAZZI:

18 Q Good morning, Officer Gerbasi.

19 A Good morning.

20 Q How long have you been a police officer employed by
21 the New York City Police Department?

22 A Ten and a half years.

23 Q How long have you been assigned to the Highway
24 Division?

25 A Four years.

1 Q And what are your basic duties and responsibilities
2 within your assignment at the Highway Division?

3 A To patrol the highways of New York City. And Highway
4 One does the Bronx County, and Manhattan.

5 Q I am going to direct your attention back to the date,
6 or the early morning hours of July 9th of 2007.

7 Did you work on that day?

8 A Yes, I did.

9 Q And were you requested to respond over to the
10 vicinity of the Crown Heights area, here in Brooklyn, Kings
11 County, due to an incident involving the shooting of two New
12 York City police officers?

13 A Yes, I was..

14 Q And what was the assignment, or basic function that
15 you were asked to perform?

16 A To canvass the area of the crime scene.

17 Q And how did you go about doing that?

18 A Inside my patrol vehicle.

19 Q Now the patrol vehicle that you were traveling in on
20 that date, was that a marked patrol car?

21 A Yes, it was.

22 Q Is it different, in any way, from the -- I guess what
23 people would think of as the normal NYPD cars, the blue and
24 white cars with the turret lights on top?

25 A It is also equipped with a piece of equipment called

1 a license plate reader.

2 Q If you can explain to the members of the jury what a
3 license plate reader is?

4 A It is a device that automatically detects license
5 plates on vehicles, or reflective material. And a license
6 plate is reflected. It detects the digits on the plate, takes
7 those digits, and runs it into the computer of the vehicle.
8 And if that vehicle happens to be wanted, it will notify the
9 operator of the vehicle, of the police vehicle. And if it is
10 not, it just stores it in the computer.

11 Q Where is that police equipment, plate reader, affixed
12 in your patrol car so that it is able to capture the license
13 plate images, as you just described?

14 A There are two cameras on the roof of the vehicle.

15 Q Now, when you are saying it is capturing images of
16 license plates, is that something you are doing manually, or
17 happening automatically as you are travelling in the car?

18 A It happens automatically.

19 Q So, is it just by virtue of capturing the reflective
20 image of the license plate, that then the plate reader
21 automatically scans the image, or catches the image of that
22 license plate?

23 A That is correct.

24 Q Now you said that if that plate, when it is run
25 through the computer, if that plate is wanted in some fashion,

1 that it automatically notifies you.

2 What if it is not, at that time?

3 A It stores the information that it read. And then
4 that information gets uploaded into a main frame computer in
5 the police department.

6 If a plate is specifically in question, it would be
7 inquired in that fashion.

8 Q So then, if a particular license plate, if that
9 information, both by State and the actual digits and letters
10 on a license plate are input into the computer main frame,
11 then, if that image had ever been captured by the plate
12 reader, you will be able to pull that up?

13 A Yes.

14 Q And were you within the vicinity of where the
15 officers had been shot in the early morning hours, around the
16 hour, about 6:00 in the morning on July 9th of 2007?

17 A Yes, I was.

18 Q And what was the specific mobile unit, or number of
19 your highway patrol car on that morning?

20 A It was 2822, Highway One car.

21 Q I am going to ask you to take a look at an item,
22 which is two sheets stapled together, premarked as People's
23 number 44.

24 (Handing.)

25 And do you recognize what those items are, those two

*Search 2
follow*

1 items that are attached to one another, generally, Officer
2 Gerbasi?

3 A Yes, I do.

4 Q What are they, generally?

5 A The first page is a photograph of New York State
6 license plate. This is what the image would be showing on the
7 computer inside the vehicle as it captures the image.

8 And the second page is a picture of a map. This
9 would be what is retrieved from the main frame computer
10 showing the actual location where that license plate is
11 captured.

12 Q That is my next question then.

13 Once a license plate is inputted into the main frame,
14 what is the actual information that the computer generates
15 back, if that license plate had ever been captured?

16 A It shows the exact location where that plate was
17 captured, known as a GPS location. And it would actually give
18 the cross streets of the location that it was given at.

19 Q So, it generates the map. And does it also give you
20 the actual photographic image of the particular plate that was
21 captured at that locale?

22 A Yes, it does.

23 Q And the address, or streets shown as People's number
24 44, were you in that area, in that vicinity in the early
25 morning hours, about six, I think it says 6:07 a.m., on

1 July 9th of 2007?

2 A Yes, I was.

3 MS. NICOLAZZI: I would offer that into
4 evidence, subject to connection.

5 THE COURT: Any objection?

6 MR. MEGARO: No objection.

7 THE COURT: Okay. Request it be shown on the
8 monitor at all?

9 MS. NICOLAZZI: Then in for all purposes, your
10 Honor.

11 THE COURT: Very well.

12 (People's 44, marked in evidence.)

13 License plate image and map

14 Q I'll blow this up in a moment, Officer Gerbasi.

15 If you can tell the members of the jury first, just
16 generally, what is the type of information recorded in this
17 upper portion where I am circling with the red pen?

18 A On the top left, as you can see, it says a date and
19 time that the image was captured.

20 THE COURT: If you will, sir, just step down to
21 the microphone where the image is.

22 THE WITNESS: Sure.

23 A From left to right it is stating the date and time,
24 July 9th of 2007 at 6:07 a.m.

25 Then it gives the plate number that was detected,

1 which is DBP 4721. And mobile unit Highway One is the vehicle
2 that it was captured from. And within Highway One, there is
3 only one vehicle with that license plate reader, like I said
4 before is 2822.

5 Q Now, moving down under the information that is listed
6 on that printout.

7 What is the jury looking at there, which is the lower
8 portion of that same page?

9 A The actual photograph of the license plate that the
10 cameras had detected.

11 Q So, just by way of explanation of this page, so once
12 that specific license plate number which you just given the
13 digits on, beginning with the letters DBP, once that
14 information is inputted, this is what came out of the main
15 frame, both the actual photograph of the license, and the data
16 of where and when that image was captured?

17 A That is correct.

18 Q Then you said there is also a map generated by that
19 computer.

20 And, if you can explain that to the members of the
21 jury, specifically, what is circled in red?

22 A What is circled in red is exactly where the license
23 plate was captured by the vehicle that I was operating with
24 the license plate reader.

25 Q So here that would be Fenimore and Albany?

1 A That's correct.

2 Q And is it correct, by way of this GPS map, that
3 Kingston is this street running here?

4 A That is correct.

5 Q With Lefferts running perpendicular here?

6 A Correct.

7 Q You can have a seat, Officer Gerbasi.

8 MS. NICOLAZZI: I have nothing further for this
9 witness.

10 THE COURT: Any cross-examination?

11 MR. MEGARO: No thank you.

12 THE COURT: Thank you very much, sir.

13 THE WITNESS: Thank you.

14 (Whereupon, the witness is excused.)

15 THE COURT: Jurors, I am going to ask your
16 indulgence. We are going to take a break. We will be back
17 with you shortly.

18 Keep my warnings in mind.

19 Take the jury out, please.

20 (Jury exits the courtroom.)

21 THE COURT: All right, Mr. Megaro, take a look
22 at the exhibits and let me know when you are ready.

23 MR. MEGARO: I have, actually, your Honor.

24 It is 45.

25 MS. NICOLAZZI: The next witness is Detective

1 Newman, which is the BMW processing. So, I have shown Mr.
2 Megaro all the photographs. If you want to look at any of
3 the actual items, they are right here.

4 MR. MEGARO: Is that 73 and such?

5 MS. NICOLAZZI: I have not numbered them yet.

6 THE COURT: Why don't you talk to her, talk to
7 the People, and let me know when you are ready.

8 In the meantime, for the moment put the defendant in.
9 We are in recess for at least ten minutes, okay?

10 (Whereupon, a brief recess was taken.)

11 THE CLERK: Case on trial. All parties are
12 present.

13 THE COURT: All right. Both sides, before we
14 proceed, either side want to put anything on the record?

15 MS. NICOLAZZI: No, your Honor.

16 MR. MEGARO: No -- Judge, I am stipulating to
17 the photographs. And, I am not objecting to the
18 introduction of the other evidence.

19 THE COURT: But you have seen them?

20 MR. MEGARO: I had an opportunity to look them
21 over, spoke to my client about it, and we are fine.

22 THE COURT: Let's get the jury in.

23 MS. NICOLAZZI: Your Honor, just to try to
24 expedite it. There is a lot of photographs to go in, and
25 I will just approach and try to help Detective Newman get

1 them in.

2 MR. MEGARO: No problem.

3 THE COURT: Okay.

4 COURT OFFICER: Ready for the jury?

5 THE COURT: Bring them right in, please.

6 COURT OFFICER: Jury entering.

7 (Whereupon, the jury enters the courtroom, and
8 is seated in the jury box.)

9 THE CLERK: Case on trial. All parties are
10 present.

11 Both sides waive a reading of the roll of the jury?

12 MS. NICOLAZZI: Yes.

13 MR. MEGARO: Yes.

14 THE COURT: Witness.

15 MS. NICOLAZZI: People call Detective Karen
16 Newman.

17 D E T K A R E N N E W M A N, called as a witness on
18 behalf of the People, having been first duly sworn, was
19 examined and testified as follows:

20 THE CLERK: For the record, please state your
21 name, spell your last name. Shield number and command.

22 THE WITNESS: Detective Karen Newman.
23 N-E-W-M-A-N. Shield number 1339. Assigned to Crime Scene
24 Unit.

25 THE COURT: Thank you, Detective.

1 THE COURT: Detective, continue to speak into
2 the microphone.

3 You may inquire.

4 MS. NICOLAZZI: Thank you, your Honor.

5 DIRECT EXAMINATION

6 BY MS. NICOLAZZI:

7 Q Good morning, Detective Newman.

8 A Good morning.

9 Q How long have you been employed by the New York City
10 Police Department?

11 A 18 years.

12 Q How long have you been a detective?

13 A Eight.

14 Q How long have you been assigned as a member of the
15 Crime Scene Unit?

16 A Over five.

17 Q I am going to direct your attention to the early
18 morning hours of July 9th of 2007.

19 Did you work on that day?

20 A Yes.

21 Q Did you receive an assignment to respond to a
22 location, here in Kings County, with respect to the shooting
23 of two New York City police officers that occurred that
24 morning, soon after the hour of two a.m.?

25 A Yes.

1 Q When you received the notification, where were you
2 assigned to respond to initially?

3 A I don't remember the exact location, Kingston -- I
4 don't know the original location.

5 Q Were you originally asked to go to the specific
6 location where the officers had been shot, over at Rogers
7 Avenue?

8 A Yes.

9 Q Now, did you remain at that location?

10 A For a short time.

11 Q When you say, a short time, what, if anything,
12 happened that caused you to leave that initial scene of where
13 the shooting had taken place?

14 A I was directed to leave that scene.

15 Q And to go where?

16 A Kingston and Lefferts.

17 Q And what were you directed to go there to do?

18 A To process a vehicle.

19 Q And what type of vehicle is that?

20 A BMW.

21 Q Now, when you had originally been given the
22 assignment to process the actual scene of the shooting over on
23 Rogers Avenue, how far had you gotten, in terms of your work,
24 before you received the assignment to go to the next location
25 over on Kingston and Lefferts?

1 A I was only there for a short time. And I think we
2 just started, my partner and I started laying down evidence
3 markers.

4 Q Who was your partner on that day?

5 A Detective Robert Knapp.

6 Q Had you gone so far as to prepare diagrams, anything
7 at that initial scene?

8 A No.

9 Q When you went over to Kingston and Lefferts, what
10 time was it, approximately, that you began your work there?

11 A Approximately 4:15 a.m..

12 Q And if you can tell the members of the jury,
13 generally, what you did once you arrived there, and how you
14 went about processing that vehicle, first at the scene at
15 Kingston and Lefferts, where you first observed it?

16 A When myself and my partner first got to the scene,
17 there was crime scene tape up around the location.

18 We started photographing the scene. We did a diagram
19 of the scene. And began processing the vehicle there at the
20 scene.

21 Q What type of processing did you do there at the
22 scene?

23 A We, as well, photographed the car. We processed the
24 exterior of the vehicle for fingerprints. We started doing
25 some serology, collecting serology evidence.

1 Q Now, when you are saying process the area for latent
2 prints, and collecting serology evidence, just backing up for
3 a moment.

4 Do you have specialized training in those fields as
5 part of your work in the Crime Scene Unit?

6 A Yes, I have gone to training.

7 Q And how did you go about processing that vehicle, the
8 BMW, for the presence of any potential latent prints?

9 A That day we used white fingerprint powder on the
10 exterior of the entire vehicle.

11 Q And that was done at the same location that you
12 observed the car?

13 A That's correct.

14 Q And you said that you also processed the exterior of
15 that vehicle for any serology evidence.

16 Would that be referred to for any potential DNA?

17 A Yes.

18 Q How did you process the exterior of that vehicle for
19 potential DNA evidence?

20 A We used sterilized swabs, and sterilized water. And
21 we swab any area that might have potential contact DNA.

22 Q When you are talking about a swab, are you talking
23 about like a Q-tip type swab that you use to take a potential
24 sample from?

25 A Yes.

1 Q How do you do that with the sterilized water?

2 A The sterilized water, we remove it, put it into a
3 dropper. Or some of the water comes in with a small bottle
4 which has a dropper attached to it.

5 We open up each Q-tip -- I am going to call it
6 Q-tip -- we open up each single wrapped Q-tip, put one or two
7 drops of that water on that, the Q-tip, and run the Q-tip
8 along any surface that we think might carry DNA.

9 Q How are you dressed when you perform your work of
10 processing the scene?

11 A At the scene we were wearing PPE, which is a white
12 suite you see sometimes on TV. It has a hood, and gloves, and
13 booties.

14 Q Did you finish the remainder of your work with the
15 processing of that BMW at that same location outside where you
16 had observed it?

17 A No.

18 Q Where did you finish the remainder of your work?

19 A At the 61st Precinct.

20 Q What is -- what was the purpose in moving the BMW
21 from the location where you did some of the processing that
22 you just described, to the 61st Precinct to finish your work?

23 A Our normal procedure is to remove vehicles from the
24 street. Take them into a precinct garage where humidity and
25 temperature is more controlled for the chemicals we might use

1 during an investigation.

2 Q And how was the vehicle transported from the location
3 where you first observed it and began your work over on
4 Kingston near Lefferts, and taken over to the 61st Precinct?

5 A I believe it was on a tow truck.

6 Q And then, did you go over to the 61st Preinct,
7 continue and finish your work there?

8 A Yes.

9 Q And again, just generally, at this point, what did
10 that entail? What did you do once you were working on the
11 vehicle in the 61st Preinct garage?

12 A We photographed evidence that we recovered from the
13 interior of the vehicle. As well as processed the interior of
14 the vehicle for possible DNA and fingerprints.

15 Q Now, Detective Newman, you said that you photographed
16 the vehicle, both at the scene, and again at the 61st Preinct?

17 A Yes.

18 Q And the diagram that you prepared, was that prepared
19 where the vehicle was first observed by you?

20 A Yes.

21 Q I am going to ask you to take a look at items that
22 have already been marked People's 45, and these photographs
23 are chronologically, People's 46, going up and through
24 People's 58.

25 MS. NICOLAZZI: They have already all been shown

1 to defense counsel.

2 MR. MEGARO: Stipulated.

3 MS. NICOLAZZI: I offer them into evidence, your
4 Honor, all of them.

5 And if I may just approach with the witness to the
6 document camera?

7 THE COURT: Very well.

8 There is no objection to these exhibits going into
9 evidence; is that correct?

10 MR. MEGARO: No.

11 THE COURT: Just post them on the camera then.

12 (People's 45 - 58, marked in evidence.)

13 Photos

14 Q Detective Newman, I am going to ask you to bring your
15 documents with you. I am just going to ask you to come up to
16 the camera with me.

17 THE COURT: Keep your back to me. Speak into
18 the microphone.

19 THE WITNESS: Yes.

20 Q First, using the crime scene diagram that was
21 prepared by you and your partner, Detective Knapp, People's
22 number 45.

23 First, just generally, before I go into a close up
24 view, if you could, using the pen, to show the members of the
25 jury what it is that they are looking at, generally, both by

1 way of location, and what are the various items, generally, at
2 this point, that are located -- that are on that diagram?

3 A On this diagram is Lefferts Avenue, Kingston Avenue.

4 Q And where was the BMW when you first came into
5 contact with it?

6 A This is the BMW right here.

7 Q If you can just write BMW next to it in red?

8 (Witness complies.)

9 Q Now, Detective Newman, you said that there was
10 already a crime scene established when you arrived there.

11 What do you mean by that?

12 A That the area was roped off so that only police
13 personnel could enter that street.

14 Q Were you made aware, whether or not, any law
15 enforcement personnel had, either had anything to do with that
16 vehicle externally, or gone into it prior to your arriving
17 there and processing it?

18 A Yes?

19 Q And what was it that you were made aware of?

20 A K-9 unit had been there.

21 Q And that was before you had arrived there?

22 A Yes.

23 Q Now, with respect to the BMW. When you got there,
24 what was its condition, in terms of the engine and any keys?

25 A The key was in the ignition, the engine was running.

1 Q Now you said, just so it is clear, this is Kingston
2 here?

3 A Yes.

4 Q And this would be Lefferts?

5 A That's correct.

6 Q And we don't have to go through this now. But, what
7 is the information that is listed on this diagram here?

8 A Those are all the other vehicles, and any kind of
9 evidence that was recovered.

10 Q And would that be outside the BMW?

11 A Yes, outside of it.

12 Q Now, moving to the photographs -- and I will identify
13 them both by the People's exhibit number, and the crime scene
14 exhibit number.

15 So, the first one is People's 46, crime scene
16 photograph number five. What are the members of the jury
17 looking at there?

18 A What you are looking at is the interior front of the
19 BMW as viewed from the passenger side. And it is showing you
20 the operator seat front, and passenger seat front.

21 Q What is it that is shown here in the seat area; if
22 you know?

23 A Yes. Portions of the seat had been removed for use by
24 the K-9 unit.

25 Q And that was something that was done prior to you

1 getting there?

2 A Yes.

3 Q So that, basically, a piece that is cut out. So, we
4 are looking at white, some of the stuffing, or cushion of the
5 seat?

6 A That's correct.

7 Q As well as this photograph appears, as well as the
8 others, that's the way those items, and the vehicle itself
9 appeared when you observed it and began your work?

10 A Yes.

11 Q Would that also include the positioning of the seats
12 here, the passenger seat and the driver's seat?

13 A Yes.

14 Q And the key still being in the ignition?

15 A Yes.

16 MR. MEGARO: Is this 45 or 46?

17 MS. NICOLAZZI: People's 46, crime scene
18 photograph number five.

19 Q Now, moving to People's 47, crime scene photograph
20 number six. Just, again, what is that a picture of?

21 A That is a view of the interior front of the BMW as
22 viewed from the operator, or driver's front.

23 Q Just an opposite view?

24 A Opposite view.

25 Q Moving on to 48, crime scene photograph number seven.

1 A That's a photograph of the interior front passenger
2 compartment of the BMW from the driver's side.

3 Q And, again, here, where it is circled red, is that
4 the portion that had already been removed from the seat prior
5 to your arrival by K-9?

6 A Yes.

7 Q What about on the ground outside of the door there?

8 A That was evidence that we had recovered.

9 Q When you say evidence, what was that generally?

10 A It was a Popeye's box and chicken bones.

11 Q The way this appears here, both by the door, or the
12 items by the ground, the Popeye's box and chicken bones, is
13 that how those items appeared when you arrived?

14 A Yes.

15 Q Next, going to 49, which is crime scene photograph
16 number eight. What is that?

17 A That is a close up of the driver's front seat.

18 Q So then, the seat to the left of that photograph
19 would be the passenger front?

20 A Yes.

21 Q Now moving on to People's 50, which is photograph
22 number nine. What is that?

23 A That is a photograph of the Popeye's box that was
24 recovered on the ground outside of the front driver's door of
25 the BMW.

1 Q But now the door has been closed for the photograph?

2 A Yes.

3 Q People's 51, crime scene photograph number 12. What
4 is that?

5 A That is a ballistics impact mark, with an evidence
6 scale being held by my partner. And that damage was done to
7 the driver's side, rear passenger door.

8 Q Now, People's 52, which is crime scene photograph 14,
9 what is that?

10 A That is the window on the operator side, the rear
11 passenger door.

12 Q So that is the window, and the passenger side
13 directly behind the driver?

14 A Yes, the back seat.

15 Q Now, with respect to that vehicle, you said the
16 vehicle was transported from that location to the 61st Precinct
17 where you finished your work?

18 Was there anything done, by either you or your
19 partner, to preserve that window in the condition as it
20 appears there?

21 A Yes. We removed that window prior to the car being
22 taken to the 61st Precinct.

23 Q How is that done?

24 A We put cardboard backing, put it to the exterior of
25 the window. Use a cutout blade, cut it out, and push out the

1 window.

2 Q Is that done with the main window here, which is the
3 majority of the photograph?

4 A Yes.

5 Q And what about a portion of the triangular window,
6 smaller portion on that door?

7 A Same thing.

8 Q Were they sent to the lab section of the police
9 department for analysis?

10 A Yes.

11 Q Moving on to People's 53, crime scene photograph 15.
12 What is that?

13 A That is the trunk area of the vehicle with ballistic
14 damage to it. A scale being held up by my partner.

15 Q Trunk area, the license plate portion of which is
16 shown would be the back license plate?

17 A That's correct.

18 Q Now People's 54, crime scene photograph 17, what is
19 that?

20 A Those are all the items that were recovered in the
21 Popeye's box on the ground outside the operator's door, on the
22 ground of the BMW.

23 Q People's 55, crime scene number 18?

24 A That is an overall view of Kingston Avenue from
25 Lefferts, facing north. And that would be the BMW facing

1 towards us with the lights on.

2 Q Now, this seems to be, rather, some whitish in
3 appearance, or something on top of the vehicle?

4 A Yes.

5 Q What is that from; if you know?

6 A That would be the latent fingerprint powder.

7 Q Just, again, how is it conducted that it would leave
8 some type of white film, or dusting on the car?

9 A We processed the whole vehicle, and it does leave
10 white powder on the car.

11 Q This is People's 56, crime scene photograph number
12 20. What is in view there?

13 A That is the east sidewalk of Lefferts. No -- I'm
14 sorry --

15 Q Crime scene photograph 20?

16 A That's the east sidewalk of Kingston.

17 Q So where would the BMW be in relation to that
18 photograph?

19 A The BMW, if you are looking at that photograph the
20 way we are, would be more over to the left side.

21 Q More this way?

22 A Yes, that's correct.

23 Q Farther down?

24 A Farther down.

25 Q People's 57, crime scene photograph 22.

1 A That is a view of the BMW, which is to the right.
2 You can see in that photograph the crime scene tape. And that
3 is on Kingston. That photograph was taken heading south.

4 Q So this would be Lefferts, the cross street here?

5 A Yes, that's Lefferts.

6 Q And this is Kingston?

7 A That's Kingston.

8 Q Lastly of these photographs, People's 58, which is
9 crime scene photograph number 30. What is in view there?

10 A In view there is the interior compartment of the BMW
11 as viewed from the passenger front, into the operator's side
12 of the vehicle.

13 Q Now the key, as it appears here with the yellow tag,
14 is that how it appeared when you first observed it?

15 A Yes.

16 Q What is this that we can see part of the item here?

17 A Popeye's bag.

18 Q Now, in some of the photographs that bag is there,
19 and some it is not there.

20 Do you remember, when you first arrived there,
21 whether or not that bag was in that position, or whether it
22 had been placed there subsequently?

23 A I don't remember.

24 Q And, again, this is the portion of the seat that you
25 already described, that was removed prior to your arrival?

1 A Yes.

2 Q Now, these photographs which goes up to People's 58,
3 up through Crime Scene Unit number 30. Are those photographs
4 actually taken by you and your partner while still at the
5 scene at Kingston?

6 A Yes.

7 MS. NICOLAZZI: At this time, People's number 59
8 through 72, again, chronologically, I have already shown
9 to defense counsel.

10 MR. MEGARO: Stipulated.

11 MS. NICOLAZZI: And offering them into evidence.

12 THE COURT: All right. Marked and received in
13 evidence.

14 (People's 59 - 72, marked in evidence.)

15 Photos

16 Q Now, going to some of the photographs that were taken
17 while you did your work at the 61st Preinct garage.

18 People's 59, crime scene photograph 31. What is
19 viewed there? Or what is in view there?

20 A That is the ignition key to the BMW.

21 Q That is after it was taken from the car?

22 A Yes.

23 Q Now People's 60, crime scene photograph 34?

24 A That is the interior view of the rear passenger
25 seating, as viewed from the operator's side of the vehicle.

1 Q So, the way these seats are positioned, both the
2 front passenger seat and the front driver's seat there, are
3 they still in the same position as when you observed the car
4 on Kingston?

5 A Yes.

6 Q And what is this, Detective Newman, that is seen
7 here, and some of the seams of the seats, and down on the
8 floor, these particles?

9 A Those are pieces from the window, glass from the
10 shattering of the window.

11 Q These are small pieces, or shards of the glass?

12 A Yes.

13 Q And, again, what is shown here as the framing of the
14 license plate, and the Dole bottle, or juice bottle, these are
15 all as they appeared when you observed them?

16 A Yes.

17 Q People's number 61, which is crime scene photograph
18 35. What is in that photograph?

19 A That photograph, again, is of the interior of the
20 BMW, front passenger compartment, showing the front passenger
21 seat and the operator's seat.

22 Q And what about these items down here?

23 A They were collected into evidence. Popeye's chicken,
24 Dole juice, and Popeye's bag, plastic.

25 Q Now, People's number 62, crime scene photograph 36.

1 What is in view here?

2 A That is another view of the interior of the BMW
3 passenger compartment, focusing on the rear passenger seating
4 as viewed from the passenger side of the vehicle.

5 Q So, it is the back seat again, now taken from the
6 other side of the car?

7 A That's correct.

8 Q People's 63, which is crime scene photograph 39?

9 A This would be a view of the operator's front seat
10 floorboard.

11 Q 64, which is crime scene photograph number 40. What
12 is that?

13 A That is a view of ballistic evidence that we
14 recovered in the back seat of the vehicle, behind the
15 operator.

16 Q Now, you are saying ballistic evidence. You are
17 talking these two items here at the edge of the mat?

18 A Yes.

19 Q And this?

20 A The napkin.

21 Q Those were recovered as well?

22 A Yes.

23 Q People's 65, crime scene photograph number 42.

24 A That is ballistic evidence that was also found in the
25 rear passenger seating. Except, this was on the passenger

1 side.

2 Q You are talking about this item here on the ground?

3 A Yes.

4 Q People's 66, which is crime scene photograph 43.

5 A In this photograph, although it is hard to see, is
6 another piece of ballistic evidence that was recovered in the
7 rear passenger seating, on the passenger side.

8 Q Would that be what is basically wedged here under a
9 portion of the mat?

10 A That's correct.

11 Q And how is the area being illuminated for this
12 photograph?

13 A Flashlight was used.

14 Q People's number 67, crime scene photograph 50. What
15 is that?

16 A That is a close up of the passenger's front seat, the
17 rear of. It is a pocket that is accessible to the rear
18 passenger.

19 So, if you are sitting in the back seat of the car,
20 and you are on the passenger side, that pocket is on the back
21 of the front seat.

22 Q And what is that item that is being shown there with
23 the gloved hand pulling open that pocket?

24 A That was more ballistic evidence that we recovered.

25 Q And what type of ballistic evidence were they, shell

1 casings, live rounds, what were those, generally?

2 A We can call them live rounds, cartridges.

3 Q And they were as shown here in the ziplock bag?

4 A Yes.

5 Q So, basically, unfired bullets, or bullets not yet
6 fired?

7 A Yes.

8 Q People's 68, crime scene photograph 54. What is shown
9 there?

10 A That is another piece of ballistic evidence. That was
11 recovered in the front passenger area, underneath the mat.
12 And that is a live bullet, an unfired.

13 Q And that is here?

14 A Yes.

15 Q You are saying it was underneath the mat.

16 Would that be this mat that is flipped back?

17 A That's correct, folded back.

18 Q People's number 69, crime scene photograph 59?

19 A That is an exterior view of the BMW operator's side,
20 rear passenger compartment with a ballistics rod.

21 Q If you could, I guess with the pen, circle the
22 ballistics rod, so maybe it would be a little more clear.

23 (Witness complies.)

24 Q Now, first of all, Detective Newman, that window, is
25 that after you and your partner have already removed the

1 glass, as you indicated, prior to being removed to the 61st
2 Precinct garage?

3 A Yes.

4 Q When you say that is a ballistics rod, what is the
5 purpose of placing that yellow rod there for?

6 A We use ballistics rods in crime scenes to try and get
7 an approximation of the trajectory area in which the gun, or
8 the weapon was being fired.

9 So the ballistic rod is placed inside of a ballistic
10 impact mark, or bullet hole.

11 Q People's number 70, crime scene photograph 60. What
12 is in view there?

13 A This is just another view of the photograph before.
14 Except, this view is taken from the passenger side front seat,
15 showing you that ballistic rod in place in the bullet hole.

16 Q So, the bullet hole would be right here in the
17 interior of this door, close to the window frame?

18 A Yes.

19 Q And -- so, basically, am I correct to say, the
20 purpose of that ballistic rod is to help determine the angle
21 that the gun, or muzzle of the gun when the bullet was fired?

22 A Yes.

23 Q Moving on to 71, crime scene photograph number 41.
24 What is pictured there?

25 A That is another piece of ballistics evidence that was

1 recovered in the rear seat of the passenger compartment of the
2 BMW.

3 Q When you are saying ballistics evidence, that shell
4 casing here?

5 A Yes, that is a shell casing.

6 Q Lastly of the photographs, now 72, People's 72, which
7 is crime scene photograph 65. What is that?

8 A That is the rear passenger door, operator's side,
9 with two ballistics rods showing. Two separate bullet holes.

10 Q Now, when you are saying -- if you can just, again,
11 circle the ballistic rod?

12 (Witness complies.)

13 Q And was there another one there as well? You did
14 both, sorry.

15 So when you are saying two, is that two separate
16 bullet holes that then the rods were placed inside to help
17 determine angles?

18 A Yes.

19 Q And this would be in the, I guess, the metal frame
20 partitioning, the left side passenger rear door, behind the
21 driver, between the rectangular and triangle window?

22 A Yes.

23 Q What is this here, the black object?

24 A That was the window screen.

25 Q Detective Newman, you can have a seat.

1 So, I'm going to ask you now, and I am going to try
2 and compartment it by type of work that you did, to try and
3 lend a little sense of all the work you did there.

4 First, I am going to talk to you about some of the
5 ballistics items, or piece of ballistics items that you
6 removed.

7 I am going to ask you if you can go through the
8 various pieces of ballistics evidence that you observed and
9 removed, and if you can identify them, starting with whatever
10 you numbered them as, and where you recovered them from.

11 THE COURT: Look at your notes.

12 THE WITNESS: Thank you.

13 Q And also, indicating any voucher numbers that these
14 items were vouchered under, if applicable.

15 So, first of all, Detective Newman, when you
16 recovered each item of ballistics evidence, how did you
17 catalog them, by way of markings or numbers?

18 A I marked each one starting with a B for ballistics,
19 and numerically from there on, one through nine.

20 Q Starting with B1, if you can tell us what that item
21 was, where you recovered it from?

22 A B1 was a discharged .9mm shell that was recovered
23 inside the BMW on the rear passenger floor, behind the
24 operator seat.

25 Q For example, when you determine that that was a .9mm

1 shell, how did you determine that it was a .9mm shell, as
2 opposed to a different caliber?

3 A It is stamped on the base.

4 Q And is the make also stamped?

5 A Yes.

6 Q And what type was that?

7 A RP.

8 Q And?

9 A .9mm Luger.

10 Q And the manufacturer?

11 A Luger.

12 Q If you can, just go right through starting with B2.
13 And you said it goes to B9.

14 A B2 was also RP .9mm Luger discharged shell recovered
15 inside the BMW on the rear passenger floor, behind the
16 operator's seat.

17 B3 was also RP .9mm Luger discharge shell recovered
18 inside the BMW rear passenger seat, operator's side.

19 B4 WIN .9mm Luger discharge shell, also recovered
20 inside the BMW rear passenger seat, passenger side, underneath
21 the floor mat.

22 B5 WIN .9mm Luger discharge shell recovered inside
23 the BMW rear passenger seat, passenger side, on the floor.

24 B6 was a total of nine WIN .9mm Luger cartridges,
25 which were recovered inside two mini zip loc baggies, inside

1 the pocket behind the front passenger seat.

2 B7 WIN .9mm Luger cartridge that was found on the
3 front passenger floor, underneath the floor mat.

4 B8 was one deformed bullet which was recovered inside
5 the BMW in the door window post, rear passenger side,
6 operator's side of the vehicle.

7 And B9 was another deformed bullet that was recovered
8 from the trunk.

9 Q And what were those items, B1 through B9, what was
10 the voucher number assigned to those items?

11 A The voucher number was N, as in Nora, 737352.

12 MR. NICOLAZZI: I am going to ask the witness to
13 take a look at what's being marked as 73 collectively, two
14 white envelopes previously shown to defense counsel.

15 MR. MEGARO: Okay.

16 (Handing.)

17 Q Now, Detective Newman, prior to your testimony here
18 today, have you the opportunity to look within those envelopes
19 to see what is inside before you testified today?

20 A No.

21 Q At another time?

22 A Yes.

23 Q And, again, if you could just take a look in there
24 now?

25 I know that you had the opportunity to look within

1 both envelopes. Do those items, are they the items that you
2 recovered, that you just testified to, the various pieces of
3 ballistic evidence, numbers B1 through B9, both the shell
4 casings and the live cartridges?

5 A Yes.

6 Q Once those items were collected by you and vouchered,
7 were they sent to the firearm analysis section to be tested
8 and analyzed?

9 A Yes.

10 MS. NICOLAZZI: I offer those into evidence,
11 collectively, as People's 73.

12 MR. MEGARO: No objection.

13 THE COURT: Marked and received.

14 (People's 73, marked in evidence.)

15 Ballistics

16 Q Now, Detective Newman, you told the members of the
17 jury, that while you were still out at the scene at Kingston
18 and Lefferts, you swabbed various areas of the vehicle for any
19 potential DNA evidence.

20 Did you do any further work in that same area, once
21 you were at the 61st Preinct garage?

22 A Yes.

23 Q Generally, what did you do with respect to that?

24 A We processed most of the interior parts of the car
25 which may contain contact DNA.

1 Q Was that done by the same method, or different method
2 that you would use initially out at the scene?

3 A Same method.

4 Q That would be, again, the sterile water. And, for
5 lack of a better word, Q-tip, that then swabs various areas?

6 A Yes.

7 Q Are both those items that you took, both from the
8 scene and at the 61st Preinct garage, did you, together with
9 your partner, voucher those items, and were they sent off to
10 be tested by the lab?

11 A Yes.

12 Q Now, how -- who packaged these items in general?

13 A I packaged them myself, and my partner. We packaged
14 them. I packaged them.

15 Q And when you actually packaged the item what, if
16 anything, did you do to maintain those items in the same
17 position?

18 A After we put the items in packaging, it is sealed
19 with crime scene tape, initialed with that tape, and
20 transported to whatever lab it has to go to.

21 Q I am going to ask you to go through, now, any
22 potential biological evidence, or potential DNA evidence you
23 recovered. Again, by way of any markings that you designated
24 any item. And then telling us where you recovered those items
25 from.

1 THE COURT: Let's take a break.

2 COURT OFFICER: Jurors follow me.

3 (Jury exits the courtroom.)

4 THE COURT: Five minutes.

5 Detective, you can step outside. Just don't discuss
6 your testimony.

7 (Whereupon, the witness steps down from the
8 witness stand.)

9 (Whereupon, a brief recess was taken.)

10 COURT OFFICER: Jurors entering.

11 (Whereupon, the jury enters the courtroom, and
12 is seated in the jury box.)

13 THE CLERK: Case on trial. All parties are
14 present.

15 Both sides waive a reading of the roll?

16 MS. NICOLAZZI: Yes.

17 MR. MEGARO: Yes.

18 THE COURT: Ladies and gentlemen, if anybody is
19 feeling drowsy, let us know. We will take a break, okay?

20 MS. NICOLAZZI: Thank you.

21 Q All right, Detective Newman, we will continue with
22 this marathon of evidence collection.

23 We left before the break at the point that I just
24 asked you if you would please go through what it was that you
25 collected by way of any biological evidence. Also indicating

1 to the members of the jury, not only where you recovered those
2 items from, but what numbers, or letters you designated each
3 item?

4 A Designation for the following items is K, for my
5 first name Karen, I for interior, and then S for serology. And
6 then it was given a number.

7 Q So, you are starting with K1S1?

8 A K1S1 is one eaten chicken bone that was recovered on
9 Kingston Avenue, outside of the front door of the BMW on the
10 ground. From that chicken bone we also did a swab for
11 possible DNA. And the designation for that evidence was K1S1
12 swab.

13 There was a second chicken bone also on the ground
14 that was given the designation K1S2. That was on the ground,
15 Kingston Avenue, near the operator front door. A swab was
16 taken of that chicken bone as well. The designation for that
17 swab was K1S2 swab.

18 There was another chicken bone that was recovered on
19 Kingston Avenue, also on the ground by the operator front
20 door. That third chicken bone was given the designation K1S3.
21 Swab was also taken from that chicken bone that was given the
22 designation K1S3 swab.

23 A fourth chicken bone was recovered that was given
24 the designation K1S4. That was also on the ground, Kingston
25 Avenue, near the front door of the BMW. That chicken bone was

1 also swabbed with a designation K1S4 swab.

2 Q Now, with respect to the chicken bones, the four that
3 you just testified about, did they appear to be uneaten --
4 excuse me -- eaten or untouched?

5 A Eaten.

6 Q Anything else in that series of potential biological
7 specimens?

8 A Yes.

9 Q Go ahead?

10 A From the box of Popeye's chicken, I took a swab for
11 any possible biological evidence. That swab was given the
12 designation K1S5 swab.

13 And there was a white napkin that was also recovered
14 with the Popeye's box. And that was given a designation K1S6.

15 Q And what were those -- withdrawn.

16 Were those items packaged, and subsequently vouchered
17 together to be sent to the lab for analysis?

18 A Yes.

19 Q What was the voucher number assigned to all those
20 items?

21 A N, as in Nora, 595649.

22 Q And would those items be the items contained -- what
23 I am handing up to you -- as People's 74?

24 MS. NICOLAZZI: I have already shown the various
25 items to defense counsel.

1 MR. MEGARO: No objection to People's 74, your
2 Honor.

3 THE COURT: Very well.

4 Q So, would those be the bones and swabs that you just
5 testified about?

6 A Yes.

7 MS. NICOLAZZI: Offer those in evidence as
8 People's 74.

9 (People's 74, marked in evidence.)

10 Chicken bones and swabs

11 Q Now, sticking with biological evidence.

12 Did you recover additional potential specimens?

13 A Yes.

14 Q Again, same procedure, going through what you
15 numbered or lettered those. And where you recovered them
16 from.

17 A For this next group the designation was just given S,
18 for serology, followed by a number.

19 S1 was one swab recovered from the rear license
20 plate, which was affixed to the BMW.

21 S2 is a swab which was, any possible DNA being
22 recovered from the front license plate that was affixed to the
23 BMW.

24 S3, another swab, possible biological specimen
25 recovered from the key that was in the ignition of the

1 vehicle.

2 S4 is another swab that was recovered from the
3 exterior door handle, operator front door of the BMW.

4 S5, a further swab recovered from the exterior door
5 handle of the BMW. This time on the passenger side, front of
6 the vehicle -- I'm sorry -- that was the passenger rear door
7 of the vehicle.

8 S6 was another swab, also taken from the exterior of
9 the vehicle passenger front door. The door handle.

10 S7 was another swab which was recovered from the
11 operator side rear door, exterior door handle of the BMW.

12 The next section of serology evidence that I
13 collected I designated as I for interior, S for serology, and
14 in numerical order they follow.

15 IS8 was one partially eaten biscuit. And one swab
16 from that biscuit that was recovered in the interior of the
17 BMW operator front floor.

18 IS9 was one swab which was recovered from a plastic
19 weapons bottle, which was found on the operator front floor of
20 the BMW.

21 IS10 is another swab recovered from the plastic Dole
22 bottle that was found on the rear passenger seat inside of the
23 BMW.

24 IS11, another swab that was taken from the Dole
25 bottle that was recovered on the passenger front floor inside

1 of the BMW.

2 IS12, another swab for possible biological specimen,
3 which was recovered from the interior door handle, the
4 operator front door.

5 IS13, another swab also recovered from an interior
6 door handle of the BMW. This time the passenger front door.

7 IS14, further swab also recovered from a door handle
8 inside of the vehicle, operator rear passenger door.

9 IS15, a further swab recovered from the interior door
10 handle of the BMW, the passenger rear door.

11 IS16 was one swab that was taken from the vehicle
12 steering wheel of the BMW.

13 IS17, a swab from the gear shift inside the BMW.

14 IS18, one swab taken of the stereo panel.

15 IS19, one swab that was taken from a key that was
16 recovered inside the center console of the vehicle.

17 And by the center console, I mean the part that is in
18 between the front seats, the driver's seat and the passenger
19 seat. And there is a console in between, a small glove
20 compartment, a key came out of there.

21 IS20 is another swab that was recovered from jewelry
22 that was also recovered in the center console portion of the
23 vehicle, in between the two front seats.

24 MR. MEGARO: I am sorry, what was the last one?

25 A IS20.

1 The designation for further biological evidence was
2 given K, for Karen my name, a number, and then an S for
3 serology.

4 KS7 was one swab that was recovered from a screw
5 driver that we found inside the glove compartment.

6 K4 was a box of Popeye's apple pie. And that was sent
7 for any kind of DNA, touched DNA on that.

8 K6S was three pieces of Popeye's fried chicken. They
9 were recovered from the interior of the vehicle passenger
10 front floor.

11 K9 was one brown cigar that was also recovered from
12 that center console.

13 Q Now, Detective Newman, all those various items ending
14 with the K9, beginning with S1, were they packaged by you,
15 sealed, and then sent together under the same voucher for
16 testing or analysis?

17 A Yes.

18 Q And what was the voucher number assigned to all those
19 tells?

20 A The voucher number was N, as in Nora, 737355.

21 Q Are those the items that are contained within
22 People's number 75, already shown to defense counsel?

23 (Handing.)

24 Q And on a previous occasion, Detective, have you had
25 an opportunity to look through there?

1 A Yes.

2 Q And are those items contained within that larger bag?

3 A Yes.

4 MS. NICOLAZZI: I offer those into evidence as
5 People's 75.

6 THE COURT: Any objection?

7 MR. MEGARO: No objection.

8 THE COURT: Marked and received.

9 (People's 75, marked in evidence.)

10 Food items

11 MS. NICOLAZZI: Your Honor, with all of these,
12 which are food items over two years, I will not open them.

13 Q Now, Detective Newman, now that we are finished with
14 the biological evidence.

15 Going to move now, were there any items that you
16 recovered for any potential gunshot residue evidence?

17 A Yes.

18 Q Just briefly, what do we mean by gunshot residue
19 evidence, or the potential of?

20 A Potential gunshot residue evidence is when you fire a
21 gun -- and I am sure you have seen it on television -- gas is
22 expelled after the firing the gun. And items that are in
23 contact with this, to make it simplified, can pick up some of
24 those elements from that gas. And they can be tested to see if
25 a gun was fired in that general vicinity.

1 So, anything that we feel is in the vicinity, and
2 possibly contain ballistics residue, would be sent for
3 testing.

4 Q And just, generally, what were the items that you
5 removed from the vehicle, and sent for potential gunshot
6 residue analysis?

7 A We did remove two interior door panels, and a door
8 post.

9 Q So, the actual panel of the door?

10 A Inside.

11 MS. NICOLAZZI: And, again, because of their
12 size, I am not going to offer those into evidence.

13 Q But, which doors were they that you searched?

14 A The front passenger, I believe, anterior door panel.
15 The rear seating operator's side interior door panel. And that
16 door post which had the ballistic rods.

17 Q And, was there any other items that you sent in for
18 potential gunshot residue analysis?

19 A We also sent in the window from that passenger rear
20 window driver's side that had ballistic damage to it as well.

21 Q Now, Detective Newman, did you also collect other
22 items from within that vehicle that you then packaged and
23 vouchered?

24 A Yes.

25 Q I am going to ask you, if you could go through what

1 those items are, please?

2 A Would you like me to start with chemical, latent
3 print evidence?

4 THE COURT: What I would really like you to do
5 is hold that until 2:15. We will break for lunch now.

6 Be back in the jury room 2:15.

7 Keep my warnings in mind, jurors.

8 (Jury exits the courtroom.)

9 THE COURT: Detective, enjoy your lunch. Don't
10 discuss your testimony.

11 Be back here 2:15, ready to proceed.

12 THE WITNESS: Thank you.

13 THE COURT: 2:15, counsel.

14 MS. NICOLAZZI: Thank you, your Honor.

15 MR. HALE: Thank you.

16 (Whereupon, a luncheon recess was held.)

17 (Whereupon, Phyllis Price is relieved by Monica
18 Walker-Bailey as the official court reporter.)

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NICOLAZZI - DIRECT - DET. NEWMAN

1 A F T E R N O O N S E S S I O N:

2 COURT CLERK: Case on trial. All parties are
3 present.

4 (Whereupon, the witness enters the courtroom
5 and takes the witness stand.)

6 THE COURT: Ms. Nicolazzi, after Detective
7 Newman, any other witnesses?

8 MS. NICOLAZZI: Yes, Detective Curry. If we
9 could take a break between the two.

10 THE COURT: Yes.

11 Bring them in.

12 COURT OFFICER: Jury is entering.

13 (Whereupon, the jury enters the courtroom.)

14 COURT CLERK: Case on trial. All parties are
15 present. Do both sides waive the reading of the roll?

16 MS. NICOLAZZI: Yes.

17 MR. MEGARO: Yes.

18 THE COURT: Good afternoon, folks.

19 Detective, you are still under oath. Please
20 proceed.

21 DIRECT EXAMINATION

22 BY MS. NICOLAZZI (Continued):

23 Q Good afternoon, Detective Newman.

24 The next thing I would like to talk to you about
25 is the recovery of the latent prints, or the work you did in

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1 latent print recovery. You already explained to the members
2 of the jury the process that you used when you examined the
3 outside of the vehicle for the presence of any latent
4 fingerprints. You said you also recovered various latent
5 prints from the inside. Did you use the same procedure when
6 you focused on the interior of the vehicle?

7 A No, on the interior of the vehicle, we used
8 cyanoacrylate fuming and then powder.

9 Q Just generally, if you could tell the members of
10 the jury what you mean by that procedure, and also is it
11 also commonly referred to as "super glue"?

12 A Yes.

13 Q And what is that procedure used on the inside of
14 the vehicle?

15 A With that procedure is you seal up the vehicle and
16 then you have your chemicals. The smoke that's an off
17 product of these chemicals reacting, adheres to what would
18 be left behind in a latent print, organical material, sweat,
19 that adheres to it, and then it dries like a glue would so
20 you have a permanent fixed print so then you could powder
21 and lift.

22 Q So, now, if you could please go through what
23 latent prints you recovered, indicating what designation you
24 gave each and where you recovered each from?

25 THE WITNESS: May I refer to my notes?

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1 THE COURT: Yes, ma'am, by all means.

2 (Whereupon, the witness peruses notes.)

3 A The latent prints that I recovered from the
4 exterior of the vehicle, using white powder, we recovered a
5 lift from the rear quarter-panel operating side of the BMW;
6 we recovered a latent print from the passenger front door
7 exterior of the vehicle; the rear passenger door window; the
8 passenger front door handle; rear passenger door window; the
9 rear operator door handle; the rear operator door below the
10 window; the operator exterior door handle; rear window; the
11 operator front door at the window; passenger rear door
12 triangle window; operator front door below the handle; above
13 the handle; the rear license plate, and the front license
14 plate we also recovered latent prints using black latent
15 print powder and cyanoacrylate fuming.

16 Q Were those brought into the Latent Print Section
17 for analysis?

18 A Yes.

19 Q How is that done physically? Once you are able to
20 lift a print, how is it then submitted to the Latent Print
21 Unit?

22 A By lifting a print, we use tape; it almost looks
23 like Scotch tape, if you will, but it is a little bit
24 bigger. You press that down on the print and lift it up,
25 and now you have your print. That gets affixed to either a

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1 black or white card. Black, if we are using that white
2 powder, and vice versa. Once we attach it, the back of the
3 card has spaces for me to fill out with my name, Crime Scene
4 run number, and I draw a diagram of where that lift was
5 recovered.

6 Q And did you do that with each print that you
7 recovered in this case that you just testified to?

8 A Yes.

9 Q So, it would be attached to a card that you would
10 have made a diagram or a drawing of specifically where, what
11 prints or where that print was recovered from?

12 A Yes.

13 Q Did you also lift any latent prints from any of
14 the items that you had recovered?

15 A We sent the items down for chemical.

16 Q And what were those items that you sent down?

17 A For chemical latent print enhancement, I sent down
18 designated K, for Karen, number 1, was the box of Popeye's
19 Chicken and Biscuit that was recovered on the ground outside
20 the vehicle; I also sent down a Popeye's box of sliced apple
21 pie that was recovered inside the vehicle, designated K, as
22 in Karen, 4; one white plastic bag that was recovered inside
23 the BMW on the passenger front floor, designated, K5; one
24 Popeye's Chicken and Biscuit box that was recovered inside
25 the vehicle on the passenger front floor, designated K6; one

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1 screwdriver that was recovered inside the glove compartment
2 of the BMW, designated K7; DMV sticker, which was recovered
3 from the front windshield, designated K8; K9 was a book of
4 matches recovered inside the console; the two ziplock
5 baggies, designated as B, as in boy, 6L, as in Larry, which
6 had ballistic evidence inside of it was also sent down.

7 Q And are those the items contained in this exhibit
8 that are being handed up to you, premarked for
9 identification People's Number 76 (handing)?

10 MS. NICOLAZZI: I already showed it to
11 defense.

12 MR. MEGARO: No objection to this, your
13 Honor.

14 MS. NICOLAZZI: I offer it into evidence as
15 People's 76.

16 THE COURT: The items you just testified to
17 are contained in that exhibit, ma'am.

18 THE WITNESS: Yes.

19 MS. NICOLAZZI: K1 through B6L?

20 THE WITNESS: Yes.

21 THE COURT: Marked and received into
22 evidence.

23 (Whereupon, the aforementioned Items were
24 entered into evidence as People's Exhibits K1
25 through B6L, as of this date.)

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1 MS. NICOLAZZI: Thank you.

2 Q Lastly, with respect to your processing at that
3 time, did you also take various items for or collect various
4 items and catalog them as investigatory evidence?

5 A Yes.

6 Q And what were those items and from where?

7 A The investigatory evidence that I recovered was
8 the license plate, both front and back, which were recovered
9 from the BMW; one plastic Dole bottle that was recovered
10 from the rear passenger's seat; jewelry, namely two
11 necklaces, that were recovered from the console; 7-11 store
12 receipt; plastic Schweppes bottle; plastic Dole bottle, and
13 a Toyota ignition key that was recovered inside the vehicle.

14 Q And where was the jewelry and the Toyota key
15 recovered from?

16 A They were recovered from the console that
17 separates the two front seats.

18 MS. NICOLAZZI: If the witness could be
19 handed up these four items, which will be People's 77
20 for identification, 78 and 79, which are items in two
21 white boxes, and 80 (handing).

22 Q First beginning with 77, if you could just take a
23 look at that and tell us what that is?

24 A Seventy-seven is the Dole, a Schweppes bottle,
25 another Dole bottle.

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1 Q The items you just testified to that you
2 recovered?

3 A Yes.

4 Q Moving on to 78 and 79, to the two white boxes?

5 A Yes.

6 Q What is contained within those items or those
7 boxes?

8 A License plates to the vehicle.

9 Q And then, lastly, 80?

10 A The box of Popeye's Chicken.

11 MS. NICOLAZZI: I offer those into evidence.

12 MR. MEGARO: Without objection.

13 THE COURT: Mark and received in evidence.

14 (Whereupon, the aforementioned Items were
15 entered into evidence as People's Exhibits 77, 78,
16 79 and 80, as of this date.)

17 Q I lastly ask you to take a look at two items that
18 have already been marked as 81 and 82 (handing).

19 MR. MEGARO: Judge, I'll also stipulate to 81
20 and 82.

21 THE COURT: Just identify them.

22 Q First, Detective Newman, 81, that is what?

23 A Eighty-one is the Toyota key.

24 Q The one you found in the console?

25 A Yes.

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1 Q And, lastly, 82?

2 A The metal necklaces found inside the console.

3 Q That is the center console in the front seat?

4 A Yes.

5 MS. NICOLAZZI: I offer those items into
6 evidence.

7 THE COURT: Marked and received into
8 evidence, without objection.

9 (Whereupon, the aforementioned Items were
10 entered into evidence as People's Exhibits 81 and
11 82, as of this date.)

12 Q Now, Detective Newman, when you were finished
13 processing that vehicle, as you just testified to, what time
14 was that approximately?

15 A The following morning, around 1:30.

16 Q So, it took you approximately 21 to 22 hours to
17 process that vehicle?

18 A That's correct.

19 Q And while you were processing that vehicle, did
20 you take handwritten notes?

21 A Yes.

22 Q And were those then -- based on those handwritten
23 notes and your own memory, was a printed report prepared?

24 A Yes.

25 Q And is that basically what you are working off

NICOLAZZI - DIRECT - DET. NEWMAN

1 when you say you are referring to your notes now?

2 A Yes.

3 Q Did you, at any time, file any amended reports?

4 A Yes.

5 Q What was the reason for filing the amended
6 reports?

7 A Typographical errors, transcription errors.

8 Q Now, Detective Newman, on a subsequent date, on a
9 later date, were you asked to return to the BMW for some
10 additional processing?

11 A Yes.

12 Q And what were you asked, specifically, to go there
13 to look for?

14 A Ballistics evidence.

15 Q And had that been brought to your attention?

16 A Yes.

17 Q And what date did you go and do that?

18 A September 9th.

19 Q And when you went there on September 9th, where
20 did you perform your work?

21 A 6-1 Precinct.

22 Q And if you could tell the members of the jury what
23 you did; then, on September 9th of 2007, when you went back
24 over that vehicle again?

25 A Going over that vehicle again, I had recovered

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1 evidence from the operator front fog lamp housing, which is
2 a deformed bullet. Also in the rear operator passenger door
3 was some deformed lead that was recovered from a window
4 post.

5 Q And did you then remove and recover any items?

6 A Yes.

7 Q And what were the items, specifically, that you
8 removed and recovered?

9 A The evidence recovered was one deformed lead
10 bullet, with cooper jacketing, which is given B, as in boy,
11 1, and that was recovered from the rear passenger window
12 divider post, operator side of the vehicle. B, as in boy,
13 two, which was one deformed lead bullet fragment, with
14 cooper jacketing recovered from the fog lamp operator front
15 of vehicle. Other investigatory evidence that was recovered
16 that day was N, as in Nancy, 1, one triangle sun shade from
17 a rear passenger window operator side; and, two, was a
18 window post with possible ballistic damage, rear passenger
19 window operator side; N, as in Nancy, 3, the vehicle fog
20 lamp and the housing.

21 Q And did you also photograph those items prior to
22 your removal of them?

23 A Yes.

24 MS. NICOLAZZI: I'm going to offer into
25 evidence, I've spoken to defense and showed him the

NICOLAZZI - DIRECT - DET. NEWMAN

1 photos, People's 83 through 88.

2 MR. MEGARO: Judge, could I write them down?

3 THE COURT: Yes.

4 MR. MEGARO: I Stipulate to these
5 photographs,

6 MS. NICOLAZZI: If you need your notes, if
7 you could come down again.

8 (Whereupon, the witness leaves the witness
9 stand.)

10 Q First, looking at People's 83, which is your Crime
11 Scene photograph, what is shown in that photograph?

12 A That is the front wheel well operator side of the
13 vehicle, showing possible ballistic and viewpoint.

14 Q This was a bullet hole where the rod is going
15 into --

16 A No, the rod is down here going into the bullet
17 hole (indicating).

18 Q So, it is this way (indicating)?

19 A Yes.

20 Q Now, moving on to People's 84, which is Crime
21 Scene photograph 28?

22 A That is the lamp housing with the bullet stip
23 evidence that was recovered.

24 Q And where was that fog lamp on the vehicle?

25 A The lower bumper operator side.

NICOLAZZI - DIRECT - DET. NEWMAN

1 Q Now, People's 85, which is your Crime Scene
2 photograph number 14.

3 A That is the door to the back passenger seat on the
4 operator side, with the ballistic evidence that was
5 recovered from inside the ballistic hole.

6 Q Now, in your original run, you had shown the
7 members of the jury various photographs that ballistics rods
8 were in two bullet holes inside that door. Is that the same
9 bullet hole or different?

10 A That's the same one; it is the lower one.

11 Q But, now, it is just -- what you did was remove or
12 observe now and remove ballistic evidence from inside that
13 hole?

14 A That's correct.

15 Q Now, moving on to People's 86, which is your Crime
16 Scene photograph 17.

17 A That is the same post from the other photograph
18 upon retrieval.

19 Q So, it is the same bullet hole, just a different
20 angle?

21 A Yes.

22 Q Now, People's 87, which is your Crime Scene
23 photograph 20.

24 A That is the triangle sun shade that was affixed to
25 that back passenger door operator side.

NICOLAZZI - DIRECT - DET. NEWMAN

1 Q The same sun shade that is shown in earlier
2 photographs from your initial work there?

3 A Yes.

4 Q And what is the arrow pointing to there?

5 A Possible ballistic damage.

6 Q And, lastly, People's Number 88, which is your
7 Crime Scene photograph 21?

8 A That's a piece of that window post, the bottom of
9 the window where the glass would come up by where the post
10 was.

11 Q What are the arrows indicating on those
12 photographs?

13 A Possible ballistic damage.

14 Q "BH" standing for what?

15 A Possible bullet hole.

16 Q "BIM"?

17 A Bullet impact mark.

18 Q You could have a seat.

19 (Whereupon, the witness resumes the witness
20 stand.)

21 Q You said you recovered various items when you did
22 your work there. I ask you to take a look at what's marked
23 People's 89 for identification and 90 (handing).

24 MS. NICOLAZZI: And I had previously shown
25 them to defense counsel.

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1 MR. MEGARO: I've seen them. I have no
2 objection.

3 THE COURT: Identify them.

4 Q First, looking at the brown bag items, People's
5 89, what is contained within those items?

6 A These items are the window post, the mesh sun
7 shade and the fog lamp housing.

8 Q The same ones shown in the photographs?

9 A Yes.

10 MS. NICOLAZZI: I offer those into evidence
11 as People's 83 through 89.

12 THE COURT: Marked and received, without
13 objection.

14 (Whereupon, the aforementioned Photographs
15 were entered into evidence as People's Exhibits 83
16 through 89, as of this date.)

17 Q Lastly, what is contained within People's 90, the
18 white envelope you were handed up?

19 A This is the ballistic evidence recovered.

20 Q Specifically, what was that, I mean in terms of
21 shell casings, bullets?

22 A Two deformed bullets.

23 MS. NICOLAZZI: I offer that into evidence as
24 People's 90.

25 THE COURT: Marked and received, without

NICOLAZZI - DIRECT - DET. NEWMAN

1 objection.

2 (Whereupon, the aforementioned Ballistics
3 Evidence Recovered was entered into evidence as
4 People's Exhibit 90, as of this date.)

5 Q Again, when you finished your work on that date,
6 did you document that by way of handwritten notes, which is
7 ultimately put into a typed report?

8 A Yes.

9 Q Just going back one moment.

10 When you did your work originally on July 9Tth
11 into the 10th of 2007, the various items that we put into
12 evidence, the physical items, are those the same items that
13 you showed to the members of the jury in the photographs,
14 the bottles, the ballistics, the same ones in the pictures?

15 A Yes.

16 MS. NICOLAZZI: I have nothing further.

17 THE COURT: Any cross examination?

18 MR. MEGARO: Yes, your Honor.

19 May I have People's Exhibits 46 through --

20 THE SERGEANT: All the photos?

21 MR. MEGARO: Yes.

22 Just a minute, your Honor.

23 CROSS EXAMINATION

24 BY MR. MEGARO:

25 Q Good afternoon, Detective. How are you?

MEGARO - CROSS - DET. NEWMAN

1 A Good afternoon.

2 Q Now, you testified just now, on direct
3 examination, that on September 9, 2007 you conducted another
4 examination of that BMW, correct?

5 A Yes, September 9th.

6 Q Now, why did you go back and look at it again?

7 A I was directed to by my commanding officer.

8 Q And it was your understanding that additional
9 ballistic evidence had been found on that date, right?

10 A I found it.

11 Q When you got to the 61st Precinct and started
12 looking at that BMW, were there other individuals there?

13 A From my unit.

14 Q And had there been, to your knowledge, had there
15 been other individuals that were investigators that had been
16 hired by defense lawyers prior?

17 A I had heard that.

18 Q And the investigators that had been hired by the
19 defense lawyers were the ones that found that ballistic
20 evidence?

21 MS. NICOLAZZI: Objection.

22 THE COURT: Sustained.

23 Q After the defense investigators were there, that's
24 when you were called back, right?

25 MS. NICOLAZZI: Objection.

MEGARO - CROSS - DET. NEWMAN

1 THE COURT: Do you know in fact whether
2 someone had examined the car before you had?

3 THE WITNESS: Someone did, yes.

4 THE COURT: After you examined the car, you
5 found the ballistics?

6 THE WITNESS: Yes.

7 THE COURT: Next question.

8 Q Who directed you to those two additional bullet
9 holes that you found?

10 A My Deputy Inspector at the time.

11 Q Now, back on July 9, 2007, when you first arrived
12 at this vehicle, did you document the time of your arrival?

13 A Yes.

14 Q That's on Kingston Avenue, right?

15 A Yes.

16 Q What time did you arrive?

17 A I documented time of arrival at approximately 0415
18 hours.

19 Q 4:15 a.m.?

20 A That's correct.

21 Q And when you got there, there were lots of other
22 police officers there, correct?

23 A Yes.

24 Q As you testified on direct examination, there was
25 a Canine Unit, right?

MEGARO - CROSS - DET. NEWMAN

1 A I did not see it.

2 Q But, it was your understanding that a Canine Unit
3 had been there prior, right?

4 A Yes.

5 Q How many police officers were there when you got
6 there?

7 A I don't know.

8 Q And when you got there, was the driver's side door
9 opened or closed?

10 A I don't remember without looking at the photos I
11 took when I first got there.

12 Q Do you know whether any of these other police
13 officers had gone into that car before you arrived?

14 A Well, I testified that I know someone from
15 Emergency Services had gone in to recover some fabric for
16 the Canine Unit, so I knew that, yes.

17 Q Aside from Emergency Services, did any other of
18 those police officers go inside that car, that you knew
19 about?

20 A I don't know.

21 Q Did any of those other police officers touch any
22 of the contents of the evidence?

23 MS. NICOLAZZI: Objection.

24 THE COURT: If you know.

25 Q If you know?

MEGARO - CROSS - DET. NEWMAN

1 A I don't know.

2 Q When you got there, you started taking some
3 photographs, correct?

4 A Yes.

5 Q And how many photographs did you take while you
6 were there?

7 A At the scene?

8 Q Yes?

9 A I have to look at my notes.

10 Q Please do.

11 A Thirty-two.

12 Q Thirty-two photographs.

13 I'm going to show you now People's 50 in evidence.

14 MR. MEGARO: Could everyone see? There is a
15 glare. Can everyone see?

16 THE JURY: Yes.

17 MR. MEGARO: Okay.

18 Q Showing you now People's 50 in evidence, is that
19 the way you found that Popeye's box when you first arrived
20 at 4:15 a.m.?

21 A Could you tell me the Crime Scene photo number on
22 the back of that, please?

23 Q Sure, Number 9.

24 A Well, that was one of the first photos that I took
25 of that box.

MEGARO - CROSS - DET. NEWMAN

1 Q My question was: Was that how you found it when
2 you first got there in that exact position with the top
3 facing up?

4 A I would have to look at photograph 2 to answer
5 that question, Crime Scene photo 2.

6 MR. MEGARO: Do we have photo 2?

7 MR. HALE: People's 32 through 35.

8 MR. MEGARO: Can I see People's 32 through
9 35, please?

10 (Handing.)

11 Q I'm showing you People's Number 33 in evidence,
12 Crime Scene photo 2. That's how you found that Popeye's box
13 when you first got there at 4:15 a.m.?

14 A Yes.

15 Q Back to People's 50, this is just a close-up,
16 right?

17 A That's correct.

18 Q Okay.

19 Now, I'm showing you People's 54, Crime Scene
20 photo 17. The box in this photograph is in a different
21 position, right?

22 A That's correct.

23 Q Who moved it?

24 A I did.

25 Q I'm now showing you People's 48, Crime Scene photo

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1 7 in evidence. In this picture, there is a piece of
2 partially eaten chicken on the bottom of that -- I'm sorry,
3 let me back up a second.

4 This is a photograph of the interior of the driver
5 seat and the floor, right in front of the driver seat of
6 that BMW, right?

7 A Yes.

8 Q This is the ginger ale bottle that you testified
9 to on direct examination, correct?

10 A Yes.

11 Q This is a partially eaten piece of chicken on the
12 floor right near the gas pedal, correct?

13 A Yes.

14 Q And farther down towards the edge of the door is
15 the partially eaten biscuit, correct?

16 A Yes.

17 Q Is that how you found the interior of the driver's
18 side seat when you first got there at 4:15 a.m.?

19 A Yes, that photograph was taken first thing in the
20 morning.

21 Q At 4:15 a.m.?

22 A Approximately.

23 Q Was it light out or dark out then?

24 A I believe it was just starting to get a little bit
25 light at that time in the morning by the time we had gotten

MEGARO - CROSS - DET. NEWMAN

1 there and started photographing.

2 Q So, this is some time after 4:15, right?

3 A Yes.

4 Q Just so I get this straight, the only items on the
5 floor of that car, ginger ale, piece of chicken and biscuit,
6 right?

7 A Yes.

8 Q I'm showing you People's 63 in evidence, Crime
9 Scene photo 39. When was that photograph taken?

10 A That was taken at the 6-1 Precinct.

11 Q In this photograph, there is a Popeye's bag, paper
12 bag, in that photo, right?

13 A Yes.

14 Q How did that get in there?

15 A I don't know.

16 Q Do you know who put that there?

17 A No, I do not.

18 Q Now, I'm going to show you what's been previously
19 marked as Defense's A for identification.

20 MR. MEGARO: May this be given to the witness
21 (handing).

22 Q Do you recognize that?

23 A Yes.

24 Q What is that?

25 A Those are the metal necklaces that were recovered

MEGARO - CROSS - DET. NEWMAN

1 inside the vehicle.

2 Q And where were those metal necklaces recovered?

3 A On the console, center console area.

4 Q In the center console?

5 A I believe so.

6 THE COURT: You want to display it on the
7 monitor?

8 MR. MEGARO: One moment, your Honor.

9 THE COURT: Do you want to display this
10 exhibit?

11 MR. MEGARO: Just in a second, Judge.

12 THE COURT: Okay.

13 Q In that console right there, the one with the lid
14 on it, right?

15 A Yes.

16 MR. MEGARO: I offer Defense's A into
17 evidence, your Honor.

18 MS. NICOLAZZI: No objection.

19 THE COURT: Marked and received in evidence.

20 (Whereupon, the aforementioned Photograph was
21 entered into evidence as Defendant's Exhibit A, as
22 of this date.)

23 MR. MEGARO: May I put that up?

24 (Handing.)

25 Q Defendant's A, that is a photograph of that

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1 jewelry, correct?

2 A Yes.

3 Q Where is that jewelry in this photo?

4 A It's on the seat.

5 Q Who put it there?

6 A I did.

7 Q Why didn't you photograph it inside the console?

8 A You couldn't see inside that console from the
9 photo. After I took swabs of it, I put it on the seat.

10 Q So, this is not how you found it?

11 A No.

12 Q You couldn't open up that console and put the lens
13 of the camera straight down to photograph that?

14 A Yes, I could have tried.

15 Q And why didn't you?

16 A I just didn't feel I had the room to maneuver in
17 that tight area with my photographic equipment.

18 Q Now, how did that BMW end up back at the 61st
19 Precinct?

20 A I believe it was towed.

21 Q By whom?

22 A I do not know that.

23 Q Was it a NYPD truck? Private tow company?

24 A I do not know.

25 Q You didn't go along with that tow truck; is that

MEGARO - CROSS - DET. NEWMAN

1 correct?

2 A I'm sorry, I did not hear you.

3 Q You did not go along with that tow truck?

4 A No, I did not.

5 Q To your knowledge, did any police officers stay
6 with that car while it was being towed?

7 A I do not know that.

8 Q What time was it towed?

9 A I do not know the time that it was towed.

10 Q As you testified on direct examination, you spent
11 approximately 22 hours with this car processing it, correct?

12 A That's correct.

13 Q You get there at 4:15 a.m. and you start
14 processing the BMW, right?

15 A That's correct.

16 Q And you left that BMW when? When did you finish?

17 A On the 10th, around 1:30 in the morning.

18 Q You were not the only Crime Scene officer that was
19 examining this BMW; is that correct?

20 A I work with a partner.

21 Q Were there any other police officers, besides you
22 and your partner, that were going over this and inspecting
23 this vehicle?

24 A My captain did show up at the 6-1 Precinct garage.

25 Q Before this car was towed, did you remove the

MEGARO - CROSS - DET. NEWMAN

1 contents in that BMW, the chicken boxes, the juice bottles,
2 all that stuff?

3 A No.

4 Q You left it in the car while it was towed?

5 A That's correct.

6 Q And when that car got back to the precinct, those
7 items were in different positions in that car, correct?

8 A That would happen, yes.

9 Q Now there is a Popeye's box on the passenger side
10 floor, right?

11 A Correct.

12 Q Who put that there?

13 A I do not know.

14 Q There was a plastic bag now, when it gets back to
15 the 61st Precinct, on the passenger's side door, correct?

16 A I would have to look at the photos. There were
17 items on the passenger floor.

18 Q Nobody took those out before the car was moved?

19 A No.

20 Q When were they taken out at the precinct?

21 A Yes.

22 Q At the 61st, right?

23 A Yes.

24 Q And in the 22 hours that you examined this
25 automobile, neither you nor your partner ever discovered

MEGARO - CROSS - DET. NEWMAN

1 that ballistic evidence that was discovered on September
2 9th, correct?

3 A That's correct.

4 Q How did you examine the car?

5 A I don't understand.

6 Q Did you use flashlights? Did you use microscopes?
7 Did you use anything to aid your vision?

8 A Flashlights.

9 Q You went over every inch of that car?

10 A We tried to, yes.

11 Q You didn't see that bullet hole in the rear
12 driver's side seat, right, in that post?

13 A We did see it. We marked it with a ballistic rod.

14 Q On July 9, 2007?

15 A That's correct.

16 Q Did you document that in any report?

17 A Yes, there are photographs of it.

18 Q On July the 9th?

19 A Yes.

20 Q And did you recover any ballistic evidence?

21 A Not from the lower ballistic hole.

22 Q When you say -- what lower ballistic hole? Which
23 one are you referring to?

24 A Are you referring to the rear passenger door?

25 Q Yes?

MEGARO - CROSS - DET. NEWMAN

1 A Yes.

2 Q The one in the post?

3 THE COURT: Is there a photograph that you
4 could use?

5 MR. MEGARO: Yes.

6 THE COURT: Perhaps it would be easier to let
7 her thumb through it.

8 MR. MEGARO: I got it. This is People's 85,
9 Crime Scene photo.

10 MS. NICOLAZZI: Go back to 69, 70.

11 MR. MEGARO: I'm referring to this one.

12 MS. NICOLAZZI: I want the record to be
13 clear. He's asking her about a different date.

14 MR. MEGARO: I'm asking her about September
15 9th.

16 THE COURT: Let's make sure we have a
17 photograph that displays what you both are talking
18 about, otherwise it is Greek.

19 Ma'am, do you recognize that photograph?

20 THE WITNESS: Yes.

21 THE COURT: What's the run number on it?
22 Look on the back of the photograph.

23 MR. MEGARO: Sure. 07-08-07.

24 MS. NICOLAZZI: Picture number.

25 MR. MEGARO: Photo number 14.

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1 Q This one, you did or you did not notice that on
2 July 9, 2007?

3 A Yes, we did notice that as a ballistic hole.

4 Q And you recovered the ballistic evidence on
5 July 9, 2007?

6 A Not from the lower ballistic hole.

7 Q Not from the lower one. And that one was brought
8 to your attention on September 9th?

9 A Yes.

10 Q Now, the bullet hole for the front wheel well,
11 People's 83, September 9th, photo 22, this one you did not
12 find on July 9, 2007, right?

13 A That's correct.

14 Q Now, going back a moment to the plastic Popeye's
15 bag, which is in evidence as People's 76.

16 MR. MEGARO: May I have that? There is one
17 part in it that I need to take out.

18 (Handing.)

19 MR. MEGARO: I'm going to ask the witness to
20 take this out of the evidence bag (handing).

21 THE COURT: All right, counsel.

22 Q That's the plastic Popeye's bag that appeared on
23 the passenger's seat when you got back to the 61st Precinct,
24 right?

25 A I don't know if it was on the passenger's seat or

MEGARO - CROSS - DET. NEWMAN

1 the floor.

2 Q I'm sorry, the floor of the passenger's seat,
3 right.

4 Now, you didn't put that bag there, right?

5 A No.

6 MR. MEGARO: Can I have this marked as
7 Defense's B for identification (handing).

8 Q Do you recognize that?

9 A Yes.

10 Q What is that?

11 A This is a photograph of the floor, of the
12 operator's front seat with evidence.

13 Q And that's a photograph that you took?

14 A Yes.

15 Q On which date?

16 A The original date of July.

17 Q July 9, 2007, right?

18 A Yes.

19 Q And that's on Kingston Avenue or back at the 61st
20 Precinct you took that particular photograph?

21 A I don't know without the Crime Scene number on the
22 back.

23 Q Crime Scene photo number 53?

24 A That was at the 61st Precinct.

25 MR. MEGARO: Your Honor, I offer Defense's B

MEGARO - CROSS - DET. NEWMAN

1 into evidence.

2 MS. NICOLAZZI: No objection.

3 THE COURT: Marked and received in evidence.

4 (Whereupon, the aforementioned Photograph was
5 entered into evidence as Defendant's Exhibit B, as
6 of this date.)

7 Q Before I publish that to the jury, once again this
8 is People's 63 in evidence, Crime Scene photo 39, showing
9 that piece of chicken on the floor right near the gas pedal
10 on the driver's side, right?

11 A That's correct.

12 MR. MEGARO: Can I have Defense Exhibit B?

13 (Handing.)

14 Q In this particular photograph, that chicken is not
15 in this photograph, right?

16 A That's correct.

17 Q And the biscuit has been moved, right?

18 A Correct.

19 Q Who moved the biscuit?

20 A I don't know.

21 Q What happened to that piece of chicken near the
22 gas pedal?

23 A I don't know.

24 MR. MEGARO: Thank you. Nothing further.

25 THE COURT: Redirect, ma'am?

NICOLAZZI - REDIRECT - DET. NEWMAN

1 MS. NICOLAZZI: I have a couple of questions.
2 If I could have just one moment because I'm trying to
3 find a couple of pictures.

4 THE COURT: Take the jurors out.

5 (Whereupon, the jury exits the courtroom.)

6 (Whereupon, the witness leaves the witness
7 stand and exits the courtroom.)

8 (Whereupon, a brief recess was held.)

9 COURT OFFICER: Witness entering.

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

12 THE COURT: Bring the jurors in.

13 COURT OFFICER: Jury entering.

14 (Whereupon, the jury enters the courtroom.)

15 COURT CLERK: Case on trial. All parties are
16 present. Do both sides waive the reading of the roll?

17 MR. MEGARO: Yes.

18 MS. NICOLAZZI: Yes.

19 THE COURT: Detective, you are still under
20 oath.

21 THE WITNESS: Thank you.

22 REDIRECT

23 BY MS. NICOLAZZI:

24 Q Detective Newman, on cross examination you were
25 asked some questions about dates that you made various

NICOLAZZI - REDIRECT - DET. NEWMAN

1 observations and recovered various pieces of items, be it
2 July 9th or September 9th; do you recall those questions you
3 were asked on cross examination?

4 A Yes.

5 Q Just to be clear about some of the items you were
6 asked about, you were asked about the bag, which I'm using
7 People's 58, that appears in some of your later photographs,
8 correct, and that would be the Popeye's bag in the front
9 driver's seat?

10 A Yes.

11 Q And as you said, that was there at some point, but
12 when you first arrived there and you first photographed it,
13 it was not there, correct? And I'm using People's 48.

14 A Yes.

15 Q And you said you did not place that bag there, but
16 it is fair to say that somebody did it at some point,
17 correct?

18 A Yes.

19 Q Do you know whether it had come from outside the
20 vehicle, the street, the sidewalk, or where that bag came
21 from?

22 A I do not know.

23 Q But, it's fair to say it was not there initially,
24 and it was there when you took some of your later pictures?

25 A Yes.

NICOLAZZI - REDIRECT - DET. NEWMAN

1 Q Then, you were asked about the plastic bag, which
2 was in the front passenger's side to the right of the
3 vehicle, correct?

4 A Yes.

5 Q And you said that the pictures that you took
6 initially, that is exactly the way everything appeared when
7 you first arrived there, correct?

8 A Yes.

9 Q And that bag you were asked about, I'm using Crime
10 Scene photograph five, which is People's 46, that was there
11 from the beginning, correct?

12 A Yes.

13 Q I'm referring to the plastic bag that is in the
14 seat portion, on the front passenger's side?

15 THE COURT: Jurors, are you able to see that?
16 You did it sort of quickly.

17 Q That's part of the Popeye's box in a Popeye's bag
18 in the bottom right portion?

19 A Yes.

20 THE COURT: Are you able to see the Exhibit?

21 THE JURY: Yes.

22 Q Although, now using People's 61, the bag may have
23 changed positions when it was transported, still they're
24 just in a different position, correct?

25 A Yes.

NICOLAZZI - REDIRECT - DET. NEWMAN

1 Q And, lastly, the ballistics evidence, the actual
2 bullet that you, yourself, did not see, that you recovered
3 after it was brought to your attention on September 9th, how
4 did you have to remove that? Were you able to just see it
5 with your naked eye and pull it out?

6 A No.

7 Q How was that done?

8 A I had to use tools to pull apart the metal of the
9 door.

10 Q Defense counsel showed you this photograph, I
11 guess, People's 85, which you took on September 9th and you
12 said that was the bullet hole that you removed that piece of
13 ballistics from on September 9th, correct?

14 A Yes.

15 Q But, you said you actually had observed the bullet
16 hole and made notations, you had just not seen the actual
17 bullet on July 9th, correct?

18 A Yes.

19 Q Would that bullet hole be shown with your
20 ballistics rod in People's 70, which is your photograph 60?

21 Is that the same bullet hole?

22 A Yes.

23 THE COURT: Again, jurors, are you able to
24 see the exhibits?

25 THE JURY: Yes.

COLLOQUY

1 MS. NICOLAZZI: Nothing further.

2 THE COURT: Any recross?

3 MR. MEGARO: No, thank you.

4 THE COURT: Detective, thank you very much.

5 THE WITNESS: Thank you.

6 (Whereupon, the witness leaves the witness
7 stand and exits the courtroom.)

8 THE COURT: Next witness, please.

9 MS. NICOLAZZI: People call Detective Curry.

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

12 COURT CLERK: Remain standing and raise your
13 right hand. Do you solemnly swear or affirm the
14 statements you are about to make in these proceedings,
15 will be the truth, and nothing but the truth, so help
16 you?

17 THE WITNESS: I do.

18 COURT CLERK: Thank you. Please, be seated.
19 Speak into the microphone. You could adjust the
20 height. For the record, state your name, spell your
21 last name, shield and command.

22 THE WITNESS: Detective Josephine Curry,
23 C-U-R-R-Y, Shield Number 4565, a member of the NYPD
24 Crime Scene Unit.

25 COURT CLERK: Thank you.

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1 THE COURT: Continue to speak into the
2 microphone.

3 You may inquire.

4 MS. NICOLAZZI: Thank you, your Honor.

5 DIRECT EXAMINATION

6 BY MS. NICOLAZZI:

7 Q Good afternoon, Detective Curry.

8 A Good afternoon.

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

11 A Approximately 12 years.

12 Q How long have you been a member of the Crime Scene
13 Unit?

14 A Five years.

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

16 A Um, approximately four years.

17 Q And do you have various specialized training that
18 you use in your Crime Scene work?

19 A Yes.

20 Q Very basically, what does that consist of?

21 A Evidence collection training, recognition of
22 latent prints, photography, types of schools we went to for
23 that.

24 Q I'm going to direct your attention to the morning
25 of July 9th of 2007. Were you requested to respond over

NICOLAZZI - DIRECT - DET. CURRY

1 here to Brooklyn Kings County to work on a case involving
2 the shooting of two New York City police officers?

3 A Yes.

4 Q And, specifically, what work were you assigned to
5 do in this case?

6 A Um, initially we were asked to respond, and then
7 we were going to be deemed out for additional assignment at
8 the scene.

9 Q So, where did you go to when you arrived?

10 A It was Rogers and Lefferts.

11 Q And when you arrived at the location of Rogers
12 Avenue and Lefferts Avenue, what, if any, direction were you
13 given at that time?

14 A Well, we met with the commanding officer from the
15 Crime Scene Unit, and at that point we were repositioned
16 from there.

17 Q When you say, "We," who else were you working with
18 that day?

19 A I was working with Officer William Brown.

20 Q And where were you and Officer Brown specifically
21 assigned?

22 A We were told to respond to an area on Lefferts
23 Avenue, between Kingston and Albany, more specifically right
24 in front of 591 Lefferts.

25 Q And were you informed what you were being

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1 assigned, what type of work you were being assigned to do
2 over at that location?

3 A We were told there were firearms and ballistics.

4 Q And did you go to that location?

5 A Yes.

6 Q And what did you do after you arrived over there?

7 A Well, after initial conferrals, and we met with
8 the XO from our unit, we were --

9 Q The XO, would that be the commanding officer?

10 A No, the Executive Officer. That is one below as
11 far as rank. And we were given our duties from him
12 basically at that location.

13 Q And what were your duties?

14 A Um, we were going to respond to the backyard of
15 591 in a garaged area, and we were going to process some
16 items that were basically from one driveway to the front of
17 the location, as well as in the back inside one of the
18 garages.

19 Q When you arrived in that vicinity, how did that
20 location appear? Was there anything being done to safeguard
21 that area?

22 A Yes.

23 Q What was it?

24 A Um, there were safeguarding officers, as well as
25 Crime Scene tape line basically around the area to section

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1 it off.

2 Q And what did you do to document those locations
3 after you began your work there?

4 A Um, first thing was photo documentation of the
5 location.

6 Q And other than actually taking photographs, did
7 you do anything?

8 A Yes, I had to do a preliminary sketch.

9 Q I'm going to ask you to take a look at what has
10 been premarked People's 91 for identification (handing).

11 MS. NICOLAZZI: Already shown to defense
12 counsel.

13 MR. MEGARO: Stipulated in.

14 THE COURT: Let her identify it.

15 Q What is that, Detective Curry?

16 A This was the computerized version or otherwise
17 known as a diagram of the rough sketch that I had done.

18 Q And does that diagram fairly and accurately
19 reflect the way those areas appeared on the morning of July
20 9th of 2007, other than the fact that that diagram is not
21 drawn to scale?

22 A Yes.

23 MS. NICOLAZZI: I offer that into evidence.

24 THE COURT: Any objection?

25 MR. MEGARO: No.

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1 THE COURT: Marked and received into
2 evidence.

3 (Whereupon, the aforementioned Diagram was
4 entered into evidence as People's Exhibit 91, as
5 of this date.)

6 MS. NICOLAZZI: Your Honor, if the witness
7 could please approach the diagram.

8 THE COURT: Sure. Take the exhibit with you
9 and keep your back to me.

10 (Whereupon, the witness leaves the witness
11 stand.)

12 THE COURT: Stand near the microphone.

13 Q First, I'm just going to ask you some questions
14 generally about People's 91, your diagram.

15 What type of information generally is that
16 contained to the right of the diagram in the area that I'm
17 making a circle around (indicating)?

18 A That area is basically telling what directional.
19 There is a circle here, which shows a point of direction
20 being north, which would be the top of the screen. And
21 below that is what is known as a "key" or a "legend," which
22 gives you a quick basic itemized list of evidence that would
23 be on the sketch. Little notations are on the sketch.

24 Q And, in general terms, what is the area that the
25 members of the jury are looking at on your diagram there?

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1 A You are looking at an overview. This whole area
2 is an overview of the scene that I processed, specifically
3 this area here, which if it was actually opened up or blown
4 up more on the screen --

5 Q I will do that in a moment?

6 A -- it will show you specifics to where most of the
7 processing had taken place.

8 Q What street is this where I'm putting the blue
9 highlighter (indicating)?

10 A Lefferts Avenue.

11 Q Right here, the street that is perpendicular
12 (indicating)?

13 A Kingston Avenue.

14 Q You said if it was blown up more to show the area
15 where you concentrated on?

16 A Yes.

17 Q Now that it's blown up, if you could show the
18 members of the jury where the bulk of your work was focused?

19 A Well, there were some items in front of the
20 location, being 595 over here. And then if you look to the
21 rear or the top portion of the screen, you'll see a thing
22 that says, "empty garage," and you'll see garages with two
23 cars over here. That's over here (indicating).

24 Q And where was your work focused with respect to
25 those garages where it says, "empty garage" and shows the

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1 two cars?

2 A The one where the two cars are is where the
3 firearms were recovered.

4 Q If you could make circles around that, please,
5 just on there.

6 A (Complying).

7 Q All right.

8 So, just so it's clear where the various addresses
9 are marked, is that signifying buildings that could be seen
10 from Lefferts? So, 591 would be a house, and 595 would also
11 be a dwelling?

12 A Right.

13 Q And what is in between here where there happens to
14 be some Js on some of them?

15 A Those are alleyways or driveways that lead to the
16 rear area behind the houses. It's almost like a common
17 garage setup, like there is one garage after the other, and
18 these alleyways or driveways lead you to that back area and
19 they all connect.

20 Q So, which of the alleyways or driveways lead or
21 led to, or could you use to access the garage where the
22 firearms were found?

23 A The alleyway between 591 and 589, as well as the
24 alleyway between 595 and 597.

25 Q And if you could just -- and you could go around

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1 to the front if you need to make this marking. If you could
2 just make, I guess, arrows on each one of those alleyways
3 that you could access that driveway from.

4 A (Complying).

5 Q And so that would be a few buildings over from
6 Kingston?

7 A Yes.

8 Q I'm going to ask you to -- actually, I'll have you
9 stay right there. You said you also took photographs?

10 A Yes.

11 MS. NICOLAZZI: I'm going to ask that the
12 witness be shown the photographs, I have already shown
13 them to defense counsel, that have been premarked
14 People's 92 through 105.

15 MR. MEGARO: I stipulate to these photos,
16 your Honor.

17 THE COURT: Okay. These are in evidence.
18 The witness is going to identify them though.

19 (Whereupon, the aforementioned Photographs
20 were entered into evidence as People's Exhibits 92
21 through 105, as of this date.)

22 Q Now, the photographs, and I'll identify as many as
23 I can by your Crime Scene number as well, are those some of
24 the photographs, and you could do a quick flip through now,
25 are those some of the photographs that you took when you did

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1 your work on July 9th of 2007?

2 THE COURT: If you want to compare them to
3 your run number, you may.

4 THE WITNESS: Do you mind if I refer to my
5 notes?

6 THE COURT: No, compare them with your notes
7 to make sure.

8 Q Are these some of the photographs that you took?

9 A Yes.

10 THE COURT: Let her look.

11 MS. NICOLAZZI: I offer them into evidence.

12 Q Now, starting with People's 92, which is your
13 Crime Scene photograph number 40, if you can explain to the
14 members of the jury what they are viewing in that
15 photograph?

16 A Okay. This photograph is facing north while
17 standing on Lefferts Avenue in the street. It's basically
18 an overview of the front of both 589 and 591 Lefferts
19 Avenue. Those are the two houses situated with the driveway
20 in between.

21 Q Now, the two driveways that you could see in the
22 back of that photograph, which is indicating in the back,
23 the one that looks like part of a car or a van on the right
24 side, where is that in relation to the garage that you found
25 the guns in?

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1 A That's the garage (indicating).

2 Q If you could then, with the red pen, just circle
3 around that?

4 A The garage?

5 Q Yes?

6 THE COURT: Is that going to show up? Put an
7 arrow down pointing to the garage.

8 THE WITNESS: Yes, sir (indicating).

9 THE COURT: Jurors, are you able to see that?

10 THE JURY: Yes.

11 THE COURT: Okay.

12 Q Moving to the next photograph, which is People's
13 Number 93, which is your Crime Scene photograph number 51,
14 if could you tell the members of the jury what they are
15 looking at there, if you know by way of address and then
16 more specifically?

17 A Okay. Again, I would be standing in front of,
18 let's see, 595 Lefferts Avenue, and I'm facing north and
19 there is another view towards the rear. You could see the
20 garage area of that location. This is a house that's
21 also -- the series of houses that was in the prior
22 photographs.

23 Q So, just now using both photographs, People's 92
24 and 93, if you were to put the two together, is this how
25 they line up or is it different, like is the one on the

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1 right side of People's 92 the same that's on the left side
2 of 93?

3 A These two here are actually one of the same.

4 Q That's the same. So, the house that is --

5 A This is just a little bit closer angle, that's why
6 the stoop looks bigger.

7 Q So, these then in People's 93 are not the garages
8 that the firearms were found in?

9 A Not in this view.

10 Q Now, People's 94, which is your Crime Scene
11 photograph 43, what is shown there?

12 A That's evidence marker J33. That is a front
13 garden area with a cement wall around it, and in that 33 is
14 also a piece of ballistics.

15 Q And where was that located on Lefferts?

16 A That would be considered the front of 589 Lefferts
17 Avenue.

18 Q And this piece of ballistics is what has
19 previously been circled there in the red?

20 A Yes.

21 Q People's 95, which is your 67, if you could just
22 tell the members of the jury what you are looking at there,
23 generally?

24 A Okay. This is a view. The camera is facing west.
25 I'm on Lefferts Avenue and I'm in front of 597 Lefferts.

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1 And basically if I went farther to the corner on this block
2 going west, I would hit Kingston Avenue.

3 Q So, that would be up here where you could see the
4 marked patrol car?

5 A Yes.

6 Q Now, Detective Curry, moving on to People's 96, I
7 don't have your Crime Scene run number on that, what are the
8 members of the jury looking at there?

9 A That is the garage that the firearms and other
10 evidence was located inside.

11 Q Just from this vantage point, where in the garage
12 did you observe and recover the firearms?

13 A That was in the front of that blue car, which is
14 the right-hand side of the vehicle.

15 Q And these photographs that we have shown, so far,
16 other than the evidence markers, is that the way all of
17 those areas appeared to you when you arrived there?

18 A Yes.

19 Q Moving to People's 97, which is your Crime Scene
20 photograph 11, if you could tell the members of the jury
21 what they are looking at there?

22 A This is just an overview. I'm inside the garage
23 in front of that blue vehicle. It shows you there is like a
24 white bag on the floor there. That is where the firearms
25 were located inside the bag.

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1 Q You could circle that with a black marker, the bag
2 that had the firearms.

3 A (Indicating).

4 Q Is that part of at least one of them that is
5 sticking out there, that the silver appearance?

6 A Yes.

7 Q Is that the way that bag appeared to you when you
8 first observed it?

9 A Yes.

10 Q Moving on to People's 98, which is Crime Scene
11 photograph 13 from this run, what is shown in this
12 photograph?

13 A This is now -- it's marked as J30. That's the
14 yellow marker and it's just a closer view.

15 Q Now, what is this item here on the right that I'm
16 circling with my hand on the left side (indicating)?

17 A That also was a jacket that was recovered.

18 Q Is that the way that that item appeared when you
19 first observed it?

20 A Yes.

21 Q I don't have the Crime Scene photograph number;
22 it's number 99 in evidence. If you could tell the members
23 of the jury what they are looking at in this photograph?

24 A That is the same jacket inside out or actually the
25 right way.

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1 Q Who turned that jacket inside out?

2 A We did.

3 Q For what purpose?

4 A They needed more understanding of whether it was a
5 solid-colored jacket or a multi-colored jacket.

6 Q Now, moving on to People's Number 100, what's the
7 jury looking at there?

8 A Well, that's a view into the same garage, and it's
9 just showing you the spatial difference from the front of
10 the garage now showing where the evidence is if you were
11 standing out on that outer edge. And that evidence marker
12 being J30 would give you a better idea where the bag with
13 the firearms was.

14 Q Is any of the bags with the firearms visible in
15 that photograph?

16 A Just a little bit.

17 Q And if you could point to it and just circle it?

18 A This is the bag (indicating).

19 Q And, again, Detective Curry, is that where that
20 item was when you first observed it?

21 A Yes.

22 THE COURT: You want to push it down and just
23 enlarge it?

24 Are you able to see that, jurors?

25 THE JURY: Yes.

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1 Q Moving on to People's 101 in evidence, which is
2 Crime Scene photograph 46. What is shown in that
3 photograph?

4 A Okay. This is a close-up photograph of a hat that
5 was found under the jacket.

6 Q So, is the jacket then -- did you have to remove
7 the jacket before you first observed the hat?

8 A Yes.

9 Q Now, moving to People's 102 or actually --
10 withdrawn.

11 Inside of the bag, Detective Curry, at some point
12 did you actually pick up that item and catalog its contents?

13 A The bag?

14 Q Yes?

15 A Yes.

16 Q And what was inside the bag?

17 THE COURT: You could refer to your notes.

18 A Well, it was a white Popeye's bag and inside the
19 bag was a cardboard box, a Popeye's Chicken cardboard box,
20 and inside the box was a chicken bone, a wing, one biscuit
21 and also a folding knife.

22 Q Showing you now People's 102, which is Crime Scene
23 photograph number 29, what is that?

24 A Those were the contents of the Popeye's box that
25 were inside the bag with the firearms.

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1 Q Now, People's 103, Crime Scene photograph 27.

2 A That would be an open version of the folding
3 knife, just with a scale.

4 Q When you say, "an open version," was it closed or
5 was it opened in that position when you found it inside of
6 the bag?

7 A It was closed.

8 Q People's 104, which is Crime Scene photograph 28.

9 A That's just a close-up of the bag and box.

10 Q The same box that contained the chicken that was
11 inside that bag with the firearms?

12 A Yes.

13 Q Now, you said that when you removed the jacket,
14 that you observed the hat underneath it. You just shown
15 that to members of the jury. Did you ever examine the
16 jacket itself?

17 A Yes.

18 Q Was there anything contained within the jacket?

19 A Yes, there were several items.

20 Q I'm going to ask you to take a look at People's
21 105, which is Crime Scene photograph 50. If you could tell
22 the members of the jury what that is?

23 THE COURT: Also, again, use your notes,
24 please.

25 Q First, just generally, and then you could --

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1 A These are the contents that were inside the pocket
2 of the jacket, and I just put them out on a piece of clean
3 craft paper so I could show a view of what was pulled from
4 the pocket, various miscellaneous papers, cigarettes, a
5 matchbook, keys there, you have a lighter.

6 Q So, those were all found in a jacket pocket of the
7 multi-colored jacket?

8 A Yes.

9 Q You could have a seat, Detective.

10 (Whereupon, the witness resumes the witness
11 stand.)

12 Q Now, Detective Curry, with respect to the various
13 items that you just told the members of the jury about, and
14 those photographs that were shown that you observed and
15 recovered, with respect to those items, did you take any
16 samples for any potential DNA or serological evidence?

17 A From the items from the pocket?

18 Q In general, all the items that you observed and
19 recovered?

20 A Yes.

21 Q If you could go through what serological samples
22 you took, indicating how you marked them prior to them going
23 to the lab for examination?

24 THE COURT: Again, use your notes.

25 THE WITNESS: Thank you, sir.

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1 A Um, specifically the swabs that I took for DNA,
2 because otherwise there are items that went on their own,
3 one swab was taken from the back strap of one of the
4 firearms.

5 Q Now, I'm just going to stop you. You said, "from
6 the back strap of one of the firearms." Specifically when
7 you actually recovered the bag that you had just shown to
8 members of the jury, what did you find in that bag as far as
9 firearms? First of all, how many?

10 A There were three firearms.

11 Q And if you can, describe them for the members of
12 the jury?

13 A Certainly. Okay. One firearm was listed as J30C,
14 as in Charlie, Intertek 9MM Luger, model Tek DC9, also known
15 as a "Tek 9." Another one listed as item number J30A, as in
16 Adam, was a 9MM Highpoint, Model C9, 9MM Luger. And the
17 third firearm was a Llama Max I45.

18 Q I'm going to ask you to take a look at three items
19 that will be handed up to you momentarily that have been
20 marked People's 106 and 107.

21 THE COURT: Have you seen the items,
22 Mr. Megaro?

23 MR. MEGARO: Yes, I have.

24 MS. NICOLAZZI: And 108.

25 THE COURT: Any objection?

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1 MR. MEGARO: These three, no.

2 (Whereupon, the aforementioned Firearms were
3 entered into evidence as People's Exhibits 106,
4 107 and 108, as of this date.)

5 THE COURT: Why don't you put them on the
6 monitor? You could place them on the monitor so the
7 jury can see them at the same time. He's not objecting
8 to them going into evidence.

9 MS. NICOLAZZI: Sure.

10 (Whereupon, the witness leaves the witness
11 stand.)

12 THE COURT: Mr. LaRose, just dim the lights
13 over there.

14 MS. NICOLAZZI: First, People's Number 106.

15 THE COURT: Jurors, are you able to see the
16 exhibits?

17 JUROR: Yes.

18 THE COURT: Okay.

19 Just describe what that is, ma'am.

20 Q First of all, People's 106, which is on the
21 monitor, which firearm is that specifically?

22 A This was listed in the Crime Scene run as item
23 J30C, as in Charlie. This is an Intertek 9MM Luger,
24 otherwise known as a "Tek 9."

25 Q Now, the clip is not in. Now, it is sitting on

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1 the monitor. Is that how you observed it? Was it intact
2 with the clip in it when you found it in the bag?

3 A It was intact with the clip in it.

4 THE COURT: Could you hold the clip up?

5 MS. NICOLAZZI: I was going to ask if that
6 could be held up, along with the firearm.

7 Q If you could just hold it up with the firearm
8 itself, Detective Curry?

9 A (Complying).

10 MS. NICOLAZZI: Obviously, it is not loaded
11 at this point.

12 THE COURT: Jurors are you able to see the
13 exhibit?

14 THE JURY: Yes.

15 Q Now, when you examined and recovered that firearm
16 initially, Detective Curry, what, if any, observation did
17 you make about the load of that gun, whether it was loaded
18 or not?

19 A Well, there was still a load inside the gun. It
20 had one inside the chamber, and it also had inside the
21 magazine, or what you called "a clip," which is this. It
22 had a mix of eighteen and six (indicating).

23 Q What does that mean, eighteen and six what?

24 A It was just the brand of ballistics were just
25 different, but otherwise they were 9MM.

NICOLAZZI - DIRECT - DET. CURRY

1 Q And how many .9MM cartridges were within the clip
2 of that firearm?

3 A So, that makes it 25 total.

4 Q Now, moving on to the next firearm, which is
5 People's 105.

6 THE COURT: Let the officer remove that for
7 you, ma'am.

8 Q Detective, if you could hold it up to the members
9 of the jury, and then place it on the monitor.

10 A (Complying).

11 Q Which firearm is that, People's 107?

12 A This would be listed in my notes as item J30A, as
13 in Adam. This is a 9MM Highpoint, Model C9. It is a
14 handgun.

15 Q When you found that handgun in the bag with the
16 two others, what did you observe about the load of that
17 weapon?

18 A The magazine, which is not in this gun at this
19 time, it's in the bag still, the magazine was empty, but
20 there was one in the chamber.

21 Q The magazine at the time that you observed it was
22 not intact, together with that firearm itself, when you
23 observed it?

24 A Yes.

25 Q Now, moving on --

NICOLAZZI - DIRECT - DET. CURRY

1 MR. MEGARO: May I?

2 (Whereupon, defense counsel approaches.)

3 Q Moving on to the last firearm, People's 108.

4 Again, if you could just hold it up for the members of the
5 jury, and then place it on the monitor.

6 A (Complying). This was listed in my notes as item
7 J30B, as in boy. This is called a Llama Max I45.

8 Q That's a .45 caliber handgun?

9 A Yes.

10 Q And what observations did you make about both, the
11 magazine and whether that gun was loaded or not, when you
12 observed it?

13 A There was no load as far as inside the magazine or
14 inside the firearm in the chamber.

15 Q Was the magazine intact with the firearm when you
16 recovered it?

17 A Yes, it was.

18 Q Now, with respect to the serological evidence that
19 you recovered from those weapons, if you could tell the
20 members of the jury what samples you took, also indicating
21 just showing them where you took that from?

22 A Do you want me to go back to the specific gun or
23 just use a gun in general to show the locations?

24 Q Yes, if you could go back to the specific gun.

25 THE COURT: Whatever order you want.

NICOLAZZI - DIRECT - DET. CURRY

1 A Let's start with J30A, which was the Highpoint.

2 THE COURT: Take it out.

3 Q If it is easier for you, Detective, you could fold
4 it up and show the members of the jury.

5 THE WITNESS: If you could see it, if you
6 don't see it, I'll do it differently.

7 THE COURT: I prefer you to do it that way so
8 the jurors could see it.

9 THE WITNESS: No problem at all.

10 A Okay. This firearm was swabbed for DNA or
11 serology, and the first swab was listed as S1, and that swab
12 was taken from what is considered the back strap of this
13 firearm. And the location would be as follows: By -- let
14 me show you by direction (indicating).

15 Q Basically, the back of the grille?

16 A Yes.

17 S2 would be the second swab taken from the
18 firearm, and that was in the area of the muzzle. That would
19 be in this location (indicating). S3 would be the following
20 swab, and that would be from the trigger or trigger area of
21 this firearm (indicating). S4 was the final swab from this
22 firearm, and that was from the front strap. This is the
23 location (indicating).

24 Q Now, moving on to which firearm would you like
25 next, Detective?

NICOLAZZI - DIRECT - DET. CURRY

1 A Let's go to J30B, and that's the Llama.

2 Q And when you took -- while you are getting that
3 gun, when you took these various samples from the firearms,
4 how did you go about doing that? How did you take the
5 samples from each area that you indicated?

6 A Each firearm is swabbed individually, and every
7 time you take a swab you would put on brand new gloves. You
8 swab the area, you put the tip of the swab in a piece of
9 clean filtered paper; it's folded and it's put into an
10 envelope and then the envelope is sealed and sent out for
11 analysis. Then, you would take off your gloves and the
12 whole process starts all over for the next item you are
13 taking the swab from.

14 Q Did you do that in this case?

15 A Yes.

16 Q Is each package sealed and sent for analysis?

17 A Yes.

18 Q Moving on to the .45 caliber Llama. What
19 designation is that, J30B?

20 A Yes.

21 Likewise, the swabbing sequence is pretty much the
22 same. The first swab for this firearm would be listed as
23 S5, and that would be from the back strap of the .45.
24 That's this area (indicating). The following would be from
25 the muzzle area of this firearm located here (indicating).

NICOLAZZI - DIRECT - DET. CURRY

1 Q What was the designation given to the DNA swab of
2 the muzzle?

3 A S6.

4 S7 would be the following, and that would be from
5 the trigger area of this firearm (indicating). S8 would be
6 from the front strap of this firearm (indicating). Those
7 were all the swabs from the firearm.

8 Q Then, now, the last firearm, which would be the
9 Intertek, I believe, and the designation of the Intertek was
10 J30C; is that correct?

11 A That is correct.

12 The first swab from this firearm is listed as S9.
13 That is from the back strap (indicating). S10 would be from
14 the muzzle area on this firearm (indicating). S11 would be
15 from the trigger area of this firearm (indicating). S12
16 would be from the front strap (indicating).

17 Q Detective, is that the last swab that you took
18 from that firearm?

19 A That was the last swab from that firearm.

20 Q You could resume your seat with your notes.

21 (Whereupon, the witness resumes the witness
22 stand.)

23 Q Now, Detective Curry, sticking with the serology,
24 what other items did you take samples from, just again
25 giving us the designation and telling us where?

NICOLAZZI - DIRECT - DET. CURRY

1 A There were also swabs taken from the folding
2 knife, which was a Flying Falcon folding knife, which is
3 listed as J30D, as in David.

4 Q And what designation did you give those swabs that
5 were taken from the folding knife?

6 A The first swab was taken from the knife blade,
7 which is listed as S13. The second one was taken from the
8 knife handle, which was listed as S14.

9 Q And were there other serological samples taken by
10 you of other items?

11 A Yes, there was one DNA swab from a chicken bone
12 that was inside that bag inside the box. That's listed as
13 S15.

14 Q And what was the designation that you gave to the
15 chicken bone itself?

16 A That was item number J30E, as in Eddie, number 1.

17 Q And then, lastly, what other item did you take a
18 serological sample from?

19 A That would be listed as S16, and that would be
20 from a screwdriver that was found. And that was listed as,
21 the screwdriver itself, as J32.

22 Q Now, Detective Curry, various items that you
23 showed members of the jury, by way of the photographs, did
24 you recover them, including, but not limited to, the jacket,
25 the hat, the chicken bone, including the wing, the biscuit,

NICOLAZZI - DIRECT - DET. CURRY

1 all those items?

2 A Repeat that question.

3 Q Did you recover the items themselves that you just
4 showed the jury, by way of photographs, that included, but
5 are not limited to, the jacket, the hat, the chicken, the
6 biscuit?

7 A Yes.

8 Q I'm going to ask you to take a look at an item
9 that is being marked 109 collectively (handing).

10 MS. NICOLAZZI: I've already shown this to
11 defense counsel.

12 Q If you could just tell us what is contained in
13 that? If you need the help of the voucher, I believe that
14 is on there and it is listed. What is contained within
15 that? If you want to read off the voucher, that is fine.

16 A There are several items.

17 Q Sure.

18 A The contents of all those bags?

19 Q Yes, People's 109.

20 A There is one multi-colored jacket. Do you want my
21 listed numbers?

22 Q Please.

23 A The multi-colored jacket was a Coogi hooded
24 jacket, and I have it listed as J31; the next item on this
25 voucher is a navy blue Yankee hat, and I have that listed as

NICOLAZZI - DIRECT - DET. CURRY

1 J31A, as in Adam; the next item would be a white T-shirt,
2 and I have that listed as J34; then, the next item is a red
3 sleeve, and that's listed as J35 in my notes. And the
4 following would be a red hooded sweat shirt with one sleeve.

5 Q And were those items submitted to the lab for
6 potential analysis themselves, be it DNA or other, the
7 items?

8 A They went for hair and fiber, as well as DNA
9 abstraction.

10 Q So, those were not items that you took samples
11 from, but you submitted the items themselves to the lab?

12 A That's correct.

13 Q I now hand you up the last three items, and I
14 offer that into evidence.

15 MR. MEGARO: No objection.

16 THE COURT: Marked and received in evidence.

17 (Whereupon, the aforementioned Items were
18 entered into evidence as People's Exhibit 109, as
19 of this date.)

20 MS. NICOLAZZI: I'll hand them up one at a
21 time, People's 110, 111 and 112, which I already shown
22 to defense counsel (handing).

23 Q First starting with People's 110. I think it's
24 opened on top. If you could just tell us what is contained
25 within People's 110?

NICOLAZZI - DIRECT - DET. CURRY

1 A These are the miscellaneous papers that were taken
2 from the left pocket of that multi-colored jacket that you
3 saw the photograph of, and I have those things listed as
4 J31B, as in boy.

5 Q Did they go down for any sort of lab work?

6 A Yes, they did.

7 Q For what?

8 A Okay. The items contained in this bag were paper
9 items mostly, and they went for chemical processing for
10 latent prints.

11 Q Next, moving on to what is marked there People's
12 111. It is the larger of the two bags. If you could tell
13 us -- there looks like three white boxes contained within
14 that.

15 A The first item is listed in my notes as J32, and
16 that would be one screwdriver; then, the next one is J30D,
17 as in David. That would be the folding knife that I
18 explained and showed in the photograph earlier; and the
19 following one would be J30E, as in Eddie, which is the
20 plastic bag and the chicken box that was in a photograph
21 earlier.

22 Q I'm sorry, did you give your designation?

23 A J30E, as in Eddie.

24 Q And those also went down to the lab for analysis?

25 A Yes.

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1 Q And then the last --

2 MS. NICOLAZZI: I offer People's Exhibits
3 110, 111 and 112 into evidence.

4 THE COURT: Any objection?

5 MR. MEGARO: No objection.

6 THE COURT: Marked and received in evidence.

7 (Whereupon, the aforementioned Items were
8 entered into evidence as People's Exhibits 110,
9 111 and 112, as of this date.)

10 Q The last one is People's 112.

11 A Okay. The contents here was the chicken bone, the
12 chicken wing and the biscuit. And the package contains the
13 16 DNA swabs that were listed before, the chicken bone being
14 J30E, as in Eddie, number 1, as well as chicken wing is the
15 same, J30E, as in Eddie, number 1, and the biscuit, J30E, as
16 in Eddie, number 1. The swabs, they were the listed items
17 as S1 through S16.

18 Q And just lastly, what was the designation you gave
19 that 9MM cartridge you found outside on Lefferts?

20 A The one in the garden area?

21 Q The designation?

22 A That is J33.

23 Q That went to Ballistics for analysis?

24 A That is correct.

25 Q What time did you finish your work at that

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1 location, Detective Curry?

2 A The overall completion was at 0230 hours, on the
3 10th.

4 Q And did you prepare a written report from your
5 notes with respect to your work?

6 A That is correct.

7 Q Just a couple more questions, Detective Curry.

8 On a subsequent date, were you requested to
9 respond down to be present at the time of the autopsy that
10 was performed in this case on Russell Timoshenko?

11 A Yes, I was.

12 Q And were you present while that autopsy was
13 performed?

14 A Yes, I was.

15 Q What was the date that that occurred?

16 A That was the 15th.

17 Q When you were present for the autopsy on Officer
18 Timoshenko, were you present when various x-rays were taken
19 and viewed?

20 A Yes.

21 Q And did you take photographs of those x-rays?

22 A Yes, I did.

23 Q Were you present when any items were removed from
24 the body of Officer Timoshenko?

25 A Yes, I was.

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1 Q If you could tell the members of the jury what you
2 observed removed?

3 A The autopsy was conducted by Dr. Hayes, and he
4 extracted two pieces of ballistics.

5 Q And how were those marked, and what was done with
6 them after he removed them from Russell Timoshenko's body?

7 A After he removed them, they were photographed and
8 then they were initialed. He put a "T" on them. That was
9 his identifier. I listed them in my notes, after my
10 photographs, as J1 and J2, and then they were received from
11 Dr. Hayes in a sealed package.

12 Q Received by you?

13 A Yes.

14 Q And were those items then sent down to Ballistics
15 Analysis for testing?

16 A I took them back to the NYPD laboratory, where I
17 had to voucher them and then they were forwarded to the
18 Ballistics Section.

19 Q What was the voucher number that was given to
20 those pieces of ballistics?

21 A The voucher number for the ballistics was N, as in
22 Nancy, 374292.

23 MS. NICOLAZZI: I'm going to ask that
24 Detective Curry be happened these last three items.
25 I've previously shown to defense counsel People's 113,

COLLOQUY

1 114 and 115 (handing).

2 MR. MEGARO: Judge, may we have a brief
3 sidebar?

4 THE COURT: Yes, let's step outside.

5 (Whereupon, the following discussions were
6 held outside the presence of the jury.)

7 THE COURT: You have the floor.

8 MR. MEGARO: The only thing I'm objecting to
9 are the X-rays. I think there is certainly a distinct
10 probability that this would inflame the jury. They are
11 very, very gruesome. They show two pieces of lead
12 severing this man's spinal column. I'm not objecting
13 to the actual bullets that have been removed, but I
14 think this is inflammatory.

15 MS. NICOLAZZI: Your Honor, first of all,
16 I've chosen the least graphic of all options, which of
17 course would be the autopsy photos, which we have as
18 well, being sensitive to any gruesome photograph. The
19 relevant purpose, and the reason these photographs
20 themselves are probative, is that location of the
21 shooter in relation to any directionality, angle, where
22 it was that Officer Timoshenko was wounded, which is
23 shown. The pictures speak a thousand words here in
24 these photographs. The reason I chose the X-rays
25 instead of the photographs is because they are less

COLLOQUY

1 graphic. In trying to be sensitive to everyone, this
2 is the best option, I believe.

3 THE COURT: Mr. Megaro, while your concern
4 is understandable, it is being offered for a legitimate
5 reason, to reflect the state of mind of the person or
6 persons who did this. So, I'm allowing it to be
7 admitted. I'll give a limited instruction they are not
8 to dwell on it, and any weight they find must be based
9 on objective criteria. Your objection is overruled.

10 How much longer?

11 MS. NICOLAZZI: Two minutes.

12 THE COURT: Mr. Megaro?

13 MR. MEGARO: Fifteen minutes at the most.

14 (Whereupon, Monica Walker-Bailey was relieved
15 by Phyllis Price as the Official Court Reporter.)
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1 THE COURT: You have a question, Miss Nicolazzi?

2 MS. NICOLAZZI: Yes.

3 Q First, People's 113, the items contained in the white
4 envelope. Do you recognize what they are, Detective Curry?

5 A Yes.

6 Q What is that, People's 113?

7 A These are the recovered ballistics.

8 Q From the body?

9 A From the autopsy by Dr. Hayes from Officer Russell
10 Timoshenko.

11 MS. NICOLAZZI: Offer those into evidence as
12 People's 113?

13 THE COURT: All right. Without objection,
14 ballistics only?

15 MR. MEGARO: There is no objection.

16 (People's 113, marked in evidence.)

17 Recovered ballistics

18 Q Then the two photographs, People's 114, 115, what are
19 they photographs of, generally? And do you recognize them?

20 A These are my photographs from the x-rays put on the
21 x-ray board, the light board.

22 These are head/neck, chest area, upper chest area of
23 Russell Timoshenko.

24 Q What are they showing, other than the actual skeletal
25 view of officer Timoshenko?

1 A You can see in the photographs the ballistics that
2 are lodged inside his body.

3 MS. NICOLAZZI: Offer those into evidence,
4 People's 114 and 115?

5 MR. MEGARO: And the Defendant objects for the
6 reason noted earlier.

7 THE COURT: Okay.

8 (People's 114 and 115, marked in evidence.)

9 X-ray photos

10 Ladies and gentlemen, these two exhibits are
11 going to be admitted into evidence. You may find them
12 gruesome and somewhat unpleasant. Don't dwell on them. Any
13 consideration of these exhibits must be made objectively,
14 without emotion. They are x-rays of the location of the
15 bullets in Officer Timoshenko's body at the time of the
16 autopsy.

17 Put them on the monitor.

18 Q And if you could bring the ballistics down with you
19 also, Detective Curry?

20 THE COURT: Please.

21 Q If we could put the two bullets recovered from
22 Officer Timoshenko, place them on the document camera.

23 Now -- and, Detective Curry, those were the two
24 pieces of ballistics that you observed Dr. Hayes remove from
25 Russell Timoshenko during the autopsy?

1 A Yes.

2 Q Now, People's 114 is being displayed for the members
3 of the jury.

4 If you can explain to them, what it is they are
5 viewing in that photograph of the x-ray?

6 A Well, the medical examiner takes an x-ray of the
7 decedent. And what happens is, this is on a light board. I
8 took an additional photograph for the record.

9 And you are looking at, basically, the right side.
10 It is a side view. And if you look in this location, these
11 two areas are depicted here like white spots, those are the
12 ballistics.

13 Q So, the white areas below the skull, and behind the
14 vertebrae, or neck area are the two pieces of ballistics?

15 A Correct.

16 Q Then, lastly, People's 115.

17 If you can tell the members of the jury what they are
18 looking at there?

19 A This is a front view x-ray.

20 So, I also did the same, taking a photograph while it
21 was on the light board. And you can see it is a little bit
22 hazier on this end. One item of ballistics, and this is the
23 other.

24 Q So, one would be to the left of the skull facing, and
25 the other directly through the oral cavity, or commonly the

1 mouth?

2 A Yes, basically.

3 MS. NICOLAZZI: I have nothing further.

4 THE COURT: Detective, you can return and have a
5 seat, ma'am.

6 Any cross-examination?

7 MR. MEGARO: Briefly, your Honor.

8 CROSS-EXAMINATION

9 BY MR. MEGARO:

10 Q Good afternoon, Detective.

11 A Good afternoon.

12 Q This will be quick.

13 You arrived at this scene at Lefferts Avenue at
14 approximately 6:30 a.m. on July 9, 2007?

15 A Yes, approximately six, 6:30.

16 Q And after you arrived there, you were directed by
17 other police officers to that back garage area that you showed
18 us in the photo, right?

19 A Well, it is a series before I got to the back area.
20 But, basically, I was told from the executive officers to go
21 to the back area.

22 Q When you say, a series, you had gotten information at
23 a different location, to go to this place?

24 A Well, the way I am referring to your question is, is
25 that at 6:30 I arrived at Rogers and Lefferts. And then we

1 went and moved to the other location because of the CO's
2 request.

3 Q Okay. So, at Rogers and Lefferts the CO told -- CO
4 meaning Commanding Officer?

5 A Commanding Officer of the crime scene officer.

6 Q Your CO told you to respond to that location on
7 Lefferts to recover some weapons?

8 A Right. That's where I was going to be assigned.

9 Q And by this time, the weapons had already been
10 located, those three guns that are in evidence, right?

11 A Yes, sir.

12 Q What time -- let me withdraw that.

13 How long before you had gotten there did they tell
14 you they found these weapons?

15 A Before I got there.

16 Q Did they tell you, we found them three hours ago,
17 four hours ago?

18 A I wasn't told that.

19 Q And when you go to the rear of -- I'm sorry.

20 When you got to 591 Lefferts, that area had already
21 been taped off and designated a crime scene, and sealed?

22 A Yes, sir.

23 Q How many police officers were at that particular
24 location?

25 A In my specific location?

1 Q Yes?

2 A I am going to give you a speculation of about eight
3 on the perimeter.

4 Q And when you go to the back garage area, that garage
5 where the two cars were, and the guns were found, was there
6 any police officers safeguarding those guns?

7 A They were not explicitly on top of the gun. They
8 were at the crime scene taped area.

9 Q Had any -- to your knowledge, had any police officers
10 been back there prior to you getting there?

11 A I am going to safely say, the person who visualized
12 where the guns were. But that is speculation, I don't know
13 that.

14 Q Do you know who that was? Do you know the name of
15 the officer who first found them?

16 A I do not.

17 MR. MEGARO: Can I have People's 99?

18 THE COURT: You are going to put it on the
19 monitor?

20 MR. MEGARO: Yes.

21 Q Now, People's 99 in evidence, that's that multi-
22 color jacket that you were testifying about that was found
23 near the car, correct?

24 A Yes.

25 Q Now, in this particular photograph, where are the

1 three firearms? Are they under the jacket?

2 A No. They had been removed already.

3 Q Okay. And where is the baseball cap, under the
4 jacket?

5 A Under the jacket.

6 Q Where was the baseball cap prior to you -- prior to
7 it ending up under the jacket?

8 A I wouldn't know where it was.

9 Say your question again, because I don't quite
10 understand it.

11 MR. MEGARO: Neither do I.

12 Can I have 97 and 98 please?

13 Q Where did you find the baseball cap?

14 A Under the jacket.

15 Q And is it under the jacket?

16 THE COURT: If you will, keep your voice up. She
17 is speaking into the microphone.

18 Q And is the baseball cap under the jacket in this
19 picture?

20 A Yes.

21 Q I am going to show you People's 98, crime scene photo
22 13.

23 Where is the baseball cap in this particular
24 photograph?

25 A If you look to the left-hand side edge of that

1 photograph, there is a white item on the floor, and that is
2 the jacket inside out. It would be underneath the jacket.

3 Q Underneath the jacket there?

4 A Yes.

5 Q When the jacket is inside out?

6 So when the jacket was moved and turned right side
7 in, the baseball cap is placed underneath the jacket?

8 A No. It was already there under the jacket. And we
9 only did the inside out thing, putting it back to see what
10 colors there were right there in that location.

11 Q When you picked up the jacket to put it inside out,
12 or to put it right side in, you had to pick it up off the
13 floor?

14 A Yes.

15 Q And then the jacket, and the baseball cap were moved
16 over?

17 A Nothing was moved, just the jacket was put in the
18 right version to see it.

19 Q The Popeye's box was inside that plastic bag that we
20 just saw in that photograph, right?

21 A Yes.

22 Q Let me put it back up.

23 And inside this Popeye's box was those pieces of
24 chicken and the biscuit that you found, correct?

25 A Yes.

1 Q And you could see actually the outline of the box
2 inside the bag, right?

3 A I guess, yes.

4 Q When you find that Popeye's box, it is partially
5 open, correct?

6 A Yes.

7 Q And the pieces of chicken, the biscuit, they are all
8 in the same bag with the guns, right?

9 A Well, they are still in the box. But it is all
10 inside the bag.

11 Q Do you know whether those pieces of chicken had come
12 in contact with those firearms?

13 A I would have no way of knowing that.

14 Q And the folding knife is inside that bag as well?

15 A Yes, sir.

16 Q Was that bag ripped when you found it at that
17 location?

18 A Slightly torn.

19 Q Did it become ripped later? Did the rip get bigger?

20 A No.

21 Q Did any of the police officers, at that particular
22 scene, tell you whether they had touched that bag?

23 A No.

24 Q Did any of them tell you whether they had touched the
25 firearms inside that bag?

1 A I was told the scene was safeguarded.

2 Q Apart from the scene, I am talking about the items in
3 that picture?

4 Did any of them tell you they touched any of those
5 items?

6 A No.

7 Q And all those items were together in that bag before
8 you swabbed them for DNA, right?

9 A Yes.

10 Q Now, after you recovered each item, and you process
11 it for DNA and fingerprints, what did you do with those items?

12 A They get packaged.

13 Q And they get packaged separately, right, separate
14 plastic sealed packages?

15 A Yes. The chicken stuff, those items were together.
16 But most other items in the bag were definitely done
17 separately.

18 Q And as we saw, the three firearms were separated into
19 each their own plastic bags, right?

20 A They were initially put into the -- a cardboard
21 firearms box.

22 What you saw was packaging from ballistics.

23 Q Okay.

24 And did each firearm get its own box, or put in one
25 particular?

1 A No, each firearm gets its own box.

2 Q So, they were not bagged at that particular scene,
3 right?

4 A No. We don't bag them like that at a scene.

5 MR. MEGARO: Thank you.

6 I have nothing further.

7 THE COURT: Any redirect?

8 MS. NICOLAZZI: No, your Honor.

9 THE WITNESS: Thank you, sir.

10 THE COURT: Thank you.

11 (Whereupon, the witness is excused.)

12 THE COURT: All right, members of the jury,
13 that concludes the evidence for today.

14 Please try to get in the jury room tomorrow morning
15 at 10:00. You can expect a full day, okay?

16 With that, keep my warnings in mind. See you
17 tomorrow 10:00 in the morning.

18 (Jury exits the courtroom.)

19 THE COURT: All right, what is the schedule for
20 tomorrow?

21 MS. NICOLAZZI: Tomorrow is Detective Peruzza
22 for latent prints. Along with K9 Detective Damen and
23 Cunningham, which is the computer model. And they did the
24 trajectory evidence as well.

25 That's it.

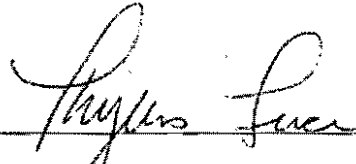
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With that, see you tomorrow morning at 10:00 then.

(Whereupon, the trial proceedings were adjourned until March 5, 2009.)

* * *

Certified to be a true and accurate transcript of the foregoing proceedings.



PHYLLIS PRICE

OFFICIAL COURT REPORTER

MONICA WALKER-BAILEY, RPR, CSR

OFFICIAL COURT REPORTER

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM: PART: 37

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4 PEOPLE OF THE STATE OF NEW YORK, :
5 : Indictment
6 : No. 6797/07
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-against-
LEE WOODS,
Defendant.

320 Jay Street
Brooklyn, New York
March 5, 2009

11 B E F O R E:

12 HONORABLE PLUMMER LOTT,
13 Justice of Supreme Court

14 A P P E A R A N C E S:

15 CHARLES J. HYNES, ESQ.
16 DISTRICT ATTORNEY KINGS COUNTY
17 BY: ANNA SIGGA-NICOLAZZI, ESQ.
18 MARK HALE, ESQ.
19 Assistant District Attorneys

20 PATRICK M. MEGARO, ESQ.
21 47-03 Bell Boulevard
22 Bayside, New York 11361
23 Attorney for the Defendant

24 PHYLLIS PRICE
25 DIANE ADKINS-FORTE, RPR
OFFICIAL COURT REPORTERS

1 THE CLERK: Case on trial. All parties present.

2 THE COURT: Counsel, Mr. Woods.

3 MR. MEGARO: Good morning.

4 THE COURT: What is the schedule for today?

5 MS. NICOLAZZI: We have five witnesses, your
6 Honor. Four of them which are not lengthy. Detective
7 Perruzza, who is latent, then we have K-9, then two crime
8 scene detectives laying the foundation for the
9 reconstruction video, and the medical examiner.

10 THE COURT: I beg your indulgence. I will get in
11 as much as I can, but I am not available this afternoon.

12 MS. NICOLAZZI: Your Honor, if at any point we
13 are not able to get through them, we will just put them
14 back on Monday.

15 THE COURT: Bring them in.

16 COURT OFFICER: Jury entering.

17 (Whereupon, the jury enters the courtroom, and
18 is seated in the jury box.)

19 THE CLERK: Case on trial. All parties are
20 present.

21 Both sides waive a reading of the roll?

22 MR. MEGARO: Yes.

23 MR. HALE: Yes.

24 THE COURT: Folks, good morning.

25 JURORS: Good morning.

1 THE COURT: People?

2 MR. HALE: People call Detective Daniel
3 Perruzza.

4 D E T D A N I E L P E R R U Z Z A, called as a witness
5 on behalf of the People, having been first duly sworn,
6 was examined and testified as follows:

7 THE CLERK: For the record, state your name.
8 Spell your last name. Shield and command.

9 THE WITNESS: My name is Detective Daniel
10 Perruzza. Last name spelled P-E-R-R-U-Z-Z-A.

11 My shield number is 3969. And I work for the latent
12 print unit for the New York City Police Department.

13 THE COURT: You may inquire.

14 MR. HALE: Thank you.

15 DIRECT EXAMINATION

16 BY MR. HALE:

17 Q Sir, you are a member of the New York City Police
18 Department?

19 A Yes, sir.

20 Q How long have you been a police officer?

21 A Well, I have been a police officer for the last 27
22 full years.

23 Q And how long with the rank of detective, sir?

24 A Since 1985.

25 Q You work where?

1 A I work for the latent print section for the New York
2 City Police Department.

3 Q And how long have you been working in that unit, sir?

4 A I have been in the latent print unit for the last 24
5 and a half years.

6 Q Detective, just, generally, what is the function of a
7 detective in the latent print unit?

8 A Well my function, my duties at the latent print unit,
9 I read, analyze, exam, classify, and identify fingerprints
10 from crime scenes.

11 Q What sort of training have you had that allows you to
12 perform that function, sir?

13 A Well, many, many years ago I took the science of
14 fingerprint course given by the New York City Police
15 Department.

16 I have taken a palm symposium on friction ridges and
17 friction skin positions contained in a person's palm.

18 I have taken a Ridgeology Course, which is the study
19 of friction ridge and friction skin uniqueness and formations
20 on a person's finger points, palms, and also at the bottom of
21 a person's foot.

22 Numerous courses given by the Federal Bureau of
23 Investigation on chemical development enhancements of
24 fingerprints, where you learn to read and analyze
25 fingerprints.

1 But the best is sitting at your desk analyzing
2 thousands and thousands of images until you become efficient
3 at doing this type of work.

4 Q And during the time you have been at the latent print
5 unit sir, how many thousands of those images have you
6 examined?

7 A I don't have an exact number, but on a given day, I
8 mean, on a quite day you would look at anywhere from, maybe --
9 I don't know -- three, 400 images on a quiet day. On a busy
10 day, maybe a couple of thousand images, whether you are
11 identifying, or not identifying, just looking at the images.

12 What that amounts to over 24 and a half years, I
13 don't know the exact number.

14 Q It is a lot of zeros?

15 A A lot of fingerprints.

16 Q Now, detective, you mentioned something right there
17 about having taken a course in the science of fingerprints.

18 What is the science of fingerprints?

19 A That's good. Science -- well, is it a science? The
20 new wave of attack now, that this is all made up stuff,
21 fingerprints are not legitimate, this is something you made
22 up. You know what, the opposite is true.

23 Is it a science? Well, what is a science? The first
24 question should be, what is a science? And what do we do in
25 the fingerprint world? You know, in the fingerprint world we

1 have -- we are looking at friction skin, or pieces of skin, or
2 friction skin that's left at a crime scene, or on a person's
3 hand. And we look for points of identifications that are
4 contained there.

5 If it is a science our hypothesis is, hey, find
6 something else on this planet, another person's friction skin
7 that contains the same material, or same points of
8 identification somewhere else, because we are stating that
9 there are no two fingerprints, or no two friction skin areas
10 exactly alike found on another individual.

11 Well, how do you test this? Well, you know what, we
12 have been analyzing and comparing, evaluating prints for the
13 last 120 years. Actually, what we are trying to prove, each
14 and everyday we look at a print, we are looking for that
15 elusive fingerprint that is an exact match to someone else.
16 You know what, it doesn't exist.

17 So, for something to be a science it has to be
18 proved, or disproved by other people around the world. They
19 examine prints the way we do. They are still looking for that
20 elusive print trying to disprove there is a science. And you
21 know what, it has never been disproved. And more than likely,
22 will never be disproved.

23 Q So I guess, Detective, to sum it up, the prints that
24 are caused by the friction ridges on the fingerprints, no two
25 people have the same. Therefore, you can identify a

1 particular print to a particular individual; is that correct?

2 A Not only two people, no two fingerprints, no two
3 fingers on this planet, no two joints, no two pieces of a palm
4 will you ever find to have the same identical information.

5 Q And so, then, sir, your job would be to look for
6 those sorts of identifications in individuals that have known
7 fingerprints versus unknown fingerprints that are sent to you?

8 A Well, what you are saying is, we have ink
9 fingerprints that are maintained by the police department
10 files, and prints that are retrieved from the crime scenes, we
11 refer to those prints as latent prints. And my job is to
12 compare the image retrieved from a crime scene to known ink
13 fingerprints, yes.

14 Q Have you ever testified before concerning your
15 findings with regard to analysis of fingerprints and
16 identification between latent and known fingerprints?

17 A Yes, sir.

18 Q How many times have you testified before, Detective?

19 A Approximately 219 other times.

20 Q And in what courts have you testified, sir?

21 A I have testified here in Brooklyn Supreme Court,
22 Bronx Supreme Court, Queens Supreme Court, Staten Island,
23 Manhattan Supreme Court, and in various Federal jurisdictions.

24 Q On the occasions when you have testified sir, have
25 you been found to be an expert in your field?

1 A Yes, sir.

2 Q Ever denied expertise in a court of law?

3 A No, sir.

4 MR. HALE: Your Honor, I offer Dr. Perruzza as
5 an expert in the field of latent fingerprint analysis, and
6 identification as he has defined it for the Court.

7 MR. MEGARO: I agree, Detective Perruzza is an
8 expert, your Honor.

9 THE COURT: Again, this witness will be able to
10 give an opinion. He is an expert in latent print
11 development and analysis. You will treat his testimony
12 just as you would any other witness. You can accept it, or
13 reject it. But, his opinion should be based on something
14 that he observed, or based upon questions which the
15 lawyers asked him to assume and certain facts.

16 Proceed.

17 Q Now, Detective, its fair to say that in your current
18 position, you don't go and lift, or develop fingerprints. You
19 analyse fingerprints that are sent to you; is that correct?

20 A Yes, the images that are retrieved from the crime
21 scene are sent to my office, yes, sir.

22 Q And you were performing that function in July of
23 2007?

24 A Yes, sir.

25 Q During the month of July of 2007, sir, were you

1 assigned a particular case having to do with the shooting of
2 two New York City police officers?

3 A Yes, sir.

4 Q As part of that assignment, sir, did you receive a
5 number of latent lifts in reference to a crime scene that was
6 processed by a Detective Newman?

7 A Yes, sir.

8 Q I am going to show you, sir, these are 16 items that
9 are deemed, actually marked now People's 116 through 131 for
10 identification.

11 Sir, if you can just look at those items?

12 (Handing.)

13 A Okay.

14 Q Now, sir, those items are the actual lifts that has
15 been taped, put on the cards with the description on the back
16 of it; is that correct?

17 A These are the actual lifts from this particular crime
18 scene run, yes, sir.

19 Q Are they in, substantially, the same condition as
20 they were when they were received by you for analysis in the
21 latent print section in July of 2007?

22 A Yes, sir.

23 MR. HALE: I will offer those, your Honor, as
24 116 through 131 in evidence.

25 MR. MEGARO: No objection.

1 THE COURT: Marked and received in evidence,
2 without objection.

3 (People's 116 - 131, marked in evidence.)

4 Latent print images

5 Q Now, Detective, when you first get a grouping of
6 latent prints such as the ones you have in front of you, what
7 is your first step in analyzing those fingerprints and seeing
8 whether they would be of any utility to you at all?

9 A The first thing we do, when a case is received in my
10 office, we analyze each and every lift. We literally take a
11 four and a half power microscope, place it on the lift card,
12 and we count, or look for the points of identification.

13 These friction ridges that I was talking about
14 earlier, they do things from the time you are in your mother's
15 womb, about the 15th, 16th week you are being formed, these
16 friction ridges grow and they do certain things, and they are
17 permanently -- that information is permanently embodied on
18 your friction skin.

19 So, we look for ending ridges, ridges that travel
20 along and come to an abrupt end. You have ridges that go out
21 of your skin that looks like dots, that's what we call them,
22 dots.

23 Another point to identify prints, you have ridges
24 that split, they come apart, we call them bifurcations.

25 We have ridges that open and close, they are called

1 islands or enclosures.

2 Then you have ridges that are fast ridges that do
3 strange shapes or, lack for a better word, there are no words
4 that describe what they do, but that is a point we use to
5 identify prints.

6 And we look for certain amounts of information. And
7 NYPD, New York City Police Department, you have to have at
8 least eight points for us to deem that print to be of value.
9 Meaning, it could be identified to someone on this planet.
10 And if it falls below the threshold, it doesn't have enough
11 points of identification, we would deem those lifts to be no
12 value.

13 Q Now, Detective, of the 16 lifts that you received
14 from Detective Newman in regard to this case, how many of
15 those prints, after your analysis, were not of value? That
16 is, they were not any utility for you, in terms of comparing
17 against any other print?

18 A 99 lifts, nine lifts are deemed to be no value.

19 Q If you could, sir, just going through the exhibits
20 that you have in front of you.

21 Tell us what exhibit number, and then what lift
22 number, and from what location the ones of no value were.

23 A The no value ones?

24 Q Right?

25 A Well, lift number -- I don't have these in

1 numerical -- lift number ten.

2 Q What exhibit number is that?

3 A Exhibit number 125, which is lift ten, comes from the
4 operator front door window, was deemed to be no value.

5 Q Proceed.

6 A Lift number 12 deemed to be no value, exhibit 127.

7 Operator front door below handle from BMW, was deemed to be no
8 value.

9 Lift number 13, exhibit 128. Operator front door
10 above door handle from BMW, no value.

11 Lift number 14, no value, exhibit number 129. This
12 was from the rear license plate from the BMW, no value.

13 Lift number 15, no value, front license plate, BMW,
14 Exhibit 130.

15 Lift number 16, exhibit 134. And that was from the
16 back of a front license plate from the BMW, no value.

17 Q Detective, I think that was Exhibit 131, was it not?

18 A I'm sorry, it is 131, that's correct.

19 Lift number six, exhibit 121, rear operator door
20 handle from the BMW, no value.

21 And then, lift number four, passenger front door
22 handle from BMW, Exhibit 119, no value.

23 Q Just keep those in separate stacks, sir, Detective, I
24 will ask you a few more questions.

25 Did you also, sir, during the course of your

1 investigation, your assignment, receive prints that had been
2 chemically developed from certain items that had been --
3 chemically developed by the lab? Did you receive some lifts
4 that were submitted in this case?

5 A Yes, sir.

6 Q Now, sir, from what voucher number did you receive
7 those lifts, and what were the descriptions of the items from
8 which those lifts were taken?

9 A From voucher item N, Nancy, 374275. And our police
10 lab number was 07 Thomas 2868, we received images from a
11 Popeye's chicken box, and a bag of a Popeye's chicken box.

12 Q Sir, just in general terms, if you know, how are
13 prints developed in the laboratory, as opposed to the lifts
14 that you have there on the cards?

15 A Well, from the laboratory they use chemicals which
16 are pretty dangerous. You are not going to do that out at the
17 field because the chemicals can cause cancer, and can kill
18 you. So, it is done under a laboratory condition.

19 If paper was being tested, they will usually use
20 ninhydrin. Besides secreting oils and moisture from our
21 fingertips, our body, we are secreting chemicals. They use
22 ninhydrins like human acids we are secreting from the human
23 body. If we are using a fingerprint on paper, they use
24 ninhydrins, like amino acid, and will develop your
25 fingerprints on paper.

1 They also use crazy glue. Crazy glue, ethyl
2 cyanoacrylate, which is the technical name, likes
3 fingerprints. You leave moisture, so crazy glue will attach
4 itself to the moisture that is left on fingerprints.

5 Iodine. If you leave fat or grease -- well, you know
6 what, they have iodine fuming, it will fume certain items and
7 will retrieve your fingerprints in that manner.

8 But all these chemicals has to be done under a
9 controlled enviornment. That's why these products are sent to
10 the lab to be developed.

11 Q Now the prints that you received under that voucher,
12 sir, under that lab number -- first of all, how many prints
13 did you receive, and how many of those prints were of value
14 when you analyzed them?

15 A Five images were sent from that particular run. Four
16 were deemed to be no value, I deemed them -- couldn't identify
17 them -- and one on the top side of the Popeye's chicken box
18 was deemed to be of value.

19 Q Sir, once you have prints that you have determined
20 are of value, are those able to be compared to the known
21 inked, or live scan prints of individuals?

22 A Yes, sir.

23 Q In the course of your investigation, sir, in the
24 course of your assignment, were you asked to compare those
25 prints of value from Detective Neuman's crime scene run, and

1 from the laboratory analysis, against some known individuals'
2 prints?

3 A Yes, sir.

4 Q Did that include individuals by the name of Dexter
5 Bostic?

6 A Yes, sir.

7 Q Robert Ellis?

8 A Yes, sir.

9 Q And Lee Woods?

10 A Yes, sir.

11 Q Sir, were you able to identify any of the prints, the
12 latent prints of value, in your possession, to any of those
13 individuals?

14 A Yes, I did.

15 Q Let's start with Dexter Bostic.

16 Were you able to compare -- were you able to identify
17 any of the lifts that you had, against the known prints of
18 Dexter Bostic?

19 A Yes, from the BMW run, from the original run, on lift
20 number two, which was from the passenger front door below the
21 handle. I identified Dexter Bostic's number four finger.

22 When I say four finger, in the fingerprint world your
23 right thumb is the first finger, and we count two, three,
24 four, five and six, seven, eight, nine, 10. So, his fourth
25 finger is the finger adjacent to the one finger and right hand

1 was Dexter Bostic's fingerprint.

2 Q Was there any other fingerprints -- you have now
3 eight prints of value -- to Dexter Bostic, or just that one?

4 A Just that one from that particular run.

5 Q Now, with regard to Robert Ellis. Were you able to
6 make an identification, between any of the prints that you had
7 in your possession, I think we are down to seven unknown
8 prints of value, against Robert Ellis? Were you able to
9 identify?

10 A You know what, on Dexter Bostic there was another
11 identification. It wasn't his finger, but it was his palm.

12 Later, when they apprehended the individual, we took
13 major case prints, and they took his palm print. And from
14 lift number nine was a palm print.

15 So, he also left his palm print on a rear window from
16 that BMW.

17 And Robert Ellis, from lift number three, the rear
18 passenger door triangular window on this BMW, I ended up
19 identifying Robert Ellis' number one finger, his right thumb,
20 from that particular area.

21 Q So, just to back up a little bit.

22 You had a match of Bostic with the ring finger on the
23 right hand?

24 A Yes.

25 Q Number four. And then also a palm?

1 A His left palm, his left hand.

2 Q Now, is the same principle that applies to
3 fingerprints and the friction ridges on principles, apply to
4 the friction ridges on the palm?

5 A Same theory.

6 Q No two identical?

7 A No two identical area of friction skin, no, sir.

8 Q Were there any other matches of Robert Ellis among
9 the prints that you have, sir?

10 A Not from that particular run, no, sir.

11 Q Now, with regard to Lee Woods.

12 Were there any matches among the prints that you had
13 in your possession?

14 A On Lee Woods, lift number seven, which comes from the
15 rear operator door, I identified Lee Woods' number six finger,
16 left thumb.

17 Q Now, that was off of the lifts that had been
18 submitted by Detective Newman on the car; is that correct?

19 A From the vehicle, yes, sir.

20 Q Was there any identification between the prints of
21 Lee Woods, or any other individual, from the one print of
22 value that was generated during the laboratory analysis?

23 A From the chicken box. The images that I retrieved
24 from the lab, I ended up identifying Lee Woods' number six
25 finger, again, from the top side of the Popeye's box.

1 Q Sir, were there any other identifications between any
2 of those three individuals, and any other prints that were in
3 your possession from these two runs?

4 A No, sir.

5 Q Now, you said that when you make an identification,
6 you are looking for certain individualized characteristics
7 that match between the inked, or known print of an individual,
8 and your latent, or unknown print; is that correct?

9 A Yes, sir.

10 Q I have an item here that is People's 132 for
11 identification. I would like to show it to you.

12 (Handing.)

13 MR. MEGARO: Judge, I have no objection to 132.

14 THE COURT: All right.

15 Come up, counsel.

16 (Whereupon, there was a sidebar discussion held
17 off the record.)

18 THE COURT: No objection to this going into
19 evidence once he identifies what it is?

20 MR. MEGARO: No, I have no objection.

21 Q Just tell us what that is, Detective.

22 A This is a fingerprint chart that I have created in my
23 office, I blew up. On one side is the ink fingerprint, the
24 number six finger of Lee Woods. On the right-hand side is
25 actual the image that was developed on the top of the Popeye's

1 chicken box, the latent print.

2 Now, we have an unknown and we are comparing it to a
3 known print. And this is to demonstrate how an identification
4 is made in the fingerprint world, how we look for these points
5 of identification, match them with a known print, and how that
6 process is formed.

7 Q And this particular exhibit would help you explain to
8 the jury how you make your identification, sir?

9 A Yes, sir.

10 MR. HALE: I offer it in evidence, your Honor,
11 132.

12 THE COURT: Admitted, without objection.

13 (People's 132, marked in evidence.)

14 Fingerprint chart

15 Let's see if we can put it on the easel.

16 Q Detective, come on down here, with the Court's
17 permission. Detective, if you can just take station over
18 there on that side.

19 I think, as you testified, what we have here, the
20 image on the left-hand side, this is the known inked, or live
21 scan fingerprint of Lee Woods, the number six finger?

22 A That is the number six finger of the known
23 individual.

24 Q And the six finger is the left thumb?

25 A Your left thumb.

1 Q This is the latent print that was chemically
2 developed from the Popeye's chicken box, the top of the
3 Popeye's chicken box, and submitted to you?

4 A Yes, sir.

5 Q If you can, sir, using this exhibit, just illustrate
6 to the jury how it was you were able to make an identification
7 between the number six finger of known fingerprint of Lee
8 Woods, versus the print that was developed on the top of the
9 Popeye's box?

10 A The first thing you are going to notice, this image
11 here that was developed on the top of the Popeye's chicken box
12 is white. Crazy glue, they used crazy glue to develop this
13 imagine on the top of the box. Crazy glue changes white on the
14 box, hence the white image. And this image is now sent to my
15 lab for me to analyze and try to compare to a known
16 individual.

17 So, you see the image is in white, so you are going
18 to train your eye on white ridges here, and on the right side
19 is the actual number six finger of a known individual by the
20 name of Lee Woods.

21 Now, in the fingerprint world we have to count, or
22 see where the points of identification are. If one point is
23 off, you know what it is not the fingerprint in question,
24 that's how unique fingerprint identification is.

25 You can pretty much start anywhere on either one,

1 start doing the comparison. I am going to start where it says
2 point D, you see this little dot here just hanging out in
3 space, this little dot right here?

4 MR. MEGARO: I think one of the jurors in the
5 back are having a hard time seeing.

6 THE COURT: Push the easel closer.

7 A Train your eye, here you see a little black dot.
8 Everybody see that?

9 JURORS: Yes.

10 A I am going to use that as my starting point. I could
11 start else where if I like, but I will use that.

12 And I am going to try and find that little black dot
13 in the same relative position in the unknown. It has to be
14 there, or else, you know what, it is not the fingerprint in
15 question. Here is that little white dot, all right?

16 Now, one; two away, there should be an ending ridge.
17 Two ridges away there should be an ending ridge. One, two
18 ridges away, what do I find? An ending ridge. Stay on that
19 ending ridge and just travel it along, and it bifurcates point
20 F. Let's stay on it, travel along and it bifurcates.

21 I have three points that match up perfectly, where
22 they should be, but I said eight, we need eight points for it
23 to be a positive match.

24 Let's go back to the dot, and we count one, two down.
25 There should be a bifurcation. One, two down, there is a

1 bifurcation. Not only is there a bifurcation. If I stay on
2 the top half of it, I come to this ending ridge, or
3 bifurcation. I come right up, and there is another
4 bifurcation. I didn't plot that, but now I am up to five
5 points that match up perfectly to this particular finger.

6 Let's go to point C and go one, two, three, four
7 down, we come to a bifurcation. Notice how I am counting four,
8 it has to be four ridges in between. Well, one, two, three,
9 four, bifurcation exactly, landed exactly where I am supposed
10 to land on that image.

11 From point C, if you look at point C, you see this
12 little dot just hanging out in space? What is hanging out
13 right here, that little dot out in space, exactly where it is
14 supposed to be.

15 That, ladies and gentlemen, is how an identification
16 is made in the fingerprint world. If I counted down three and
17 there was four in between the known print, you know what?
18 That is not the finger that I am looking for. That's how we
19 know that this known image matched this image on the top of
20 the Popeye's chicken box, without a shadow of a doubt.

21 Q Thank you, Detective.

22 And, Detective, now that was for illustration with
23 regard to that particular identification. But, did you go
24 through the same procedure with all of the prints that you
25 analyzed in this case, and the identifications that you made,

1 not just for the fingerprints of Mr. Woods, but Mr. Bostic and
2 Mr. Ellis?

3 A Yes. Each and every time you analyze a fingerprint,
4 you replicate that same procedure each and every time. It is
5 very tedious, very labor intensive, but you know what? That
6 is the only way it can be done. You literally take your
7 microscope, place them underneath the microscope, and with
8 little pitch you are counting from one ridge, to another
9 ridge, to another ridge, to every single ident, or non-ident.
10 You want to prove, or disprove that latent print belongs to
11 that particular person and no one else on this planet.

12 Q Detective, thank you very much.

13 MR. HALE: I have no further questions.

14 THE COURT: Any cross-examination?

15 MR. MEGARO: One question.

16 CROSS-EXAMINATION

17 BY MR. MEGARO:

18 Q Good morning, Detective.

19 You said the known fingerprints of Robert Ellis were
20 also found on the same chicken box?

21 A No.

22 Q Were they found on the same chicken box?

23 A No, sir. Robert Ellis?

24 Q Robert Ellis?

25 A No, sir.

1 MR. MEGARO: Nothing, thank you.

2 MR. HALE: That's it. Thank you.

3 THE COURT: Detective, thank you very much.

4 THE WITNESS: Thank you, your Honor.

5 (Whereupon, the witness is excused.)

6 MS. NICOLAZZI: People call Sergeant Zaccarese.

7 S G T L A W R E N C E Z A C A R E S E, called as a
8 witness on behalf of the People, having been first duly
9 sworn, was examined and testified as follows:

10 THE COURT: If you will identify yourself.

11 THE WITNESS: Sergeant Lawrence Zaccarese. NYPD
12 shield 1247. Z-A-C-A-R-E-S-E.

13 THE COURT: You may inquire.

14 MS. NICOLAZZI: Thank you, your Honor.

15 DIRECT EXAMINATION

16 BY MS. NICOLAZZI:

17 Q Good morning Sergeant Zaccarese.

18 A Good morning.

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

21 A Approximately 11 years.

22 Q Where are you currently assigned?

23 A 115th Precinct.

24 Q Where is the 115th Precinct located?

25 A Jackson Heights, Queens.

1 Q How long have you been a sergeant?

2 A About 14 months.

3 Q Prior to that, what was your rank?

4 A I was have a police officer assigned to the K9 Unit.

5 Q How long were you a member of the K9 Unit?

6 A About six years.

7 Q And if you could, explain to the members of the jury,
8 what is the K9 Unit within the New York City Police
9 Department?

10 A The K9 Unit is a subunit of the special operations
11 division, which is comprised of specialty units within the
12 department, Aviation, Marine Bureau, Harbor Unit subunits that
13 assist patrol officers with specialized training and
14 equipment.

15 Q And what is the K9 Unit?

16 A It consists of the dogs, German Shepard and Blood
17 Hound police dogs.

18 Q Is there a differentiation between the work of the
19 two types of dogs, German Shepard and Blood Hound?

20 A Yes.

21 Q What is that?

22 A As a patrol dog, they are used for both apprehension,
23 which is the finding and biting, if necessary, of
24 perpetrators. They are used to search for evidence, they are
25 used to track for missing perpetrators, missing children,

1 missing elderly, things like that.

2 Whereas Blood Hound is used primarily as a tracking,
3 or trailing dog. They don't have any biting capabilities, if
4 you will.

5 Q And how long were you assigned to the K9 Unit?

6 A About six years.

7 Q And what type of training did you receive for your
8 work within that unit?

9 A Initially, when I was handling the German Shepard,
10 about six months of training with the dog. Dogs come into the
11 country at about 14 or 15 months old, and you begin training
12 with the dog the first day they get trained match. So, there
13 is one dog and one handler. Nobody else handles your dog, and
14 vise versa.

15 And then, after my German Shepherd was retired, I
16 took a Blood Hound, and that training is about six weeks.

17 Q You said, after your German Shepherd was retired. How
18 many dogs did you work with during those six years?

19 A Two.

20 Q Initially, which dog?

21 A DJ was my German Shepard.

22 Q How long did you work with that dog,?

23 A About three and a half years.

24 Q What type of a dog did you have after your German
25 Shepard was retired?

1 A That's when I had Scooby, a Blood Hound.

2 Q What happens to the dogs when they are retired?

3 A The German Shepard I kept. He retired and is home
4 with my family now.

5 The Blood Hound, I opted to continue to allow him to
6 work, because he was only five, and he was an very effective
7 dog.

8 But, for the most part, the handler has the option to
9 adopt the dog, and let them continue on living at home.

10 Q Now the Blood Hound that you worked with for the
11 second period of three years while you were with the K9 Unit,
12 what was your dog's name?

13 A Scooby.

14 Q Since Scooby is a Blood Hound, is it fair to say his
15 primary purpose was for tracking?

16 A That's correct.

17 Q If you can explain to the members of the jury, in
18 general terms, initially, when your dog was working, tracking,
19 how is that done?

20 A Basically, the dog has an inherit ability. The way
21 the dog is built, they want to track, follow a scent, Blood
22 Hounds in particular.

23 So the dog is used to go from a weak scent to a
24 stronger scent. The weak scent is what is called the scent
25 article. So, if the person took off their jacket or hat, that

1 article of clothing retains that person's scent.

2 There are thousands and thousands of microscopic skin
3 cells falling off right now, as you are sitting there. So,
4 those cells stay attached to the clothing.

5 As the person leaves, either in training or real life
6 in practice, and the article is left behind, that's the weaker
7 scent. And the actual physical live person is the stronger
8 scent.

9 So the dog is trained to go from smelling the scent
10 article, to know who they are looking for, to follow the
11 trail, or track, wherever the scent leads them to.

12 Q So, is the article of clothing, for example, actually
13 given to the dog to scent, or smell, and then they use that
14 scent to try and locate the live individual?

15 A Correct. It is placed in the dog's face, and given a
16 command, depending on the dog, to smell the article and then
17 begin to track.

18 Q Now, Sergeant Zaccarese, I am going to direct your
19 attention to the early morning hours of July 9th of 2007.

20 On that morning were you directed, or given the
21 assignment to respond to a particular location within Kings
22 County?

23 A Yes.

24 Q And if you can tell the members of the jury where
25 were you directed to respond to, and for what purpose?

1 A To the confines of the 71st Precinct.

2 Q And what was your purpose in going there?

3 A It was a request to search for perpetrators in regard
4 to a police involved shooting.

5 Q When you went there, where did you go to
6 specifically?

7 A To Kingston Avenue, intersection of Kingston and
8 Lefferts.

9 Q And is that where you were actually on your way to?
10 Was that your desired locale when you were initially traveling
11 there?

12 A Not initially yet. I was working -- when the initial
13 call came out for assistance, I responded to the actual
14 initial shooting itself. It was still undetermined as to where
15 we were going to respond. The general vicinity of Empire
16 Boulevard and Kingston, or Empire -- Kingston and Lefferts.

17 As I got closer to the scene, and actually in the
18 confines of the precinct, I was directed to that actual
19 intersection, Kingston and Lefferts.

20 Q And were you directed to something specific within
21 that intersection, or close to?

22 A Yes.

23 Q What was that?

24 A There was a BMW vehicle believed to be from the
25 perpetrators in the middle of the street.

1 Q And what time did you get over there, approximately?

2 A It was approximately 2:30 in the morning.

3 Q And when you went there, who were you with?

4 A Just by myself. Myself and my dog.

5 Q That was Scooby?

6 A Yes.

7 Q And once you and your dog got there, can you tell the
8 members of the jury, first of all, who else was there when you
9 you arrived, if anyone?

10 A There were other members, uniform members, I am not
11 sure if it was from the 71st Precinct -- I am sure there were
12 some of them there. Few emergency service unit officers.

13 That's all I remember, really.

14 Q And when you arrived there, were any of those people,
15 first of all, inside of the BMW?

16 A No.

17 Q Was anything being done with respect to that BMW when
18 you first arrived there?

19 A No. There were just a few officers standing off to
20 the side securing it, making sure nobody approached it, or
21 went near it.

22 But, there was no one inside the actual car.

23 Q What did you do when you got there?

24 A I conferred with the emergency service captain, as
25 well as two members of the emergency service unit, and we --

1 they decided we were going to attempt to do the track from the
2 vehicle to the perpetrators.

3 Q Tell the members of the jury how you went about doing
4 that attempting to conduct a track from the BMW itself?

5 A The BMW had leather seats, leather happens to be very
6 good at retaining and keeping scents. So the determination
7 for that, which is commonly the case, is to cut a piece of
8 seat, the driver's seat out, and that becomes the scent
9 article, like I have explained earlier.

10 Q And why the driver's seat as opposed to somewhere
11 else in the vehicle?

12 A We know that somebody drove the car there. It is in
13 the middle of the street. So, presumably, that's who we are
14 looking for.

15 So, whoever was in the driver's seat that's where we
16 are going to start our track from, because someone had to
17 actually drive the car.

18 Q And who was it -- did you actually, then, actually
19 cut a portion of the driver's seat of that BMW then?

20 A Yes, I did.

21 Q And was that done by yourself?

22 A I did it, yeah.

23 Q When you did that, where was your dog?

24 A He was actually being held off to the side by another
25 one of the German Shepard handlers.

1 Q Did anyone else enter that BMW during the time that
2 you were there?

3 A No, not while I was there.

4 Q Now, what was your purpose in going into that BMW,
5 generally?

6 A Just to retrieve evidence.

7 Q And so, and when you are saying, retrieve evidence,
8 are you focused on the collection, and/or preservation of
9 evidence, or something else at that point?

10 Q Not at all. Just to retrieve evidence to use to
11 conduct the track. That's the only purpose.

12 Q Did you concentrate, or focus about anything else
13 within the BMW, other than the piece of seat that you were
14 then cutting?

15 A No.

16 Q Could you tell the members of the jury what was
17 inside that BMW, the way it appeared, based on your memory?

18 A I don't remember now.

19 Q After you cut a portion of the seat of the BMW, what
20 happened next?

21 A As soon as we -- being members of ESU and myself --
22 were ready to begin, I made sure that was actually the case,
23 as soon as the piece of the seat was cut, I then retrieved
24 Scooby back from the other handler. I gave him the article,
25 placed it in front of his nose, gave him the command to smell,

1 which is an indication to him we are ready to start a track.
2 And once he takes a strong smell, I give him the command to
3 track, and we begin to conduct a track.

4 Q And when you conduct a track, is the dog on its own,
5 or leashed in some way?

6 A He wears a harness that's around his midsection that
7 has a metal ring on it, and the metal ring is connected to a
8 15-foot long leash.

9 Q And when you began your track, is that something you
10 did alone with your dog, or other members of law enforcement
11 with you?

12 A Traditionally, a case like this, we conduct the track
13 with members of ESU, they are there. In this case we are
14 looking for perpetrators from a shooting, so they are there to
15 protect not only me, but each other.

16 If we were looking for, say, a missing child, or
17 missing elderly person, then we traditionally do that by
18 myself.

19 Q So, after you scented Scooby, or gave him the piece
20 of leather seat to smell, what happened from there?

21 A He immediately proceeded southbound on Kingston,
22 towards Lefferts.

23 Q And just so it is clear. Where did the scenting
24 actually begin?

25 A Right outside the car.

1 Q The BMW?

2 A Correct.

3 Q Okay. You can continue.

4 A Southbound on Kingston. And I always get confused,
5 Lefferts Boulevard, Lefferts Avenue, made a left on Lefferts
6 Avenue heading eastbound.

7 Q And how is that direction being determined? I mean,
8 who is leading the way?

9 A The dog determines which way we go. I merely am at
10 the end of the leash, and we are following his nose,
11 essentially, and his nose is following the scent.

12 Q So the dog went southbound on Kingston, then made a
13 left onto Lefferts?

14 A Correct.

15 Q And where did the dog go from there?

16 A He proceeded about 75 or a hundred feet east on the
17 north sidewalk on Lefferts Avenue to -- till he got to a
18 driveway, and then he made a left and proceeded up the
19 driveway.

20 Q And after your dog made a left up that driveway, what
21 happened from there?

22 A The houses on Lefferts, between Kingston and Albany,
23 which is the block we are talking about, are attached houses.
24 So the -- there is a common alleyway that the houses share as
25 a common alleyway behind them.

1 He proceeded up the driveway, into that alleyway.
2 And in the alleyway there are garages that are associated with
3 each of the houses.

4 Q And where did the dog go from there?

5 A The first garage that was in the alleyway was open.
6 There was two cars inside, and he proceeded into that garage.

7 Q And, specifically, where within that open garage that
8 had the two vehicles did Scooby go to?

9 A All the way to the right, far right side of the
10 garage. There was a van and a car, so he proceeded to the
11 right of the car. And then in towards the back of the garage.

12 Q And if you could tell the ladies and gentlemen of the
13 jury, once the dog went into the garage what happened?

14 A He made it all the way to the back of the garage.
15 And myself, and members of ESU, maybe four or five feet in,
16 because the vehicles were taking up so much of the space. He
17 went to the back wall, picked his head up and began to, what
18 is called air scenting. When a dog attempts to follow the
19 scent, human scent, although it is invisible, really is
20 susceptible to weather, wind, different conditions, whether it
21 is in the woods, on concrete.

22 So, inside the garage was concrete. So, he appeared
23 to be trying to figure out -- to follow the scent, is probably
24 an easier way to explain it.

25 Q And what was the lighting like, at that time?

1 A The only light we had was light from our flashlights.

2 Q And this was done soon after you had arrived at the
3 scene, you said sometime close to 2:30 in the morning?

4 A Yes.

5 Q Still dark outside?

6 A Yes.

7 Q So, what type of illumination was there inside that
8 garage?

9 A To my knowledge, to my recollection, there was no
10 natural light. It was just the flashlights we had.

11 Q What were you doing while the dog was attempting, or
12 scenting within that garage?

13 A My main focus is to watch him. The only real way I
14 can follow the dog, for lack of a better term, is read his
15 body language.

16 So, my primary function is watching the dog while the
17 members of ESU sort of watched my back, and really looking for
18 the perpetrators.

19 Q So when the dog began scenting in the garage, what
20 happened from there?

21 A He immediately made a turn and started to head back
22 towards where I was standing. It is only, maybe two foot wide,
23 and maybe ten feet deep section between the car and the side
24 of the wall of the garage.

25 So, he turned back to come towards me, and actually

1 made another turn, almost like doing a circle, lifting his
2 head up again, back towards the wall, and he proceeded to do
3 that two more times until he did it a third time, and then
4 proceeded past me, back out of the garage.

5 Q Now, while the dog is doing that, are you looking
6 around with your eyes, with your flashlight to see if there
7 are any people, or individuals within that garage, since that
8 is your purpose?

9 A Yes.

10 Q Did you find anyone in the garage?

11 A No, there was nobody.

12 Q Other than looking for people, or potential
13 perpetrators, were you looking for anything else, any
14 evidence, or anything like that?

15 A Not at that time.

16 Q So after you determined that there were no people in
17 the garage, while the dog was scenting, what happened from
18 there?

19 A We just continued to follow him as he follows the
20 scent.

21 Q So where did you go?

22 A Back out into the common alleyway, continuing
23 eastbound in the alleyway, which would be parallel to Lefferts
24 Avenue.

25 Q And how far were you able to go in the alleyway once

1 you travelled eastbound?

2 A Maybe one or -- one house, or more, or maybe two more
3 houses before there was a fence.

4 Q Did you observe anything at that fence?

5 A There is a ladder next to the fence.

6 Q And what happened from there?

7 A We followed, continued to follow the Scooby, in this
8 case. Now it would be southbound down the driveway, back out
9 to Lefferts Avenue, to the sidewalk on Lefferts.

10 Q The same side where you had originally made the turn
11 from into the alleyway?

12 A Correct.

13 Q And where did you go from there, if you can just take
14 me through.

15 A We continued eastbound on Lefferts to the
16 intersection of Lefferts and Albany.

17 Q And then what?

18 A Made another left turn, proceeded north on Albany to
19 the intersection of Empire and Albany.

20 Q And then what?

21 A When we got to that particular intersection, I
22 noticed that Scooby appeared to -- his posture changed, and
23 his body language changed a little bit. His tail dropped and
24 his demeanor changed, he appeared to lose the scent. I could
25 tell he was air scenting again, trying to determine and figure

1 it out.

2 Q So everything up until that point is, again, you
3 following the dog, and the scent that he is tracking?

4 A Correct.

5 Q And then that changed, and he appeared to lose the
6 scent?

7 A Yes.

8 Q After he appeared to lose the scent, what did you do
9 from there?

10 A He, on his own, made his way back onto the sidewalk,
11 on the corner of Albany and Empire.

12 I give him a few minutes to figure it out, for lack
13 of a better term, give him a chance to sort of pick up the
14 scent. And he continued now, westbound on Empire on the, what
15 would be the south side of Empire Boulevard sidewalk, heading
16 westbound from Albany.

17 Q And after the scent appeared to be lost, did you
18 decide to do anything else?

19 A We continued -- I continued to follow him throughout
20 the rest of the track along Empire Boulevard, and subsequently
21 back to Kingston, and back to the vehicle.

22 Q And, what happened after you got back to the BMW?

23 A There was a determination that, through the captain
24 and other members, higher ranking members of the department
25 wanted to conduct a second track, to sort of see what would

1 happen the second time around.

2 Q Did you do the same procedure again, scent the dog
3 with the same piece of the leather seating?

4 A The same identical procedure.

5 Q Just briefly, Sergeant Zaccarese, where did the dog go
6 this time?

7 A The first half of the track was almost identical. We
8 went south on Kingston towards Lefferts, made a left. East on
9 Lefferts, up the driveway, up into the common alleyway, into
10 the garage. Back out of the garage, back out the subsequent
11 driveway, and then continued east on Lefferts to Albany.

12 Q So, it was not successful in ultimately finding
13 anyone, or any potential perpetrators?

14 A That's correct.

15 Q But that he followed the same track, into that same
16 driveway, into the same garage, into the back?

17 A Yes.

18 Q Now, Sergeant Zaccarese, at some point, or withdrawn.
19 How long were you out there in that vicinity,
20 approximately?

21 A Still approximately one, or 2:00 that next afternoon.
22 Nine, 10 hours.

23 Q During that morning now, later in the morning on
24 July 9th of 2007, was your -- were you directed, or your
25 attention directed back to that particular garage?

1 A Yes.

2 Q And if you could explain that?

3 A Other members of the department had conducted more of
4 a full search of that garage. And it was determined that
5 there was some firearms in a bag discovered in the garage.

6 Q And did you ever go back to that garage after you
7 were made aware that firearms had been found in that same
8 garage that your dog had scented into?

9 A Not into the garage, no.

10 Q How close did you get to the garage?

11 A Outside the garage in that common alleyway, that's
12 where the discussion took place.

13 Q And were there other members of law enforcement there
14 at the time?

15 A Yes.

16 Q And what -- where were they in relation to the
17 interior of the garage, at that point?

18 A They were always outside. We were always outside,
19 having a discussion in the alleyway.

20 Q And what was being done with respect to the garage?

21 A It was being secured as a crime scene.

22 Q And to your knowledge, what was found in there?

23 The guns and whatever else, did you ever see that
24 moved, or touched, or picked up in any way during any time
25 that you were there?

1 A No, not that I saw.

2 MS. NICOLAZZI: If I could just have one moment?

3 If I could just approach the document camera with the
4 witness, your Honor?

5 THE COURT: Yes. If you can just step down, sir.
6 Keep your back to me, speak into the microphone.

7 THE WITNESS: Yes, sir.

8 MS. NICOLAZZI: First, I am going to show
9 Detective Zaccarese the crime scene photo of Detective
10 Newman, exhibit 93.

11 Q Have you had a chance to look at a copy of this
12 earlier, Sergeant Zaccarese?

13 A Yes.

14 Q Are you familiar basically with this vicinity?

15 A Yes.

16 Q Using People's 93, and if you could speak from there,
17 but if you need to come around to make any markings.

18 First, can you mark on this diagram where it was that
19 the BMW was when you observed it, when you cut the seat? And
20 you can write BMW in pen for where that is?

21 A Sure.

22 Q And now, first, if you could use your finger, if you
23 could trace, for the members of the jury, using your finger,
24 showing them, after Scooby scent the piece of leather seating
25 from the driver's seat, where was it that Scooby took you?

1 A Eastbound, along the sidewalk to the driveway, up
2 this driveway to the common alleyway, and into that garage
3 there.

4 Q If you could, there is a blue highlighter here. If
5 you could actually mark on the diagram the direction that
6 Scooby took you. And, specifically, where into that garage?

7 (Witness complying.)

8 Q Now, just, if you could, point for the members of the
9 jury -- you don't need to mark it -- you said, after you came
10 out of that garage, he took you as far as you could go where
11 the fence and the ladder was before you came back out.

12 Where is it that you are talking about? How far
13 could you go in that alley? I believe you said eastbound, I
14 believe?

15 A It's right there, the fence.

16 Q So, that is to the right of that garage, below where
17 there is some markings, I believe it says camera on there?

18 A Correct.

19 Q And then, just generally -- and I will go out -- if
20 you could, with your finger, you don't need to mark this, just
21 show them the direction that Scooby took you before he
22 ultimately lost any scent.

23 A Back out southbound, towards Lefferts. And then
24 eastbound to Albany, and northbound to Empire.

25 Empire Boulevard would be up here. If it was

1 depicted, it would be up here.

2 Q Sergeant Zaccarese, based on your experience and
3 training, the way Scooby took you, specifically where the dog
4 is walking, does that mean the individual, you followed that
5 exact path in footsteps? Or what are we talking in terms of,
6 I guess, the distance that could be based on the scent?

7 A No. In an urban environment scent travels and
8 behaves differently then, say, in a wooded environment, or
9 open field.

10 The actual travel of where we followed the dog, the
11 scent could have travelled 15, 20, 30, 40, 50 feet. And as
12 time goes on, that distance certainly increases, almost
13 expeditiously, could travel blocks.

14 Q Now, a couple of photographs, if you could stay
15 there.

16 Using People's 96 in evidence. You recognize that
17 photograph, Sergeant?

18 A Yes.

19 Q Now where was it, using that photograph,
20 specifically, that Scooby went to?

21 A All the way to the right here. And then in the back,
22 the back of the garage between the vehicle and the wall.

23 MS. NICOLAZZI: Let the record reflect, the
24 witness is indicating what is on the photograph to the
25 right of the blue car in that garage to the right.

1 And lastly, Sergeant Zaccarese, using what is in
2 evidence as People's number 100. Now, if you could show
3 the members of the jury, with your finger, and explaining
4 where it was that Scooby went within that garage and,
5 basically, where you were during that time?

6 A I stopped about here, back rear wall just close
7 enough to be able to see in the car, to see if anyone was in
8 the back seat and front seat.

9 And Scooby was about four or five feet in front of me
10 here. This is where he began to air scent, up against the back
11 wall.

12 Q Basically, by the back wall in the front portion,
13 right side of that car?

14 A Correct.

15 Q But you never made it farther from where you were
16 able to see inside the car?

17 A I would say no further than here, the back wheel
18 well.

19 Q You could have a seat, Sergeant Zaccarese.

20 A Thank you.

21 MS. NICOLAZZI: I have nothing further.

22 THE COURT: Any cross-examination?

23 MR. MEGARO: No, thank you.

24 Q Thank you very much, sir. You may step down.

25 THE WITNESS: Thank you, your Honor.

1 (Whereupon, the witness is excused.)

2 THE COURT: Jurors, we are going to take a
3 break. I will have you back in a moment.

4 Please keep my warnings in mind.

5 Take the jurors out, please.

6 (Jury exits the courtroom.)

7 THE COURT: Who is next?

8 MS. NICOLAZZI: We are just debating -- medical
9 examiner, and then crime scene.

10 MR. HALE: If you could give us about ten
11 minutes?

12 THE COURT: Sure. Ten minutes, folks.

13 (Whereupon, a brief recess was taken.)

14 THE CLERK: Case on trial. All parties are
15 present.

16 THE COURT: So we have the ME?

17 MS. NICOLAZZI: And then the two crime scene,
18 just to lay the foundation for the reconstruction video.

19 THE COURT: How long those two guys?

20 MS. NICOLAZZI: They are brief.

21 MR. HALE: The actual reconstruction video is
22 seven, eight minutes.

23 THE COURT: We may finish by one.

24 MS. NICOLAZZI: About a whole hour, the whole
25 thing.

1 THE COURT: Let's go.

2 COURT OFFICER: Jury entering.

3 (Whereupon, the jury enters the courtroom, and
4 is seated in the jury box.)

5 THE CLERK: Case on trial. All parties present.

6 Both sides waive a reading of the roll?

7 MR. HALE: Yes.

8 THE COURT: People?

9 MR. HALE: People call Dr. Lara Goldfeder.

10 D R. L A R A G O L D F E D E R, called as a witness on
11 behalf of the People, having been first duly sworn, was
12 examined and testified as follows:

13 THE CLERK: For the record, please state your
14 name.

15 THE WITNESS: Lara Goldfeder.

16 THE COURT: You may inquire.

17 MR. HALE: Thank you.

18 DIRECT EXAMINATION

19 BY MR. HALE:

20 Q Ma'am, are you a medical doctor?

21 A Yes, I am.

22 Q How long have you been practicing medicine?

23 A For about 14 years.

24 Q Where are you currently employed, Doctor?

25 A I work at the Medical Examiner's Office of the City

1 of New York.

2 Q And what is your job title with the Office of the
3 Chief Medical Examiner?

4 A I am the deputy medical examiner for the borough of
5 Manhattan.

6 Q And how long have you been in that position?

7 A Its been about two and a half years.

8 Q Now, ma'am, what does a medical examiner do with the
9 Office of the Chief Medical Examiner?

10 A The -- my main function is to perform autopsies to
11 determine why somebody died, especially when the circumstances
12 are unknown, or suspicious.

13 Q And what sort of training have you had that allows
14 you to perform that job function?

15 A I have a BS in Biology from Long Island University.
16 I received my medical degree from NYU.

17 After graduating medical school, I did a four year
18 internship in pathology at Mount Sinai School of Medicine in
19 Manhattan, one additional year of training in forensic
20 pathology at the Medical Examiner's Office, the New York City
21 Medical Examiner's Office. And since that time I have been
22 employed by the same office.

23 Q Now, Doctor, you used a couple terms there. The
24 first of which is pathology. What is pathology?

25 A Pathology is one of the specialties within medicine.

1 Sort of the behind the scene aspects of medicine, because a
2 patient would never see a pathology. But specimens sent to a
3 pathologist in a laboratory setting. Anything from a blood
4 sample, to biopsy, or something removed at surgery, or the
5 entire body for autopsy.

6 Q And forensic pathology, what is that?

7 A That's a subspecialty within pathology that primarily
8 deals with performing autopsies when somebody dies of unknown
9 causes.

10 Q Autopsy, what is an autopsy?

11 A Autopsy is an examination of the body. Starts with
12 the outside of the body looking at whatever is there.

13 We take pictures, or make drawings, take x-rays,
14 whatever needs to be documented, the findings.

15 After the external examination of the outside of the
16 body, we do an internal examination looking at the internal
17 organs. We make a surgical type of incisions, and through
18 those incisions we look at the organs one by one looking for
19 disease, injury, anything that is remarkable. The autopsy also
20 includes the head. So, we examine the skull, and brain
21 inside.

22 Q Now, Doctor, does the medical examiner who is working
23 for the Office of Chief Medical Examiner, are you trained to
24 determine, and certify the cause and manner of deaths in cases
25 presented to you?

1 A Yes.

2 Q During the time you are working with the Office of
3 the Chief Medical Examiner, you have performed autopsies; is
4 that correct?

5 A Yes, I have.

6 Q Approximately how many autopsies have you performed,
7 Doctor?

8 A I, myself, have performed probably around 16 hundred
9 autopsies. But I observed, and assisted in three to four
10 times that number.

11 Q Doctor, when a medical examiner does perform an
12 autopsy and certifies the cause and manner of death, are
13 you required to fill out any sort of documents, or reports?

14 A Yes.

15 Q What sort of documents, or reports are you required
16 to fill out?

17 A We make diagrams at the time of autopsy, some notes.
18 Then we also either dictate, or type a formal autopsy report.

19 Q Are those autopsy reports, are they required to be
20 kept in the usual course of business by the Office of the
21 Chief Medical Examiner?

22 A Yes.

23 Q Doctor, have you ever had occasion to testify
24 concerning autopsies that you, yourself, performed, or
25 autopsies performed by your colleagues at the Office of the

1 Chief Medical Examiner?

2 A Yes, both.

3 Q And how many times have you testified before, Doctor?

4 A Probably around 50, 60 times.

5 Q In what courts?

6 A I have testified in State courts around the five
7 boroughs, except for Staten Island. Also out in Long Island,
8 Upstate New York. And, I have also testified in Federal
9 Court.

10 Q The occasion when you have testified, have you been
11 found to be an expert in your field of forensic pathology?

12 A Yes.

13 Q Ever been denied expertise in a court of law?

14 A No.

15 MS. NICOLAZZI: Your Honor, I offer the Doctor
16 as an expert in the field of forensic pathology as she
17 explained to the Court.

18 MR. MEGARO: Without objection.

19 THE COURT: Again, this witness will be allowed
20 to give an opinion. Her testimony is your call. You can
21 accept it, or reject it.

22 Please proceed.

23 Q Doctor, in July of 2007, at what branch of the
24 Medical Examiner's Office were you working?

25 A At that time I was in the Manhattan office.

1 Q And, on or about the date of July the 15th of 2007,
2 was a body presented to the Manhattan branch of the Office of
3 Chief Medical Examiner, which was identified as a police
4 officer by the name of Russell Timoshenko?

5 A Yes.

6 Q Now, ma'am, who was it that conducted the autopsy
7 with regard to Officer Timoshenko?

8 A It was one of my colleagues, Dr. Jonathan Hayes.

9 Q And, Dr. Hayes is not available at this time, is that
10 correct?

11 A Correct, he is out of town.

12 Q Have you had occasion to review the documents that
13 were filed by Dr. Hayes, as he was required to file them in
14 regard to the case of Officer Timoshenko?

15 A Yes.

16 Q Let me show you an item which has been marked as
17 People's Exhibit number 133 for identification.

18 MR. MEGARO: I have seen that.

19 (Handing.)

20 A Okay.

21 Q Doctor, does that appear to be the autopsy that was
22 completed by Dr. Jon Hayes with regard to the autopsy of
23 Russell Timoshenko, and subsequently filed with your office?

24 A It is the autopsy report, and accompanying documents,
25 yes.

1 Q And that, again, as I said, was required to be kept
2 by your office in the course of your duties as charted by law;
3 is that correct?

4 A Yes.

5 Q I will offer this as 133 in evidence, your Honor,

6 MR. MEGARO: No objection.

7 THE COURT: Marked and received in evidence.

8 (People's 133, marked in evidence.)

9 Autopsy report

10 Q Doctor, if you need to refer to that report during
11 the course of your testimony, feel free to do so.

12 I am going to ask you a little bit about what Dr.
13 Hayes' findings were upon the autopsy of Officer Timoshenko.
14 Are you able to do that?

15 A Yes.

16 Q First of all, when you talk a little bit what an
17 autopsy consists of, you say the initial part is a external
18 examination of the body; is that correct?

19 A Yes.

20 Q What were Dr. Hayes' findings upon the external
21 examination of the body of Officer Timoshenko?

22 A In general, he was a six foot tall young man,
23 weighing approximately 200, and two gunshot wounds of the
24 face, as well as evidence of medical intervention throughout
25 his body, essentially.

1 Q When you say, evidence of medical intervention, what
2 are you talking about?

3 A He had an incision on his scalp, with a monitor
4 placed into his brain.

5 He also had a gastric tube in his mouth. The tube
6 that went into his mouth, down his esophagus, in his stomach.

7 In addition, he had a breathing tube placed in his
8 throat. So, incision was made -- in the front of his throat
9 had two incisions that had been made. One was no longer being
10 used. But, there was a tube in the lower of the two
11 incisions. And that was, essentially, how the man was
12 breathing for him while he had been in the hospital.

13 He also had an incision on his abdomen that had been
14 left open by the surgeons to relieve pressure.

15 He had a catheter in his urinary bladder, and IV
16 catheters in his -- on his left chest, and in his right groin
17 area.

18 Q Now, Doctor, was this appearance, was it consistent
19 with Officer Timoshenko having been hospitalized and
20 undergoing treatment prior to his clinical death?

21 A Yes.

22 Q You described that Dr. Hayes said there were, upon
23 external examination, two gunshot wounds, correct?

24 A Yes.

25 Q Can you describe the location of those gunshot

1 wounds?

2 A Sure. They were both on the face. One was on the
3 left side of his nose, just off of the midline, basically
4 involving part of the nostril of his nose. And the other one
5 was the right upper lip.

6 Q Now, Doctor, did Dr. Hayes or -- withdrawn.

7 As a medical examiner, you would be looking for some
8 indication as to range factor with a gun at or around the
9 entrance wound of these sort of injuries?

10 A Yes.

11 Q Was there any indication that would tell you what the
12 range factor was? That is, how far the gun was away from
13 Officer Timoshenko at the time the injuries were inflicted?

14 A No, there was no evidence on the body to indicate
15 anything about the range of fire.

16 Q What sort of things, just generally, would you be
17 looking for to make that determination?

18 A What we are looking for on the surface of the skin,
19 or on the clothing, if it is a covered area of the body,
20 evidence of gunshot residue.

21 Basically, when a gun is fired, not only a bullet
22 comes out of the muzzle, but burned gunpowder, and unburned
23 powder out of the muzzle of the gun. If the muzzle of the gun
24 is close to the skin, within two to three feet surface of the
25 skin, we can see the evidence of that gunshot residue, or

1 gunpowder on the skin itself.

2 In this case, none of that was found.

3 Q Now, Doctor, again, these were areas that wouldn't
4 normally be clothed. So in the face, are you able to say, at
5 that point, from not seeing that evidence, what the range
6 factor was with regard to the gun?

7 A Yes. I could say the gun had to be at least two to
8 three feet away from the surface of the skin at the time it
9 was fired. And when I say, at least, that means it could have
10 been three and a half feet, or could have been 50 feet, I
11 really can't make a judgement between those two, or even
12 farther.

13 Q From the appearance of the wounds, you can't make
14 that --

15 A Correct.

16 Q Now, Doctor, you indicated that the second phase of
17 the autopsy, upon having completed the external examination,
18 would be an internal examination, which includes dissection of
19 certain body areas; is that correct?

20 A Yes.

21 Q Now, with regard to the area around where these two
22 entrance gunshot wounds had been received in the face, did Dr.
23 Hayes do a dissection, or internal examination of that area?

24 A Yes.

25 Q What were his findings upon doing that?

1 A Would you like me to go through each?

2 Q Please?

3 A Well, as described in the report is the first of two
4 gunshot wounds, but the sequence is irrelevant here.

5 The first gunshot wound, like I said, went in,
6 basically, through the nostril on the left side of the face.
7 The bullet passed through, essentially, through the face with
8 fractures of the nose and deep portions of the sinuses in the
9 face. And then the bullet passed through the vertebrae, the
10 bony structure in the back, or middle of your neck just below
11 the bottom of your skull.

12 So, the bullet passed through the vertebrae and
13 actually cut across the spinal cord housed in the bony
14 structures of your neck. And the bullet, after creating
15 fractures of the vertebrae, was lodged just behind the bone in
16 the deep muscles of the back of his neck.

17 Q Now, from that examination, was Dr. Hayes able to
18 determine a path, or directionality of that particular gunshot
19 wound?

20 A Yes.

21 Q And what was that?

22 A Well, the bullet went from front to back, it went
23 slightly downward, and also slightly left to right.

24 Q And was the -- did the projectile which caused that
25 particular injury, did it remain in the body of Officer

1 Timoshenko?

2 A Yes.

3 Q At what location?

4 A Basically in the midline at the back of his neck.

5 Q And it was present during autopsy?

6 A Yes, and recovered by Dr. Hayes.

7 Q Talk about the other gunshot wound?

8 A So, the second gunshot wound, there was an entrance
9 wound on the right upper lip. And the bullet passed through
10 the lip, through the gum, and the teeth at the upper portion
11 of the mouth. Injured portions of the tongue, and rest of the
12 mouth as it was traveling back towards the throat.

13 Bullet travelled, essentially, through the throat,
14 and also injured the vertebrae, more to the right side of the
15 neck, at this point. And the bullet was lodged just below the
16 skin, on the back of the right neck.

17 Q And the directionality, or path of that particular
18 injury?

19 A Was essentially the same. Front to back, slightly
20 down, and also slightly left to right.

21 Q Doctor, I have an item here which has been marked as
22 People's Exhibit Number 114 in evidence.

23 Doctor, this particular image purports to be the
24 lateral, or side aspect of Officer Timoshenko taken during the
25 autopsy by Dr. Hayes.

1 From that are you able to see where the two bullets
2 that were recovered in the autopsy, where they are located
3 within the area of Officer Timoshenko's body?

4 A Yes.

5 Q If you could, Doctor, could you just step down, with
6 the Court's permission?

7 THE COURT: Yes. Keep your back to me, speak
8 into the microphone, Doctor, please.

9 THE WITNESS: Okay.

10 Q Doctor, if you can just, with your finger -- and
11 speak into the microphone right there -- would you please
12 illustrate where it is that the bullets were recovered during
13 the autopsy, or located on that particular image?

14 A Well, these are the two bullets. You see one there,
15 and one there. Here is a bullet, and here is a bullet.

16 Because it is a two dimensional x-ray, it is hard for
17 me to say which is which. But since I can't say is -- but
18 probably the one that was just below the skin more on the
19 right side is this one here, and the one that is deeper is
20 here.

21 But depending on the angle of how the x-ray is taken,
22 it may not be the case.

23 Q We have another aspect.

24 This is People's Exhibit number 115 which, again, is
25 purported to be the frontal image x-ray. And again, Doctor,

1 if you could point to the two projectiles?

2 A So, again, you see two bullets, here and here. This
3 is obviously the one that is off to the side, more on the
4 right side of his neck. And this is the one that is more along
5 the midline.

6 Q And these images are consistent with the path of the
7 bullet as described by Dr. Hayes in his examination?

8 A Yes.

9 Q Thank you, Doctor. You can resume your seat.

10 Now, Doctor, was there any other injury that appeared
11 on the body of Officer Timoshenko besides these two gunshot
12 wounds?

13 A Yes, there were some minor injuries.

14 Q What sort of minor injuries you talking about?

15 A There were some bruises on his arms which may have
16 been from the therapy -- may have been from while he was in
17 the hospital.

18 And, there was also a defect on his scalp at the back
19 of his head, which also may have been either from the
20 hospital, or from transporting the body. I can't be certain.

21 Q Would any of those injuries be consistent with what
22 is called terminal fall, that is, contacting a blunt surface
23 at the time, or immediately after the infliction of the
24 injuries?

25 A No.

1 Q So, in your opinion, those injuries are either from
2 the therapy when he went into the hospital, or during his
3 actual transportation?

4 A Certainly the one on the scalp is. The bruises on
5 his, on his left forearm, and also near the right armpit,
6 those could either be during the hospitalization, or just be
7 bruises. They are very non specific, so I can't say where
8 they are from.

9 Q Not associated with any particular type of injury, or
10 type of assault, or anything of that nature?

11 A No, very non specific.

12 THE COURT: Just a moment. We are going to
13 switch reporters.

14 (Whereupon, Phyllis Price is relieved by Diane
15 Adkins-Forte as the official court reporter.)
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1 Q Doctor, from Dr. Hayes's postmortem
2 examination of Officer Timoshenko, was he able to
3 determine a cause and manner of death that he
4 certified?

5 A Yes.

6 Q What was that?

7 A Gunshot wound to the head.

8 MR. HALE: Doctor, thank you, very
9 much.

10 Nothing further, Your Honor.

11 THE COURT: Any cross-examination?

12 MR. MEGARO: No, thank you.

13 THE COURT: Doctor, thank you, very
14 much.

15 (Witness excused.)

16 THE COURT: Witness, please.

17 MR. HALE: The People call Detective
18 Michael Cunningham.

19 THE COURT OFFICER: Witness entering.

20 THE COURT: If you will, sir, just
21 raise your right hand.

22 M I C H A E L C U N N I N G H A M, a Detective
23 bearing Shield Number 5035, called as a
24 witness by the People, having been first
25 duly sworn, was examined and testified as

1 follows:

2 THE COURT: Have a seat.

3 If you will, Officer, identify
4 yourself, please.

5 THE WITNESS: Detective Michael
6 Cunningham, Shield Number 5035 of the N.Y.P.D.
7 Crime Scene Unit, C-u-n-n-i-n-g-h-a-m.

8 THE COURT: Okay. You may proceed.

9 MR. HALE: Thank you, Your Honor.

10 DIRECT EXAMINATION BY

11 MR. HALE:

12 Q Detective Cunningham, you are a New York
13 City police officer, right?

14 A Yes, I am.

15 Q How long have you been with the police
16 department?

17 A About 23 years.

18 Q You're currently assigned to what unit, sir?

19 A To the Crime Scene Unit.

20 Q And how long have you been working in the
21 Crime Scene Unit?

22 A About eight years.

23 Q Sir, are you currently now part of any
24 subsection of the Crime Scene Unit?

25 A Yes, I am. I'm assigned to the Special

1 Projects Team.

2 Q If you can, sir, can you tell us what the
3 detective in the Special Projects Team of the Crime
4 Scene Unit is?

5 A Respond to crime scenes for the purpose of
6 reconstruction, forensic mapping and also develop
7 procedures on the unit's equipment and policy.

8 Q What is reconstruction and forensic mapping?

9 A Reconstruction is trying to piece using the
10 forensic evidence available at the scene to try to
11 piece together what occurred. That may be a complete
12 reconstruction of a crime. More often it's a partial
13 reconstruction of certain events associated with the
14 crime, and forensic mapping is the documentation of
15 the crime scene using specialized techniques and
16 measurement instruments to prepare scale diagrams or
17 three-dimensional exhibits of the crime scene.

18 Q Sir, were you working with the Crime Scene
19 Unit and specifically that special projects unit on
20 July 9th of 2007?

21 A Yes, I was.

22 Q And sir, on that date, did you have occasion
23 to respond to a location in Brooklyn regarding the
24 shooting of two New York City police officers?

25 A Yes, I did.

1 Q Detective, can you tell the jury what it was
2 you did during the course of that particular
3 assignment on that date?

4 A I responded to Lefferts Avenue and Rogers
5 Avenue in Brooklyn, and my primary assignment was to
6 document the scene using total station survey
7 equipment and to finalize some ballistic damage,
8 bullet holes that were at the scene to see if
9 trajectory reconstruction could be completed on the
10 bullet holes.

11 Q Now, sir, you indicated that you were
12 utilizing something called total station. What is
13 that and what does it do?

14 A It's a surveys instrument. What it does is
15 it collects measurement information. It's an
16 electronic instrument. It has optics that you can
17 look through and focus the cross hairs that are
18 visible in the optics on to an object or surface and
19 take measurements. It's an instrument frequently
20 used by surveyors or engineers. It sets up on to a
21 heavy duty tripod, and you will see them using this
22 on the side of highways, sometimes on building
23 bridges or buildings they use these instruments to
24 gather accurate measurement data.

25 Q Is that what you were doing at Lefferts and

1 Rogers on the 9th of July, '07?

2 A Yes.

3 Q Now, sir, this particular instrument is
4 accurate to what degree?

5 A It's an extremely accurate instrument in
6 collecting data. The degree of accuracy depends on a
7 lot of conditions. It's used under, but it's
8 generally accurate within a few millimeters.

9 Q Now, sir, did you, in fact, map certain
10 locations and certain items using the total station
11 at Rogers and Lefferts on the 9th of July 2007?

12 A Yes, I did.

13 Q At that time, sir, were you able to collect
14 any data or make any measurements with regard to
15 potential trajectories of bullets?

16 A Yes, I was.

17 Q Can you just describe generally what you
18 were able to do at that time, sir?

19 A I examined three areas of ballistic damage.
20 There was a bullet hole in a parked van near the
21 corner of Rogers Avenue and Lefferts Avenue. There
22 was another bullet hole in a marked vehicle a little
23 further north from Lefferts Avenue on Rogers, and
24 there was another bullet hole that was in a window on
25 the second floor apartment of 422 Rogers Avenue.

1 I examined those bullet holes to see if they
2 were suitable for trajectory analysis, and I
3 determined that two of them were, the one in the
4 white van parked near the corner of Rogers Avenue and
5 Lefferts and the one on the second floor window of
6 422 Rogers Avenue.

7 Q Once you determine those two areas were
8 conducive to trajectory, that is, what did you do
9 thereafter, sir?

10 A I utilized the total station to fix their
11 positions, take some measurements, and I also
12 utilized some other equipment, trajectory rods,
13 lasers and string to measure the angles of impact of
14 bullets that created the bullet holes.

15 Q Sir, having done that, would this
16 information that you acquired on that day including
17 the angles, the measurements, would that be of
18 utility in creating any other sort of analysis or
19 exhibit?

20 A Once the data is collected from the scene,
21 the data could be downloaded into a computer and then
22 used to prepare diagrams or three-dimensional
23 exhibits of the scene to illustrate the trajectories.

24 Q Sir, would it be fair to say you know a
25 detective by the name of Edward Dingman; is that

1 correct?

2 A Yes.

3 Q Where do you know him from?

4 A He is my partner at the Crime Scene Unit.

5 Q Did you use this data that you gathered on
6 that date, sir, with Detective Dingman in aid of
7 creating a three-dimensional model which purports to
8 reconstruct trajectories with regard to this
9 incident?

10 A Yes, I did.

11 Q And, sir, besides what you gathered on the
12 7th of -- or excuse me, the 9th of July, 2007, did
13 you go to any other locations or examine and/or
14 measure any other items to assist Detective Dingman
15 in creating a model?

16 A Yes, I did.

17 Q What sort of things did you do, Detective?

18 A I returned with Detective Dingman and others
19 to that scene on several dates, and I also responded
20 to the 61 Precinct station house where there was a
21 vehicle that had been invoiced and was being stored
22 there, and I assisted Detective Dingman in analyzing
23 some ballistics damage on that vehicle.

24 Q Does that include, again, utilizing
25 instruments to get more exacting measurements and

1 angles with regards to ballistic damage that was
2 present on the BMW vehicle at the 61st Precinct?

3 A Again, we used the total station instrument.

4 Q Did you also utilize any sort of computer
5 models that were available concerning the make and
6 model of that particular automobile BMW X5 and police
7 cruiser that were involved in this particular
8 incident?

9 A We used three-dimensional models to
10 reconstruct the events.

11 Q And did you also, sir, make certain
12 measurements and recordings of the various landmarks
13 that were in that area including, you know, telephone
14 poles, fire hydrants, building lines, things of that
15 nature?

16 A I measured, yes, many of the fixed objects
17 including the curbed lines and buildings and sign
18 posts.

19 Q And all of that was utilized, sir, in an
20 effort to create some sort of model that might
21 reconstruct certain phases of that incident; is that
22 correct?

23 A That's correct.

24 MR. HALE: Detective, thank you.

25 I don't have any further questions at

1 this time.

2 MR. MEGARO: Nor do I, Your Honor.

3 Thank you.

4 THE COURT: Detective, thank you, sir.

5 (Witness excused.)

6 THE COURT: Do you have a witness, Mr.

7 Hale?

8 MR. HALE: I certainly do.

9 The People call Detective Edward

10 Dingman.

11 E D W A R D D I N G M A N, Detective bearing

12 Shield Number 6450, called as a witness by

13 the People, having been first duly sworn,

14 was examined and testified as follows:

15 THE CLERK: Thank you. Please be

16 seated.

17 Detective, for the record, please state

18 your name, spell your last name, your shield

19 number and command, please.

20 THE WITNESS: Detective Edward Dingman,

21 D-i-n-g-m-a-n, shield number is 6450.

22 THE CLERK: Command, please.

23 THE WITNESS: Crime Scene Unit.

24 THE CLERK: Thank you.

25 You my inquire.

1 DIRECT EXAMINATION BY

2 MR. HALE:

3 Q Sir, how long have you been a police
4 officer?

5 A Nineteen years, nine months.

6 Q And how long with the Crime Scene Unit?

7 A Almost eight years.

8 Q Sir, are you currently a member of any team
9 within the Crime Scene Unit?

10 A Yes, I am.

11 Q What is that, sir?

12 A It's called the Special Projects Team.

13 Q Just generally, what are the duties of a
14 detective in the Special Projects Team?

15 A Well, the detectives are myself and
16 Detective Cunningham you just met, and we respond out
17 to major incidents where our assistance could be
18 utilized be it shooting reconstruction, any sort of
19 help that the detectives on the scene or actually
20 processing the team can use.

21 Q When you say shooting reconstruction, how do
22 you go about doing that and what sort of training
23 have you had in doing that?

24 A Basically shooting reconstruction, it takes
25 a lot of time. We go out and we'll survey the scene,

1 we'll see what evidence we have. We will talk to the
2 detectives who actually caught the scene, look at
3 photographs, measurements, laser measurements,
4 surveying, whatever it might entail at the time. We
5 might have to talk to the ballistics analysis people,
6 look at the actual ballistics itself, autopsy
7 reports, speak with the doctor, speak with officers
8 who were actually involved at the scene, and we put
9 all that information together and try to come up with
10 a conclusion as to what happened at the shooting.

11 Besides the eight years in the Crime Scene
12 Unit which I've had a lot of hands-on experience
13 working with investigators and being out on over
14 1,700 crime scenes myself, I've also had courses in
15 violent crimes reconstruction, shooting incidents
16 reconstruction, blood stain pattern analysis. I've
17 been trained in NYCON and TOPCON. I'm a certified
18 instructor with what's called CAD zone which is
19 computer-aided drawing software. I've taught
20 numerous agencies in the use of computer-aided
21 software and surveying equipment. I've also worked
22 for homeland security Louisiana State University's
23 National Center for Biomedical Research and trained
24 and brought on as a subject matter expert in the
25 field of forensic mapping.

1 I also belong to an association called the
2 International Association of Forensic and Security
3 Metrology which is the science of measurements. I've
4 attended their conferences and symposiums in 2007 and
5 8 which deals with computer-aided modeling
6 diagramming and also has shooting reconstruction as
7 part of their course.

8 Q Now, sir, using all that experience, once
9 you've made your measurements and gathered all your
10 data and in fact formed an opinion, is there a way
11 and do you have skills to illustrate what that
12 opinion is?

13 A Yes.

14 Q Tell the jury what that is?

15 A To illustrate what our conclusions or
16 opinions are, we do computer-aided drawings. There
17 is 2-D and there is also three-dimensional drawings
18 and illustrations.

19 Q And that is done how, sir? I mean, what
20 process do you go through to get this model that is
21 either 2 or 3-D?

22 A Well, it's as I was saying before, it could
23 be the survey equipment, hand drawn sketches, hand
24 measurements, all the information that we've gathered
25 in the -- what I described before, then all that

1 information is then put into a computer either 2-D or
2 3-D animation program and I build it from there.

3 Q Sir, in July of 2007, did you become aware
4 of an incident that involved the shooting of two New
5 York City police officers which occurred on the 9th
6 of July, 2007, in Brooklyn?

7 A Yes, I did.

8 Q Were you tasked with any particular
9 assignment by your superiors with regard to that
10 shooting incident?

11 A Yes.

12 Q And what was that, sir?

13 A Myself and Detective Cunningham were
14 assigned to assist in the further processing of the
15 crime scenes. Detective Cunningham was working that
16 day. I was off. I was on vacation.

17 Approximately two months later, we both got
18 involved and were assisting with the evidence and the
19 reconstruction of the shooting incident started in
20 about September.

21 Q Now, sir, Detective Cunningham has talked
22 about various evidence and data that he gathered.
23 Did you gather further data with him in aid of your
24 opinion ultimately on the shooting reconstruction in
25 this case?

1 A Yes, I did.

2 Q After you had gathered your data, sir, were
3 you tasked to create a model or an exhibit that would
4 illustrate what your opinion was?

5 A Yes, I was, yes.

6 Q Did you, in fact, do so, sir?

7 A Yes.

8 Q That particular model, sir, it's fair to say
9 that from your investigation you determined there was
10 a number of shots that were fired at Rogers and
11 Lefferts on that date July 9, 2007; is that correct?

12 A Absolutely, yes.

13 Q From the data you were able to gather, you
14 were able to reconstruct a model of all of those
15 shots, some of those shots?

16 A Some of those shots.

17 Q And why is it that you were only able to
18 model some of the shots and say not all of the shots?

19 A Some of the shots there just was not enough
20 evidence for us to actually come with a conclusion
21 that we could illustrate for.

22 Q Did you, in fact, gather other data that
23 would allow you to make an accurate 3-D model of that
24 particular neighborhood and of the vehicles that were
25 involved in that particular case?

1 A Yes, sir.

2 Q And were you able to utilize some mapping
3 techniques that would show what your opinion was to a
4 degree of scientific certainty and to the
5 trajectories that were involved like you said with
6 some of the shots that were involved with that case?

7 A Yes.

8 Q And sir, did that end up being a model that
9 was able to be placed on a computer disk and
10 displayed utilized in the computer?

11 A Yes.

12 MR. HALE: I have an item here which is
13 People's 134 for identification.

14 MR. MEGARO: Stipulated.

15 THE COURT: Have you seen it, sir?

16 MR. MEGARO: Yes.

17 MR. HALE: Just to identify, Detective,
18 if you can, that's now in evidence as People's
19 134, but having seen the images that are
20 contained upon that CD, sir, is that the
21 computer model that you created from the data
22 gathered to illustrate, one, evidence that was
23 found at or around the crime scene, and two, the
24 reconstruction of certain of the shots that were
25 done on that day in your scientific opinion?

1 A Yes, it is.

2 MR. HALE: Offer it as 134 in evidence.

3 THE COURT: Ladies and gentlemen, I'm
4 going to permit the People to use this video
5 animation as evidence.

6 I instruct you, though, it is not, I
7 repeat, not a recreation of the actual episode
8 of the shooting of Timoshenko and Yan. It was,
9 in fact, created after the alleged events of
10 July 9th of 2007.

11 Now, it's illustrative of the witness's
12 testimony and his theory of evidence. Like all
13 the other evidence in this case, you may accept
14 it or reject it in whole or in part.

15 Okay.

16 Q All right. And Detective, with the Court's
17 permission, if the Detective can step down here.

18 THE COURT: Sure.

19 Let's dim the lights.

20 Q And Detective, just to be clear from, again,
21 something the Court just said, this is not a
22 recreation of the incident, it is a reconstruction
23 based upon the available evidence that you observed;
24 is that correct?

25 MR. HALE: It's an illustration of our

1 reconstruction, yes.

2 Q Into the microphone, I'm sorry. Please, the
3 answer?

4 A It's an illustration of our reconstruction.

5 Q Detective, if you can, go ahead and initiate
6 the program, and I'll ask you some questions along
7 the way where you might want to stop it.

8 (Whereupon, a reconstruction
9 illustration was shown in open court.)

10 Q All right. Stop it right there, please.

11 Again, tell us what we're generally seeing
12 at this point in time, sir?

13 A This would be the BMW X5, suspect vehicle
14 followed by Officer Timoshenko and Officer Yan's
15 marked police car.

16 Q Detective, besides the measurements that you
17 and Detective Cunningham took of the crime scene and
18 neighborhood, did you also utilize some surveillance
19 video that was captured from various cameras at or
20 along this particular intersection?

21 A Yes, we did.

22 Q And do those aid you in terms of making this
23 particular illustration for your reconstruction?

24 A Yes, they did.

25 Q Okay. You can go ahead and proceed, sir.

1 (Whereupon, a reconstruction
2 illustration was shown in open court.)

3 Q Hold on there a second, please, Detective.
4 With regard to the various markings that are on the
5 street including crosswalks and other landmarks like
6 fire hydrants and light poles and things of that
7 nature, did you map and try to document those
8 accurately with what is, in fact, at the location?

9 A Yes, I did.

10 Q And the relation of the vehicles to those
11 particular landmarks, as far as you were able to
12 reconstruct from the vehicles and the measurements,
13 those are in scale; is that correct?

14 A That's correct, yes.

15 Q Go right ahead.

16 (Whereupon, a reconstruction
17 illustration was shown in open court.)

18 Q Now, Detective, can you tell us what you
19 have just mapped or illustrated right there?

20 A That light blue line is a trajectory. That
21 was actually mapped by Detective Cunningham, the
22 original scene hit July 9th. That was the trajectory
23 that went into the white van. The yellow transparent
24 cone represents tolerance that we build into a
25 shooting reconstruction where we back extrapolate the

1 trajectory backwards from the point of impact. There
2 is also some tolerance that we build into it. That's
3 common in shooting reconstruction. There is nothing
4 perfect in shooting reconstructions. There is also
5 room for error. The way the bullet stopped, it might
6 have struck an item or stopped tumbling and lost a
7 little bit of rotation when it hit certain objects it
8 could knock the bullet off a slight, slight amount.
9 We build that into the reconstruction. We don't want
10 to say it's certain this line is exactly the way the
11 bullet traveled because we don't know exactly.

12 Q Detective, this mapping the shot that
13 terminated in the white van on the opposite side of
14 the street opposite side of Rogers Avenue; is that
15 correct?

16 A Yes, that is correct.

17 Q In your opinion, from the data that you have
18 been able to observe the point of origin that is
19 where the shot was fired from would be somewhere
20 within that yellow cone; is that correct?

21 A Yes, that is correct.

22 Q Go ahead. Okay, let's hold it right there,
23 please. Please. Now, this is a second shot; is that
24 correct?

25 A That is correct, yes.

1 Q This is the shot that terminated in the
2 second floor apartment across the street, again, from
3 the subject vehicle; is that correct?

4 A Yes.

5 Q Sir, what other items did you look at
6 besides the ballistic damage in that second floor
7 apartment window and wall to determine this
8 particular trajectory?

9 A That was actually mapped by Detective
10 Cunningham. Can I explain what he did?

11 Q Sure.

12 A What Detective Cunningham did is they had a
13 bullet hole in the glass and bullet hole in the wall
14 inside the apartment and they were able to run a
15 trajectory line out through the window, but they also
16 use the laser that fired out from the wall so
17 trajectory rod was accurately placed inside the wall,
18 a laser guide, almost like a laser pointer, but
19 screwed on to the end of the trajectory rod.

20 It's turned on and the laser now is directed
21 through the second hole which is through the window
22 and somebody goes into the bottom on the street level
23 and finds the point of where that laser is actually
24 terminated down at the street level and then for
25 photographic purposes they ran a trajectory string a

1 fluorescent string out following down before that
2 laser was terminated, and I think the photographs
3 show the trajectory line that was actually back
4 extrapolated from the apartment back to the street.

5 Q And again, sir, utilizing the surveillance
6 tape in connection with that, you were able to
7 extrapolate the origin of the shot as being in the
8 location you have illustrated there within the cone;
9 is that correct?

10 A That is correct, yes.

11 Q Now, we're talking about a larger cone than
12 we were with the first shot, correct?

13 A A larger -- well, it's the same degree cone.
14 It's just larger at this point.

15 Q Does it become larger when you're talking
16 about more distance travel it becomes larger?

17 A Further it goes out, the larger the cone
18 gets.

19 Q Your point of origin in your opinion, sir,
20 is somewhere within that cone as it's illustrated
21 there?

22 A Somewhere within that cone, yes.

23 Q Go ahead. Now, this is a third shot; is
24 that correct?

25 A That is correct.

1 Q This is a shot as opposed to originating
2 from the BMW is terminated from the BMW; is that
3 correct?

4 A Yes.

5 Q The location being where?

6 A In the driver's side forward wheel well.

7 Q You were able to extrapolate at that point
8 the path of that particular bullet and hypothesize as
9 to a point of origin?

10 A Yes. We were able to get a trajectory
11 analysis out of this bullet hole. This was done
12 later on at the police facility, not at the scene.

13 Q This is from looking at the vehicle at the
14 63rd Precinct?

15 A That is correct.

16 Q And measuring it with various mapping
17 devices?

18 A Yes.

19 Q Okay. Go ahead. And again, the cone is
20 showing where the point of origin of the shot might
21 have been; is that correct?

22 A With that cone, yes, as you see it, it looks
23 like it goes into the pavement, and this is a
24 possibility that the projectile, the bullet actually
25 deflected off the pavement.

1 Q Now, we're looking at the inside of the
2 vehicle. We're talking about trajectories inside the
3 vehicle. It's marked, right?

4 A Yes.

5 Q What ballistic damage are you looking at in
6 order to determine these trajectories?

7 A These two trajectories, now one actually
8 strikes the door panel on the driver's side rear door
9 interior just underneath the post that separates the
10 main window and affixed triangular window and the
11 second one goes into a post and terminates within
12 that post that separates the two glass windows. Both
13 are in the driver's side rear door.

14 Q All right. Go ahead.

15 A It's a little difficult to see. You might
16 not be able to see it so well there. We had problems
17 last time.

18 Q Can the pointer help out?

19 With the Court's permission, Detective,
20 approach the screen up there. That will help you
21 illustrate the point.

22 A I'm sorry. This was a little difficult
23 after the animation was completed. This trajectory
24 is right here (indicating). You can see it. I'm not
25 sure if you can see it. It comes across. It's

1 striking the -- this is actually striking the
2 interior door panel underneath that post between the
3 two windows, and it comes from we call this a right
4 to left as if the muzzle was going this way and the
5 shot was coming from the right to the left going on a
6 bit of an angle like this (indicating), just to help
7 you if you can't see that.

8 Q Were you able to model that same sort of
9 cone of origination as you did before?

10 A On this one, yes.

11 Q Okay. Proceed, please.

12 A I think you can see the line there a little
13 bit better.

14 (Whereupon, a reconstruction
15 illustration was shown in open court.)

16 Q Now, sir, if you can stop that for just a
17 second, the cone origin I saw you had that
18 terminating at the passenger side door, correct, on
19 the passenger?

20 A Oh, the actual --

21 Q Passenger side, yeah?

22 A That is terminating approximately the
23 passenger side door, yeah.

24 Q There was no ballistic damage that would
25 correspond with the bullet having started somewhere

1 to the passenger side of the car and then passing
2 through the car; is that correct?

3 A No. We have no ballistic damage
4 corresponding to that.

5 Q Is it your opinion, sir, based upon what you
6 saw that the bullet originated inside the vehicle?

7 A Yes, it is.

8 Q You can proceed. Now, this is the second
9 one; is that correct?

10 A That is correct, yes.

11 Q Again, no corresponding ballistic damage
12 which would indicate that it came from the outside of
13 the vehicle passing through the passenger side; is
14 that correct?

15 A That is correct, yes.

16 Q Originating inside the vehicle?

17 A Yes, correct.

18 Q Now, at this point, sir, the model just
19 recounts the various items where they were found by
20 the Crime Scene Unit?

21 A Just done strictly as an illustration.

22 Q The placards, the markers are illustrative
23 of the markers that were placed there by the Crime
24 Scene Unit; is that correct?

25 A Yes, it is.

1 MR. HALE: Detective, thank you.

2 I have no further questions, Your
3 Honor.

4 MR. MEGARO: Nor do I, Your Honor.

5 THE COURT: Any cross-examination?

6 MR. MEGARO: No.

7 THE COURT: Thank you, Detective.
8 You're excused.

9 (Witness excused.)

10 THE COURT: All right. Members of the
11 jury, that concludes the evidence for today.
12 I'm going to give you some warnings. You can go
13 home, enjoy the weekend. Be in the jury room
14 Monday morning, 10:00.

15 You are to expect a full week next
16 week.

17 Keep an open mind. Do not form or
18 express any opinion as to the guilt or non-guilt
19 of the defendant until all the evidence has been
20 presented, the closing arguments have been made
21 by counsel and I have instructed you on the law.

22 You must reach your decision as to
23 guilt or non-guilt of the defendant during jury
24 deliberations with your fellow jurors and that
25 comes at the end of the case.

1 You must not discuss this case with
2 anyone including your fellow jurors during the
3 course of the trial, nor permit anyone to talk
4 with you or talk about this case in your
5 presence.

6 You must report any attempts by anyone
7 to approach you about jury service or try to
8 talk to you about this case whether you are in
9 the courtroom or outside.

10 You are not to talk to the attorneys,
11 the witnesses, the defendant, not even to say
12 hello or just to pass the time of day.

13 You are not to read, watch, listen to
14 any media coverage about this case, and that
15 would include any information you might have
16 obtained over the Internet about the case or
17 anybody involved with the case.

18 You are not to visit or view any scene
19 allegedly involved here or any other place
20 discussed or try to investigate any factor on
21 your own and until you are discharged, you are
22 not to request, accept, agree to accept or
23 discuss acceptance of any benefit for supplying
24 information about this case.

25 With those warnings in mind, have a

1 pleasant weekend.

2 In the jury room, please.

3 Monday morning. 10:00.

4 (Whereupon, the jury panel exited the
5 courtroom.)

6 THE COURT: With that, are we on
7 schedule for probably summations and charge
8 Thursday?

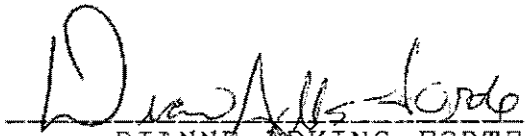
9 MS. NICOLAZZI: Yes.

10 THE COURT: With that, I will see you
11 Monday. 10:00.

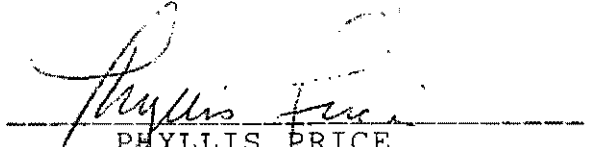
12 (Whereupon, the above-entitled trial
13 was adjourned to March 8, 2009, at 10:00 a.m.)

14 oOo

15 IT IS HEREBY CERTIFIED THAT THE FOREGOING IS A TRUE
16 AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS.

17 
18 _____ RPR
19 DIANNE ADKINS-FORTE, RPR
20 Official Court Reporter

21 IT IS HEREBY CERTIFIED THAT THE FOREGOING IS A TRUE
22 AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS.

23 
24 _____
25 PHYLLIS PRICE
Official 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, IND: 6797/07

4 -against- TRIAL

5 LEE WOODS,

6 DEFENDANT.

-----X

7
8 320 Jay Street
9 Brooklyn, New York.
March 9, 2009

10 B E F O R E:

11 HONORABLE PLUMMER E. LOTT,
12 Justice and jury.

13 A P P E A R A N C E S:

14 (Same appearances as previously noted.)

15 -----
16 DIANNE ADKINS-FORTE, RPR
17 PHYLLIS PRICE
Official Court Reporters
=====

18 THE CLERK: Case on trial. All parties
19 are present.

20 THE COURT: All right. Before we
21 proceed, either side want to put anything on the
22 record?

23 MR. MEGARO: No.

24 MR. HALE: No, Your Honor.

25 THE COURT: What do you have,

DAF

1 Ms. Nicolazzi?

2 MS. NICOLAZZI: First, we have two
3 quick witnesses, Detective Ahearn and Detective
4 Colucci who retrieved the video.

5 Then we have the first of our two DNA
6 experts. Then I was hoping to take a break and
7 then what we have for the remainder of the day
8 is the statements, Detective Habert and Yero.

9 Tomorrow we have -- the only witness of
10 substance is ballistics, and then we have a
11 couple of short witnesses. Unfortunately, we
12 just can't finish because we have the one DNA
13 expert that's out of the country until Wednesday
14 morning.

15 THE COURT: All right.

16 You will be able to put your case in
17 Wednesday morning?

18 MR. MEGARO: Yes.

19 THE COURT: And in the afternoon what?

20 MR. HALE: It will have to be the
21 afternoon because that DNA person will probably
22 take -- it's the secondary one. So, it will
23 probably take an hour or so, the high
24 sensitivity, low copy.

25 MR. MEGARO: I guess that would be

1 Wednesday.

2 My client is reviewing the stipulation
3 that was prepared by Ms. Nicolazzi now. I've
4 been going over that with him which will
5 dispense five or six witnesses which I hadn't
6 planned on cross-examining anyway. He is
7 reviewing it.

8 THE COURT: I'm more concerned about
9 your case.

10 MR. MEGARO: One of the witnesses that
11 I plan to call is about to take the witness
12 stand now on the People's case. So, the
13 remainder of my case, there is only one issue
14 that I'm still going over in my mind as to
15 whether or not to call a particular witness for
16 the remainder of my case.

17 THE COURT: So, he is available. It's
18 just a matter of strategy as to whether you will
19 call him or not.

20 MR. MEGARO: I know Ms. Nicolazzi asked
21 for an offer of proof. Before I do that, I
22 would like to reach out to him and at least talk
23 to the guy first before I make my decision.

24 THE COURT: But it's somebody who is
25 available?

1 MR. MEGARO: It's Billy Barnes who
2 testified at the first trial. There may be an
3 issue with admissibility of his testimony and
4 threshold matter, but I still have to do what I
5 have to do to figure out whether I would even
6 call him.

7 THE COURT: I understand that.

8 So, Tuesday afternoon, we probably are
9 not in session then?

10 MR. HALE: Correct.

11 MS. NICOLAZZI: Probably. I didn't say
12 yes.

13 THE COURT: Wednesday will be a full
14 day.

15 MS. NICOLAZZI: Depending on what the
16 Defense case is, we probably have an hour
17 and-a-half.

18 THE COURT: We may be able to do a
19 charge conference Wednesday night.

20 MR. MEGARO: Or tomorrow afternoon if
21 that's even better.

22 THE COURT: Wouldn't want to do it
23 before you put in your case?

24 MR. MEGARO: Right. Wednesday would be
25 we can do the charge conference.

1 THE COURT: Had you got any other
2 commitments at this point in time?

3 MS. NICOLAZZI: No.

4 THE COURT: Let's see if we can get
5 this jury in. I'm sorry. Apparently one juror
6 was delayed, may have been Daylight Savings Time
7 or whatever.

8 MR. HALE: The way it works out, we
9 will probably put in through the DNA expert this
10 morning, and it will be close to 1:00, but then
11 we will do the statement this afternoon.

12 THE COURT: Okay. Fine.

13 THE COURT OFFICER: Jury entering.

14 (Whereupon, the jury panel entered the
15 courtroom.)

16 THE COURT: Good morning, folks.

17 THE JURY PANEL: (In unison) Good
18 morning.

19 THE CLERK: Case on trial. All parties
20 present.

21 Both sides waive reading of the roll?

22 MR. HALE: Yes.

23 MR. MEGARO: Yes.

24 THE COURT: Okay. Ladies and
25 gentlemen, if you're going to be delayed, try as

1 best you can to alert us to that fact, okay.

2 JUROR: I called --

3 THE COURT: No. No. That didn't
4 require a response, Mr. Davis. You know, some
5 people do call in. I'm just saying when we
6 don't hear from you, we have a problem.

7 JUROR: Nobody answered the number.
8 The one that was on the back of the juror's
9 card.

10 JUROR: I was calling all morning.

11 THE COURT: I'm going to give you my
12 secretary in my chambers, okay?

13 All right.

14 JUROR: Thank you, Your Honor.

15 THE COURT: Yes. All right.

16 Let's go. Mr. LaRose.

17 MR. HALE: Your Honor, thank you.

18 People call Gerard Ahearn.

19 THE CLERK: Raise your right hand,
20 please:

21 G E R A R D A H E A R N, a Retired Detective called
22 as a witness by the People, having been
23 first duly sworn, was examined and testified
24 as follows:

25 THE CLERK: Thank you. Please be

1 seated.

2 Detective, for the record, speak into
3 the microphone. State your name. Spell your
4 last name, shield and command, please.

5 THE WITNESS: Retired Detective Gerard
6 Ahearn, A-h-e-a-r-n, Shield Number 55, previous
7 command 71 Detective Squad.

8 THE COURT: You said that with pride,
9 retired detective.

10 Continue to speak into the microphone,
11 okay.

12 DIRECT EXAMINATION BY

13 MR. HALE:

14 Q Now, sir, you're retired from the police
15 department, right?

16 A Yes, I am.

17 Q When did you retire?

18 A September of last year.

19 Q Before that time, how long had you been with
20 the police department?

21 A I had just started my 23rd year.

22 Q Your last command was where, sir?

23 A 71st Precinct Detective Squad.

24 Q How long had you been in the 71st Precinct
25 before your retirement?

1 A About two years.

2 Q Sir, does that include the month of July,
3 the year 2007?

4 A Yes, it does.

5 Q Sir, on or about July the 9th of 2007, did
6 you become aware of the shooting of two New York City
7 police officers which had occurred within the
8 confines of the 71st Precinct?

9 A Yes, I did.

10 Q And on that day and the days thereafter,
11 sir, were you from time to time given certain
12 assignments in furtherance of the investigation of
13 that matter?

14 A Yes.

15 Q I'm going to -- I want to talk to you, sir,
16 specifically about the next date which would be July
17 10th of 2007.

18 Do you recall that particular date?

19 A Yes.

20 Q Sir, on that date did you have occasion to
21 execute a search warrant at a particular location?

22 A Yes, I did.

23 Q What was the location where you executed the
24 search warrant?

25 A I believe it was 146-09 182nd Street,

1 Springfield Gardens, Queens.

2 Q Queens, New York?

3 A Yes.

4 Q Sir, after you had obtained the warrant, how
5 was it that you gained access to that particular
6 location?

7 A The owner of the location gave us the keys.

8 Q Can you in general terms describe what that
9 location was?

10 A It was a two-family, two-story house.

11 Q And what part of that two-story, two-family
12 house did you gain access to or entry to?

13 A Second floor.

14 Q Sir, can you describe the area that you
15 entered after you had executed the search warrant?

16 A The apartment?

17 Q Yes.

18 A You enter through the front door which was
19 clearly marked the address, walked up a flight of
20 stairs, got to a first landing, turned to your right,
21 there was another step, and then you entered the
22 living room of the location.

23 Q Now, sir, when you went to that location and
24 executed the search warrant, did you see any items or
25 item which drew your attention or that you felt would

1 further your investigation?

2 A Yes, I did.

3 Q What item or items did you see, sir?

4 A Immediately entering the living room
5 location and to my left up against the wall was a
6 black firearms box.

7 Q All right. When you say there was a black
8 firearms box, were you able to recognize it as a
9 firearms box from when you first observed it?

10 A Yes.

11 Q And what was it that told you it was a
12 firearms box, sir?

13 A It had a label on it that said Intertec Arms
14 on it.

15 Q Sir, let me show you what has been admitted
16 into evidence as People's Exhibit Number 41 and ask
17 you to take a look at that.

18 Sir, do you recognize that item?

19 A Yes, I do.

20 Q What is that, sir?

21 A This is the box that I recovered from that
22 location.

23 Q Sir, you had indicated that the box had a
24 label on it that said Intertec that you observed on
25 the 10th of July 2007; is that correct?

1 A Yes.

2 Q Did it appear on that particular box?

3 A Yes, stamped on the box stamped Intertec.

4 Q Intertec, is that a manufacturer of firearms
5 that you're familiar with, sir?

6 A Yes.

7 Q After you had seen that item and recovered
8 it, sir, did you, in fact, open it up?

9 A Yes.

10 Q Can you just open it up for the jurors here,
11 sir?

12 A (Witness complied.)

13 Q That sort of foam egg crate material, is
14 that something that's generally in boxes that contain
15 firearms?

16 A It's generally in firearms boxes to protect
17 the firearms so it doesn't scratch.

18 Q When you opened that box on the 10th of
19 July, was there any item or items in it?

20 A Yes, there was.

21 Q What was that item?

22 A A 12-gauge shotgun shell.

23 Q Loaded shotgun shell or discharged?

24 A Loaded.

25 Q The Intertec firearm was not present in that

1 box?

2 A No, it was not.

3 Q Besides that particular box, you can go
4 ahead and close that up. Thank you, Detective.

5 Was there any other item or items inside the
6 apartment that you took note of and/or seized?

7 A There were numerous objects that we took.
8 We recovered cell phones, I believe a Sidekick,
9 utility bills, pictures, personal paperwork.

10 Q The utility bills that you did recover, sir,
11 were these in the names that -- the printed name of
12 Robert Ellis and/or Dexter Bostic?

13 A Yes. They were both Ellis and Bostic.

14 Q Do you remember if any of it had Lee Woods
15 on it?

16 A No.

17 Q Sir, among the personal papers, were there
18 any forms of identification that you seized at that
19 location?

20 A Yes.

21 Q And the identification or identification
22 that you seized, whose names were those?

23 A Both Ellis and Bostic.

24 Q Again, not Woods?

25 A No.

1 Q Sir, did you also find at that location a
2 computer keyboard and computer tower?

3 A Yes, we did.

4 Q Those items you also seized at that time,
5 sir?

6 A Yes.

7 Q What did you do with all the items you found
8 at that location, sir?

9 A All the property was vouchered according to
10 the police department guidelines.

11 Q Beside the boxes in front of you right there
12 and the shotgun shell that you found inside the box,
13 did you find anything else in that apartment that
14 could be characterized as ballistic evidence or
15 having to do with the firearm?

16 A I don't recall. I don't believe I did.

17 Q All right.

18 MR. HALE: Detective, thank you.

19 I don't have any further questions at
20 this time.

21 THE COURT: Any cross-examination?

22 MR. MEGARO: No, thank you.

23 THE COURT: Thank you, very much, sir.

24 (Witness excused.)

25 MR. HALE: The People call Detective

1 Colucci.

2 R I C H A R D C O L U C C I, a Detective bearing
3 Shield Number 6307, called as a witness by
4 the People, having been first duly sworn,
5 was examined and testified as follows:

6 THE CLERK: Thank you. Please be
7 seated.

8 For the record, please speak into the
9 microphone. State your name. Spell your last
10 name, shield and command, please.

11 THE WITNESS: Richard Colucci,
12 C-o-l-u-c-c-i, Richard, Shield 6307, New York
13 City Police Department TARU, Technical
14 Assistance Response Unit.

15 THE CLERK: That microphone moves. You
16 can adjust it for your height any way that's
17 good for you.

18 THE WITNESS: Good morning, Your Honor.

19 THE COURT: Good morning. How are you
20 doing?

21 If you will continue to speak so that
22 you can be heard.

23 You may inquire.

24 MS. NICOLAZZI: Thank you, Your Honor.

25 DIRECT EXAMINATION BY

1 MS. NICOLAZZI:

2 Q Good morning, Detective Colucci. How long
3 have you been working for the New York City Police
4 Department?

5 A Nine years last week.

6 Q How long have you been a detective?

7 A Two and-a-half years.

8 Q And how long have you been assigned to the
9 TARU unit?

10 A A little over four years.

11 Q I'm going to direct your attention back to
12 the date of July 9th of 2007. Did you work on that
13 date?

14 A Yes, I did.

15 Q And specifically were you working during the
16 early morning hours of that date?

17 A Yes, I was.

18 Q Did you receive any assignments with respect
19 to the investigation being conducted into the
20 shooting of two New York City police officers that
21 occurred that morning in Kings County?

22 A Yes, I did.

23 Q What was the assignment that you received?

24 A To respond to various locations and to
25 retrieve video.

1 Q With respect to the retrieval of video at
2 that particular location, were any of those locations
3 located on Empire Boulevard?

4 A Yes, there were.

5 Q Specifically, 40 Empire Boulevard?

6 A Yes.

7 Q What type of location was 40 Empire
8 Boulevard?

9 A It was a Popeye's restaurant.

10 Q Was that someplace that you went on your own
11 or were you given the assignment to go there in
12 particular?

13 A We were directed to.

14 Q What time was it approximately that you went
15 to that Popeye's restaurant located on Empire
16 Boulevard?

17 A It was early morning sometime just after
18 midnight, maybe 2:00 or 3:00 a.m.

19 Q And how long was it in terms of after you
20 had learned that the officers had been shot if you
21 recall?

22 A I can't recall how much time. We were at
23 numerous locations throughout that period of time.

24 Q Okay. Now, when you went to the specific
25 location of the Popeye's restaurant, what did you do

1 there?

2 A We retrieved video with regards to the
3 investigation that was underway.

4 Q Now, you said that you went out in the early
5 morning hours of the 9th. In total, how many
6 locations did you go to on that date?

7 A I believe it was at six or seven locations
8 throughout the city.

9 Q And do you recall what order it was or what
10 number within that six or seven locations that you
11 went to that Popeye's?

12 A No. I'm sorry. I don't recall. It was
13 towards the end.

14 Q Towards the end?

15 A It was towards the end of my tour. It was
16 actually beyond my tour.

17 Q All right. Now, when you went to that
18 location, were you working alone or with someone
19 else?

20 A I was with Detective McDonald at that time.

21 Q You said that you went there for the
22 retrieval of video. What, if anything, did you
23 observe with respect to any video or surveillance
24 monitoring system at that particular location of
25 Popeye's?

1 A. Based on the review by the case detective,
2 we were directed to retrieve video within certain
3 parameters, date and time as it pertained to that
4 investigation.

5 Q You were saying particular parameters you
6 were directed to the specific date and time within
7 which to download the video?

8 A That's correct.

9 Q And did you do that?

10 A Yes, we did.

11 Q And how did you go about doing that?

12 A The video system affords us an opportunity
13 to search and retrieve based on the steps that we
14 follow and the protocol the video is captured, copied
15 and then burned to a CD, and then extracted from the
16 system from the tower itself.

17 Q And when you downloaded particular portions
18 of the surveillance video from that Popeye's
19 restaurant, do you recall the date and hours that you
20 downloaded from the time frame?

21 A I believe it was between 2:00 and 3:00 a.m.

22 Q And you're saying you believe. Would you
23 like to look at something that might help to refresh
24 your recollection?

25 A Please, thank you.

1 MS. NICOLAZZI: If I can just hand it
2 up to the witness and indicate what it is that
3 you're looking at?

4 THE COURT: What are we up to now?

5 MR. MEGARO: 135, your Honor.

6 THE COURT: All right. Show it to
7 Defense.

8 Q Sir, if you can take a look at it, Detective
9 Colucci, tell us whether it refreshes your
10 recollection as to specific date and time frame that
11 you downloaded footage from that Popeye's restaurant?

12 A This indicates I responded on the 10th of
13 July.

14 Q Not when you responded the actual time frame
15 of what you downloaded, what were the times and the
16 dates?

17 A My apologies. It indicates at 0215. I
18 think the parameters are a little wide, about an
19 hour's worth of video if memory serves me. I think
20 it's five different segments.

21 Q Does it state on there specifically what
22 time to what time?

23 THE COURT: More importantly, does it
24 refresh your recollection as to the time?

25 Q Now, I have another worksheet that would

1 reflect that.

2 MS. NICOLAZZI: We can make it
3 respectively 135.

4 THE COURT: Very well.

5 Is there something that you want to
6 circle, ma'am, to show it to him, and show it to
7 Defense?

8 MS. NICOLAZZI: Handing up the entire
9 folder from TARU which --

10 THE COURT: Show it to Defense.

11 MS. NICOLAZZI: Which Defense has a
12 copy of.

13 MR. MEGARO: I have a copy.

14 THE COURT: Just look at that,
15 including the circle. Take your time.

16 A Time indicates 1:55 to 2:28.

17 Q So, from July 9th from 1:55 to 2:28, that's
18 the portion of the footage?

19 A That's correct.

20 Q Once the portion of the footage was
21 downloaded, various still photographs were made of
22 portions of the video?

23 A Yes. Actually, I believe it was 20 -- 21
24 still pictures were created as well placed into a
25 separate folder and burned to a CD.

1 Q Have you had the opportunity prior to today
2 to look at those still footages that were put
3 together on what's now 136 for identification?

4 A Yes, I did.

5 Q And do those fairly and accurately reflect
6 those portions of the video other than the fact that
7 they are still photographs put together rather than
8 the actual video footage itself?

9 A Yes, they do.

10 MS. NICOLAZZI: 136.

11 THE COURT: Any objection?

12 MR. MEGARO: No objection to 136.

13 THE COURT: Marked and received in
14 evidence, 136.

15 (At this time, a CD was received as
16 People's Exhibit 136 in evidence.)

17 Q Detective, did these images of video footage
18 contain a time stamp?

19 A Yes, they did.

20 Q Was that time stamp checked by yourself or
21 your partner to see if it correlated with the
22 accurate time?

23 A Yes, it did.

24 Q And was it the same time?

25 A Yes, it was.

1 MS. NICOLAZZI: I'm going to play
2 People's 136.

3 (Whereupon, a video CD was played in
4 open court.)

5 MS. NICOLAZZI: I have nothing further,
6 Your Honor.

7 THE COURT: Any cross-examination?

8 MR. MEGARO: No, Your Honor.

9 THE COURT: Thank you, very much. You
10 may step down.

11 (Witness excused.)

12 MR. HALE: The People call Misonara
13 Ahmed.

14 MS. NICOLAZZI: Judge, while we wait
15 for the witness, can we approach a second?

16 THE COURT: Yes, ma'am.

17 (Whereupon, an off-the-record
18 discussion was held at the bench.)

19 THE CLERK: Remain standing. Raise
20 your right hand.

21 M I S O N A R A A H M E D, called as a witness by
22 the People, having been first duly sworn,
23 was examined and testified as follows:

24 THE CLERK: Thank you. Please be
25 seated.

1 For the record, please state your name.

2 THE WITNESS: My name is Misonara

3 Ahmed, A-h-m-e-d, M-i-s-o-n-a-r-a.

4 THE CLERK: Thank you.

5 THE COURT: If you will continue to
6 speak into the microphone. Keep your voice up.

7 You may inquire.

8 DIRECT EXAMINATION BY

9 MR. HALE:

10 Q Ma'am, where are you employed?

11 A I am employed by the Office of the Chief
12 Medical Examiner.

13 Q How long have you worked there?

14 A It's been three and-a-half years now.

15 Q What capacity do you work in at this office?

16 A Chief criminalist level three.

17 Q Do you work in a particular section of the
18 Office of the Chief Medical Examiner?

19 A I am currently in the Missing Persons
20 Exemplar Group in the Forensic Biology Unit.

21 Q What is the Forensic Biology Unit? What do
22 they do?

23 A In the forensic biology department, we have
24 several different teams. There is the homicide and
25 sex crimes team, the missing persons and exemplar

1 teams, property crimes team. We basically do DNA
2 testing for various reasons for various purposes
3 depending on which team you're actually in.

4 Q And you're in which team now?

5 A At this time I'm in the Missing Persons
6 Exemplar Team.

7 Q How long have you been in that team?

8 A It's been a little over a year now.

9 Q Before that time, where were you assigned?

10 A I was in the homicide and sex crimes team.

11 Q And were you in the homicide and sex crimes
12 team in July of 2007 and the months immediately
13 following?

14 A Yes, I was.

15 Q Ma'am, you indicated that what your team did
16 or what the Forensic Biology Unit does is DNA
17 testing; is that correct?

18 A Yes, that is.

19 Q What is DNA?

20 A DNA is basically the genetic material that
21 makes us who we are. We inherent half of our DNA
22 from our mother and half of our DNA from our father.
23 Greater than 99 percent of our DNA is all the same.
24 So, we will all have DNA that will code for us having
25 two eyes or two ears, et cetera.

1 It's less than one percent of our DNA that's
2 different. For example, that's why we have different
3 eye colors and it's these differences in DNA between
4 individuals that's important in forensic science;
5 however, in our lab, we don't look at DNA that will
6 code for any physical characteristics.

7 Q When you say that you look at particular
8 part of DNA that is useful in forensic sciences, what
9 is it that you are looking for that allows you to do
10 your job?

11 A We are looking for DNA this is in the
12 noncoding region of DNA. It doesn't code for any
13 physical characteristics, and we look at specific
14 markers within these noncoding regions and eventually
15 produce a DNA profile for each individual tested and
16 the DNA profile is basically just a string of numbers
17 that's different for everybody except for identical
18 twins.

19 Q Now, what sort of training or educational
20 background do you have that allows you to perform
21 this function?

22 A I have a bachelor's degree in biology from
23 Stoneybrook University. I have a master's degree in
24 cell and microbiology from Fordham University and I'm
25 currently in a master's program at John Jay College

1 for forensic science.

2 Q During the time you have been working in the
3 Office of the Chief Medical Examiner and Forensic
4 Biology Unit, you have occasion to examine various
5 pieces of evidence for the presence of DNA and typing
6 of categorization of DNA; is that correct?

7 A Yes, that's correct.

8 Q Approximately how many cases have you had?
9 How many pieces of evidence have you looked at?

10 A I'd say hundreds.

11 Q And have you ever been called upon to
12 testify before concerning your findings with
13 result -- excuse me, with respect to the finding of
14 DNA or the categorization or typing of DNA?

15 A Yes, I have.

16 Q How many times have you testified
17 previously?

18 A Approximately six times previously.

19 Q On the occasions when you have testified,
20 have you been found to be an expert in your field of
21 forensic biology specifically DNA extraction typing?

22 A Yes, I have.

23 Q Have you ever been denied expertise?

24 A No, I have not.

25 MR. HALE: Your Honor, I offer the

1 witness as an expert in the field analysis of
2 forensic materials and specifically DNA
3 extraction typing.

4 MR. MEGARO: No objection.

5 THE COURT: Again, as an expert, she
6 will be allowed to give an opinion based on
7 observable fact or based upon questions where
8 the lawyers ask the witness to assume certain
9 facts.

10 Her testimony, however, is to be
11 treated like any other witness. You can accept
12 it or reject it in whole or in part. It's your
13 call.

14 Please proceed.

15 Q Ms. Ahmed, your laboratory there at the
16 Office of the Chief Medical Examiner, does it have a
17 protocol or a specific scheme for the extraction of
18 testing and categorization typing of DNA?

19 A Yes, we do.

20 Q And you are familiar with that protocol?

21 A Yes, I am.

22 Q Have you been tested on that particular
23 protocol?

24 A Yes, we have.

25 Q Just tell the jury in general terms, you

1 know, what sort of testing or certification you've
2 had with the protocol for the typing of DNA?

3 A Well, we are all required to have six months
4 of inhouse training, and what this is comprised of us
5 watching our supervisors perform specific techniques.
6 They in turn watch us perform the same techniques,
7 and we are finally given a competency test and what
8 that is is basically test us on whether you have
9 mastered the techniques that you have just learned.
10 We also given an oral examination. That's at the end
11 of six months, and it's very technical, and it covers
12 all aspects of the laboratory and tests our knowledge
13 in that.

14 Q And you are certified and have passed the
15 various qualifications tests?

16 A It's not really a certification, but I have
17 passed the training.

18 Q Okay. In general terms, how is it that you
19 would get a case? How would it be initiated for you?

20 A At the time that I was in the homicide and
21 sex crimes group, we have what is called a rotation
22 system. So, every week your duties change, and for a
23 particular week, we might be assigned to the evidence
24 exam rotation and what that basically is is that you
25 will be examining evidence that week. So, you will

1 pick up the next case in line and examine the
2 evidence for that particular case.

3 Q In July of 2007, did you pick up or were you
4 assigned a case that had to do with the shooting of
5 two New York City police officers in Brooklyn?

6 A Yes, I did.

7 Q And with regard to that case, was there
8 submitted to you that is your laboratory a number of
9 items and samples that had been gathered by the New
10 York City Police Department?

11 A Yes.

12 Q Now, among those items, there were items
13 which had already been sampled, swabs that came to
14 you; is that correct?

15 A Yes, that's correct.

16 Q Were there also items that were submitted to
17 you that hadn't been swabbed that you, yourself, or
18 people working under your supervision swabbed to try
19 and extract biological material and/or DNA?

20 A Yes.

21 Q Let me ask you generally did your lab
22 receive biological samples referring to five known
23 individuals, those individuals being police officer
24 Russell Timoshenko, Police Officer Hermann Yan and
25 three civilians by the name of Dexter Bostic, Robert

1 Ellis and Lee Woods?

2 A Yes, we did.

3 Q And when you received those particular
4 biological samples of those known individuals, what
5 did you do with them?

6 A We performed DNA typing on those samples.

7 Q When you performed DNA typing on those
8 samples, what sort of results do you get? How are
9 those results displayed?

10 A The end results of us performing DNA typing
11 is DNA profile for each sample test, and like I said
12 previously, a DNA profile is just a string of
13 numbers, and it's different for every person except
14 for identical twins.

15 Q All right. Ma'am, let me show you what has
16 been marked as People's Exhibit Number 137 for
17 identification.

18 Ma'am, take a look at People's 137 for
19 identification. Do you recognize that?

20 A Yes, I do.

21 Q What do you recognize that as?

22 A This is a compilation of all the DNA
23 profiles that I generated for the five individuals
24 that you just mentioned.

25 Q And those are in table form that shows the

1 string of numbers that you talked about that are, in
2 fact, the DNA type or DNA profile?

3 A Yes, that is correct.

4 MR. HALE: I'll offer that as 137 in
5 evidence, Your Honor.

6 MR. MEGARO: No objection.

7 THE COURT: Mark and received 137 in
8 evidence.

9 (At this time, DNA profile document is
10 received as People's Exhibit 137 in evidence.)

11 Q If I can have that please, Officer.

12 THE COURT: Jurors, are you able to see
13 that? Not well?

14 MR. HALE: Okay.

15 Q With the Court's permission, Ms. Ahmed, can
16 you step down here, please. Just so the jury knows
17 what we're talking about right here, you first have
18 the name of the five individuals there on the extreme
19 left-hand side of the document; is that correct?

20 A That's correct.

21 Q And we have color coded them, right?

22 A Yes.

23 Q Okay. Now, across the top in bold print,
24 you see first item and then a series of numbers which
25 are bolded and underlined across the top. Do you see

1 those?

2 A Yes, I do.

3 Q What do those represent?

4 A These are the 13.

5 THE COURT: Why don't you point to
6 them.

7 Q Point to them please, yes.

8 A So, we're looking at 13 different locations.
9 We're looking at 13 different locations on a person's
10 DNA, and that's also included amelogenin which is a
11 sex determining location. So, there is 13 different
12 locations plus amelogenin going across the top.

13 Q The amelogenin is going to give an X or X,X
14 for female and X,Y for male; is that correct?

15 A Yes, that's correct.

16 Q And the others are going to give you a
17 numerical value; is that correct?

18 A Yes, that's correct.

19 Q Why are there some that are only one number
20 and some that are two numbers? What does that
21 represent?

22 A Okay. So, a person's DNA, like I said
23 before, you inherit half your DNA from your mom and
24 half from your dad. So, you will have two numbers,
25 one from each person.

1 Sometimes a person can inherit the same
2 number from both the mother and the father.
3 Therefore, you will just see it represented one time.

4 Q Okay. The various numbers, they are called
5 what? What is it that you're actually looking at
6 that you assign a number to?

7 A We are calling each location each one is
8 called locus, and if you have multiple locations, you
9 call them loci.

10 Q Now, ma'am, is, in fact, this whole string
11 of numbers for each individual which comprises the
12 DNA profile?

13 A Yes.

14 Q And is that DNA profile what you use to
15 compare against various profiles that are generated
16 from biological samples that come into your
17 laboratory?

18 A Yes, it is.

19 Q Now, the particular section that you were
20 working in at the time did what sort of DNA testing?
21 What was it called?

22 A We did STR DNA test.

23 Q STR refers to what?

24 A Short tandem repeats.

25 Q That just tells you what the scientific

1 process is; is that correct?

2 A Actually, it says -- well, they are
3 repeating units. So, you have repeating units that
4 are in close proximity to each other. Therefore,
5 they are tandem.

6 Q Okay. Did the laboratory at that time, did
7 it differentiate between types of biological samples
8 that might be generated through, say, patent sort of
9 stains like saliva and blood and other stains that
10 may not be visible such as items that may have been
11 touched?

12 A Yes, we did.

13 Q What sort of items did you test at that
14 time?

15 A We tested items where we were to look to see
16 if there was any blood present or to see if there
17 were any skin cells present, we would do what's
18 called a scraping of an item of clothing, for
19 example, to see if there were any skin cells present
20 from which we can obtain DNA from.

21 Q Was there a different unit at that time that
22 was tested with regard to items that may have only
23 have transferred by touch?

24 A Yes.

25 Q What was -- what did you call the two units?

1 A So, the other unit where they would examine
2 items where there was a minimal amount of DNA or
3 usually items that were just possibly touched, that
4 group is called the high sensitivity group, and they
5 specialize in working with low amounts of DNA.

6 In my group, we work with mostly high
7 amounts of DNA, and for it's the high copy group
8 or -- in other words, we just basically work with the
9 samples that have a lot of DNA.

10 Q Now, with regard to that particular case,
11 the case we're talking about with the shooting of the
12 two New York City police officers, did your unit
13 forward a number of the items that were received by
14 you to the other unit with the high sensitivity unit?

15 A Yes, we did.

16 Q And sometimes you tested those items; other
17 times you forwarded them without testing; is that
18 correct?

19 A Exactly.

20 Q Now, during the course of all of your DNA
21 analysis of the various items that were brought to
22 you, did you, in fact, generate paperwork in the form
23 of notes and reports and charts and graphs, things of
24 that nature?

25 A Yes, we did.

1 Q And are those charts and graphs, can they
2 make up in total a file which related to your work
3 and the work of people under your supervision with
4 regard to this case?

5 A Yes, it does.

6 Q And those files and that paperwork, are they
7 required to be kept accurately in the regular course
8 of business of the Office of the Chief Medical
9 Examiner?

10 A Yes.

11 Q Let me show you a number of papers in this
12 envelope which we have marked as People's Exhibit
13 Number 138 for identification.

14 Ms. Ahmed, take just a moment and take a
15 look at those, please.

16 Ma'am, do you recognize the items there?

17 A Yes.

18 Q What do you recognize them as?

19 A These are copies of the files that have been
20 generated by our office.

21 Q And those are the reports, documents, the
22 charts, the graphs, the things I was just talking
23 about a moment ago; is that correct?

24 A Yes.

25 Q Are they in substantially the same condition

1 when they were treated by you during the course of
2 completion or during the course of the testing with
3 regard to this particular case?

4 A Yes.

5 Q And they are regularly kept in the course of
6 business?

7 A Yes, they are.

8 MR. HALE: Offer that as 138 in
9 evidence, Your Honor.

10 MR. MEGARO: Just one minute.

11 No objection.

12 THE COURT: Marked and received in
13 evidence.

14 (At this time, DNA documents are
15 received as People's Exhibit 138 in evidence.)

16 Q All right.

17 Ms. Ahmed, what is -- in your line of work,
18 what is an item that is called a single source
19 contributor?

20 A Single source contributor is basically when
21 you have a sample and you have it sent through the
22 entire -- all the steps of DNA typing and the end
23 result shows a DNA profile where you have no more
24 than two numbers per location. You can say that is
25 the single source contributor. There was only one

1 person who contributed their DNA in that sample.

2 Q How does that differentiate from a mixed
3 contributor sort of item?

4 A We called samples where there is more than
5 one person contributing to that sample we call it a
6 mixture, and we know that it's more than one person
7 because if you were to look at each of the locations,
8 you will have more than two numbers. Therefore,
9 there must be more than one person contributing to
10 their DNA. ,

11 Q Within the samples of that categorized as a
12 mixed contributor, that is, more than one or two or
13 more contributors, are you able to say whether any
14 one contributor is a major or minor contributor with
15 regard to that DNA sample?

16 A With some mixtures, you can actually clearly
17 see who was the major component and who was the minor
18 component, and with other mixtures, it becomes a
19 little more difficult because you might have equal
20 amounts of DNA that each person is contributing which
21 would make it harder for you to deduce whose DNA is
22 whose where the numbers are actually going to like
23 who contributed which numbers and sometimes when you
24 have more than three people, then it becomes
25 impossible to deduce who else is contributing, which

1 numbers in that sample.

2 Q What does the term, "cannot be excluded,"
3 what does it mean with regard to mixtures when you
4 are analyzing them?

5 A When you have a mixture and you are seeing
6 numbers in the DNA profile of the mixture and you're
7 comparing it to a known sample from a known
8 individual and that person's -- that person's -- the
9 numbers that person's DNA profile are also present in
10 that mixture, you can say that that person cannot be
11 excluded. That person may be present in that
12 mixture.

13 Q Now, Ms. Ahmed, let me ask you this. When
14 you have made a determination as to a DNA profile of
15 an individual whether it's a known individual like
16 you have at the table or an unknown individual who
17 you have gotten as a single source from a sample, are
18 you able to say there or is there research and
19 information available to you that allows you to make
20 a determination as to an expert opinion as to how
21 often or what would be the likelihood of that
22 particular profile reoccurring within the population?

23 A Yes, we do.

24 Q And is that in terms in odds of how often it
25 would be one and however many?

1 A We have a database that has the frequency of
2 every possible number that you can see and every
3 location that is tested.

4 Q Now, with regard to this particular case,
5 did you receive any sort of samples that yielded a
6 single source contribution as to Police Officer
7 Timoshenko?

8 A Yes, we did.

9 Q Can you tell us what that was?

10 A I am referring to page two of our report and
11 we have samples S1 and S2. The DNA profile that we
12 yielded from those two samples was the same as the
13 DNA profile of Russell Timoshenko.

14 Q S1 and S2 were there; is that correct?

15 A Yes, they were.

16 Q Did you receive any samples that you were
17 able to determine that Police Officer Hermann Yan was
18 the single source contributor?

19 A Yes, we did.

20 Q What item or items did you receive that said
21 that?

22 A We received samples S3 through S6, all of
23 which yield profile that were the same as Hermann
24 Yan.

25 Q These were also determined by your lab to be

1 blood?

2 A Yes, they were.

3 Q With regards to the other three individuals
4 who were on the table, that is Bostic, Ellis and
5 Woods, did you test any samples to which you were
6 able to say that any one of those individuals was the
7 single source contributor?

8 A Yes, we did.

9 Q Okay. Let's first talk about Mr. Bostic.
10 What item or items were you able to type that yielded
11 a result that would tell you that Mr. Bostic was the
12 single source contributor to those items?

13 A We tested a chicken bone. It was item 1C
14 and the DNA profile that that yielded was the same as
15 that of Dexter Bostic.

16 Q Item 1C that was the chicken bone was that a
17 swab that was marked that would be taken from the
18 chicken bone to the New York City Police Department
19 or was that something that your lab had swabbed,
20 extracted or swabbed off the chicken bone?

21 A It was something that we had actually
22 swabbed ourselves off of the chicken bone.

23 Q What voucher number did that come off of
24 that particular chicken bone, do you recall?

25 A That was under voucher N as in Nancy 585649.

1 Q Okay. Now, you had indicated just a moment
2 ago that you have tables that -- of research that
3 will tell you the frequency of profiles recurring
4 within the population; is that correct?

5 A Yes.

6 Q What is the frequency with regard to that
7 single source contribution by Mr. Bostic from a
8 chicken bone?

9 A You would expect to see this DNA profile in
10 one in greater than one trillion Blacks, one in
11 greater than one trillion Caucasians, one in greater
12 than one trillion Hispanics and one in greater than
13 one trillion Asians.

14 Q Were there any other items that you examined
15 that yields a single source contribution by
16 Mr. Bostic?

17 A No, there were not.

18 Q Were there any items that you examined that
19 yielded a single source contribution that came back
20 matching the profile of Mr. Ellis?

21 A Yes, there was.

22 Q Can you describe what that was, please?

23 A Sure. We tested a sample that we called
24 sample 7B from a ginger ale Schweppes bottle, and we
25 also tested another chicken bone which was item

1 number 1D and both yielded a DNA profile that was the
2 same as that of Robert Ellis.

3 Q 1D from the chicken bone, what voucher
4 number did that come from?

5 A This was under the same voucher as the
6 previous chicken bone which is N 585649.

7 Q Now, 1D, was that a different area that was
8 swabbed than 1C that came back to Mr. Bostic?

9 A 1D is a separate chicken bone entirely.

10 Q That's all part of a group of chicken bones,
11 but 1D is a separate chicken bone entirely?

12 A Yes, it is.

13 Q That Schweppes bottle, what voucher number
14 did that come from?

15 A That was under Voucher Number N as in Nancy,
16 737355.

17 Q Now, what we talked -- when we talk about
18 these voucher numbers, this is the way that you
19 received it from the police department; is that
20 correct?

21 A Yes.

22 Q And however their packaging is is how you
23 examined it; is that correct?

24 A Yes.

25 Q Now, you don't know out in the field from

1 when you're testing what items came in contact with
2 what other items; is that correct?

3 A Yes.

4 Q And there is no way that you can tell that
5 from your testing?

6 A No.

7 Q Now, with regard to the reoccurrence or the
8 frequency of the profile of Mr. Ellis within the
9 population, what would that be?

10 A You would expect to see that profile in one
11 in greater than one trillion Blacks, one in greater
12 than one trillion Caucasians, one in greater than one
13 trillion Hispanics and one in greater than one
14 trillion Asians.

15 Q Were there any other single source items
16 with the single source contribution from Mr. Ellis?

17 A No, there were not.

18 Q Were there any items that came back their
19 profile to yielding a single source contribution from
20 Lee Woods?

21 A Not a single source contribution from him.

22 Q Were there other items that came back in
23 yield the mixtures with regard to the three
24 individuals that we have just talked?

25 A Yes, there were.

1 Q Let's first talk, again, we will do it in
2 order. Dexter Bostic, what item or items that you
3 tested that yielded you tested that yielded a mixture
4 of the profile coming back to Mr. Bostic?

5 A We found a mixture of a DNA in another
6 chicken bone sample. This was item 1A, and it was a
7 mixture that was consistent with that of Dexter
8 Bostic and another DNA source.

9 Q From that particular mixture, were you able
10 to say who was the major contributor to the DNA?

11 A We were not able to tell who the major
12 component was, but we did see -- we did see that
13 Dexter Bostic could not be excluded as being a
14 contributor to that mixture.

15 Q And this was another chicken bone out at
16 that same lot with regard to the two other single
17 source contributions; is that correct?

18 A Yes.

19 Q But a different chicken bone?

20 A Yes.

21 Q The other contributor to that particular
22 chicken bone from your analysis, were you able to
23 exclude any of the other individuals that we talked
24 about here?

25 A Yes. I was able to exclude all other

1 individuals that we tested.

2 Q So, there was no way that Officers
3 Timoshenko and Yan or Mr. Ellis or Mr. Woods could
4 have contributed to that DNA sample?

5 A That's correct.

6 Q But Mr. Bostic could have contributed to the
7 DNA sample?

8 A Correct.

9 Q What other item or items was there a yielded
10 a mixture with regard to Mr. Bostic and if there
11 wasn't any, there wasn't any?

12 A There were no others.

13 Q How about with regard to Mr. Ellis? Any
14 pictures with regard to him?

15 A Yes. There were mixtures of DNA from sleeve
16 scrapings. There was a sleeve which we scraped with
17 using a blade to obtain skin cells and that yielded a
18 mixture of DNA as well as scrapings taken from a red
19 sweatshirt. We found that both samples had mixtures
20 of DNA which were consistent with having come from
21 Robert Ellis and another DNA source.

22 Q One other DNA source?

23 A Yes, at least one other source.

24 Q Were you able to exclude the other four
25 individuals as having contributed to that particular

1 DNA source?

2 A Yes, we were.

3 Q And what voucher number did those two items
4 come to you under the sleeve and the sweatshirt?

5 A They were under voucher number N as in
6 Nancy, 374286.

7 Q How about with regard to Mr. Woods? Were
8 there any items that were tested by you that yielded
9 mixtures where Mr. Woods was or could be a
10 contributor?

11 A Yes. We have a mixture of DNA and scrapings
12 that we had taken from a New York Yankees baseball
13 cap.

14 Q Where did you take those scrapings from the
15 baseball cap?

16 A We took it from the rim of the cap.

17 Q The sweatband?

18 A The sweatband, yes.

19 Q On the inside?

20 A Yes.

21 Q What were the results when you took those
22 particular scrapings and analyzed them for the
23 presence of DNA?

24 A We found a presence of DNA. The major
25 contributor had the DNA profile that was the same of

1 that of Lee Woods. There was a minor female
2 contributor, but we could not develop a full DNA
3 profile for that female contributor.

4 Q And being a female contributor, that would
5 obviously exclude the other four gentlemen we were
6 talking about here?

7 A That is correct.

8 Q Were there any other items that were tested
9 by you that yielded mixtures where Lee Woods was a
10 contributor?

11 A Yes. We also checked scrapings from a
12 multi-colored jacket, and this yielded a DNA profile
13 that was also a mixture, but it was a mixture of at
14 least three individuals, and Lee Woods could not be
15 excluded as being a contributor to that mixture.

16 Q Both of those items, were those items that
17 you got under voucher number that was N374286, the
18 hat and coat?

19 A Yes, they were.

20 Q Besides those items, ma'am, were there any
21 other items that came back to any of these
22 individuals having been a contributor in your testing
23 of items?

24 A No, there were not.

25 Q Were these items along with some other items

1 that you did not test, were they forwarded to your
2 high sensitivity unit for further testing with regard
3 to this case?

4 A Yes.

5 MR. HALE: Ma'am, thank you.

6 I don't have any further questions at
7 this time.

8 THE COURT: Any cross-examination?

9 MR. MEGARO: I'll be brief, Your Honor.

10 CROSS-EXAMINATION BY

11 MR. MEGARO:

12 Q How are you, Ms. Ahmed?

13 A I'm good. Thank you.

14 Q You just testified a moment ago about
15 scrapings to get skin cells, right?

16 A Correct.

17 Q And that's because people shed skin cells
18 every minute of the day, correct?

19 A Correct.

20 Q Some of us more than others, right?

21 A Yes.

22 Q Okay. And to obtain these skin cells,
23 that's why you took the knife and you scrape it off
24 parts of?

25 A The clothing.

1 Q Items of the clothing?

2 A Right.

3 Q You said the multi-colored jacket Mr. Woods
4 could not be excluded as a possible contributor?

5 A Correct.

6 Q There were two other individuals that yield
7 or two other DNA profiles from two other unknown
8 individuals on that particular jacket?

9 A There were at least two other individuals
10 that were contributing their DNA to that sample.

11 Q Were either of those contributors a major
12 contributor?

13 A We could not tell. This was a mixture of at
14 least three people. So, it becomes very difficult to
15 tell who is contributing what from the sample.

16 Q The other two, were they male or female?

17 A One was -- there was at least one female
18 contributor in this mixture.

19 Q And the other one was possibly the other
20 unknown?

21 A I'm sorry. I just want to backtrack. There
22 was at least one female contributor in the mixture,
23 the multi-colored jacket and at least one female
24 contributor in the mixture from the New York Yankees
25 baseball cap.

1 Q Okay. Now, DNA is what forensics people
2 call trace evidence, right?

3 A I don't know that exactly I don't know if
4 it's considered trace evidence really.

5 Q And are you familiar with the term direct
6 transfer or primary transfer?

7 A Yes.

8 Q Of DNA?

9 A Yes.

10 Q Explain to the jury what direct transfer or
11 primary transfer?

12 A Direct transfer is when a person is in
13 direct contact with the item being tested. So, you
14 can touch a cup, and there is a direct transfer of
15 your DNA from your skin cells from your fingers to
16 the cup. That's a direct transfer.

17 Q And you're familiar with the term indirect
18 transfer or secondary transfer, right?

19 A Yes.

20 Q Can you explain to the jury what the
21 indirect transfer or secondary transfer is?

22 A I guess you can -- one example would be, um,
23 if someone were to just spit on the floor on the
24 ground walking outside and another person walks by
25 and then actually steps in that so there is an

1 indirect transfer, secondary transfer from the person
2 to the ground, and then the ground to the person's
3 shoe.

4 Q That's how you actually get the evidence to
5 test is by an indirect transfer, right? You swab the
6 evidence and collect DNA. That's how that gets
7 tested in the machine?

8 A Yes. You can say that.

9 Q Now, the machine that actually tests the DNA
10 and produces those numbers, that machine, does it
11 distinguish between whether the sample is an indirect
12 transfer or a direct transfer?

13 A No, it does not.

14 Q It can't. It doesn't have that capability,
15 right?

16 A Correct.

17 Q And the machine also doesn't tell you when
18 that particular DNA was left on a particular item,
19 right?

20 A Correct.

21 Q And can't distinguish timing, right?

22 A Correct.

23 Q Now, when you received these pieces of
24 evidence that you just testified about, the chicken
25 bones, the clothing, how did it come to you? How was

1 it packaged?

2 A These were packaged in paper bags typically
3 and they were vouchered. So, we would receive it
4 from our evidence unit.

5 Q Were they separated like the hat in one bag,
6 the jacket in another bag, the chicken bones, each
7 chicken bones had their own bag?

8 A Yes, I believe so. I would have to check my
9 notes to be sure, but I'm pretty sure that they were.
10 Are you talking about all the items of evidence?

11 Q All the items you just testified about, the
12 bones, the hat, the jacket, the sleeve, did I miss
13 anything? And the Schweppes ginger ale bottle. Tell
14 the jury how those items came back?

15 A The bones were each in their own individual
16 coin envelopes. The sample taken from the ginger ale
17 Schweppes bottle, this was the swab that was swabbed
18 by the police department and we received that swab
19 also in its own individual coin envelope.

20 The multi-colored jacket was also received
21 in its own packaging and its own bag as well as the
22 baseball cap also in its own bag. One of the shirt
23 sleeves was in its own brown paper bag, and another
24 brown paper bag contained another shirt sleeve as
25 well as the sweatshirt in one bag.

1 Q That's it, right?

2 A There were also the swabs S1 through S6 and
3 they were also in their own individual coin
4 envelopes.

5 Q When you test each item you were just
6 talking about, you test them individually and made
7 sure those items didn't touch any of those other
8 things?

9 A Absolutely.

10 Q And when you test the items, you clean the
11 whole area to make sure that nothing is left behind
12 from those items could possibly contaminate the rest
13 of those items?

14 A That's correct.

15 MR. MEGARO: Thank you, very much.

16 Have a nice day.

17 THE COURT: Any redirect?

18 MR. HALE: No, Your Honor.

19 THE COURT: Ms. Ahmed, thank you, very
20 much.

21 (Witness excused.)

22 THE COURT: We have one more witness.

23 MS. NICOLAZZI: Yes. If we can take a
24 five-minute break and then start with this
25 witness.

1 THE COURT: Yes, take the jurors out,
2 please.

3 (Whereupon, the jury panel exited the
4 courtroom.)

5 THE COURT: All right. At least five
6 minutes. All right.

7 (Whereupon, a recess was taken.)

8 THE COURT: Case on trial. Both sides
9 ready? How long is this witness?

10 MS. NICOLAZZI: About 15 minutes on
11 direct.

12 MR. MEGARO: Five to ten minutes tops
13 on cross.

14 THE COURT: We should be able to finish
15 before lunch?

16 MR. MEGARO: Yes.

17 THE COURT: Let's get the jurors in.

18 THE COURT OFFICER: Ready for the jury,
19 Your Honor.

20 THE COURT: Bring them right in,
21 please.

22 THE COURT OFFICER: Jury entering.

23 (Whereupon, the jury panel entered the
24 courtroom.)

25 THE CLERK: Case on trial. All parties

1 are present.

2 Do both sides waive the reading of the
3 roll of the jury.

4 MR. HALE: Yes.

5 MR. MEGARO: Yes.

6 THE COURT: People.

7 MS. NICOLAZZI: People call Detective
8 Michael Habert.

9 THE CLERK: Please remain standing.
10 Raise your right hand.

11 M I C H A E L H A B E R T, a Detective bearing
12 Shield Number 6725, called as a witness by
13 the People, having been first duly sworn,
14 was examined and testified as follows:

15 THE CLERK: Please be seated. Thank
16 you.

17 Detective, for the record, please state
18 your name, spell your last name, your shield
19 number and command.

20 THE WITNESS: Detective Michael Habert,
21 H-a-b-e-r-t, Shield 6725.

22 THE CLERK: Command, please.

23 THE WITNESS: Brooklyn South Homicide.

24 THE CLERK: Thank you.

25 THE COURT: You may inquire.

1 MS. NICOLAZZI: Your Honor.

2 DIRECT EXAMINATION BY

3 MS. NICOLAZZI:

4 Q Good afternoon, Detective Habert.

5 A Good afternoon.

6 Q How long have you been employed by the New
7 York City Police Department?

8 A Almost 17 years.

9 Q How long have you been a detective?

10 A About ten years.

11 Q And how long have you been assigned to the
12 Brooklyn South Homicide Division?

13 A Almost five years.

14 Q What are the basic duties and
15 responsibilities of the members of your unit in the
16 Brooklyn South Homicide Unit?

17 A We catch homicides or people who are hurt or
18 injured and likely to die within a 12 or 13 precinct
19 area. We're either assigned a case to work a
20 precinct or detective on that time to assist in that
21 investigation.

22 Q Did you become involved into the
23 investigation to the shooting of two New York City
24 police officers that occurred here in Brooklyn back
25 on July 9th of 2007?

1 A Yes.

2 Q With respect to that investigation, were you
3 directed to go to a particular location early in the
4 morning of the 9th?

5 A Yes, I was.

6 Q Where did you go?

7 A I went to Five Towns Mitsubishi dealership.
8 It's located at 550 Burnside Avenue, Inwood, New
9 York.

10 Q What was your purpose in going out to the
11 Five Towns Mitsubishi dealership? What led you
12 there?

13 A From the scene in Brooklyn there was plates
14 that the numbers were recovered. The plates to that
15 car, the owner had been interviewed and they had
16 dropped that car off with the plates on it to be
17 maintained at Five Towns Mitsubishi.

18 Q When you went to Five Towns Mitsubishi that
19 morning, did you speak with employees of the Five
20 Towns Mitsubishi dealership?

21 A About 7:30 in the morning, I had an
22 opportunity to speak to Mohammed Dakak, D-a-k-a-k.
23 He was some type of manager there.

24 Q First of all, with respect to any vehicles
25 involved in your investigation, what did you learn?

1 A Just speaking to the manager, he informed me
2 that there was a gray BMW SUV that was missing. It
3 should have you been on the lot, and also with
4 regards to a Mitsubishi Outlander that the plates
5 were missing from that, the plates shouldn't have
6 been removed from the car and it was dropped off
7 there for maintenance. I believe one of the other
8 managers left him a note on his desk.

9 Q That the plates for the Mitsubishi Outlander
10 along with an actual BMW were missing from that
11 dealership?

12 A Yes.

13 Q Did you learn anything while you were there
14 with respect to any particular employee of the
15 dealership?

16 A Yes. We learned about Dexter Bostic who
17 worked there and apparently this manager had a
18 problem with him before taking plates off of a car.

19 Q After you got that information about a
20 person now known to you under the name Dexter Bostic,
21 what happened from there?

22 A Later that morning, I was directed to go
23 over to 1430 Gateway Boulevard in Far Rockaway.

24 Q And what was the reason in going to that
25 location?

1 A That was an address of either Mr. Bostic or
2 a relative and at that point, we were looking to
3 speak to him.

4 Q Specifically with respect to this
5 investigation; is that correct?

6 A Yes.

7 Q And at that point how would you term him how
8 was he categorized by you at that point?

9 A I guess a person of interest, somebody I
10 wanted to speak to.

11 Q May have been involved in this case the
12 shooting of two officers?

13 A He could have been, yes.

14 Q Possible. When you went over to that
15 address on Gateway Boulevard, who did you go there
16 with?

17 A I drove over with Detective Henn, H-e-n-n
18 and Detective Hopkins.

19 Q And were you met there by any other
20 detectives once you arrived over at Gateway
21 Boulevard?

22 A Yes. Of course there was a number of
23 detectives from my office and there were a few others
24 from Queens.

25 Q How many were there approximately if you

1 recall?

2 A Probably about ten or eleven.

3 Q And what happened then when you arrived
4 there and now met up with the other detectives at
5 that Gateway Boulevard address?

6 A They set up a perimeter around the
7 apartment.

8 Q If you can explain to the members of the
9 jury what that means when you set up a perimeter?

10 A We located where the apartment was in the
11 building, try to cover all windows, everything else,
12 guys on outside and guys on the inside.

13 Q What is the purpose in doing that?

14 A Basically so nobody really can come or go
15 out without us going in case anything goes out the
16 window or anything like that.

17 Q Who actually then went to the particular
18 apartment that you were interested in going to?

19 A I went and knocked on the door. Detective
20 Hopkins and Henn were with me.

21 Q And do you know if there were any other
22 detectives that actually went inside to in the
23 building with you other than the two of you?

24 A Yeah. There was three of the other guys
25 from my office. I'm pretty sure Detective Cheetum

1 (phonetic). I'm not sure who the other two
2 were whether it was McMahon and Moss. It was some
3 combination.

4 Q The other detectives that you had said had
5 met you there, were they part of this perimeter
6 covering the various windows and doorways outside the
7 building?

8 A Yes, there were.

9 Q You said that you knocked on the door tell
10 the members of the jury what happened from there when
11 you knocked on that the particular apartment door?

12 A I knocked on the door from the inside. A
13 male voice answered and asked who it was.

14 Q What did you say?

15 A I related, "Police, can you open the door?
16 We would like to come and speak to you."

17 Q When you went to that apartment, were any
18 guns drawn at that point?

19 A No, it was not.

20 Q When you stated, "Police, we would like to
21 come in and speak with you," what happened then?

22 A At that point, the door opened. There were
23 two males inside. The younger, which was by the
24 door, he said to come in. Second male was
25 approximately about ten feet directly in front of me,

1 and I learned from him to be Mr. Woods (indicating).

2 THE COURT: Let the record reflect the
3 witness is pointing in the direction of the
4 defendant.

5 Q After the younger man said to come in and
6 you saw the other person, the defendant, about I
7 believe you said ten feet, if you can tell the
8 members of the jury what happened from there?

9 A After as I was entering the apartment, Mr.
10 Woods turned and put his hands toward his waistband.

11 Q You are saying turned. Turned towards you
12 or away from you?

13 A Turned away from me.

14 THE COURT: You can stand.

15 THE WITNESS: As I'm coming in the
16 door, he turns (indicating).

17 MS. NICOLAZZI: Let the record reflect
18 the witness turned with his back facing the jury
19 both arms towards the waist area in front.

20 Q And when now his hands moved towards his
21 waist area turning away from you, what did you do at
22 that point?

23 A At that point, I took my gun out and was
24 ordering him to let me see his hands.

25 Q And when you took your gun out and ordered

1 the defendant to let you see his hands, what
2 happened?

3 A He was not complying. So, I came towards
4 him and physically grabbed him, pulled the gun on
5 him, told him to get on the floor (indicating), and
6 he complied and --

7 Q Let the record reflect the witness put his
8 other hand --

9 A I had my left hand on the back of his shirt
10 and my gun pointing towards him.

11 Q You physically put it on him?

12 A Physically, I had him, but he complied and
13 got on the ground on his own.

14 Q What happened after the defendant was on the
15 ground?

16 A Once he was on the floor, I frisked him and
17 determined he did not have a weapon.

18 Q After you frisked him on the ground, where
19 did he go from there physically?

20 A From there, he got up and sat on the couch.

21 Q When he got up and sat on the couch, did you
22 see if there were any objects on him or under him
23 where he would have been on the ground?

24 A Yes. There was a cell phone.

25 Q After the defendant was on the ground, did

1 you or anyone else have a conversation with him?

2 A I sat across from him on the chair. I had a
3 conversation with him. I told him we were there
4 looking to speak to Dexter Bostic. He related Dexter
5 wasn't there and we could check if we didn't believe
6 him.

7 Q Did you and the other detectives check the
8 apartment?

9 A Other detectives, yes, but I did not.

10 Q Fair to say Dexter Bostic was not there?

11 A No, he was not.

12 Q After that was done, what, if any other
13 conversation did you have with the defendant?

14 A I asked him did -- have you seen Dexter
15 since the last time? He told me he had -- no, he
16 hadn't seen Dexter since Saturday at Dexter's job,
17 and he had been home at the apartment sleeping since
18 10:00 the night before.

19 Q After he told you that the defendant had
20 been home or at that apartment sleeping since about
21 10:00 the night before, first of all, did he tell you
22 whose apartment it was?

23 A Yes. He told me it was -- it wasn't
24 Dexter's apartment, it was his sister Nicole's
25 apartment and Dexter didn't live there.

1 Q And did you have any further conversation
2 with him from there after he told you he had been
3 there since 10:00 the night before?

4 A Yes. I asked him if he lived there and he
5 told me he did not live there and he went on to tell
6 me that he is a confidential informant for the 101st
7 Precinct and that this must be very serious for all
8 these detectives to be there.

9 Q When he said to you this must be very
10 serious for all these detectives to be here, how did
11 you respond to that statement?

12 A I told him it was very serious and I asked
13 him if he would come back to Brooklyn to help us in
14 locating Dexter.

15 Q How did he respond to that?

16 A He agreed, but he requested that he be put
17 in handcuffs. These people are very dangerous and if
18 they thought he was a snitch, he and his family would
19 be killed.

20 Q Detective Habert, when you saw the defendant
21 or had you ever seen him before that day?

22 A No, I did not.

23 Q At that point in time when you were having
24 this conversation with him or asking him to come back
25 to help you locate Dexter Bostic did you know what,

1 if any, role this defendant had with respect to the
2 investigation that you were working on the shooting
3 of two officers?

4 A At that point, I didn't know he had any
5 involvement. I just knew that he was someone that
6 knew Dexter Bostic and was willing to help us out.

7 Q And your purpose in asking him to come back
8 to the precinct was what?

9 A To locate Dexter.

10 Q So, now, after you asked him to come back to
11 the precinct and he said yes but asked for you to put
12 him in the handcuffs. So, saying that if anyone knew
13 that he was, I believe, you used the word a snitch
14 that he or his family could be killed, how did you
15 respond to that request?

16 A I complied. I put him in the handcuffs. I
17 walked him out the car. Once in the back seat, I
18 uncuffed him.

19 Q You uncuffed him?

20 A Yes.

21 Q Was that into your car you had been
22 traveling in?

23 A It wasn't my car. Detective Summer and
24 Detective Moss's car.

25 Q Where was he taken from there?

1 A After he was speaking to Detective Yero, he
2 was taken back to the 67th Precinct.

3 Q Now, you said that there was another younger
4 man in the apartment as well?

5 A Yes.

6 Q Did you speak with him?

7 A Yes, I did.

8 Q And did you learn later who that was?

9 A I didn't learn by name, but I learned it was
10 Dexter and Nicole's nephew.

11 Q And did you talk to him at all about whether
12 or not he would be willing to help you or become
13 involved in the investigation?

14 A When I asked him his name and things like
15 that, he told me he didn't want to be involved and
16 that he was up from South Carolina visiting.

17 Q So, did he come back to the precinct with
18 you or what happened with respect to him?

19 A He was left at the apartment.

20 Q And did you then go back to the precinct
21 with the defendant Lee Woods with the other
22 detectives he was traveling with or did you go
23 somewhere else?

24 A No. I went someplace else.

25 MS. NICOLAZZI: Thank you.

1 I have nothing further.

2 THE COURT: Any cross-examination?

3 MR. MEGARO: Yes.

4 CROSS-EXAMINATION BY

5 MR. MEGARO:

6 Q Good afternoon, Detective.

7 A Good afternoon, sir.

8 Q When you first entered this apartment, you
9 ordered Lee Woods to the floor at gun point, correct?

10 A Yes.

11 Q You physically put him on the floor while
12 pointing a loaded gun at his body, right?

13 A I grabbed onto him physically and ordered
14 him to the floor, yes.

15 Q And you put him down on the floor, right?

16 A He complied with my order to get on the
17 floor. I didn't have to physically throw him or
18 anything like that.

19 Q And all this time you have your side arm
20 drawn, correct?

21 A I had my side arm drawn.

22 Q And your side arm is up against his body?

23 A No. It's pointed at his body. It's held
24 next to mine to protect.

25 Q Not against his head, right?

1 A No.

2 Q Now, your testimony is that after you put
3 him on the floor, you determined he doesn't have any
4 weapons on him, right?

5 A Yes..

6 Q And then he sat on the couch?

7 A Yes.

8 Q And you sat on the couch across from him?

9 A I don't know if it was a couch. It was a
10 seat.

11 Q It was a chair?

12 A Yes.

13 Q And you two proceeded to have a normal
14 conversation, right?

15 A Yes.

16 Q Your testimony is that Lee Woods answered
17 your questions, right?

18 A Yes.

19 Q And you asked him specifically about where
20 Dexter Bostic was, right?

21 A I was inquiring about Dexter Bostic.

22 Q And his response to you was he hasn't seen
23 Dexter Bostic in sometime?

24 A I believe it was a couple of days since
25 Saturday.

1 Q So, you then asked him if he would take a
2 ride with you to help -- I'm sorry. Let me withdraw
3 that.

4 You then asked him if he would help you find
5 Dexter Bostic, right?

6 A Yes.

7 Q And he said, yes?

8 A Yes.

9 Q Now, you asked him to take a ride with you
10 to leave Far Rockaway and go back to the 67th
11 Precinct here in Brooklyn, right?

12 A I asked him to come back to Brooklyn, yes.

13 Q At this point in time, you know Dexter
14 Bostic is a Queens resident, right?

15 A Yes.

16 Q Okay. So, and Lee Woods had just told you
17 that he didn't know where Dexter Bostic was, right?

18 A He said he hasn't seen him.

19 Q He also said he didn't know where he was,
20 right?

21 A I don't recall him saying that.

22 Q And at this point in time you didn't think
23 Lee Woods had anything to do with the shooting
24 whatsoever, right?

25 A I didn't know who Mr. Woods was at that

1 time.

2 Q If Lee doesn't know where Dexter is, how is
3 he going to help you by coming back to back to the
4 67th Precinct in Brooklyn?

5 A He is friends with him. He has a history
6 with him. He knows where he is, who family friends
7 are, who friends are, who girlfriends are, any
8 frequent phone numbers, anything.

9 Q And none of this could have been
10 accomplished here in Nicole Bostic's living room?

11 A I'm one part of an investigation. There is
12 as you can imagine with two police officers shot
13 there is many other detectives working on it. Many
14 with other information that I don't have, other
15 resources I don't have where the investigation is
16 essentially located back in Brooklyn, like everything
17 would come through there or back to there. So, they
18 would be better equipped.

19 Q So, you were going to turn him over to other
20 detectives so he can help other detectives. Is that
21 it?

22 A Yes.

23 THE COURT: You did, in fact, turn him
24 over to other detectives, didn't you?

25 THE WITNESS: Yes, I did, Your Honor.

1 THE COURT: Next question.

2 Q Now, did you even talk with him about
3 exactly what he was going to help you or how he was
4 going to help you?

5 A That he was going to speak to other
6 detectives.

7 Q Okay. And your testimony here in court
8 today is that Lee Woods said, sure, I'll go with you
9 back to the 67th Precinct, right?

10 A Yes.

11 Q But only on one condition, right, I'm sorry,
12 two conditions. One was that he be handcuffed so
13 that everything can --

14 A So he doesn't look like a snitch.

15 Q His other request is he be put in the back
16 in the police car so just like he was being arrested.

17 A He didn't request that.

18 Q That was your idea to put him in the back of
19 the police car?

20 A We generally don't have anybody other than
21 police personnel ride in the front of the police car.

22 Q He didn't have to go back to the 67th
23 Precinct with you?

24 A No.

25 Q You told him you were free to leave at any

1 time you want?

2 A I asked him if he would come back, and he
3 said he would come back.

4 Q It was his idea to go back to the 67th
5 Precinct?

6 A I asked him would he come back to Brooklyn,
7 and he agreed to come back and look for Dexter.

8 Q And if he didn't want to go with you, he
9 wouldn't have had to, right?

10 A No.

11 Q By the way, when you first get to this
12 apartment building, how many other police officers
13 are outside?

14 A When I first get there?

15 Q Yes.

16 A We all kind of arrive at the same time.

17 Q How many?

18 A Ten or eleven detectives.

19 Q How many uniformed police officers?

20 A No uniform.

21 Q And you and these other detectives are going
22 there to look for Dexter Bostic, right?

23 A Yes.

24 Q And this is the man that you had believed
25 had shot Officer Timoshenko in the face the night

1 before?

2 A I don't know if he was at that time.

3 Q You believed that Dexter Bostic is?

4 A Is somebody who could be involved..

5 Q Somebody who could have been involved,
6 right?

7 A Yes.

8 Q And if he is somebody who could have been
9 involved, he is possibly armed with a weapon, right?

10 A Yes.

11 Q You also know since he possibly shot a
12 police officer in the head, it's a good chance he
13 could shoot at you and your other detectives if you
14 encountered him again, right?

15 A Possible.

16 Q So, when you the eight or ten or eleven
17 detectives come to the door arrive at the apartment,
18 you're all armed, right?

19 A Yes.

20 Q When you knock on this door, other
21 detectives have their firearms drawn?

22 A I did not. I don't know if they did.

23 Q Outside the building, there is other police
24 officers, other detectives setting up a perimeter?

25 A Yes.

1 Q To make sure if anything happens that they
2 are ready to back you up, right?

3 A Um-hum.

4 Q Also to make sure that nobody is able to
5 escape that particular location, right?

6 A Yes.

7 Q After you put Lee Woods on the floor and you
8 handcuff him, he doesn't struggle with you, right?

9 A No.

10 Q He doesn't fight with you?

11 A No.

12 Q Doesn't kick, resist arrest?

13 A No.

14 Q Anything like that, right?

15 A Nothing like that at all.

16 Q Who brought him back to the 67th Precinct?

17 A He went back with Detective Summer and
18 Detective Moss.

19 Q There came a point in time when you did see
20 Lee Woods again back at the 67th Precinct, right?

21 A Yes.

22 Q When was that?

23 A About 12:30 on the morning of the 10th.
24 About half past midnight.

25 Q 12:30 a.m.?

1 A Yes.

2 Q So, this is how many hours after you first
3 seen him?

4 A Ten hours approximately -- I'm sorry, about
5 14 hours it would be.

6 Q Fourteen hours after you first see him?

7 A Yeah.

8 Q Where do you see him back at the 67th?

9 A In the squad office, the interview room.

10 Q And by this time, he is in custody, right?

11 A Yes.

12 Q You participated in questioning him further?

13 A No.

14 Q You never asked this man a single question
15 in that room?

16 A Not in that room, no.

17 Q You never hit him in the face?

18 A No.

19 Q Never pulled his hair?

20 A No.

21 Q None of that ever happened, right?

22 A No.

23 MR. MEGARO: Thank you.

24 MS. NICOLAZZI: I have no redirect.

25 THE COURT: Thank you, sir.

1 THE WITNESS: Thank you, Your Honor.

2 (Witness excused.)

3 THE COURT: With that, jurors we're
4 going to break for lunch. Please be back in the
5 jury room as close to 2:20 as possible. See you
6 then. Keep my warnings in mind. 2:20.

7 (Whereupon, the jury panel exited the
8 courtroom.)

9 THE COURT: Please remain seated until
10 the jurors leave the courtroom.

11 If there is nothing further, 2:20.

12 (Luncheon recess.)

13 (Whereupon, Phyllis Price relieved
14 Dianne Adkins-Forte as Official Court Reporter.)

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

2 THE COURT: Case on trial. Both sides ready?

3 MS. NICOLAZZI: Yes.

4 MR. HALE: Yes.

5 MR. MEGARO: Yes.

6 THE COURT: Let's get the jury.

7 COURT OFFICER: Ready?

8 THE COURT: Bring them right in, sir.

9 COURT OFFICER: Jury entering.

10 (Whereupon, the jury enters the courtroom, and
11 is seated in the jury box.)

12 THE CLERK: Case on trial. All parties are
13 present.

14 Both sides waive a reading of the roll?

15 MR. MEGARO: Yes.

16 MR. HALE: Yes.

17 THE COURT: Good afternoon.

18 JURORS: Good afternoon, your Honor.

19 THE COURT: Mr. Hale.

20 MR. HALE: People call Detectives Luis Yero.

21 D E T L U I S Y E R O, called as a witness on behalf of
22 the People, having been first duly sworn, was examined and
23 testified as follows:

24 THE CLERK: For the record, Detective, state your
25 name. Spell your last name. Shield and command.

1 THE WITNESS: Detective Luis Yero, Y-E-R-O.
2 Shield number 5149.

3 Brooklyn South Homicide Squad.

4 THE COURT: Just continue to speak into the
5 microphone.

6 Mr. Hale.

7 MR. HALE: Thank you, your Honor.

8 DIRECT EXAMINATION

9 BY MR. HALE:

10 Q Sir, you work for the police department?

11 A Yes, I do.

12 Q How long have you been a police officer, sir?

13 A 18 and a half years.

14 Q How long with the rank of detective?

15 A Since December of 2001.

16 Q Your current assignment is where, sir?

17 A Brooklyn South Homicide Squad.

18 Q How long have you been working as a detective with
19 the Brooklyn South Homicide Squad?

20 A Say, since June of 2005.

21 Q In general terms, what are the duties of a detective
22 in the Brooklyn Homicide Squad?

23 A Homicide squads are a support unit. We get attached
24 to a case detective in whatever precinct the homicide occurs.
25 And we pretty much are involved in the aspects of the case,

1 with the case detective.

2 Q Sir, were you working with the Brooklyn South
3 Homicide Squad as a detective on July 9th of 2007?

4 A Yes, I was.

5 Q On that date, sir, during the early morning hours,
6 did you become aware of a shooting of two New York City Police
7 Officers which had happened within the confines of the 71st
8 Precinct?

9 A Yes.

10 Q When you learned about that, sir, did you respond to
11 any particular location?

12 A I responded to Lefferts and Rogers.

13 Q And, sir, at that time, did you meet with other
14 detectives, including your immediate supervisor?

15 A Yes.

16 Q Were you given a particular assignment with regard to
17 that shooting of the two police officers?

18 A I was given the lead in the Brooklyn South Homicide
19 office.

20 Q And was that working in conjunction with a precinct
21 detective from the 71st Precinct?

22 A Yes, it was.

23 Q And who was that detective, sir?

24 A Detective Pete Margraf.

25 Q Now, once you are assigned as the lead detective,

1 along with the precinct detective, what does that entail
2 doing?

3 A It entails, obviously, the obtaining of witnesses.
4 The speaking to the DA's Office, Medical Examiner's Office.
5 Conducting canvasses. DNA evidence. Anything that the
6 investigation leads us to, I help out with the precinct
7 detective.

8 Q Now, with regard to this particular case, does that
9 mean that you and Detective Margraf were the only detectives
10 working on the case?

11 A No.

12 Q At that time, sir, were you assigned with a certain
13 team within the Brooklyn South Homicide Squad?

14 A Yes.

15 Q Who were the other team members working with you in
16 conjunction with this investigation?

17 A Detective Habert, Hopkins, Penn, and Detective
18 Gorman.

19 Q Since they were working on your team, sir, were they
20 also tasked various assignments that had to do with the
21 investigation of this matter?

22 A Yes.

23 Q And, at that time, sir, would their information,
24 whatever they gleaned, would have come through you as part of
25 the investigation?

1 A It would come through me, come through a boss, yes.

2 Q Now, sir, did there come a time in the morning of
3 that date, approximately 10:30, 10:45 that you received a
4 communication from a member of your team concerning an
5 individual by the name of Lee Woods?

6 A Yes.

7 Q Tell the jury what it was, who communicated with you,
8 and what happened?

9 A Approximately 10:45 in the morning, Detective Habert
10 calls me, and tells me there is an individual by the name of
11 Lee Woods who is a friend of Dexter Bostic's and he is on his
12 way over to the 67th Precinct to help us locate Dexter Bostic.

13 Q That was your understanding of his purpose being
14 there, sir?

15 A Yes.

16 Q What did you do after you received that information?

17 A I told Detective Margraf that there was someone on
18 the way to the precinct, and that we should talk to him.

19 Q Now, at that time, was Detective -- excuse me -- was
20 Dexter Bostic a person of interest, one you wanted to talk to,
21 someone you wanted to contact?

22 A Yes.

23 Q At the time was he a suspect in the shooting?

24 A Someone we wanted to talk to, obviously.

25 Q At that time, did you have any idea who Lee Woods

1 was, besides what it was that Detective Habert had told you?

2 A Not at all.

3 Q Had his name come up at all during the course of the
4 investigation, before you heard it from Detective Habert?

5 A No, it had not.

6 Q After you and Detective Margraf deferred, did you
7 have occasion to respond to the precinct?

8 A Yes.

9 Q What time was that?

10 A We arrived about 11:30.

11 Q At that time, did you see Mr. Woods?

12 A Yes

13 Q Where did you see Mr. Woods?

14 A He was sitting in an interview room in the precinct
15 squad.

16 Q Can you just describe this room, and the area that he
17 was at?

18 A The second floor of the 67th Precinct, part of it is
19 the squad room. You walk in through one of the doors, and
20 there is two interview rooms, one to the right, one to the
21 left. And he was sitting, as you walk into the interview
22 room, on the left.

23 Q At that time, was he restrained in any fashion?

24 A No, he was not.

25 Q No handcuffs?

1 A No.

2 Q What was he doing when you first saw him?

3 A He is sitting in the interview room.

4 Q You see him in the courtroom today, sir?

5 A Yes, I do.

6 Q Please point to him, indicate something he is wearing
7 right now.

8 A Black vest, eye glasses.

9 MR. HALE: Indicating the defendant, your Honor?

10 THE COURT: The record will so reflect.

11 Q When you saw Mr. Woods, at that time, was he wearing
12 eye glasses?

13 A No, he was not.

14 Q What, if anything, did you do with regard to Mr.
15 Woods, at that time?

16 A I introduced myself, Detective Margraf introduced
17 himself.

18 Q And did you proceed to have a conversation with Mr.
19 Woods, at that time?

20 A Yes.

21 Q Can you tell the jury what the nature of that
22 conversation was?

23 A I asked him if he knew Dexter Bostic? At which
24 point, he said he did.

25 I asked him, when was the last time he had seen

1 Dexter? He said, the last time I saw Dex two days ago at Five
2 Town Mitsubishi.

3 I asked him if he knew where Dexter was now? He
4 said, the last he heard, Dexter was out of town with a
5 stripper friend in South Carolina.

6 I asked if he knew what kind of car Dexter drove? He
7 said, I believe it was a 2007 Mercedes, or black Infinity.

8 I asked if he knew the car was registered to Dexter?
9 He said, he didn't know. He did not know if they were
10 registered to Dexter.

11 I said, are they registered in New York? He said he
12 didn't know.

13 I asked if he knew Dexter's phone number? He didn't
14 know it off hand, in memory. But it was in his phone. And if
15 someone gave us his phone, he would get us the number.

16 I asked if he knew the girl that Dexter was
17 apparently with? He said he didn't know her, her name. He
18 didn't know where she lived. He didn't know any numbers for
19 her either.

20 Q Did you also ask him if he knew where it was that
21 Dexter resided?

22 A Yes, I did.

23 I asked him if he knew where Dexter lived? He said
24 he didn't know exactly where Dexter lived, but he lived with
25 an individual named Roger.

1 Q Now, sir, what, if anything, occurred at that point
2 and time?

3 A At that point I got called away by one of my bosses
4 back to the crime scene.

5 Q And that directed Detective Margraf along with
6 yourself?

7 A Yes.

8 Q How did you leave it with Mr. Woods when you were
9 called away?

10 A I had his information. I said, pretty much, we have
11 to go. I don't know how long we are going to be. You want to
12 hang out, hang out. If you want to go, make sure someone
13 knows you are going to go. But, if you want to hang out, hang
14 out.

15 Q What did he say for that?

16 A He said, no, I am a CI from the 101st Precinct to
17 help out.

18 Q He said he had worked as a CI for the 101st Precinct?

19 A Yes.

20 Q What did that mean to you, that he said he was a CI?

21 A It just means he had given precinct police officers
22 information on whatever it was that he was giving information
23 on.

24 Q 101st Precinct is located where?

25 A Queens.

1 Q At that point, did you leave Mr. Woods?

2 A Yes.

3 Q Before leaving the precinct, did you give any
4 instructions to any other police officers, police detectives
5 with regard to Mr. Woods?

6 A I spoke to Detective Walker from the 67th Precinct.
7 And I told him -- you know -- he is here, he is a witness,
8 potential witness -- you know. Whatever he needs, he needs to
9 go to the bathroom, if he wants to leave, make sure you tell
10 me.

11 And that's basically it.

12 Q Mr. Woods, at that time, did you have any incline
13 about any involvement in the situation you were investigating
14 at all?

15 A None, whatsoever.

16 Q His status, at that time, was he under arrest?

17 A No.

18 Q Free to go?

19 A Yes.

20 Q You and Detective Margraf left, right?

21 A Yes, we did.

22 Q And fair to say, you were working on other facets of
23 the investigation; is that correct?

24 A Yes.

25 Q Now, during the course of the time that you were

1 working on other facets of the investigation, did you receive
2 some information that indicated to you, or in your opinion,
3 that Mr. Woods hasn't been entirely truthful about his
4 statement concerning the whereabouts of Dexter?

5 MR. MEGARO: Objection as to his opinion.

6 THE COURT: Mr. Hale, you can ask him what
7 information he had.

8 Jurors, this is being offered for a limited purpose.
9 The information he got from another source is really
10 hearsay, but it is offered for a non-hearsay purpose. Is
11 it to explain the actions of the police with respect to
12 the defendant. And that's how you will treat it, in that
13 limited fashion.

14 So, instead of you trying to summarize, you can ask
15 him what information he had.

16 Q Sir, what was the general nature of the information
17 that you received, that gave you some cause about whether Mr.
18 Woods --

19 A We received information that Mr. Woods was with
20 Dexter Bostic the night before the evening of the eighth.

21 Q And how long was it that you were working on other
22 facets of the investigation, including that information,
23 before returning to the 67th Precinct?

24 A At least seven, eight hours.

25 Q Did there come a time that you then returned to the

1 precinct?

2 A Yes.

3 Q About what time was that, sir?

4 A About nine, 9:30.

5 Q Where was Mr. Woods, at that time?

6 A In the interview room.

7 Q Same way you had left him?

8 A Same way I left him.

9 Q Again, restrained in any fashion at the time you saw
10 him?

11 A No.

12 Q When you saw him again, sir, you were with Detective
13 Margraf?

14 A Yes.

15 Q And, at that time, did you again initiate a
16 conversation with Mr. Woods?

17 A Yes, I did.

18 Q Tell the jury what the nature of the conversation
19 was, at that time?

20 A I told him that we had spoken to a few people. And
21 that --

22 Q Did you indicate to him who it was you had spoken to?

23 A No.

24 Q Who was it you had spoken to, sir?

25 A Frederick Bostic.

1 Q Frederick Bostic, what relation, if any, to Dexter
2 Bostic?

3 A Brothers.

4 Q So, you told Mr. Woods what?

5 A That we had spoken to a few people. And that we have
6 information that you are not being a hundred percent with us.

7 Q What did Mr. Woods say to that?

8 A He said, listen, all right. You know, I was there. I
9 mean, I was there, I was there at the time the shots licked
10 off the, shots went off, but I wasn't in the car. I was in a
11 different car.

12 You were there, is what I am asking, you were there
13 when the shots went off? Yeah.

14 You saw when the shots went off? He says, yeah.

15 At that point I asked Detective Margraf to leave the
16 interview room.

17 Q And what, if anything, did you and Detective Margraf
18 discuss when you left the interview room?

19 A I told Margraf, I said, we have to read this guy
20 Miranda. We have to read him his rights, he is putting
21 himself at a shooting where two New York City Police Officers
22 were shot. We have to read him his rights. And Margraf
23 agreed.

24 Q What happened thereafter?

25 A We found the Miranda sheet, and we back into the

1 interview room.

2 Q And when you say, Miranda sheet, what do you mean?

3 A His rights, Miranda warnings.

4 Q Were his Miranda warnings read to him in the
5 interview room?

6 A Yes.

7 Q Who read them to him?

8 A Detective Margraf.

9 Q From what sort of documents.

10 A A piece of paper that they are written on, typed on.

11 Q Detective, I want to show you what's been marked
12 People's 139 for identification.

13 MR. MEGARO: I have seen it.

14 (Handing.)

15 Q Do you recognize that, sir?

16 A Yes.

17 Q What do you recognize that as?

18 A This is the Miranda sheet that we read his rights off
19 of.

20 Q Is it in, substantially, the same condition as it was
21 when it was read to him, along with the various signatures,
22 and responses that are recorded there?

23 A With the exception of the stickers, yes.

24 MR. HALE: Offer it as 139 in evidence.

25 THE COURT: Any objection?

1 MR. MEGARO: No.

2 THE COURT: Marked and received in evidence.

3 (People's 139, marked in evidence

4 Miranda rights

5 THE COURT: You want him to demonstrate?

6 MR. HALE: I am going to hand it back to him. I
7 want him to identify it for the jurors, at this time.

8 THE COURT: Again, jurors, you will be able to
9 handle this exhibit. I know it is small on the screen.

10 Q Again, Detective, this was a typed document that
11 contains a number of questions, or warnings on it; is that
12 correct?

13 A Yes.

14 Q You will notice on the document, sir, that there are
15 areas for responses which, in this case, have handwriting in
16 them.

17 Those were blank at the time that the warnings were
18 read to him?

19 A Yes, they were.

20 Q The various responses recorded there, who was it that
21 wrote those responses?

22 A Mr. Woods.

23 Q And, there is also a time and signature line down
24 here; is that correct?

25 A Yes.

1 Q The signature line where it stays Lee Woods, who
2 filled that out?

3 A That was Mr. Woods.

4 Q And the date and time, do you know, sir?

5 A I believe that was Detective Margraf.

6 Q The signature that is at the bottom?

7 A Detective Margraf.

8 Q Detective, I am going to hand you, again, People's
9 Exhibit 139.

10 (Handing.)

11 Q If you could, can you read the first warning that was
12 read to Mr. Woods in the interview room of the 67th Precinct
13 on the -- this was still the ninth; is that correct?

14 A Yes.

15 Q What was the first warning?

16 A One, "You have the right to remain silent and refuse
17 to answer any questions. Do you understand?"

18 Q What was Mr. Woods' response to that?

19 A "Yes."

20 Q And did he records his response in his own hand
21 there?

22 A Yes, he did.

23 Q What was the second warning?

24 A Number two, "anything you say may be used against you
25 in a court of law. Do you understand?"

1 Q Did he give an oral response to that?

2 A Yes.

3 Q And did he write his response also?

4 A Yes, he did.

5 Q And that's as it is with the word yes?

6 A Yes.

7 Q What is the third question, or warnings?

8 A Number three, "You have the right to consult an
9 attorney before speaking to the police, and have an
10 attorney present during questioning now, or in the future.
11 Do you understand?"

12 Q Did Mr. Woods indicate whether or not he understood
13 that or not?

14 A Yes, he did.

15 Q Did he write a response?

16 A He wrote yes.

17 Q Is there anything after that?

18 A Number four, "If you cannot afford an attorney, one
19 will be provided for you without cost. Do you understand?"

20 Q And Mr. Woods, did he make a response to that?

21 A Yes.

22 Q What did he say?

23 A He said, yes.

24 Q And did he also record the yes in the blank provided?

25 A Yes, he did.

1 Q What is the next warning?

2 A "If you do not have an attorney available, you have
3 the right to remain silent until you have had the opportunity
4 to consult with one. Do you understand?"

5 Q And did he indicate whether he understood that or
6 not?

7 A Yes, he did.

8 Q And did he record his understanding of it in that
9 blank?

10 A He wrote yes.

11 Q Is there anything after that, Detective?

12 A Number six, "Now that I have advised you of your
13 rights, are you willing to answer any questions?"

14 Q And what did he answer to that?

15 A Yes.

16 Q Did he also record his response?

17 A Yes, he did.

18 Q And I think you already indicated he signed the
19 document, and Detective Margraf signed the document; is that
20 correct?

21 A Yes.

22 Q Go ahead and put that aside.

23 Detective, after the rights had been read to Mr.
24 Woods, did you ask him other questions about what he knew
25 about the incident that you were investigating?

1 A I told him, let's go right back to the beginning.

2 When was it that you first saw Dex? And he said, that
3 he had seen Dex on the evening of the eighth, the night
4 before, and that they were at Rasheem's house. I wrote down
5 as Dexter Bostic who lives in Starrett City, and they were at
6 Rasheem's house to take him food.

7 Once in Rasheem's house, they take him food, and he
8 noticed a .9mm high point sitting on a table. He says he
9 picked the gun up, says, it is a piece of shit. If you drop
10 the gun the clip is going to fall out. They were making fun
11 of it.

12 At that time, he saw Mr. Bostic place three guns in a
13 bag, two .9mm and a 45. He put that in a bag, and gives it to
14 Mr. Bostic.

15 In addition to that, he put two other guns in a bag,
16 and they wakled down the stairs.

17 Q Did he identify what the other two guns were?

18 A .45mm.

19 He said they went down the stairs, and he saw an
20 individual who he knows as Black, Black works at Five Town.
21 And Dexter sells Black and an unknown female with Black the
22 two guns in the paper bag.

23 They are outside talking, and Black walks back, and
24 Dexter gets pissed off, he doesn't have bullets. He goes back
25 upstairs to get bullets for the gun.

1 At that point, they make a decision they are going to
2 go to Caribbean City on Empire Boulevard.

3 Q Let me back you up for a second, Detective.

4 Besides Dexter, Rasheem, and the young lady with
5 Black, does he talk about any other individuals at that time?

6 A An individual he knows as Roger.

7 Q Did he say how he knew Roger?

8 A Through Dexter.

9 Q When does he say Roger arrives, or is he there from
10 the beginning?

11 A He is there from the beginning.

12 Q Picking up the narrative, what did they say after the
13 gun transaction?

14 A They were going to go to Caribbean City on Empire
15 Boulevard. He goes into a black Lexus -- Mr. Woods gets into a
16 black Lexus, and Mr. Dexter gets into another car, and they go
17 to Caribbean City. They get there, they hang out.

18 He said to me something to the effect of, we are
19 there to do what we do, get paper. I said, what does that
20 mean? He said, get phone numbers. I said, all right.

21 He said, at one point they were there to hang out.
22 They are going to go to Popeye's Chicken, they were hungry.
23 He goes in two separate cars, a Porsche, and a black Lexus.

24 Q Did he identify, specifically, the automobile?

25 A No, he didn't specifically say it was a Porsche. He

1 said, they got into another car, and drove in front of him.

2 Q Did he mention anything about the vehicle being a
3 BMW? And, again, check your notes if you need to?

4 A He got into another car before him getting into the
5 Lexus.

6 MR. MEGARO: Can I see what the witness is
7 referring to?

8 THE WITNESS: My DD5.

9 A He mentions the BMW.

10 Q Is that the vehicle that he says that Roger and
11 Dexter were in, the BMW?

12 A He goes on.

13 When they go to Popeye's Chicken, he states that
14 Dexter stayed in the BMW, and him and Roger went into Popeye's
15 Chicken to get the food. And from there they went into Duncan
16 Donuts to get drinks.

17 Q What did he say there after?

18 A He got into the back seat of the BMW, and they ate.
19 Once they were eating, he says he looks down and inside a bag
20 was a .9mm and Tech. He picks up both guns, takes a look at
21 them while he is eating, puts them right back in the bag.

22 Q He says he handles the guns?

23 A Yes.

24 Q Go ahead.

25 A After he is done eating, they decide they are going

1 to leave. He got out of the car, gets back into his black
2 Lexus.

3 I asked him who the Lexus belonged to? He said it
4 belonged to a girl named Kim Watts from Seigel, although he
5 didn't know the address directly.

6 I asked him, if given the opportunity would he be
7 able to take someone there? He said, sure, no problem.

8 He says he got into his car now, following them. At
9 one point they are flagged by the police. I asked him what
10 that means? He said, the lights went on, they are getting
11 pulled over. I said, who is getting pulled over? He said,
12 Dex and Roger.

13 Q In the BMW?

14 A Yes.

15 A I said, what happened next? He said, I got behind
16 them and the police car.

17 I said, what happened next? He said, they made the
18 right-hand turn onto Rogers Avenue, the BMW and police car.
19 And that he makes the right-hand turn also. And that he
20 passes the police car, and he passes the BMW, goes down to the
21 next corner, makes a U-turn, and comes up and sits on the
22 opposite corner.

23 I asked him, you made a U-turn? He says, yeah, made a
24 U-turn, came up.

25 I said, are you sure you made a U-turn? I made a U

1 turn.

2 I said, what happened next? As I am sitting there I
3 hear the shots lick off. I see the police licking shots. The
4 BMW pulls off. I have put my head down.

5 I said, what is the next thing you saw? Did you see
6 Dexter, Roger? He said, no.

7 I said, where did you go from there? He said
8 Gateway.

9 Q Did he say where he was when the police first came in
10 contact with him?

11 A He was at, I believe, 1413 Gateway.

12 Q Did he say whose apartment that was?

13 A Nicole Bostic.

14 Q Did he say he had been there since the time he left
15 Dexter and Roger?

16 A Yes.

17 Q Now, sir, after Mr. Woods had made this statement to
18 you, did you do anything at that point to memorialize -- I
19 mean -- I know you made notes of your report. Did you do
20 anything else to memorialize what he said to you?

21 A I asked if he would write that down.

22 Q What did he say to you?

23 A He said he would.

24 Q What did you provide him with?

25 A A piece of paper and pen.

1 Q Now, sir, did you remain with Mr. Woods while he was
2 writing out his statement as to the events he had just
3 described to you?

4 A No, I did not.

5 Q What occurred at that time, sir?

6 A I gave him a piece of paper and pen, saw him begin to
7 write.

8 I told Margraf, let's go. I said, he says he made a
9 U-turn. At this point I am 99 percent sure Rogers Avenue is a
10 one-way street, but I want to make sure.

11 We drive to Rogers Avenue, and I am looking at Rogers
12 Avenue, there is no way he made a U-turn. I said, Pete, he
13 said he made a U-turn.

14 Q Pete being Detective Margraf?

15 A I said, no way he made a U-turn. Obviously, let's see
16 the video. We saw the video before.

17 Q Which video are you talking about?

18 A The video of the car stop.

19 Q This is one that's been admitted here in evidence
20 taken from right at Rogers and Lefferts, right?

21 A Yes.

22 Q Where was it that you took a look at that video, sir?

23 A 71st Precinct.

24 Q In that video?

25 THE COURT: Two things. First went to the

1 scene.

2 THE WITNESS: Went to the scene.

3 THE COURT: And the video?

4 THE WITNESS: And we went to the 71st.

5 Q When you went to the 71st and looked at the video,
6 sir, was there anything that you saw which indicated that
7 there was a second automobile, as described by Mr. Woods, him
8 driving, other than behind the police cruiser, or making a
9 U-turn on Rogers Avenue?

10 A No.

11 Q Did there come a time when you returned to the
12 precinct?

13 A A little while later, yes.

14 Q About what time was it that you got back there?

15 A About 4:30 in the morning.

16 Q When you go back at 4:30 in the morning, where was
17 Mr. Woods?

18 A He was in the interview room.

19 Q Now, sir, you had indicated, when you first left Mr.
20 Woods after he gave you the initial statement about not
21 knowing where Dexter was or anything, you had left him, talked
22 to Detective Walker, and he was not under arrest, he was free
23 to go; is that correct?

24 A Yes.

25 Q On this occasion when you left him to go check on

1 Rogers Avenue to look at the video, was he free to go?

2 A No, he was not.

3 Q Did you give anybody anymore instructions to detain
4 him, or that he wasn't free to go?

5 A I talked to Detective Walker and told him, I said,
6 listen, I am locking the door, he is not going anywhere. If he
7 has to use the bathroom, use the bathroom. He is not going
8 anywhere.

9 Q When you returned to the 67th Precinct at about 4:30
10 in the morning, this was about the 10th, right?

11 A Yes.

12 Q When you returned at 4:30 on the 10th, where was Mr.
13 Woods?

14 A In the interview room.

15 Q What was he doing when you got back there?

16 A He was asleep.

17 Q Sir, at that time -- I mean, you had indicated to the
18 jury that you had given him paper and pencil, and he started
19 writing something, but you left; is that correct?

20 A Yes.

21 Q Was there any documents that was in or around Mr.
22 Woods in the interview room, at that time?

23 A On top of the table was the piece of paper I had
24 given him.

25 Q Let me show you what's been marked People's Exhibit

1 number 140 for identification.

2 MR. MEGARO: I have seen it.

3 (Handing.)

4 Q Detective, do you recognize that item?

5 A Yes.

6 Q What do you recognize that as?

7 A The piece of paper that was on top of the table when
8 I came back to the 67th Precinct.

9 Q Is the hand that's written, is that the hand that you
10 recognize being Mr. Woods, from him starting the document
11 before you left?

12 A Yes.

13 Q Is that document in substantially the same condition
14 as when you saw it on the table when you arrived back at the
15 precinct at about 4:30 on the 10th?

16 A Yes, except for the stickers.

17 MR. HALE: I offer that as 140 in evidence.

18 THE COURT: Any objection?

19 MR. MEGARO: None.

20 THE COURT: Okay.

21 (People's 140, marked in evidence.)

22 Statement

23 Q Detective, if you could, can you read People's
24 Exhibit Number 140 just as it is written?

25 A On the top left-hand side corner it states 7/9/07.

1 "We went to Raheem's house and he gave his brother
2 the guns which was a .9mm black, and two 45 Magnums,
3 black. We went downstairs, and he sold the guns to Black
4 and the girl that was in the car. He got the rest of the
5 money and they drove off.

6 I go in my car, and went to the store with him behind
7 me. After that, we went to the club, C City on Empire
8 Boulevard. We chill there for a while, and then we go to
9 Popeye's for something to eat.

10 Oh, at Raheem's house he only sold two guns to Black
11 and the girl, which was the 45 Magnums, and that was it.

12 When I got to the car it was two guns on the floor, a
13 nine and a Tech. I look at them, pick them up, and put
14 them back on the floor in a bag.

15 I rolled up my weed in the car and got out. Went to
16 my car, and we followed each other back to the club. We
17 get out, smoke the weed, and talked to a couple of
18 girls.

19 We pulled off, and I followed him back past Popeye's
20 on the way home to the parkway. At the red light they made
21 a right, and the police pull behind them, like a minute
22 later the police pull them over, got out, and walked over
23 to the car. Next thing that happened was shots going off,
24 and I saw the police shooting at the car. And I -- and the
25 shooting at the car, and the car moving off."

1 Q Is that it?

2 A And then on the bottom it says "I."

3 THE COURT: Put it on the monitor, please.

4 (Whereupon, Exhibit 140 is displayed on the
5 monitor.)

6 THE COURT: Again, jurors, you will have this
7 available for you during jury deliberations.

8 Q Detective, this is exactly how you found the
9 document?

10 A Yes.

11 Q The cross outs, the overwrites, the misspellings, all
12 those are his?

13 A Yes.

14 Q You didn't do anything to edit this at all?

15 A No.

16 Q Detective, after you had seen this, and acquired
17 this, did you do anything with regard to Mr. Woods at that
18 time?

19 A I woke him up.

20 Q How did you wake him up?

21 A Hey, hey wake up.

22 Q Did you physically touch him?

23 A No.

24 Q Did he, in fact, wake up?

25 A Yes.

1 Q At that time, sir, did you ask him anything else?

2 A He got himself a few minutes. I says to him, I said,
3 look, again we have information you are not being straight up,
4 you are playing games. This is the time to tell us you are
5 playing games.

6 Q What did he say to that?

7 A He said, I am not playing games, you are playing
8 games. You know I was driving that car. You know that cop
9 saw me in the mirror. You know I was there.

10 I said, I don't know anything about that. I am
11 telling you right now, this is the time to come correct. You
12 want to come correct, this is the time to do it. What are you
13 going to do? He put his head down saying, I don't want to be
14 a snitch. I don't want to be a snitch.

15 I said, what are you going to do? He said, all
16 right, all right, I was driving the car, all right.

17 Q Did he proceed to give you another version of events
18 with him driving the car?

19 A He says he was driving, and that when they got
20 flagged by the police, they got pulled over by the police.
21 Dexter and Roger was like, don't pull over, don't pull over.
22 He said, don't worry, I will tell them I am a CI, don't worry
23 about it.

24 He sees the cop pull up on the side view mirror. He
25 hears shots, and Dexter and Roger saying go, go, go. And he

1 pulls off. And he says they said, make a right, make a right,
2 make a left, make a right.

3 He says they jump out of the car. He says, Dexter
4 and Roger jumps out of the car to get some stuff, and they run
5 up, what I believe, to be Lefferts. They run up Lefferts, I
6 believe. And once they went up the block, they see a police
7 car coming, and they all go into a driveway. And they see the
8 police car pass, and he says he did not go all the way. Roger
9 and Dex go all the way into the driveway. He runs to the train
10 station, and that's the last he seen of both of them.

11 Q Did he say which train station, sir?

12 A No, I don't recall.

13 Q If you just want to take a look?

14 A Sure.

15 Sutter Avenue train station.

16 Q Did he say about what time it was that he arrived
17 back at Nicole Bostic's house?

18 A About six a.m.

19 Q Now, sir, if you can, and again, take a look at your
20 police report if you need to, did he attribute any specific
21 directions that were given to him by either of the other two
22 men, that is Bostic or Ellis?

23 A In regard to while he was driving?

24 Q After the shots, right?

25 THE COURT: You want to rephrase that, Mr.

1 Hale?

2 MR. HALE: Sure.

3 Q Did he tell you, sir, that either Bostic or Ellis
4 gave him any specific instructions at or around the time of
5 the shooting?

6 A They told him not to pull over.

7 Q After the shooting, did anybody give him any
8 instruction?

9 A They were both yelling at one point. He said Roger
10 had the gun, I guess, behind him, had the gun by his head and
11 pointing out, go, go, go, go.

12 THE COURT: Let the record reflect the witness
13 has extended his right hand in a sort of horizontal
14 fashion.

15 MR. MEGARO: To motion as if he had a gun, your
16 Honor?

17 THE COURT: Yes, sir.

18 Q And, did Mr. Woods relate to you, sir, any
19 conversation that he had had with Bostic and Ellis about how
20 he was going to get out of it before the shooting?

21 A He told them, I am going to pull over, just tell them
22 I am a CI.

23 Q CI?

24 A Being a confidential informant.

25 Q Much like what he told you earlier, about being a

1 confidential informant?

2 A Yes.

3 Q Now, after Mr. Woods gave you this statement again,
4 did you take any steps to memorialize what it was that he had
5 said to you?

6 A I asked if he would write it down.

7 Q Did you, in fact, provide him with pen and paper
8 again?

9 A Yes, I did.

10 Q And did he write down the accounts?

11 A Yes, he did.

12 MR. HALE: Your Honor, this is People's 141 for
13 identification.

14 MR. MEGARO: I have no objection to 141.

15 THE COURT: Okay.

16 (Handing.)

17 MR. HALE: On stipulation.

18 THE COURT: Marked and received in evidence.

19 Okay.

20 (People's 141, marked in evidence.)

21 Statement

22 Q Is that the document that Mr. Woods completed in your
23 presence, the writing that he made at that time?

24 A Yes.

25 Q About what time was it that he made this particular

1 writing?

2 A About 5:30.

3 Q That's 5:30 in the morning on the 10th?

4 A On the 10th.

5 Q And you observed him make that?

6 A Yes.

7 Q Sir, if you can, can you read that document?

8 A "I was driving, and the police flag the car. I pulled
9 over, but Roger said not to, but I did it anyway. The
10 police got out the car and walked over to each window. As
11 soon as they get there, they started shooting at the
12 cops.

13 Roger had two guns, and Dex had the other one. Roger
14 grabbed me and said, go, go, go with the gun pointed at
15 me. I put my head down and started driving off. I drove
16 off and stopped the car, and ran while they were taking
17 stuff out of the car. And I met them at the train station
18 and went our way. I went to his sister's house. I got
19 home like six a.m.

20 Q If you can, can you hand me that, please?

21 (Whereupon, Exhibit 141 is displayed on the
22 monitor.)

23 Q Again, Detective, words of his choice?

24 A Yes.

25 Q Spelled the way he wanted to spell them, use the

1 context, punctuation, all his?

2 A Yes.

3 Q The signature below, Lee Woods, he did that in your
4 presence?

5 A Yes.

6 Q And below that, whose signature, sir?

7 A That's mine.

8 Q And the date and time, you put that down?

9 A I put that down, yes.

10 Q Sir, during the time -- now, I know you said you
11 awakened Mr. Woods when you got back to the precinct about
12 4:30; is that right?

13 A Yes.

14 Q At the time he was talking to you, and the time he
15 wrote out that statement, did he appear to be fully awake and
16 lucid, at that time?

17 A Yes.

18 Q Any reluctance, or hesitation to talk to you, or
19 write this statement down at all?

20 A No.

21 Q Anything you had to do in terms of raising your
22 voice, or changing your position relative to Mr. Woods, to get
23 him to say what he said to you, or write down what he wrote
24 down there?

25 A No.

1 Q The conversation, as you have recounted it here, sir,
2 is that about the same tone as which it was delivered on that
3 evening?

4 A Yes, it was.

5 Q Ever raise your voice to him?

6 A No.

7 Q Did you have any further conversation, sir, with him
8 after he had written down this particular statement?

9 A No.

10 Q Sir, during the course of the time you were with Mr.
11 Woods, did you obtain anything from him that would indicate
12 what his pedigree information was?

13 A He had a valid New York State permit.

14 Q You mean a learner's permit?

15 A Yes.

16 Q Let me show you this, this is People's 142 for
17 identification.

18 MR. MEGARO: Stipulated.

19 (Handing.)

20 Q Sir, you recognize that?

21 A Yes.

22 Q What as?

23 A The valid New York State valid permit that Mr. Woods
24 gave me..

25 Q That is the permit he gave to you?

1 A Yes.

2 Q That permit is in the same condition as when you got
3 it?

4 A Yes.

5 MR. HALE: Offer it as 142, your Honor.

6 THE COURT: Any objection?

7 MR. MEGARO: No.

8 THE COURT: Mark and received.

9 (People's 142, marked in evidence.)

10 Learner's permit

11 Q First of all, sir, the photograph as it appears on
12 the learner's permit, is that pretty much the way Mr. Woods
13 appeared to you at the time you were speaking to him on the
14 9th and 10th of July 2007?

15 A Yes.

16 Q The information that's contained therein, sir, there
17 is a height on there, six-foot two, appears to be about that
18 height to you, sir?

19 A Yes, he did.

20 Q And the date of birth that is on there, January 11th
21 of 1978, where it says DOB, you see that, sir?

22 A Yes.

23 Q And that was the date of birth that he had indicated
24 to you that he was?

25 A Yes.

1 Q And 29 years of age at the time that he was speaking
2 to you?

3 A Yes.

4 Q Detective, thank you.

5 MR. HALE: I don't have any further questions.

6 THE COURT: Any cross-examination?

7 MR. MEGARO: Yes.

8 CROSS-EXAMINATION

9 BY MR. MEGARO:

10 Q Before we begin, Detective Yero, can I see the police
11 report that you were referring to, the one you have up there?

12 (Handing.)

13 Q Thank you.

14 Detective, as a police officer, you receive training
15 on how to take statements from witnesses to crimes, right?

16 A Yes.

17 Q You've also received training on how to take a
18 statement from a suspect for a crime?

19 A Yes.

20 Q And tell the jury what types of training you received
21 on how to take a statement from a suspect?

22 A The homicide course, NYPD offers a homicide course.

23 Q How long was that course?

24 A Two weeks.

25 Q And during this course, you practice techniques in

1 taking statements from suspects, right?

2 A Techniques were explained to you, not so much
3 practiced.

4 Q And you also practiced it, you like acted out?

5 A No, not at the course. The organization is just
6 basically instruction.

7 Q That's the only training you received on how to take
8 a statement from a suspect?

9 A Prior to taking the homicide course, I had been in
10 the 70th squad, and done interviews prior to that.

11 Q In addition to the course given by NYPD homicide, you
12 had other training on how to take statements from other
13 suspects during the year?

14 A From experience.

15 Q How many statements have you taken from suspects
16 during the year, ballpark number?

17 A I couldn't give you an estimate.

18 Q More than a hundred?

19 A No.

20 Q Less than a hundred?

21 A Yes.

22 Q Now in this training, you learned how important it
23 was to take a -- how important a statement from a suspect is,
24 right?

25 A Yes.

1 Q Sometimes that is the most important piece of
2 evidence in a case, right?

3 A Sometimes..

4 Q And in homicide prosecutions sometimes that's the
5 only evidence in the case?

6 MR. HALE: Objection.

7 THE COURT: Yes, you are asking about his
8 personal experience? If you are asking about his personal
9 experience, that is one thing.

10 MR. MEGARO: Okay.

11 Q Now, this statement that you took from -- that you
12 say you took from Mr. Woods, that wasn't the only statement
13 that you took from any witness in this particular case, right?

14 A That's right.

15 Q You were present during an interview with Mr. Tamika
16 Buggs?

17 MR. HALE: Objection.

18 THE COURT: Let's step outside.

19 (Whereupon, a side bar discussion ensued outside
20 the presence of the jury.)

21 THE COURT: Mr. Hale, there is an objection.
22 Please state your grounds.

23 MR. HALE: Beyond the scope of direct
24 examination. He is not up there for all purposes. He is
25 there for speaking about what the statements were. I mean,

1 obviously, if Mr. Megaro wants to make him his own witness
2 sometime during the proceeding, we will provide him.

3 THE COURT: That's what he is doing at this
4 point.

5 Where are you going? .

6 MR. MEGARO: I am not getting into the substance
7 of the statement. I am asking what transpired during
8 those particular instances where he took statements from
9 others.

10 THE COURT: How can he explain what transpired
11 without, perhaps, touching on the substance of?

12 MR. MEGARO: The manner in which those
13 statements were taken.

14 THE COURT: Well think he can lead.

15 Here is what I am saying. If you are asking whether
16 he treated a suspect, or witness different in mannerism,
17 you can ask that kind of question without asking,
18 specifically, what he may have done with Miss Buggs.
19 Because, when you start asking specifically about a
20 person, in order for him to explain -- I mean -- he is
21 going to have to go into the details of what was said.

22 MR. MEGARO: I will get to the point within one
23 more question.

24 MR. HALE: Except for one other thing, I don't
25 think he was there for her interview.

1 MR. MEGARO: He was. He is on the statement. He
2 is on the cover page.

3 MR. HALE: But I don't see how any of that is
4 relevant.

5 THE COURT: One of the jurors is asking to take
6 a break. Why don't we go inside and deal with this on the
7 record inside.

8 (Whereupon, the following was held in open court
9 before the jury.)

10 THE COURT: All right, jurors, I understand you
11 need a break. We are going to take a break. Have you back
12 in a few minutes.

13 Keep my warnings in mind?

14 (Whereupon, the jury exits the courtroom.)

15 THE COURT: Detective Yero, if you will step
16 outside. Don't discuss your testimony. We will have you
17 back shortly.

18 THE WITNESS: Yes, sir.

19 (Whereupon the witness steps down from the
20 witness stand.)

21 THE COURT: Now, is there anything, sir, that
22 you want to elicit from this witness about how they may
23 have treated Ms. Buggs?

24 MR. MEGARO: Other than the fact that she was
25 tape recorded, no. Just the simple fact.

1 THE COURT: Was he present for that?

2 MR. MEGARO: That's what the transcript said.

3 MR. HALE: Well, that's already admitted. That
4 is part of the evidence. She was already taped.

5 THE COURT: No, no, but I just want to make sure
6 there is a good faith basis for asking this witness.

7 MR. MEGARO: Let me just double, double check. I
8 am reasonably certain.

9 THE COURT: Please.

10 MR. MEGARO: I am sorry, it was Margraf. I am
11 sorry, I will move on.

12 THE COURT: Here is the other thing.

13 If you are trying to elicit from the witness whether
14 Miss Buggs had some discomfort speaking to the police, she
15 already admitted that.

16 MR. MEGARO: I wasn't intending on asking him
17 that, your Honor.

18 THE COURT: You started out by suggesting,
19 somehow, that he may take statements different from a
20 witness than he would from a suspect. And you went from
21 there to Miss Buggs.

22 I am just trying to figure out where you are going,
23 and that's when Mr. Hale made the objection.

24 Are you going to go down this line of questioning?

25 MR. MEGARO: Actually, now that it seems I got

1 him and Margraf mixed up, I am not going to bother asking
2 him whether he was there with Miss Buggs, or anybody else.

3 THE COURT: All right. But are you still
4 interested in pursuing this interest about taking a
5 statement from a suspect, or a witness?

6 MR. MEGARO: No, I was just starting off
7 generally, and attempted to narrow it down for him.

8 THE COURT: Does your client have to go in?

9 MR. MEGARO: He is okay.

10 THE COURT: Then about five minutes then.

11 (Whereupon, a brief recess was taken.)

12 THE COURT: Ready to go, Mr. Megaro?

13 MR. MEGARO: Yes.

14 COURT OFFICER: Ready?

15 THE COURT: Bring them in.

16 COURT OFFICER: Jury entering.

17 (Whereupon, the jury enters the courtroom, and
18 is seated in the jury box.)

19 THE CLERK: Case on trial. All parties present.

20 Both sides waive a reading of the roll?

21 MR. MEGARO: Yes.

22 MR. HALE: Yes.

23 THE COURT: All right.

24 Sir, you are still under oath.

25 THE WITNESS: Yes.

1 THE COURT: You may proceed.

2 MR. MEGARO: Thank you.

3 Q Detective, when you first speak to Lee Woods on the
4 9th of July 2007, at approximately 11:45 a.m., one of first
5 things you do, you ask him for identification, right?

6 A Yes, sir.

7 Q And People's 141 that is in evidence, this learner's
8 permit, that is that piece of identification that he give you?

9 A Yes.

10 Q And you checked that piece of identification for all
11 of his personal information, right?

12 A Yes.

13 Q Date of birth, name, address, height, date, it was
14 issued, and the signature?

15 A Yes, sir.

16 Q One of the first things you asked him is, when was
17 the last time you saw Dexter Bostic, right?

18 A Yes.

19 Q Now, Dexter Bostic's name is already a person of
20 interest, or possible suspect, right?

21 A Yes, person of interest.

22 Q One of the things you ask him is, where Dexter Bostic
23 lived?

24 A Yes, yes.

25 Q Told you that Bostic lived with Ellis. And he gave

1 you the address somewhere in Queens, right?

2 A He didn't give me an address.

3 Q He gave you a general?

4 A He said he didn't know their address.

5 Q Did he tell you what part of Queens?

6 A No.

7 Q Now, you already knew this to be true, because you
8 knew, as the lead detective, other police had gone to Bostic
9 and Ellis' apartment, right?

10 A I am not too sure if, at this time, they had gone
11 there. At this time I am not too sure who done what.

12 Q What time did you get assigned to be the lead
13 detective on this case, on July 9th?

14 A About 3:30 in the morning.

15 Q So, by 11:45 you didn't know what had been going on
16 with the investigation, as far as other detectives were
17 concerned?

18 A At 11:45 I was in the 67th Precinct speaking to Mr.
19 Woods.

20 Q Now, at 11:45 you are also made aware that Nicole
21 Bostic is Derrick Bostic's sister?

22 A Dexter Bostic's sister.

23 Q I am sorry, I messed that up. Yes, Dexter Bostic's
24 sister?

25 And you also know Detective Habert had gone into

1 Nicole Bostic's apartment, and that's where they found Mr.
2 Woods?

3 A Yes.

4 Q Now, your testimony here today is that, after knowing
5 all of these things at 11:45 a.m., he was free to leave the
6 67th Precinct when he wanted, right?

7 A Yes.

8 Q And I believe your testimony was, if he wanted to
9 hang out, basically just hang out at the precinct, and you and
10 Detective Margraf would be back, right?

11 A Yes.

12 Q Those are the words you left him with when you left
13 him in the interview room?

14 A Yes.

15 Q Did you tell him how long you were going to be away?

16 A No.

17 Q Did you tell him where you were going?

18 A No.

19 Q Did you tell him if any other detectives were going
20 to speak to him?

21 A No.

22 Q Did you give him any instructions to write down any
23 information, make any phone calls, anything at that point?

24 A No.

25 Q Did you ask him to reach out to Dexter Bostic and to

1 call him?

2 A Yes.

3 Q Did he do that?

4 A No.

5 Q Why not?

6 A He didn't have his phone.

7 Q He didn't have his phone?

8 A Yes, sir.

9 Q What about the phone in the precinct?

10 A He didn't have his cell phone. He didn't know
11 Dexter's number by memory.

12 Q Where was his cell phone?

13 A He said it was back at 1430 Gateway, the apartment
14 that he was in.

15 Q Same apartment that he had been picked up in by
16 Detective Habert, right?

17 A Yes.

18 Q Was any efforts made to go back to that apartment and
19 get that cell phone, to get Dexter Bostic's cell phone number?

20 A Yes.

21 Q Then, did you ask him to call Dexter Bostic?

22 A The phone was not obtained.

23 Q The phone was not obtained?

24 A Yes.

25 Q But what happened to that phone?

1 A Unknown.

2 Q So, when you leave him at approximately 11:45 a.m. in
3 the 67th Precinct, he was left in that interview room, right?

4 A Yes.

5 Q That same interview room that you were talking about
6 on your direct testimony, right?

7 A Yes.

8 Q Did he ever leave that interview room?

9 A I don't know.

10 Q From 11:45 a.m. on July 9th?

11 A I don't know. In the time I wasn't there, I don't
12 know.

13 Q At the time you were there, did he ever leave that
14 interview room?

15 A No.

16 Q Now you testified, on direct examination, that when
17 you left that interview room, you told Detective Walker to
18 watch Mr. Woods. Right?

19 A Basically, he was here. As a witness, that's what he
20 is here for, to watch him, yes.

21 Q And you also testified, on direct examination, that
22 you told Detective Walker, if he wants to use the bathroom,
23 let him use the bathroom, right?

24 A Yes, sir.

25 Q He couldn't just go to the bathroom on his own?

1 A No, sir.

2 Q Why not?

3 A It is a police facility, nobody walks around by
4 themselves in the building, in the precinct.

5 Q Now, in the precinct he is upstairs in the detective
6 squad, right?

7 A Yes.

8 Q And this interview room, that's where suspects are
9 questioned, right?

10 A And witnesses.

11 Q And witnesses.

12 And you also testified, on direct examination, that
13 you told Detective Walker, if he wants to leave call me, and
14 let me know?

15 A Yes.

16 Q Now, you leave the 67th Precinct at approximately
17 11:45 a.m. on July 9th, right?

18 A Yes.

19 Q You go out into the field, and you continue your
20 investigation, right?

21 A Yes.

22 Q You spoke with some witnesses as you testified on
23 direct examination, right?

24 A Yes.

25 Q You also speak with some of the officers who are

1 processing the crime scenes?

2 A Yes.

3 Q You are learning what types of evidence had been
4 recovered?

5 A Yes.

6 Q You are also aware that the evidence is being
7 processed for forensic evidence, fingerprints, DNA, etc.,
8 gunshot residue?

9 A It is being sent out for, yes.

10 Q You also learn that three firearms are found, right?

11 A Yes.

12 Q And this is in between 11:45 a.m., and 21:30 hours,
13 9:30 p.m. on July 9th, right?

14 A I believe the guns were actually, if I am not
15 mistaken, I think the guns were found before 11:45.

16 Q You were made aware they were found before 11:45,
17 right?

18 A Yes.

19 Q And, you were also made aware of the type of gun,
20 right?

21 A Yes.

22 Q The number three?

23 A Three guns, yes.

24 Q And you are also aware of the caliber of the weapons?

25 A Yes.

1 Q And, as you said, you also see in the video of the
2 shooting of the car stop, right?

3 A Yes.

4 Q You also, from speaking with the crime scene people,
5 you also learn that there are Popeye's Chicken bags, and
6 boxes, and bones recovered at all these scenes, right?

7 A Yes.

8 Q Now, you come back to the 67th Precinct at 9:30 p.m.
9 on July 9th of 2007, right?

10 A Yes, sir.

11 Q And when you walk up to that interview room, Mr.
12 Woods is still there, right?

13 A Yes, sir.

14 Q He is still free to leave at this point?

15 A At this point when I walk in, I need to ask him a few
16 more questions.

17 Q So, he wasn't free to leave?

18 A At this point, no.

19 Q During the time you call -- I'm sorry, in between
20 11:45 a.m., and 9:30 p.m., that is about ten hours?

21 A Eight or nine and a half hours, yes.

22 Q During that eight hours, did you ever call back to
23 the precinct to speak to him, to speck to Mr. Woods?

24 A No.

25 Q Did you ever call back to the precinct and instruct

1 the other detectives to speak to him?

2 A No.

3 Q Did you ever call back to the precinct and ask if he
4 was still there?

5 A Prior to me going back to the precinct, I made sure
6 he was there.

7 Q What time was that?

8 A I would say anywhere between 8:30 and nine.

9 Q So -- and when you called back, you asked them not to
10 let him leave?

11 A I asked if he was still there, and we were coming
12 back to talk to him.

13 Q So, from 11:45 a.m., to 8:30, nine p.m. in that
14 nine-hour time span, its your testimony that he simply waited
15 there on his own choice, right?

16 A Yes.

17 Q He was free to leave that precinct whenever he wanted
18 to, right?

19 A Yes.

20 Q By the way, this person, when you are speaking with
21 him, you find out he may be a witness to this crime, right?

22 A While I am speaking to him?

23 Q Yes?

24 A The first time, no.

25 Q The second time?

1 A Yes.

2 Q And before the first time when you spoke to Mr.
3 Woods, it's your testimony that he agreed to help you find
4 Dexter Bostic, right?

5 A Yes.

6 Q And this is the man you believe was responsible for
7 shooting Officer Timoshenko?

8 A He was a person of interest.

9 Q By the way, this second interview that produces the
10 statement that is in evidence, People's 140 in evidence.

11 Now, when he gave this statement to you, did you tape
12 record him?

13 A No, sir.

14 Q Did you video tape him?

15 A No, sir.

16 Q Did you request a tape recording machine, or a video
17 taping machine?

18 A No, sir.

19 Q Now on this statement, show me where his signature
20 is?

21 A He did not sign that statement.

22 Q Show me where your signature is?

23 A I didn't sign that statement.

24 Q Nobody signed that statement, as a matter of fact,
25 right?

1 A That's correct.

2 Q Now, as you are speaking to Mr. Woods the second
3 time, you testified that he told you he made a U-turn on
4 Rogers Avenue, correct?

5 A He said he had made a U-turn. He didn't specify the
6 street.

7 Q Now, before he starts -- before you start questioning
8 him, you read him his Miranda warnings which is People's 139,
9 right?

10 A Yes, sir.

11 Q That's a signature on People's 139, right?

12 A Yes, sir.

13 Q That's the Miranda card.

14 So when you read him his Miranda warnings, now he
15 becomes a suspect in this case, right?

16 A As I read him his Miranda, before I read Miranda he
17 places himself at the shooting of two New York City police
18 officers in separate cars. But at the scene, nonetheless.

19 So, we read him his rights.

20 So when you read him his rights, and you get this
21 written statement -- when you read him these rights, and you
22 get that first written statement from him, at this point and
23 time he is definitely not allowed to leave the precinct?

24 A Absolutely not.

25 Q You testified, on direct examination, that you didn't

1 even wait for him to finish writing this second statement,
2 correct?

3 A Yes.

4 Q Neither you, nor Detective Margraf stayed behind to
5 watch him finish that statement, right?

6 A That's correct.

7 Q And here is a person giving you detailed inner
8 information as to how that shooting happened, right?

9 A Yes, sir.

10 Q And, I believe your testimony on direct examination
11 was, you and Detective Margraf left the precinct just to
12 verify whether you could actually make a U-turn on Rogers
13 Avenue?

14 A Absolutely.

15 Q Instead of watching him finish this statement?

16 A Absolutely.

17 Q The end of the second statement -- I'm sorry.

18 The first time you see this written statement is what
19 time?

20 A When I got back to the precinct, that is about four
21 a.m., I believe, 4:30.

22 Q So now, this is seven or eight hours later after you
23 left him, right?

24 A Yes.

25 Q Then your testimony is, you come into the interview

1 room, and Mr. Woods is sleeping, right?

2 A Yes, he is.

3 Q You see this statement sitting on the desk, right?

4 A Yes.

5 Q Did you tell him, hey, what about this? What about
6 that?

7 Did you tell him to add anything to that statement?

8 A No, sir.

9 Q Did you tell him to sign it?

10 A No, sir.

11 Q Did you ask him to make any corrections?

12 A No, sir.

13 Q And your testimony is, at this point and time, you
14 woke him up, and you told him that he was playing games,
15 correct?

16 A Yes.

17 Q Now, after Mr. Woods wakes up he tells you he is
18 driving, right?

19 A Yes.

20 Q And he tells you everything else in the written
21 statement, correct?

22 A Yes.

23 Q In the second written statement that is People's 141
24 in evidence?

25 A Yes.

1 Q Now, before he wrote this statement out, you had
2 discussed with him the second written statement, right? The
3 fact that he was going to put this on paper again, right?

4 A Before he wrote it?

5 Q Yeah?

6 A I asked him if he wanted to write it down.

7 Q Everything he just told you during the second
8 interview -- actually, this third interview at four in the
9 morning -- is put on this paper, right?

10 A Yes.

11 Q Now, after he finishes this statement, you are
12 satisfied with it, right?

13 A Yes, sir.

14 Q You asked him to sign it?

15 A Yes.

16 Q You didn't ask him to make any additions?

17 A No.

18 Q Or corrections, correct?

19 A Correct.

20 Q You didn't say, what about Rasheem and the guns he
21 sold to Black?

22 A No, sir.

23 Q You didn't ask him about any of the other stuff in
24 that first written statement, did you?

25 A That's right.

1 Q And your testimony is, after he finished writing
2 this, both you and he signed it, right?

3 A Yes, sir.

4 Q That's his signature right there?

5 A Yes, sir.

6 Q That's your signature at the bottom, right?

7 A Yes, sir.

8 Q Did you compare the signature with the signature on
9 his learner's permit?

10 A No, sir.

11 MR. HALE: Objection.

12 THE COURT: Overruled.

13 Q You never compared it?

14 A No.

15 Q That's his learner's permit, right?

16 A Yes, sir.

17 Q Now, on direct examination you were referring to a
18 police report, right?

19 A Yes, sir.

20 Q You have that in front of you?

21 A Yes, I do.

22 Q What is that report dated?

23 A It's dated, date of this report is 7/23/07.

24 Q That's two weeks after July 9, 2007, correct?

25 A Yes, sir.

1 Q A couple of last questions.

2 When you left the interview room the second time now,
3 you, on direct examination, you told Detective Walker, don't
4 let him go anywhere?

5 A I locked the door. I said, he is not going anywhere,
6 exactly.

7 Q And the second time you spoke to Detective Walker
8 about Lee Woods, you said, if he wants to use the bathroom,
9 let him use the bathroom?

10 A Of course.

11 Q Now, when you spoke to Mr. Woods the last time, your
12 testimony was, he said, I don't want to be a snitch?

13 A Yes.

14 Q Well -- but, he also told you that he was a CI,
15 right, confidential informant?

16 A Yes.

17 Q Isn't a Confidential Informant a snitch?

18 A Yes.

19 Q In the 14 days of that report, between that report
20 and July 9, 2007, as the lead detective in this case, you were
21 made aware of other developments in this case, right?

22 A Yes.

23 Q One of which was getting Mr. Woods' DNA, right?

24 A Yes.

25 Q Tell the jury where that sample was taken?

1 A DNA sample was taken at arraignment.

2 Q In the courtroom, right?

3 A Yes.

4 Q I was present when that DNA sample was taken?

5 A I believe so, yes.

6 Q And I consented to you taking that DNA sample; didn't

7 I?

8 A I believe so, yes.

9 Q One moment.

10 Last thing. Going back to People's 141 in evidence,
11 that's his handwriting, according to your testimony?

12 A Yes, sir.

13 Q Show me where in this statement it says that he
14 handles any guns?

15 A It doesn't say that.

16 Q Show me where in the statement he says -- that it
17 says he knew there was guns in the car?

18 A Not this statement. Obviously when he mentions the
19 shooting, he knows there is guns in the car.

20 Q Not in this statement, is it?

21 A That they were shooting, yes.

22 Q No, no, no, that he knew there was guns in the car?

23 A But if someone is shooting, obviously there is guns
24 in the car.

25 Q Show me where in the statement it says that he ran

1 down a driveway to ditch a gun?

2 A That is not in this statement.

3 Q By the way, by the time he wrote this statement, you
4 knew that those guns had been recovered from a driveway, a
5 garage behind an alleyway, correct?

6 A Yes, sir.

7 MR. MEGARO: Thank you.

8 I have nothing further.

9 THE COURT: Any redirect?

10 MR. HALE: Yes.

11 REDIRECT EXAMINATION

12 BY MR. HALE:

13 Q Detective, you just indicated, on cross-examination,
14 the date of the police report that recounts his statement is
15 July the 10th; is that correct?

16 A Well, the date of the report was the 23rd, 2007, of
17 July, yes.

18 Q Now, what did you use, sir, to write the report from?

19 A Out of notes, memory.

20 Q Now, do you, in fact, have your notes from your
21 interview of Mr. Woods?

22 A Yes.

23 Q And those notes were made at the time that he was
24 speaking to you, sir?

25 A Yes.

1 Q Can I see those, please?

2 (Handing.)

3 Q So, Detective, it wasn't like you just -- you know --
4 on the 23rd you just wrote the DD5 strictly from memory. You
5 had the notes that you had made contemporaneously with the
6 interview; is that correct?

7 MR. MEGARO: Objection, your Honor.

8 THE COURT: No, overruled.

9 A Yes.

10 Q Now, when you said, with regard to the second written
11 statement -- let me put it up here, with the Court's
12 permission -- I think you were asked previously, these were
13 words that were chosen by Mr. Woods; is that correct?

14 A Yes, sir.

15 Q You didn't tell him what to write?

16 A No, sir.

17 Q Did you tell him he had to write all the things that
18 he told you?

19 A I told him, if he wanted to commit to paper whatever
20 he had said.

21 Q So, in other words, he chooses the words at that
22 point?

23 A Yes.

24 Q When he was speaking to you, sir, and answering your
25 questions before writing this out, again, who was choosing the

1 words for him?

2 A He was.

3 Q And when he wrote this out, sir, again, you didn't
4 compel him, or suggest to him any words to say, or any areas
5 to go into?

6 A No, sir.

7 Q When Mr. Megaro was asking for, for instance, where
8 does it say in there about that he had handled the guns.
9 Again, you didn't tell him to say he handled the guns. You
10 just told him to write down what he wanted to write down; is
11 that correct?

12 A Yes, sir.

13 Q And this doesn't purport to be everything he told
14 you? Its what he chose to write down?

15 A What he chose to write down.

16 Q Now, Mr. Megaro also asked you, sir, about whether
17 you taped Mr. Woods, either using audio tape or video tape; is
18 that correct?

19 A Yes.

20 Q Was there a point in time, during the course of your
21 investigation, when you, in fact, did want to tape Mr. Woods
22 to record his conversation?

23 A Yes.

24 Q What time was that, sir?

25 A It was after the written statement, the second

1 written statement. We had reached out, obviously, to every
2 boss that is involved in the case, to let them know that we
3 have an individual who is claiming to be the driver of this
4 vehicle. And we had reached out to, I believe, the DA's
5 Office.

6 Q Now, was there anything that prevented you from him
7 being taped, either by yourself, or the District Attorney's
8 Office?

9 MR. MEGARO: Objection, your Honor.

10 THE COURT: You went down this road, sir.
11 You can answer the question.

12 A Mr. Megaro.

13 Q Now, Mr. Megaro showed up at the precinct?

14 A Yes, sir.

15 Q At that time, did Mr. Megaro indicate to you, that
16 Mr. Woods with a not to be questioned any further?

17 A Yes, sir.

18 Q Did that, then, prevented you legally from having him
19 taped in any fashion?

20 A Yes, sir.

21 MR. HALE: Thank you. I have no further
22 questions.

23 THE COURT: Mr. Megaro?

24 RE-CROSS-EXAMINATION

25 BY MR. MEGARO:

1 Q Detective, when I showed up at the precinct, I met
2 with you and Detective Margraf first, right?

3 A Yes.

4 Q And you and Detective Margraf let me into that
5 interview room where Mr. Woods had been since 11:45 a.m. the
6 previous day?

7 A Yes, sir.

8 Q What time did I get to that precinct?

9 A I am going to say about seven or 8:00, I believe.

10 Q In the morning?

11 A Yes, sir.

12 Q Almost 24 hours, right?

13 A Yes.

14 Q You observed me walk into the room with Mr. Woods,
15 right.

16 A Yes, sir.

17 Q I walked in the room, he started crying?

18 A I wasn't there when you walked into the room. I was
19 there, but I didn't look at you.

20 Q And also, that I brought to your attention --

21 MR. HALE: Objection.

22 THE COURT: Beyond the scope of redirect. You
23 were talking about whether it was taped or not.

24 Come on, please.

25 MR. MEGARO: Nothing further.

1 THE COURT: Okay.

2 MR. HALE: Thank you, sir.

3 THE COURT: You may step down.

4 THE WITNESS: Thank you.

5 (Witness is excused.)

6 THE COURT: All right, jurors. That concludes
7 the evidence for today. We are going to be in recess
8 until tomorrow.

9 Please be in the jury room as close to ten a.m. as
10 you possible.

11 Keep my warnings in mind. And be governed by what I
12 told you in terms of the admonitions.

13 I think you now have at least two phone numbers, one
14 for the clerk of the Court, and one for my chambers. I can
15 assure you that somebody will answer.

16 I apologize about the Court not being available, but
17 Mr. LaRose is a die hard Yankee fan, he was probably in
18 consultation with Joe Girardi.

19 With that, see you tomorrow morning 10:00.

20 (Jury exits the courtroom.)

21 THE COURT: Tomorrow, People, who do you have
22 now?

23 MS. NICOLAZZI: We have Detective Walker, we
24 have the detective who first discovered the guns, and then
25 ballistics, and then we have stipulations.

1 I believe, I anticipate the tomorrow, probably half a
2 day, because we cannot rest until we have a DNA for
3 Wednesday.

4 THE COURT: Are you calling Margraf?

5 MS. NICOLAZZI: Yes. And that will be tomorrow
6 also, correct.

7 THE COURT: All right.

8 And --

9 MR. MEGARO: Judge, I have gone over the
10 stipulations with my client.

11 THE COURT: What is the substance?

12 MR. MEGARO: Basically, just the witnesses
13 Detective Bavas who found two .9mm shells inside the BMW
14 at the 61st Preinct.

15 Criminalist Meredith Gittens who swabbed the
16 45-caliber pistol.

17 Criminalist Robert Schmidt removed the two windows
18 from the BMW and tested them for gunshot residue, and
19 bullet trajectory. Also, he took the deformed bullet from
20 Detective Yan's vest and took it to the lab.

21 THE COURT: Is that in a form we can submit it
22 to the jury?

23 MR. MEGARO: Yes, it is written.

24 MS. NICOLAZZI: I think we will read it into the
25 record. But, it will also become a Court exhibit.

1 THE COURT: Very well.

2 MR. MEGARO: And also, to the operability of the
3 three handguns.

4 And also, Detective Whalen's testimony. Essentially,
5 that he arrived at scene of the shooting and assisted
6 Officer Yan getting into the car to get to Kings County
7 Hospital.

8 And finally, the employee from Five Town Mitsubishi.

9 THE COURT: The manager?

10 MR. MEGARO: Right, he testified at the last
11 trial which, basically, will open the door to the video,
12 the surveillance video of Ellis taking the BMW, which I
13 would also consent to.

14 That's pretty much the gist of it.

15 THE COURT: What about your case, Mr. Megaro?

16 MR. MEGARO: One or two witnesses, at the most.

17 THE COURT: Okay.

18 Mr. Woods, same as last time. At your trial you have
19 an absolute right to testify, notwithstanding what your
20 lawyer may advise you, it is your call.

21 Do you understand that, sir?

22 THE DEFENDANT: Yes, sir

23 THE COURT: At some point and time, when your
24 case is on, Defense case is on, I will ask Mr. Megaro
25 whether any further witnesses? And it will refer to

1 whether you want to testify or not

2 But, you will let him know sometime before Thursday
3 afternoon, okay?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is there anything else we need to
6 discuss?

7 MR. MEGARO: No. Before Wednesday afternoon, you
8 mean?

9 THE COURT: Yes, I apologize.

10 With that then, I will see you all tomorrow 10:00,
11 please.

12 MR. MEGARO: Thank you.

13 MS. NICOLAZZI: Thank you.

14 MR. HALE: Thank you.

15 (Whereupon, the trial proceedings were adjourned
16 until March 10, 2009.)

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1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF KINGS: CRIMINAL TERM: PART: 37

3 -----X

4 PEOPLE OF THE STATE OF NEW YORK, : Index
: No.6797/07

5 -against- :

6 LEE WOODS, :

7 :
8 Defendant. :

9 -----X

10 320 Jay Street
11 Brooklyn, New York
12 March 10, 2009

13 B E F O R E:
14 HONORABLE PLUMMER LOTT
15 Supreme Court Justice

16 A P P E A R A N C E S:

17 (As previously mentioned.)

18
19 PHYLLIS PRICE
20 DIANE ADKINS-FORTE, RPR
21 OFFICIAL COURT REPORTERS

22 * * * * *

23 THE CLERK: Case on trial. All parties are
24 present.

25 THE COURT: All right. Good morning, counsel,
Mr. Woods.

MR. MEGARO: Good morning.

MR. HALE: Good morning.

THE COURT: Before we proceed, either side want

1 to put anything on the record?

2 MS. NICOLAZZI: No.

3 MR. MEGARO: Ready to go.

4 THE COURT: Who do we have now?

5 MS. NICOLAZZI: Detective Walker, who is very
6 short. Detective Johnson, who found the guns, very short.
7 Detective Kraljic, who is the ballistics. And Detective
8 Margraf, who should be short. And then we have the
9 stipulations.

10 THE COURT: Okay.

11 Bring them right in, sir.

12 COURT OFFICER: Jury entering.

13 (Whereupon, the jury enters the courtroom, and
14 is seated in the jury box.)

15 THE CLERK: Case on trial. All parties are
16 present.

17 Both sides waive a reading of the roll?

18 MS. NICOLAZZI: Yes.

19 MR. MEGARO: Yes.

20 THE COURT: Good morning.

21 JURORS: God morning, your Honor.

22 THE COURT: All seems to be well with the
23 Yankees. It seems A-Rod survived; is that correct, Mr.
24 LaRose?

25 THE CLERK: Yes.

1 THE COURT: People?

2 MS. NICOLAZZI: People call Detective Walker.

3 DET MATTHEW WALKER, called as a witness on
4 behalf of the People, having been first duly sworn, was
5 examined and testified as follows:

6 THE CLERK: For the record, please state your
7 name. Spell your last name. Shield and command.

8 THE WITNESS: Detective Matthew Walker.
9 W-A-L-K-E-R. Shield 1701, of the 67th Precinct.

10 THE CLERK: Thank you.

11 THE COURT: If you will continue to speak into
12 the microphone.

13 You may inquire.

14 MR. HALE: Thank you, your Honor.

15 DIRECT EXAMINATION

16 BY MS. NICOLAZZI:

17 Q Good morning, Detective Walker.

18 A Good morning.

19 Q If you can, please tell the members of the jury how
20 long have you been employed by the New York City Police
21 Department?

22 A For 18 years.

23 Q How long have you been assigned to the 67th Precinct?

24 A 16 years.

25 Q And of your time in the New York City Police

1 Department, how long have you held the rank of detective?

2 A Approximately seven years.

3 Q Where were you assigned back in July of 2007?

4 A To the 67th Precinct.

5 Q Did you work on the date of July ninth of 2007?

6 A Yes, I did.

7 Q I am going to direct your attention to sometime late
8 that morning, approximately a little after 11:00 a.m., maybe
9 closer to 12 on that morning.

10 Where were you, at that time?

11 A I was at the 67th Precinct detective office.

12 Q And did you have a conversation with another
13 detective in relation to an investigation concerning the
14 shooting of two New York City Police Officers that had
15 occurred earlier that day?

16 A Yes, I did.

17 Q And who did you speak with, at that time?

18 A Detective Luis Yero.

19 Q And did he make any requests of you, at that time?

20 A Yes, he did.

21 Q What did he ask you to do?

22 A He asked me to keep an eye on Lee Woods, and assist
23 him if he needed anything.

24 Q Now the person that he asked you to assist him, or
25 give him assistance if he needed anything, did you see that

1 person?

2 A Yes, I did.

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

4 A Yes, I do.

5 Q And if you could indicate where he is by an item of
6 clothing that he is wearing, and by pointing?

7 A He is sitting to the right, wearing a brown sweater
8 vest with a yellow shirt underneath.

9 MS. NICOLAZZI: For the record, indicating the
10 defendant?

11 THE COURT: The record will so reflect.

12 Q Now when you first saw the defendant, had you seen
13 him prior to Detective Yero asking you to keep an eye on him?

14 A No, I did not.

15 Q Where was he when you saw him?

16 A He was sitting in the interview room.

17 Q And was he with the detectives at that point, or had
18 Detective Yero, did he speak with you somewhere else?

19 A Detective Yero came out into the office.

20 Q And after that point in time, did you have occasion,
21 first of all, to see Lee Woods throughout the course of that
22 day?

23 A Yes, I did.

24 Q And where was he throughout the course of that day,
25 from the time that you had been requested, or asked to keep an

1 eye on him?

2 A He was in the interview room.

3 Q Was there anyone else with him, that you could see at
4 that point?

5 A No.

6 Q When he was in there, was he restrained in any way?

7 A No, he was not.

8 Q How was -- is there a door to that interview room?

9 A Yes, there is.

10 Q And what was the positioning of that door throughout
11 the time that you were there?

12 A The door was open.

13 Q And did you have any interaction with the defendant
14 that day?

15 A Yes, I did.

16 Q And what was your interaction with him.

17 A My interaction, I took him to the bathroom several
18 times. I fed him, I gave him cigarettes.

19 Q When you say you fed him, is that something you had
20 offered him, or he made a request for food?

21 A We were eating in the office. We had White Castle
22 and asked him if he was hungry? He said, yes. We gave him
23 White Castle.

24 Later on he had pizza with us.

25 Q You said you gave him cigarettes. Is that something

1 you offered, or he asked for?

2 A He asked for cigarettes.

3 Q During the entirety of your interactions with the
4 defendant, how would you describe his demeanor?

5 A He was very cooperative and calm.

6 Q At any point did he ask you if he could leave?

7 A No, he did not.

8 Q At any point did he tell you he wanted to leave?

9 A No, he did not.

10 Q Did he have any conversation with you, at any point,
11 other than that which you have just testified to, asking for
12 whether to use the bathroom, cigarettes, or in relation to
13 food or drink?

14 A No, he did not.

15 Q Now you said, that when you assisted him, or took him
16 to the bathroom, was there any reason that you took him as
17 opposed to letting him go on his own?

18 A Yes. It is a secure facility and civilians are not
19 allowed in the building without an escort.

20 Q When you had the conversation with Detective Yero
21 initially, based on your conversations with him, did you have
22 any reason to believe that the defendant was a suspect at that
23 time?

24 A No, I did not.

25 Q Or if he had wanted to leave, could he have left, as

1 far as you were concerned, at that point?

2 A Yes, he could have.

3 Q Did you later have another conversation with
4 Detective Yero now, directing your attention to later that
5 same evening -- the exact time escapes me -- I believe
6 sometime around 10, 11:00 p.m.?

7 A Yes, I did.

8 Q What was the substance of that conversation?

9 A At that point, Detective Yero informed me he was no
10 longer free to leave, and the door was locked.

11 Q Now, again, throughout the time that you had been in
12 the precinct, sometime late morning on the 10th, now into late
13 in the evening on the 10th, other than Detective Yero and
14 Detective Margraf, had you seen anyone inside of the interview
15 room with the defendant, other than them?

16 A No, I did not.

17 Q At any point during your interaction with the
18 defendant, up until that point in time, did his demeanor
19 change in any way?

20 A No, it did not.

21 Q Now, when Detective Yero told you that the defendant
22 was no longer to leave, late in the evening on the 10th, was
23 anything different now with respect to the door to the
24 interview room?

25 A Yes, it was closed and locked at that time.

1 Q And where was the defendant after that?

2 A He was inside the room.

3 Q And did you have any interaction with him after that
4 point in time?

5 A Again, I took him to the bathroom several times, gave
6 him cigarettes.

7 Q And even after that point in time, at any time --
8 first of all, did he ask you if he could leave after that?

9 A Not that I recall.

10 Q Did he say anything, asking about his status at all
11 to you?

12 A No.

13 Q Did his demeanor change in any way with you, at that
14 point afterwards?

15 A No, it did not.

16 Q Now, directing your attention to later in the
17 morning, midmorning now, the morning of the 10th -- wait one
18 second. Just to be clear, when I was asking you initially,
19 with your first interaction with him, late in the morning on
20 the ninth -- first of all -- backing up a little bit.

21 On the morning of the ninth, was that the first time
22 you saw the defendant, later that morning?

23 A That's correct.

24 Q And then you were with him, on and off, or at least
25 on the same floor, throughout that date into the 10th?

1 A That's correct.

2 Q Now, directing your attention to midmorning on the
3 10th of July 2007.

4 At some point were you made aware that he was
5 officially under arrest at some point?

6 A Yes, I was.

7 Q And were you asked to take any property from him at
8 that point?

9 A Yes, I was.

10 Q What were you asked to do?

11 A I was asked to remove his clothing.

12 Q And did you do that?

13 A Yes, I did.

14 Q And how was that done? Was that physically actually
15 taken off of him, or how was his clothing removed?

16 A Again, in the interview room he removed his own
17 clothing, and given clothing to replace that clothing.

18 Q Now, with respect to the clothing that the defendant
19 gave you, that he had been wearing, did you go through it in
20 terms of pockets, or anything like that?

21 A I had him empty the pockets onto the table prior to
22 him removing the clothing.

23 Q I am going to ask you to take a look at what's been
24 marked People's 143 for identification. I have already shown
25 it to defense counsel.

1 MR. MEGARO: I have seen it.

2 (Handing.)

3 Q Do you recognize that, Detective Walker?

4 A Yes, I do.

5 Q What is that?

6 A That is a receipt from Popeye's Chicken that I
7 recovered off of the table from his pocket.

8 Q When you are saying "his," who are you referring to?

9 A Lee Woods' pocket.

10 Q Is that in substantially the same condition as it was
11 in when you recovered it from the defendant and placed it on
12 the table?

13 A Yes, it is.

14 MS. NICOLAZZI: I offer that into evidence,
15 People's 143.

16 MR. MEGARO: No objection.

17 THE COURT: Marked and received into evidence,
18 without objection.

19 If you will put it on the monitor.

20 (People's 143, marked in evidence.)

21 Receipt

22 THE COURT: Jurors, you are able to see that?

23 JURORS: Yes.

24 Q And did that conclude your interaction with the
25 defendant after you had retrieved his clothing later in the

1 day on the 10th?

2 A Yes, it did.

3 MS. NICOLAZZI: I have nothing further.

4 THE COURT: Any cross-examination?

5 MR. MEGARO: Briefly, your Honor.

6 CROSS-EXAMINATION

7 BY MR. MEGARO:

8 Q Good morning, Detective, how are you?

9 A Good morning.

10 Q You said civilians aren't allowed in the 67th
11 Precinct without an escort, right?

12 A That is correct.

13 Q Did he have an escort?

14 A I was his escort.

15 Q When he was inside that interview room, was there any
16 police officer that was posted outside of the door?

17 A No, there was not.

18 Q Where were you in relation to that interview room?

19 A I was sitting at my desk. The interview room is to
20 the right of my desk. If I lean back I can see the interview
21 room?

22 Q If you lean back in your chair, you are able to see
23 into the interview room, and see Mr. Woods?

24 A Not into the interview room, the door.

25 Q So, you are able to see if anybody was going in or

1 anybody was coming out?

2 A Yes, I was.

3 Q And that's where you stayed until Detective Yero
4 called you, and told you he was no longer free to leave, at
5 your desk?

6 A Detective Yero did not call me and tell me he was not
7 free to leave.

8 Q Who called you and told you he was not free to leave?

9 A Nobody called me and told me he was free to leave.

10 Q Now, you said he was given food and taken to the
11 bathroom several times; is that correct?

12 A Yes, that's correct.

13 Q When he first notified you that he was was hungry,
14 what time was that?

15 A I am not sure of the time, I didn't document that.

16 Q And how did the request for food come about?

17 A We were eating, and I asked him if he was hungry, and
18 he said, yes.

19 Q And this is the first time, when you were eating
20 White Castle?

21 A That's correct.

22 Q Did you ask him for any money to pay for the food?

23 A No, I did not.

24 Q You gave him some of your own?

25 A We had some in the office already. We had plenty to

1 go around. Yes, I did.

2 Q Now, the second time he was given food, that was what
3 type of food?

4 A That was pizza.

5 Q And how long after he ate the White Castle, did he
6 eat the pizza?

7 A I am not sure of the time frame.

8 Again, he ate when we were eating.

9 Q Is it fair to say, a few hours after the White Castle
10 meal?

11 A Yes, it was a few hours in between.

12 Q When he ate pizza, was he free to leave the precinct?

13 A I don't know what time it was served to him, the
14 pizza.

15 I was notified he was not free to leave.

16 Q And how did that request come about?

17 A Once again, I asked him if he was hungry?

18 Q And did he pay for his own food at this point?

19 A No, he did not.

20 Q Now, did there come a point in time when you were
21 asked to lock the door to that interview room?

22 A No. The door was locked, and I was informed he was
23 no longer free to go.

24 Q Who informed you that he was no longer free to go?

25 A Detective Luis Yero.

1 Q Who locked the door?

2 A Detective Luis Yero.

3 Q Now, when Detective Yero told you he was no longer
4 free to leave, what time was that?

5 A I believe it was sometime after eight p.m.

6 Q Eight p.m. on the ninth?

7 A That's correct.

8 Q Now, there came a point in time when you were
9 informed that he was officially under arrest?

10 A No, I was not.

11 Q You were not informed he was officially under arrest?

12 A I was informed he was not free to leave any longer.

13 Q From the time you were informed by Detective Yero
14 that he was not free to leave any longer, how long had he been
15 inside that interview room?

16 A From the time I was informed he was there, from
17 approximately after eight p.m., until the following morning.

18 Q And before that, how long had he been in that
19 interview room?

20 A He was there from approximately 11 a.m. on the ninth.

21 Q So, he was in there approximately nine hours before
22 Detective Yero said, don't let him out, he is not free to
23 leave?

24 A That's correct.

25 Q Now, in that time did he ever once leave that

1 interview room?

2 A Yes, he did.

3 Q To go to the bathroom?

4 A That's correct.

5 Q Besides -- how many times did he go to the bathroom?

6 A I am not sure, I didn't document the amount of times
7 he went to the bathroom.

8 Q When he went to the bathroom, he went with you as his
9 escort, right?

10 A Yes, I walked him to the bathroom.

11 Q Did he go to any other part of the 67th Precinct,
12 besides the bathroom?

13 A No.

14 Q And he never left that room once before, or after
15 Detective Yero told you he was not free to leave, other than
16 to go to the bathroom?

17 A Not that I am aware of, no.

18 MR. MEGARO: Thank you.

19 THE COURT: Any redirect?

20 MS. NICOLAZZI: No, your Honor.

21 THE COURT: You may step down, sir.

22 Thank you.

23 (Whereupon, the witness is excused.)

24 THE COURT: Witness?

25 MR. HALE: Sergeant Derrick Johnson.

1 SGT DERRICK JOHNSON, called as a witness on
2 behalf of the People, having been first duly sworn, was
3 examined and testified as follows:

4 THE CLERK: If you will, your name.

5 THE WITNESS: Derrick Johnson.

6 THE COURT: Spell your last name.

7 THE WITNESS: J-O-H-N-S-O-N.

8 THE COURT: Rank?

9 THE CLERK: Sergeant.

10 THE COURT: Shield number?

11 THE WITNESS: 2093.

12 THE COURT: And your command?

13 THE WITNESS: Brooklyn South Warrants.

14 THE COURT: Continue to speak into the
15 microphone.

16 THE WITNESS: All right.

17 DIRECT EXAMINATION

18 BY MR. HALE:

19 Q Sir, you are a New York City Police Officer?

20 A Yes, sir.

21 Q How long have you been with the police department?

22 A 16 years.

23 Q And your current rank is sergeant?

24 A Yes.

25 Q How long as a sergeant?

1 A Nine months.

2 Q Your assignment is what, sir?

3 A Brooklyn South Warrants. Supervisor, Brooklyn South
4 Warrants.

5 Q And how long have you been in that unit?

6 A I have been on the unit since '99.

7 Q You were in that unit both before and after being
8 promoted to sergeant?

9 A Yes.

10 Q Were you working in that unit, sir. In July of 2007?

11 A Yes.

12 Q I'm gonna talk to you about a specific date, sir,
13 that is July the ninth of 2007.

14 You remember that particular day?

15 A Yes, I do.

16 Q Were you working on that day?

17 A Yes, I was.

18 Q Now, what time did you arrive for duty on that day?

19 A 04:27.

20 Q That's 4:27 in the morning?

21 A Yes.

22 Q And where is it that you start your duties? Where is
23 it you turn out fro,?

24 A 78th Precinct, 6th Avenue. 65 6th Avenue, in
25 Brooklyn.

1 Q Now, sir, when you arrived for duty on that day, did
2 you learn of an incident which occurred in the 71st Precinct,
3 which was the shooting of two New York City Police Officers?

4 A Yes.

5 Q And, sir, shortly after your arrival at your command,
6 were you ordered to go to any particular location in
7 furtherance of that investigation?

8 A Yes, we were.

9 Q When you say "we" who are you talking about?

10 A My unit.

11 Q How many members does that comprise of, sir?

12 A About 10, 10 or 15.

13 Q It was 10 or 20 of you ordered to go somewhere?

14 A Yes.

15 Q And where was it that you were ordered to go?

16 A Kingston and Lefferts Boulevard.

17 Q About what time did you arrive at or around that
18 location?

19 A About 5:00.

20 Q When you arrived at about 5:00, sir, what were the
21 lighting conditions? That is, was it dark, was it light? What
22 was the lights like at that time?

23 A It was getting light.

24 Q And what, if anything, were you detailed to do at
25 that time, sir?

1 A A grid search.

2 Q Explain to the jury, what is meant by a grid search?

3 A A grid search, we are basically going around, we are
4 looking, not just searching for incidents, or what happened in
5 a particular case, we are doing the warrants in the area, we
6 are doing everything pertaining to the case, mostly.

7 Q And does that include searching all the buildings,
8 sidewalks, driveways, things of that nature within the area?

9 A Yes.

10 Q If you can, sir, can you just detail, in substance,
11 where it was that you went during the course of this grid
12 search, you, yourself?

13 A I went to the back of a building. Back of a building
14 in a garage.

15 Q Can you describe, basically, what that location was,
16 what address it was? If you had made note of it, sir?

17 A 590. I did make note of it, it is in my memo book.

18 Q If you need to check your note?

19 THE COURT: Was it residential, or commercial.

20 THE WITNESS: It was residential.

21 Behind 595 and 591 Lefferts.

22 Q And as you just told the Judge, those are residence
23 buildings?

24 A Yes, it is.

25 Q The area behind those buildings where you went to

1 search, what sort of area was that, sir?

2 A Just garages.

3 Q Did you search those particular garages, sir?

4 A Yes.

5 Q Now, you said you were doing a grid search. Were you
6 looking for people, were you looking for evidence, what were
7 you looking for?

8 A Anything pertaining to the case.

9 Q Did there come a time that you found something that
10 you thought pertained to the case?

11 A Yes.

12 Q What was it that you found, and where?

13 A A bag full of guns in a garage.

14 Q How many guns, sir?

15 A About three.

16 Q And the garage, sir, can you describe the garage and
17 whether there were any other articles, or vehicles in it?

18 A Yes. There was another car next to that one -- there
19 was a blue Buick in there. And right besides that there was a
20 dark red van. It was a garage with an open front, no garage
21 door, just open.

22 Q Now, to your knowledge, sir, had anybody, other law
23 enforcement, been in that area? Anyone told you other law
24 enforcement been in that area?

25 A No.

1 Q Were you directed, specifically, to that area?

2 A Yes.

3 Q Can you tell the jury who it was that directed you,
4 and what was said to you?

5 A Well, the chief said -- you know -- this might be a
6 place that they might have ran down from a video. So, we want
7 everybody to look behind there.

8 Q Were you the first police officer, to your knowledge,
9 to see those guns, or was there other people who were with you
10 at the time, or did other people proceed you?

11 A No, I was the first one.

12 Q Sir, let me show you what has been marked as People's
13 Exhibit number 91.

14 And with the Court's permission, Sergeant, can you
15 step down here for a second?

16 THE COURT: Keep your back to me. Speak into
17 the microphone that is there.

18 THE WITNESS: Okay.

19 (Witness complies.)

20 Q Now, sir, this is not your diagram, right?

21 A No.

22 Q Does that diagram, however, reflect the area where it
23 was that you found the guns?

24 A Yes.

25 Q If you can, just please trace, I think you talked

1 about, that it was in the rear of 591, 595; is that right?

2 A Yes.

3 Q Those adjoining buildings?

4 A Yes.

5 Q Do they appear on the diagram?

6 A Yes.

7 Q Just point at them, please?

8 A One, two.

9 Q And the garage area to the rear of those, does that
10 appear in the diagram?

11 A Yes.

12 Q And, can you please point to the area where it was
13 that you found the guns?

14 A Right in front of this car right here. Right in front
15 of this car.

16 Q That's the car to the right, in the garage?

17 A Yes.

18 Q And it was directly in front of there; is that right?

19 A Yes.

20 Q And the guns were contained in what sort of article?

21 A Plastic bag.

22 Q And you were able to see it was how many guns?

23 A About three.

24 Q And was there any other article that you were able to
25 see inside of that bag?

1 A A knife.

2 Q Sir, this is People's 96.

3 Now, you recognize that, sir?

4 A Yes.

5 Q What do you recognize that as?

6 A That was the blue Buick, and that was the van.

7 Q The blue Buick is to the right?

8 A Yes.

9 Q And the guns, again, would have been at approximately
10 what location in reference to that Buick automobile?

11 A Right in front of that Buick.

12 Q Let me show you another item, this is People's
13 Exhibit Number 100.

14 All right, sir, you recognize that?

15 A Yes.

16 Q What is that, sir?

17 A That's the bag the weapons was found in.

18 Q Is that the area that's already been circled there?

19 A Yes.

20 Q At the time you saw that area, sir, you are back in
21 the garage. About what time was that; do you know?

22 A About 7:15.

23 Q More light had been than when you started the search?

24 A Yes.

25 Q Were you able to see those guns using natural lights,

1 or did you have any lights with you that illuminated that
2 area?

3 A No, I had my flashlight with me.

4 Q Were you able to see it without the flashlights, or
5 did you need the flashlights to see?

6 A You need the flashlights.

7 Q There are no windows in the back of that garage?

8 A No, there is not.

9 Q Was this area the same as it was besides, of course,
10 the evidence marker, the number 30 that is right there?

11 A Yes.

12 Q Can I have you take a look at this one? This is
13 People's Exhibit Number 98.

14 Again, does that look familiar to you, sir?

15 A Yes, it does.

16 Q What does it look like, sir?

17 A The bag that the weapons was in.

18 Q And was the bag open in this same fashion, sir, so --

19 A Yes.

20 Q Now, tell me if I am wrong here, sir, but I believe
21 you can see the muzzle and slide area of a silver firearm
22 right there?

23 A Yes.

24 Q And the butt of two other firearms; is that correct?

25 A Yes.

1 Q Those are the handle areas?

2 A Right.

3 Q Those were exactly what you were able to see, sir,?

4 A Yes.

5 Q And the slide of the silver gun, it was back in that
6 fashion; is that correct?

7 A Yes.

8 Q Did you take note of any clothing article that was in
9 the area, sir?

10 A Just a light jacket on the side.

11 Q Does that appear in the photograph, sir?

12 A Yes, it does.

13 Q Put your finger on it, please.

14 Now, when you saw these items, sir, did you, in fact,
15 touch, or remove any of those items from where they are
16 depicted right there?

17 A No, I didn't.

18 Q What did you do with regard to those items?

19 A I called my immediate supervisor. He came over, and
20 at that point we had the chief come over, and at that point we
21 just secured the whole area.

22 Q When you say "secured the whole area," what did you
23 do, sir?

24 A We wouldn't let anybody else in until crime scene got
25 there.

1 Q Crime scene, how long after 7:15, when you found
2 these articles, did crime scene arrive in that area?

3 A Not sure.

4 Q Long time, short time?

5 A Not a long time.

6 Q And where were you when crime scene was inside this
7 area, sir?

8 A I was out in front.

9 Q Again, securing the area?

10 A Yes.

11 Q Did you observe these items being removed from the
12 garage at all by crime scene?

13 A No, I didn't.

14 Q Go ahead, take your seat Sergeant.

15 (Whereupon, the witness returns to the witness
16 stand.)

17 MR. HALE: I have no further questions.

18 Thank you.

19 THE COURT: Any cross-examination?

20 MR. MEGARO: I will be brief.

21 CROSS-EXAMINATION

22 BY MR. MEGARO:

23 Q Good morning, Detective.

24 A Good morning, how are you?

25 Q What time did you go to this location, 591 Lefferts

1 Avenue?

2 A About 5:00.

3 Q Five a.m.?

4 A Yes.

5 Q And you testified, that you found the bag containing
6 the guns at 7:15 a.m., right?

7 A Yes.

8 Q And that bag contained three firearms and a knife,
9 right?

10 A Yes.

11 Q Now, you were directed to that area by your chief?

12 A Yes.

13 Q Had he informed you that ESU had been there before
14 you had gotten there?

15 A No.

16 Q Did he say whether any police officers had been there
17 before you had gotten there?

18 A No, he didn't.

19 Q And this is at five a.m., right?

20 A Yes.

21 Q And at 7:15, that's what time you found the guns,
22 right?

23 A Yes.

24 Q And you made a notation in your memo back for 7:15
25 am?

1 A Yes.

2 Q Note the time that you found the firearms, right?

3 A Yes.

4 Q And at 7:15 a.m., you also noted that Detective Curry
5 at CSU -- of CSU, arrived to start processing those items?

6 A No, I didn't.

7 Q Would you take a look at your memo book?

8 A I just didn't put a time. I don't recall what time
9 they got there. They were there.

10 Q It could have been after 7:15 a.m.?

11 A That they were there?

12 Q That Detective Curry got there?

13 A They were after 7:15.

14 Q After 7:15?

15 A Yes.

16 Q Now, you testified that this area was secured until
17 crime scene got there, right?

18 A Yes.

19 Q When this area was secured until crime scene got
20 there, how many police officers were there at that scene?

21 A There was a few. I am not sure what number.

22 Q By the way, when you first got there at 5:00, was
23 there police officers around 591 Lefferts?

24 A I am not sure.

25 MR. MEGARO: Thank you.

1 Nothing further.

2 THE COURT: Anything further?

3 REDIRECT EXAMINATION

4 BY MR. HALE:

5 Q Detective, between 5:00 and when you were ordered to
6 initiate the grid search with your team, and 7:15 when you
7 found the firearms and the jacket, what was it that you were
8 engaged in doing during those two hours?

9 A Actually, we were going over warrants, going over
10 some type of plan, the plan attack that we want to do.

11 Q And had you, in fact, initiated searching other areas
12 along that block, before you actually found the guns?

13 A Yes.

14 Q What other areas had you been searching?

15 A Each building, behind each building.

16 Q Did that include the south side of that area, as well
17 as the north side where you eventually found the guns?

18 A Yes.

19 Q Did you the south side before the north side?

20 A Yes.

21 MR. HALE: Thank you.

22 I don't have anything further.

23 MR. MEGARO: Nothing more.

24 THE COURT: Thank you very much, Sergeant. You
25 may step down.

1 (Whereupon, the witness is excused.)

2 THE COURT: Yes, ma'am?

3 MS. NICOLAZZI: People call Detective Kraljic.

4 THE CLERK: For the record, Detective. Please
5 state your name, spell your last name. Shield and
6 command.

7 THE WITNESS: Name is Detective John Kraljic.
8 K-R-A-L-J-I-C. Shield number 2778. Assigned to the
9 firearms analysis section.

10 THE CLERK: Thank you.

11 THE COURT: You may inquire.

12 MS. NICOLAZZI: Thank you.

13 DIRECT EXAMINATION

14 BY MS. NICOLAZZI:

15 Q Good morning, Detective Kraljic.

16 A Good morning.

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

19 A Approximately 15 years.

20 Q How long have you been a detective?

21 A Approximately 11 years.

22 Q And how long have you been assigned to the firearm
23 analysis section?

24 A Approximately seven years.

25 Q What type of work do you do at the firearm analysis

1 section.

2 A I am called, what is called a firearms examiner.
3 Which means, I identify and test various types of ammunition
4 and firearms for operability. As well as conduct microscopic
5 examinations of fired ballistic evidence.

6 Q First of all, when you say "microscopic examinations
7 of ballistic evidence," what is meant by that, in terms of a
8 microscopic examination?

9 A It is the use of a comparison microscope. And a
10 comparison microscope is a microscope that has four separate
11 stages, and they are optically bridged into one set of
12 binoculars and allows you to look at two separate pieces of
13 evidence, side by side, and compare them to each other to
14 determine if they are fired from the same gun, different guns,
15 or a particular firearm that's been submitted.

16 Q What type of training do you have, both in the areas
17 of firearms and ballistics examination, and microscopic
18 comparison?

19 A I initially received approximately 80 hours of
20 instruction in the identification and operability of various
21 types of ammunition and firearms. Different types of
22 handguns, rifles, shotguns, machine guns, submachine guns, and
23 homemade devices.

24 Upon completion of that original training, I had to
25 take and pass, with a hundred percent, three competency tests.

1 Upon successful completion of those three tests, I conducted
2 firearm operability testing for approximately two and a half
3 years, at which time I examined over 2500 firearms.

4 I then completed the 18 month NYPD training program.
5 The first six months was, again, dedicated to firearms
6 operability. At which time I had to take three more
7 competency tests, and pass with a hundred on each one.

8 Upon completion of that, I then received
9 approximately 17 months of training in the use of a comparison
10 microscope, and training in conducting microscopic
11 examinations. Upon completion of that 17 months, I was again
12 required to take three competency tests and score a hundred on
13 each one.

14 Q Now, during the course of your work in the firearms
15 analysis section, have you had occasion to testify being
16 deemed as an expert in firearms analysis, including ballistics
17 analysis, and examination, and microscopic comparison?

18 A Yes, I have.

19 Q Have you testified in the various state court
20 jurisdictions of New York City in those fields?

21 A Yes, I have.

22 Q Have you ever been denied being qualified as an
23 expert in those fields?

24 A No, I have not.

25 MS. NICOLAZZI: At this time I request, your

1 Honor, that Detective Kraljic be deemed an expert in the
2 field of ballistics and firearms examination, analysis,
3 and microscopic comparison.

4 THE COURT: Any objection?

5 MR. MEGARO: No objection.

6 THE COURT: Again, this witness will be allowed
7 to give an opinion based on his experience with
8 ballistics. His testimony, however, is to be treated just
9 like any other witness. You can accept it, or reject it.
10 But, the opinion must be based on some observable facts,
11 or based on a question that the lawyer is asking him to
12 assume certain facts.

13 Please proceed.

14 Q Now, Detective Kraljic, back in July of 2007, did you
15 receive various items of evidence in relation to the
16 investigation being conducted into the shooting of two New
17 York City Police Officers?

18 A Yes, I did.

19 Q And did you examine those various items?

20 A Yes, I did.

21 Q Now, Detective Kraljic, you talked about your various
22 training and the work you done beforehand in the firearm
23 analysis section.

24 Are you familiar with the various different types of
25 handguns?

1 A Yes, I am.

2 MS. NICOLAZZI: I am going to ask that the
3 witness be shown the three firearms. If we can start,
4 please, with People's 107, which is the high point?

5 And, your Honor, with the Court's permission, I am
6 going to ask the witness to take the gun out to show the
7 jury how they work, making sure they are not loaded.

8 THE COURT: I am sure he will do that.

9 Q Now, using that .9mm, or high point, if you can
10 explain to the members of the jury both the type of gun it is,
11 and show them how it works?

12 A This is a .9mm high point semiautomatic pistol. This
13 is the grip. This area right here is the trigger. The top of
14 this firearm right here is called the slide. And there is an
15 opening in the slide that is called the ejection port. And
16 this part right here is the barrel.

17 To load this firearm, you take live cartridges,
18 insert them into this -- it is called a magazine, it has what
19 is called a four plate and a spring inside. As you insert the
20 live cartridges into the magazine, the spring will keep
21 tension on the live cartridge, and keep them at the top.

22 Q When you use the term, a live cartridge, can you
23 indicate what that is to the jury, and the various components
24 that make up a live cartridge?

25 A It is a bullet, actually four components. The

1 cartridge casing, the primer, gunpowder or propellant, and the
2 bullet or projectile. Once those live cartridges have been
3 loaded into the magazine, insert the magazine into the base of
4 the grip where the opening is, that is called a magazine well.
5 Locks into place.

6 Once that is locked into place, take your hand, put
7 it over the top, grab the slide, let it go to the rear, it
8 goes forward, takes a live cartridge from that magazine,
9 inserts it into the chamber. Now this gun is ready to fire.

10 On the side you have a safety over here called a
11 thumb safety. Once the gun is loaded, it is cocked, the
12 safety is up, it is on, which means you cannot squeeze the
13 trigger, the gun will not fire.

14 To fire this firearm, remove the safety down, make
15 sure it is disengaged, and squeeze the trigger. Once you
16 squeeze the trigger, that live cartridges discharges. The
17 bullet will travel down the barrel, exits the firearm.

18 What happens is, the recoil of that live cartridge
19 causes the slide to come to the rear. As the slide comes to
20 the rear, there is a a piece in here call the extractor that
21 grabs that discharged cartridge, and takes it out of the
22 chamber.

23 There is a second piece in here called the ejector.
24 The ejector forces that spent discharged shell casing out the
25 opening called the ejection port. Since the slide is on the

1 spring tension, it will go forward again, take another live
2 cartridge from the magazine, and put it in the chamber, insert
3 into the chamber. You squeeze the trigger, this gun will
4 discharge.

5 Q You said that is a semiautomatic pistol. What is the
6 basic difference between two basic types of handguns, a pistol
7 go and revolver?

8 A This is a semiautomatic pistol which means, for each
9 pull of the trigger the gun will automatically cycle, remove
10 that cartridge casing, discharge it. Take another one from
11 the magazine, insert it into the chamber.

12 In a revolver the live cartridge is loaded into what
13 is called a cylinder. Cylinder will contain a predetermined
14 amount of chambers. That cylinder locks into the frame of the
15 firearm, and as you squeeze the trigger, that cylinder
16 rotates, rounds up a live cartridge with the barrel, and that
17 live cartridge discharges. That spent cartridge casing
18 remains inside that cylinder until it is physically removed by
19 the shooter, or person handling the firearm.

20 Q Basically, a revolver, people often think of a
21 western type gun which has a cylinder?

22 A That's correct.

23 Q A pistol, or semiautomatic pistol, each time that gun
24 is fired, the shell casing that remains is going to eject,
25 basically, by going off the top of the gun?

1 A Yes, pushed out this opening, or right side of the
2 firearm.

3 Q How does that weapon traditionally eject the
4 cartridge casings from that gun?

5 A If the weapon is held properly like this, up and
6 down, the cartridge casing will eject up, and to the right.

7 Q And how quickly is one able to fire that gun, more
8 than one bullet?

9 A As fast as you can squeeze the trigger, this gun will
10 discharge each live cartridge.

11 Q Prior to firing at all, the safety must be removed?

12 A Yes, safety must be disengaged.

13 Q And the loud sound that was made when pulling back
14 the slide, that is going to be the sound made each time the
15 slide is going back and forth?

16 A Each time you manually slide the slide forward and to
17 the rear, it is going to make that sound.

18 Q Thank you.

19 I am going to ask you to go to the second firearm,
20 People's 108, the silver 45-caliber long horn. And if you
21 could, please show the members of the jury how that gun works,
22 the 45?

23 A This is a 45-caliber /HRAUPL /PA semiautomatic
24 pistol. Functions very similar to the one I previously showed
25 you.

1 Once again, grip. Magazine well is at the bottom.
2 Ejection port is the opening on the top. This is the slide.
3 Trigger. This is the hammer in the back. This hammer is
4 exposed as opposed to the previous firearm. There is a thumb
5 safety located on the back, as well as a grip safety which is
6 integrated into the grip.

7 To load this firearm, same idea. You put the live
8 cartridges into the magazine, insert the magazine into the
9 magazine well. Once that magazine is seated in in and locks
10 into place, pull the slide to the rear, let it go forward,
11 chambers a live round.

12 In this case you have two safeties, the thumb safety
13 would have to be disengaged, which is the down position. If
14 the safety is up, prevents the hammer from being released when
15 the trigger is pulled.

16 Second safety followed is the grip safety. When you
17 hold this firearm, you hold it the proper way, your hand will
18 actually disengage that safety. This is more a drop safety,
19 or if the gun is not held properly, it prevents the gun from
20 accidentally discharging.

21 Once this gun is loaded, there is one way to fire the
22 gun once the hammer is cocked, by putting a magazine in,
23 sliding the slide to the rear, it will cock the hammer to the
24 rear. You have a live cartridge in the chamber, gun is ready
25 to fire.

1 Another way, once there is a live cartridge in the
2 chamber, drop the hammer; retop off the magazine with another
3 live cartridge, reinsert it into the firearm. But, in order
4 to discharge the firearm now, you have to manually cock it.
5 Hammer has to be cocked to the rear for the gun to fire.

6 Once there is a live cartridge, squeeze the trigger,
7 live cartridge discharges, bullet exits, same principle as
8 before, slide comes to the rear, extracts and ejects, goes
9 forward, takes another live cartridge, inserts it into the
10 chamber. That process will repeat for each live cartridge in
11 the magazine that you squeeze the trigger.

12 Q The same as you said with the previous gun, the .9mm
13 high point, you can fire that gun as quickly as you are able
14 to pull the trigger?

15 A Yes, you can.

16 Q Now, the first firearm you said had one safety, that
17 safety had to be disengaged prior to that weapon being able to
18 be fired?

19 A That's correct.

20 Q With this gun, you must manually disengage two
21 safeties before you can fire that gun?

22 A Yes.

23 MS. NICOLAZZI: If I can just approach the
24 monitor, your Honor, People's 98 in evidence.

25 Q Now, the way that the 45 is shown here, the silver

1 gun, the way it is positioned, what does that indicate in
2 terms of, I guess, the top of it, and whether its been fired?

3 A That's what we refer to as slide lock. When this
4 firearm is fired and the last round -- I will insert it into
5 the magazine just to show you -- semiautomatic pistol is
6 designed, when they run out of ammunition, the slide will stay
7 locked to the rear to let the shooter know there is no more
8 ammunition in the firearm.

9 Q Based on the way the gun is in that position, all the
10 ammunition is used, there is no longer ammunition left?

11 A Yes. That firearm appears to be in what is called
12 slide lock.

13 Q Now, moving on to the last gun, People's 106 in
14 evidence, the .9mm /EURPBTSZ /SKWREBGT.

15 Go ahead.

16 A This is also a semiautomatic pistol, Inter Tech .9mm,
17 also known as a Tech nine.

18 It is a little different in the magazine well is a
19 little forward with the trigger guard.

20 Once you load this magazine insert into the magazine
21 well, locks it into place. This is called a bolt, and the
22 bolt handles bullets, slide the bolt handle to the rear, let
23 it go forward, takes a live cartridge, inserts it into the
24 magazine.

25 This type of firearm has what is called a button

1 safety. Once it is cocked, and there is a live cartridge in
2 the chamber, you just press that into lock, the gun will not
3 fire. In order to fire this firearm, the button has to be
4 pulled out, safety disengaged, squeeze the trigger, live
5 cartridge will discharge. To recoil, the bolt comes to the
6 rear, ejects discharge shell casing, live cartridge forward,
7 goes forward, inserts another cartridge into the chamber, and
8 that will be caused each type you pull the trigger.

9 Q That gun has one safety?

10 A Yes.

11 Q How does that gun traditionally eject the shell
12 casings after its been fired?

13 A That firearm will also eject the cartridge casings
14 up, and to the right.

15 Q Thank you.

16 Now, Detective Kraljic, are you also familiar with
17 both the firearm and ammunition that are issued to members of
18 the service within the New York City Police Department?

19 A Yes, I am.

20 Q And what type of ammunition is it that is issued to
21 members of the New York City Police Department?

22 A We are issued the Speer type of bullet is called a
23 gold dot, 124 grains, that is the weight, and it is a copper
24 jacket, meaning, it has a copper jacket, hollow point bullets.

25 Q Is there anything different about that type of

1 ammunition, as opposed to other types of ammunition, certainly
2 those used by these firearms?

3 A Yes. The Speer gold dot ammunition is what is called
4 bonded. And what happens is, what Speer does when they
5 apply -- just to back up a little bit.

6 Most semiautomatic ammunition to be fired from a
7 semiautomatic firearm has what is called a jacketing on it.
8 Which means, the jacketing is a coating on the bullet. The
9 bullet will have a lead core, and some sort of alloy as a
10 jacket material, or coating on it. It could be copper, brass,
11 aluminum, and nickel, several alloys that different
12 manufacturers use.

13 The Speer gold dot, what Speer does is, they use a
14 process called bonding. And when they apply that jacketing
15 onto the core, it almost sticks to it, where it will adhere to
16 it, and that prevents that jacket from separating from that
17 core when the bullet strikes its target, or hits concrete, or
18 any sort of hard object.

19 Q Is that one thing that could be helpful to you in
20 determining whether a particular piece of ballistics was such
21 as the type that is issued by NYPD versus another type?

22 A Yes, it is.

23 Q Now, with respect to this investigation, you said
24 that you received numerous pieces of ballistics evidence; is
25 that correct?

1 A Correct.

2 Q Fair to say there were numerous pieces that you
3 received?

4 A Yes.

5 Q Now, would it be helpful to you, to explain to the
6 members of the jury, what it was that you received, and the
7 type of work, including your conclusions, if you used a
8 presentation that you have prepared on a CD, a Power Point
9 Presentation?

10 A Yes, it would.

11 Q And what is contained on that CD which, will be
12 marked People's 144 for identification, does that list,
13 basically, all the items that you received as evidence that
14 were analyzed, and any conclusions that were reached by you
15 with respect to the ballistics and/or firearms?

16 A Yes.

17 MS. NICOLAZZI: I would offer that into evidence
18 as People's 144, previously shown to defense counsel.

19 MR. MEGARO: Without objection.

20 THE COURT: Okay. Marked and received, without
21 objection.

22 Q Detective Kraljic, it will just take a moment for
23 this to load up, and then we will go through.

24 I will start asking you, using the Power Point, the
25 various items that you received to be analyzed in this case,

1 both by your lab, and yourself.

2 So, we will use the slide. And if you can tell the
3 members of the jury what you received by voucher number. And
4 we will start there.

5 First, with respect to the firearms what was received
6 by the firearms analysis section.

7 A On the voucher number N, as in Nancy, 374278 that was
8 the 45-caliber Llama semiautomatic pistol that I just showed
9 you. Had a six right twist.

10 Q What does that mean when you talk in terms of a
11 twist?

12 A Six right twist is going to denote the rifling inside
13 the barrel. What happens is, manufacturers will rifle
14 barrels. And the purpose of that is, when a bullet is fired,
15 it will twist in the left or right direction, and spin that
16 bullet. And that causes the bullet to be more stable, and
17 travel over greater distances, and be more accurate.

18 Q And how do you use the twist of a piece of ammunition
19 fired from a particular gun to help you in your work of
20 microscopic analysis?

21 A When we receive, for example, a fired bullet in this
22 case, it has a six right twist, six being the number of lands
23 and grooves, and right being the direction of the rifle. This
24 is called class characteristics.

25 A particular manufacturer, for example this

1 45-caliber Llama, semiautomatic pistol, every one of these
2 guns will have a six right twist. When we conduct a
3 microscopic examination, the first thing we examine is the
4 class characteristics before we examine anything else. In
5 order for two pieces to be compared to each other, they would
6 have to exhibit the same class characteristics.

7 Once we determine that a particular, or in this case,
8 two bullets have the same class characteristics and we examine
9 them with the comparison microscope, we do what is called
10 individual characteristics. Even though several thousand
11 firearms can be the same class characteristics, only one
12 firearm is going to have its own individual characteristics.

13 What happens is, during the manufacturing process,
14 when the manufacturer is cutting the rifle into the panel, the
15 tool that is used, they will chip, wear down, break, using
16 unique characteristics specific to only that particular
17 barrel.

18 When a bullet is fired, it travels down that barrel.
19 The bullet, as it is squeezed and forced down the barrel, it
20 will pick up the markings left behind by the manufacturing
21 process, called striations pressed into the surface of the
22 bullet as it passes through.

23 When we conduct a microscopic examination, first
24 thing we do is determine that everything has the same class
25 characteristics, and we use the microscope to determine the

1 individual characteristics.

2 Q So this gun, the J30B, is that the markings that was
3 designated to that firearm already, prior to it getting to
4 you?

5 A Yes, it was.

6 Q And now it says, test fires here marked 1FBD and
7 2FBD. What is meant by test fired?

8 A Once a firearm is submitted for operability for the
9 firearm analysis section, we will actually fire that weapon
10 using ammunition from the firearm analysis section, as well as
11 any ammunition received with that firearm that comes with that
12 case.

13 Once that firearm is test fired, if you look at the
14 1FBD, the F denotes the first bullet fired, 1F being number
15 one firearm supplied ammunition. The BD is the examiner's
16 initials that conducted the operability test.

17 Q That was done by an examiner other than yourself?

18 A Correct.

19 Q Do you then use those test fires, and compare them to
20 various pieces of ballistics that you receive to conduct your
21 microscopic analysis?

22 A Yes. Anytime a firearm is test fired, and these test
23 fires are produced, they are kept and remain at the firearms
24 analysis section in case any sort of testing is needed later
25 on down the road. For example, microscopic examination.

1 Q What did you receive under voucher number N 374267?

2 A These were the test fires from the .9mm Luger high
3 point semiautomatic pistol marked J30A. The bullet having
4 nine left twists.

5 And test fires are marked 3FBD, 4FBD.

6 Q And what was received pertaining To voucher number N
7 374277?

8 A This was the test fires to the .9mm Intra Tech .9mm
9 pistol marked J30C, as in Charlie.

10 Six right twists.

11 And test fires were marked 5FBD, 6FBD. Those two
12 test fires being ammunition from the firearm analysis section
13 supply. And the two test fires that were marked BD17 and
14 BD18, were two rounds of ammunition received with the firearm.

15 Q And what was received by you under voucher number N
16 737344?

17 A These were test fired from a .9mm Luger caliber
18 SIG-sauer semiautomatic pistol. This firearm has a six right
19 twist.

20 And test fired marked 1FRL, 2FRL, 3FRL, and 4FRL.

21 Q With respect to that weapon that was test fired. To
22 your knowledge, was that the firearm issued by the New York
23 City Police Department in this case, Police Officer Hermann
24 Yan?

25 Q What was received under voucher number 737320?

1 A Two, 45 automatic caliber Remington Peter, white
2 primer cartridge casing.

3 I marked them JK1, and JK2. Previously marked A13
4 and A15.

5 Q Then, under voucher N 737347?

6 A These were ten .9mm Luger + P Speer, white primer
7 cartridge casings.

8 And I marked these JK3 through JK12. They were
9 previously marked A2, 3, 4 5, 7, eight, 9, 10, 11, 12.

10 Q And under voucher N 737346, I believe it is items
11 one, 13, five and seven?

12 A Four .9mm + P caliber Speer, white cartridge casings.

13 I marked them JK13, JK15, JK17, and JK19. Previously
14 marked A14, 17, 22, and 24.

15 Q And then, under voucher N 373346 for item number two?

16 A A deformed led core, 97 grains. It had no rifling on
17 it.

18 I marked it JK14. It was previously marked A16. And
19 doing my examination is what we called unsuitable.

20 Piece of evidence is unsuitable for examination, in
21 this case, contained no rifling.

22 So, there is no individual characteristics, or class
23 characteristics to be examined with the microscope.

24 Q Now, moving on to N 737346?

25 A Another deformed led core, 90.8 grains. No rifling

1 on it.

2 I marked it JK16, previously marked A18. And this
3 piece was also unsuitable.

4 Q When you are talking about the term led core, is that
5 after the bullet is fired, in this case, what's left?

6 A Yes. This being, it is a led core, which means the
7 jacket has separated from the bullet after it was fired.

8 Q And under voucher N 737346, item six?

9 A This was a deformed piece of copper jacket.
10 19.8 grains.

11 Had a question mark left twist. The question mark
12 means, I cannot determine the amount of lands and grooves, but
13 I was able to determine they go to the left.

14 I marked it JK18.

15 Q And under voucher N 737346, item eight?

16 A Another deformed led core. 96.2 grains. This also
17 had no rifling.

18 I marked it JK20, and this was also unsuitable.

19 Q Voucher N 737346, item nine?

20 A This is a deformed piece of copper jacket led.
21 0.8 grains. No rifling.

22 Marked JK2. Is also unsuitable.

23 Q And previously marked A28?

24 A That's correct.

25 Q And under voucher N 737352, item one?

1 A I received three .9mm Luger Remington Peter, white
2 cartridge casings, that I marked JK22, 23, 24. Previously
3 marked B1, B2, and three.

4 Also received two .9mm Luger Winchester brass
5 cartridge casings. I marked them JK25 and 26. Previously
6 marked B4, and B5.

7 Q Under voucher N 737352, item number two?

8 A 10 .9mm Luger Winchester brass copper jacket
9 cartridge casings.

10 I marked JK27 through 36. Previously marked B6, and
11 B7.

12 Q Under voucher N 373352, item number three?

13 A Deformed copper jacket led bullet. 104.8 grains.

14 Question mark left twist.

15 Marked JK37. Previously marked B8.

16 Q And under N 737352, item four?

17 A Deformed copper jacket led bullet. 117.8 grains.

18 Question mark right twist.

19 I marked it JK38. Previously marked B9.

20 Q Under voucher N 374288?

21 A Another deformed led copper. 91.6 grains. Contains
22 no rifling.

23 I marked it JK39, unsuitable.

24 Q Under voucher N 374292, which came to you as morgue
25 evidence?

1 A Yes. These two projectiles I received from the
2 morgue.

3 First one being a 45-caliber deformed copper jacket,
4 full metal jacket bullet. Weighed 230.23 grains. Had a six
5 right twist.

6 I marked that one JK40, which I received marked J1.

7 Second piece of evidence, 45-caliber deformed brass
8 jacket led bullet. 217.2 grains. Also had a six right twist.
9 And I marked it JK41, previously marked J2.

10 Q And under voucher N 737520?

11 A I received a 9mm Luger Winchester brass primer
12 jacket. Marked JK42, previously marked B1.

13 .9mm Luger Remington Peter, white primer cartridge
14 casing that I marked JK43, previously marked B2.

15 Q And lastly, for the items you received under voucher
16 N 834880?

17 A I received a copper jacket led bullet. 105.8 grains.
18 With a question mark left twist.

19 I marked it JK44, that was marked B1.

20 I received a deformed piece of copper jacket. It
21 weighed 4.6 grains. Also had a question mark left twist.

22 And I marked that JK45. That piece was also marked
23 B1.

24 I received a deformed copper jacket led bullet. The
25 weight 70.6 grains. Had a question mark left twist.

1 I marked that JK46. It was previously marked B2.

2 Q Now, Detective Kraljic, does that conclude all the
3 items you received pertaining to this case?

4 A Yes, it does.

5 Q And what did you do with those items after you
6 received them, generally?

7 A First thing I do, after I determine that requires a
8 microscopic examination, I do what is called an inventory.
9 Which means, I check the voucher, examine the evidence make
10 sure all the evidence listed on the voucher is actually there.

11 Once I determine everything that is vouchered is
12 present, I then mark all the evidence using my initials JK,
13 sequential numbers starting one, and FAS number assigned to
14 that case.

15 After I mark all the evidence with that information,
16 I will then conduct my microscopic examination. Like I said
17 earlier, I will determine a class characteristics of all the
18 evidence.

19 Once I determine all the class characteristics, and I
20 have my findings, I will compare those items to each other and
21 examine the individual characteristics to determine if they
22 were fired from the same gun, different guns, or test fires
23 from the particular guns that were submitted.

24 Q And after you analyzed all these various pieces of
25 evidence, did you, to a reasonable degree of scientific

1 certainty, reach various conclusions with respect to the items
2 of evidence that you analyzed?

3 A Yes, I did.

4 Q If you can tell the members of the jury what your
5 conclusions were as to the results, after you analyzed those
6 pieces of evidence?

7 A JK1 and JK2, as well as JK40 and JK41 were all fired
8 from a 45-caliber llama semiautomatic pistol.

9 Q That would both be the cartridge casings, and the
10 morgue evidence that you received?

11 A Correct. The two casings, and the two bullets.

12 Q You can go on.

13 A JK3 through JK13, JK15, JK17, and JK19, were all
14 fired from the sig-saure semiautomatic pistol.

15 Q And that would be the firearm issued to New York City
16 Police Officer Hermann Yan?

17 A Yes, correct.

18 Q And moving on?

19 A And then, the items marked JK22 through JK26, as well
20 as JK42 and JK43, fired from the .9mm Luger high point
21 semiautomatic pistol.

22 Q So, with respect to the 45 results, and the .9mm high
23 point, when you are talking about those firearms, those are
24 the guns you just showed the members of the jury in evidence,
25 People's 107 and 108?

1 A Yes, they are.

2 Q And then, did you reach some other conclusions as
3 well?

4 A Yes. JK14, 16, 18, 20, 21, and 39, are unsuitable
5 for microscopic examination.

6 And like I explained earlier, they contained no
7 individual or class characteristics to examine, to determine
8 if they were fired from any particular type of firearm.

9 JK27 through 36, those are the live cartridges that
10 were not fired. I examined them for cycling marks. By
11 cycling marks, to determine if they were actually chambered
12 into a firearm, and then extracted without being fired. And
13 they exhibited no cycling, or chamber marks.

14 JK37, JK44, and JK45, is inconclusive to the high
15 point, and out to the ours.

16 Q What does that mean?

17 A By inconclusive I mean, there are not enough on
18 there -- let me back up.

19 They exhibit the same class characteristics,
20 direction of twist, lands and grooves are the same twist.
21 There is not enough individual characteristics to say they
22 were fired from that firearm.

23 But, there is no individual characteristics to say
24 they weren't fired from that firearm.

25 Q And the individual characteristics that are present,

1 are they consistent with the high point in this case?

2 A Yes, they are. And when I say that, those three
3 pieces of evidence are out to the other firearms. It means,
4 they are out on class, which means they exhibit different
5 class characteristics. It would be impossible for any of the
6 other firearms to fire those pieces of evidence.

7 JK38 and JK 46, those two pieces are inconclusive to
8 the sig-saure, like I said. Inconclusive, I was unable to say
9 they were fired from that gun. I was unable to rule it out.
10 They are consistent with being fired from that firearm. And,
11 there is no way that they were able to be fired from any of
12 the other firearms.

13 Q Now, so, when you are saying inconclusive, again, not
14 enough individual characteristics with those that would be
15 consistent to that firearm, in this case, Officer Yan's?

16 A That's correct.

17 Q With respect to the items that you previously just
18 told the members of the jury that you were able to determine
19 were fired from both the 45 and the .9mm high point, are you
20 able to say, to a reasonable degree of scientific certainty,
21 that those pieces of ammunition were a match to those
22 firearms, exclusive to any other firearms in the world?

23 A Yes.

24 MS. NICOLAZZI: I have nothing further.

25 THE COURT: Any cross-examination?

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MR. MEGARO: No. Thank you.

THE COURT: Thank you, sir.

THE WITNESS: Thank you very much.

(Whereupon, the witness is excused.)

MS. NICOLAZZI: Judge, can we have five minutes?

THE COURT: Certainly.

Jurors, we are going to take a break. I will have you
back.

Keep my warnings in mind.

Take the jurors out, please.

(Whereupon, the jury exits the courtroom.)

THE COURT: About ten minutes, please.

MS. NICOLAZZI: Thank you.

(Whereupon, a brief recess was taken.)

(Whereupon, Phyllis Price is relieved by Diane
Adkins-Forte as the official court reporter.)

1 THE COURT OFFICER: Ready for the jury,
2 Your Honor?

3 THE COURT: Yes, sir.

4 THE COURT OFFICER: Jury entering.

5 (Whereupon, the jury panel entered the
6 courtroom.)

7 THE COURT: Mr. LaRose.

8 THE CLERK: Case on trial. All parties
9 are present.

10 Both sides waive the reading of the
11 roll?

12 MS. NICOLAZZI: Yes.

13 MR. MEGARO: Yes.

14 THE COURT: People?

15 MS. NICOLAZZI: The People call
16 Detective Peter Margraf.

17 P E T E R M A R G R A F, a Detective bearing Shield
18 Number 4530, called as a witness by the
19 People, having been first duly sworn, was
20 examined and testified as follows:

21 THE CLERK: Thank you. Please be
22 seated.

23 For the record, Detective, please speak
24 into the microphone. State your name. Spell
25 your last name, your shield number and command,

1 please.

2 THE WITNESS: Detective Peter Margraf,
3 M-a-r-g-r-a-f, Shield Number 4530, and I'm
4 assigned to the 71st Precinct Detective Squad.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION BY

7 MS. NICOLAZZI:

8 Q Good afternoon, Detective Margraf.

9 A Good afternoon.

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

12 A A little over 23 years.

13 Q How long have you been assigned to the 71st
14 Precinct?

15 A For about 12 years.

16 Q And how long have you held the rank of
17 detective?

18 A For about 15 years.

19 Q I'm going to direct your attention back to
20 the date of July 9th of 2007. Did you work on that
21 date?

22 A Yes, I did.

23 Q Did you become involved in the police
24 investigation into the shooting of New York City
25 police officers Hermann Yan and Russell Timoshenko?

1 A Yes, I did.

2 Q What was your assignment or role with
3 respect to the investigation?

4 A I was a lead investigator.

5 Q And did you work as lead investigator
6 together with Detective Luis Yero?

7 A Yes, I did.

8 Q As part of your work as lead investigator in
9 this case, did you have occasion to interview various
10 people pertaining to this investigation?

11 A Yes, I did.

12 Q And to visit various locations in reference
13 to this investigation?

14 A Yes.

15 Q Are you familiar with the Five Towns
16 Mitsubishi dealership that was involved in this
17 investigation?

18 A Yes, I am.

19 Q Just generally, where was that -- or
20 actually, withdrawn.

21 Were you also familiar with and at some
22 point did you meet a woman by the name of Nicole
23 Bostic?

24 A Yes, I did.

25 Q Are you familiar with her residence over on

1 Gateway Boulevard?

2 A Yes, I am.

3 Q Just generally, where was the Five Towns
4 Mitsubishi dealership in relationship to the Nicole
5 Bostic apartment by Gateway?

6 A Just east where she lived.

7 Q During the course of this investigation,
8 sometime later was she ultimately placed under arrest
9 with respect to this case?

10 A Yes, she was.

11 Q During the time or when she was placed under
12 arrest, was a vehicle of hers vouchered or taken into
13 custody as well?

14 A Yes.

15 Q And what type of car did she have?

16 A It was a sports utility vehicle, green
17 sports utility vehicle.

18 Q And what was the license plate that was
19 issued to her green sport utility vehicle?

20 A D as in David, B as in boy, P as in Paul
21 4721.

22 Q I'm going to ask you to take a look at a
23 photograph that's been marked People's 145 for
24 identification previously shown to defense counsel?

25 MR. MEGARO: Stipulated.

1 MS. NICOLAZZI: Based on the
2 stipulation, I offer it into evidence.

3 Q Do you recognize the photograph that's been
4 handed to you, People's 145?

5 A Yes, I do.

6 Q What is that?

7 A The vehicle that was seized from Nicole
8 Bostic.

9 Q Whose car is that?

10 A This is Nicole Bostic's.

11 Q Registered to her?

12 A Yes.

13 MS. NICOLAZZI: I'd like to offer it
14 into evidence.

15 THE COURT: Without objection, it's in
16 evidence.

17 Just put it on the monitor.

18 (At this time, a photograph was
19 received as People's Exhibit 145 in evidence.)

20 Q People's 145, that's the green sports
21 utility vehicle that you just told the members of the
22 jury about?

23 A Yes, it is.

24 Q This is the New York State license plate
25 number that's associated with that vehicle, DBP4721?

1 A Yes.

2 Q Now, as part of your contact with Nicole
3 Bostic, did you have the opportunity to take pedigree
4 information from her?

5 A Yes, I did.

6 Q Can you explain to the members of the jury
7 what is meant by the term pedigree information in the
8 context of which you get that information?

9 A Just took her name, address, date of birth,
10 phone number, contact information of that person.

11 Q With respect to the contact information, did
12 you learn her phone numbers?

13 A Yes, I did.

14 Q What are her phone numbers?

15 A Her home phone number was (718) 868-3035 and
16 I also got her cell number.

17 Q What is her cell number?

18 A It's (347) 522-3796.

19 Q Now, ultimately with respect to the actual
20 shooting of the two officers, how many people were
21 taken into custody on that case?

22 A In regards to the shooting of the police
23 officers, three people all together.

24 Q Who were those three people?

25 A It's Dexter Bostic, Robert Ellis and Lee

1 Woods.

2 Q Lee Woods is the person in the courtroom
3 today seated in the yellow shirt?

4 A Yes.

5 MS. NICOLAZZI: For the record,
6 indicating the defendant.

7 Q With respect to Robert Ellis and Dexter
8 Bostic, when and where were they taken into custody?

9 A On July, 11th, Dexter Bostic, was taken into
10 custody and on July 12th early in the morning, Robert
11 Ellis was taken into custody in Pennsylvania between
12 the median on Interstate 80 in the woods in
13 Pennsylvania.

14 Q So, both of them were ultimately found and
15 taken into custody in a wooded median area on that --
16 the highway in Pennsylvania?

17 A Yes, they were.

18 Q Were they apprehended after this defendant
19 had been taken into custody?

20 A Yes, they were.

21 Q Now, Detective Margraf, when did you first
22 get back any of the results on any of the scientific
23 analysis that was done in this case?

24 A Sometime mid morning on July 10th.

25 Q And what type of evidence was that generally

1 in terms of DNA, fingerprints or something else?

2 A The first evidence we got back were
3 fingerprint evidence.

4 Q And how much longer was it, and again,
5 generally is fine, was it before you got any of the
6 results on any of the DNA analyses that was done in
7 this case?

8 A Could have been later on, sometime later on.

9 Q Now, getting back to the two other men that
10 were taken into custody, with respect to Dexter
11 Bostic during the course of the investigation, did
12 you learn his phone numbers?

13 A Yes, I did.

14 Q And what were the phone numbers associated
15 with Dexter Bostic?

16 A I had two different cell numbers. One was
17 (718) 666-1977, and the second one was
18 (917) 536-9475.

19 Q And during your contact with Robert Ellis as
20 part of the pedigree information, did you get his
21 cell phone number?

22 A Yes, I did.

23 Q What was his cell phone number?

24 A (347) 891-4472.

25 Q Now, what, if any, relation did Dexter

1 Bostic have to the Nicole Bostic that you took into
2 custody?

3 A They were brother, sister.

4 Q Did you also meet and have a conversation
5 with another family member of theirs, a brother by
6 the name of Frederick Bostic?

7 A Yes, ma'am.

8 Q Did you as part of pedigree information get
9 his phone number?

10 A Yes, I did.

11 Q What was his phone number?

12 A (718) 350-6641.

13 Q Amongst the various interviews conducted,
14 did you speak with a woman by the name of Cora
15 Thompson?

16 A Yes, I did.

17 Q Who was she?

18 A A girlfriend of Lee Woods.

19 Q What was her phone number?

20 A (347) 454-6042.

21 Q And did you come in contact with a woman by
22 the name of Leandria Stays?

23 A Yes, I did.

24 Q Who was she?

25 A Another girlfriend of Lee Woods.

1 MR. MEGARO: Objection, Your Honor, as
2 to girlfriend.

3 THE COURT: Just a moment.

4 Did you actually contact this
5 individual?

6 THE WITNESS: Yes, I did.

7 THE COURT: Did she describe herself as
8 a girlfriend?

9 THE WITNESS: They dated. They went on
10 dates.

11 THE COURT: Fine.

12 Overruled.

13 Q As part of her contact or pedigree
14 information, what did you learn with respect to the
15 phone number that came back for Leandria Stays?

16 A I have (917) 769-8073, and I have a second
17 number which is (917) 683-8365.

18 THE COURT: That evidence about
19 somebody being a girlfriend is not offered to
20 prove the fact. It's just offered to explain
21 the actions of the police when they heard
22 certain information. That's how you treat it,
23 okay.

24 MS. NICOLAZZI: Judge, one moment.

25 Q Now, Detective Margraf, throughout this

1 investigation, you worked with Detective Luis
2 Yero?

3 A Yes.

4 Q Would it be fair to say there were numerous
5 members of law enforcement working in conjunction
6 with you as well?

7 A Yes, there were.

8 Q As the lead investigator, were the persons.
9 that actually then processed the arrest of the
10 various individuals on this case?

11 A Yes.

12 Q So, you processed the arrest of Mr. Lee
13 Woods?

14 A Yes, I did.

15 Q And that was on July 10th?

16 A Yes.

17 Q And subsequently then also the arrests of
18 both Robert Ellis and Dexter Bostic on the 11th and
19 12th of July?

20 A Yes, I did.

21 MS. NICOLAZZI: I have nothing further.

22 THE COURT: Any cross-examination?

23 MR. MEGARO: Brief.

24 CROSS-EXAMINATION BY

25 MR. MEGARO:

1 Q Good morning, Detective.

2 A Good morning.

3 Q You said that you arrested Nicole Bostic?

4 A Yes, I did.

5 Q What for?

6 A For tampering with physical evidence,
7 hindering prosecution, and other charges.

8 Q With regards to this case?

9 A Yes.

10 Q And once again, where exactly were Bostic
11 and Ellis arrested?

12 A They were arrested in the median -- wooded
13 median area on Route -- Interstate -- Route 80 in
14 Pennsylvania.

15 Q That was in the Poconos region?

16 A Yes.

17 Q And they had been in the woods for a couple
18 of days before that?

19 A Yes.

20 MR. MEGARO: Okay. Thank you.

21 Nothing further.

22 THE COURT: Anything further?

23 MS. NICOLAZZI: No, Your Honor.

24 THE COURT: Detective, thank you, very
25 much, sir.

1 THE WITNESS: Thank you.

2 (Witness excused.)

3 THE COURT: People?

4 MS. NICOLAZZI: Now, Your Honor, if I
5 can just read into evidence various stipulations
6 that both the prosecution and Defense have
7 agreed upon.

8 THE COURT: Just a preface, I told you
9 there are three forms of evidence: Testimony
10 under oath, exhibits and stipulations; that's
11 agreements about information that they are
12 offering without the benefit of a witness coming
13 in to testify, but you treat it the same way,
14 and that's what we're going to hear now, a
15 series of stipulations.

16 MR. MEGARO: Is this going to be Court
17 Exhibit 1?

18 THE COURT: However you want to do it.
19 Actually, we'll make it People's --

20 THE CLERK: 147.

21 THE COURT: 147.

22 THE CLERK: 146.

23 THE COURT: Mr. LaRose, you made a
24 mistake?

25 THE CLERK: Once I thought I was wrong,

1 but I was mistaken.

2 THE COURT: All right, 146.

3 Please proceed.

4 (At this time, a stipulation is
5 received as People's Exhibit 146 in evidence.)

6 MS. NICOLAZZI: Thank you.

7 The prosecution and the Defense have
8 entered into the following stipulation:

9 The first, that if Detective Nick Bovis
10 was called to testify at this trial, he would
11 testify as follows:

12 I was assigned to the Crime Scene Unit
13 from 2004 until late 2008.

14 On July 17, 2007, while conducting some
15 additional tests in the BMW at the 61st
16 Precinct, he moved both of the front seats and
17 then he observed and recovered two 9mm shell
18 casings, one underneath the front passenger seat
19 which he marked B1, and one that was underneath
20 the front driver's seat which he marked B2.

21 Those two shell casings were vouchered
22 under N737520 and sent to the Firearms Analysis
23 Section to be analyzed, and pursuant to that
24 stipulation, I offer People's 147 which are the
25 two shell casings into evidence.

1 THE COURT: Any objection?

2 MR. MEGARO: No.

3 That's 147?

4 MS. NICOLAZZI: 147.

5 (At this time, two shell casings are
6 received as People's Exhibit 147 in evidence.)

7 MS. NICOLAZZI: Second stipulation, if
8 criminalist Meredith Gitter, G-i-t-t-e-r, was
9 called to testify at this trial, she would
10 testify as follows:

11 She received the .45 caliber Llama
12 semi-automatic pistol under Voucher N374278.
13 She observed what appeared to be two latent
14 prints on the frame of that weapon. After
15 lifting those prints marked MG1 and MG2 which
16 were ultimately deemed to be of no value, she
17 swabbed those same two locations for potential
18 DNA evidence.

19 Those two swabs were packaged
20 individually and vouchered under Number N374302
21 and then sent to the lab for analysis.

22 The third stipulation, if criminalist
23 Robert Smith was called to testify at this trial
24 he would testify as follows:

25 He would have been qualified as an

1 expert in the field of gunshot residue analysis
2 and glass analysis. He received the two windows
3 removed from the BMW; K2, the triangular window,
4 and the K3, the laminated rear operator side
5 rectangle window vouchered under N374280.

6 After analyzing the windows, he
7 determined the hole in the windows were caused
8 by projectiles traveling in the direction of the
9 inside of the vehicle to the outside. The
10 initial point of impact was from inside the
11 vehicle.

12 He also analyzed the window post K10
13 received under N737351. After examining that
14 item, he determined that there was gunshot
15 residue present.

16 He also received Officer Yan's vest
17 under Voucher N737338. He removed the deformed
18 bullet from the vest and sent it to the Firearms
19 Analysis Section under Voucher Number N374288,
20 and pursuant to that stipulation, I'll offer
21 that deformed bullet into evidence as People's
22 148.

23 THE COURT: Any objection, sir,
24 Mr. Megaro?

25 MR. MEGARO: No, Your Honor.

1 (At this time, a deformed bullet is
2 received as People's Exhibit 148 in evidence.)

3 MS. NICOLAZZI: The fourth stipulation,
4 if Detective Beverly Devignes, D-e-v-i-g-n-e-s,
5 was called to testify at this trial, she would
6 testify as follows:

7 She would have qualified as an expert
8 in the field of ballistics and firearms with
9 respect to this case. She received a Llama .45
10 caliber semi-automatic pistol marked J30B, and a
11 black magazine. Those items were packaged under
12 N374278.

13 She also received a 9mm high point
14 semi-automatic pistol marked J30A, one live 9mm
15 cartridge marked J33, one live 9mm cartridge
16 that has been removed from the chamber, and a
17 black magazine. Those items were packaged under
18 N374276.

19 She also received an Intratec 9mm
20 semi-automatic pistol marked J30CC, one live
21 9mm cartridge from the chamber, one black
22 magazine, and 24 live cartridges from the
23 magazine.

24 Those items were packaged under
25 N374277. All three firearms were tested.

1 All three firearms were operable. Evidence
2 of discharge was present from all three
3 firearms.

4 Officer Hermann Yan's 9mm Sig Sauer
5 semi-automatic pistol was received under Voucher
6 N737344. It, too, was test fired and determined
7 to be operable.

8 Test fire rounds from the .45, the 9mm,
9 the high point, the 9mm tech and Officer Yan's
10 gun were forwarded to microscopic analysis.

11 Fifth, if Police Officer Robert Whelan
12 were called to testify at this trial, he would
13 testify as follows:

14 In July of 2007, he was assigned to
15 Brooklyn South Task Force.

16 On July 9th of 2007, he was one of the
17 first officers to arrive at Rogers Avenue at
18 Lefferts after Officers Yan and Timoshenko had
19 been shot..

20 He and his partner transported Police
21 Officer Hermann Yan to Kings County Hospital in
22 their patrol car.

23 The sixth stipulation, if Elan Elvive,
24 E-l-v-i-v-e, was called to testify as this
25 trial, he would testify as follows:

1 In July 2007, he was employed as the
2 sales manager of Five Towns Mitsubishi. The car
3 dealership showed new and used vehicles. It
4 also serviced and repaired vehicles. In July of
5 2007, Dexter Bostic was employed as a salesman
6 at Five Towns Mitsubishi.

7 On the dealership's lot in July of 2007
8 was a green BMW 5X SUV the vehicle recovered on
9 Kingston Avenue in this case. The keys to the
10 vehicle were kept in a closet at the dealership
11 and Bostic had access to the keys.

12 Neither Bostic nor any employee had
13 permission or authority to take the keys for any
14 of the vehicles for their own use after business
15 hours.

16 On July 8th and 9th, 2007, a Mitsubishi
17 Outlander was present on the lot waiting to be
18 serviced. The license plate on that vehicle was
19 New York plate DCY3504. Dexter Bostic was
20 present for work at the dealership on Sunday
21 July 8, 2007.

22 When the dealership closed, both the
23 BMW and the Mitsubishi Outlander were present on
24 the lot. When the dealership opened on Monday
25 morning July 9, 2007, the BMW was missing and

1 both license plates from the Mitsubishi
2 Outlander were missing.

3 No one had permission or authority to
4 take, use or possess either the BMW or the
5 license plates for the Mitsubishi Outlander.

6 Dexter Bostic did not show up on for
7 work Monday July 9, 2007, or any day
8 thereafter.

9 Five Towns Mitsubishi had a
10 surveillance camera which included security
11 cameras on the car lot. When he reviewed
12 recordings from the surveillance camera,
13 Mr. Elvive observed the BMW X5 being driven off
14 the lot which is contained in People's number
15 149.

16 That exhibit fairly and accurately
17 reflects those portions of the surveillance
18 footage where Mr. Elvive observed the vehicle
19 being driven off the lots.

20 Based on the stipulation, I offer into
21 evidence the surveillance footage as People's
22 149.

23 MR. MEGARO: Stipulated.

24 MS. NICOLAZZI: And if I can play that?

25 THE COURT: Okay.

1 MS. NICOLAZZI: I'm going to play it on
2 the laptop because it breaks down into 30
3 seconds rather than eight minutes, that portion.

4 (At this time, surveillance footage is
5 received as People's Exhibit 149 in evidence.)

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

8 MS. NICOLAZZI: And the last
9 stipulation, seven, regarding the Popeye's
10 receipt, People's Number 14, the cash register
11 receipt, excuse me, the cash register which
12 produced that receipt contained a time stamp
13 which was one hour behind the actual time.

14 And that concludes the stipulations.

15 THE COURT: All right.

16 Mr. Megaro, does the defense stipulate
17 this is going to be the evidence presented
18 without calling the witness?

19 MR. MEGARO: We do, Your Honor.

20 THE COURT: Again, you will treat this
21 along with the other evidence in the case. A
22 stipulation is an agreement between the parties
23 when they decide to present information to you
24 without calling any witnesses.

25 Is that it for the day?

1 MS. NICOLAZZI: That's it, Your Honor.

2 THE COURT: Enjoy the rest of the day.

3 Please be in the jury room tomorrow morning as
4 close to 9:30 as possible.

5 9:30, tomorrow morning. Keep my
6 warnings in mind. See you tomorrow.

7 (Whereupon, the jury panel exited the
8 courtroom.)

9 THE COURT: Let's see how far we can
10 get tomorrow now.

11 If there is nothing further, 9:30
12 tomorrow morning.

13 MS. NICOLAZZI: Thank you.

14 (Whereupon, the above-entitled trial
15 was adjourned to March 11, 2009, at 9:30 a.m.)

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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, IND: 6797/07
 4 -against- TRIAL
 5 LEE WOODS,
 6 DEFENDANT.

-----X
 7
 8 320 Jay Street
 Brooklyn, New York
 March 11, 2009

9
 10 B E F O R E:
 11 HONORABLE PLUMMER E. LOTT,
 12 Justice and jury.

13 A P P E A R A N C E S:
 14 (Same appearances as previously noted.)

15 -----
 16 DIANNE ADKINS-FORTE, RPR
 PHYLLIS PRICE
 Official Court Reporter
 17 =====

18 THE CLERK: Case on trial. All parties
 19 are present.

20 THE COURT: Ms. Nicolazzi.

21 MS. NICOLAZZI: Just in terms of
 22 scheduling, Judge, for the morning, I have first
 23 three witnesses to put on for cell site
 24 information for Nicole Bostic's telephone, and
 25 then DNA, and our last witness Mrs. Timoshenko,

1 I'd ask that we take a five-minute break before
2 the DNA. I want to make sure there is nothing
3 we need to do before we rest.

4 So, Brian Watkinson from Virgin Mobile,
5 then Dan McCluster for Sprint and --

6 MR. MEGARO: I haven't received notice
7 from any of these witnesses who are testifying.
8 Their names were not on the witness list.

9 THE COURT: Okay, but if you want to
10 talk to them, I will allow you to do so, sir.
11 It's clear that she is trying to place somebody
12 in an area.

13 MS. NICOLAZZI: And again, it's also
14 after the Defense's questioning of various
15 witnesses trying to stay the statements were
16 never made, thus, maybe that they were truthful.

17 THE COURT: Yes, ma'am, but in any
18 event, you will be allowed to do so.

19 More importantly, it looks like the
20 People may be through relatively early this
21 morning.

22 What is your position at this point?

23 MR. MEGARO: I know what my client's
24 position is. He stated that he intends to
25 testify.

1 I was trying to speak with him
2 yesterday, but we had a problem with
3 corrections. Corrections would not allow me to
4 see him -- well, let me make this as brief as
5 possible. They were basically playing games
6 when I went down to see him.

7 THE COURT: What was that?

8 MR. MEGARO: After we broke yesterday,
9 I asked the court officers to just notify
10 Corrections, which they did.

11 I went to the third floor. I asked for
12 him to be brought up so I could speak with him
13 in a semi-private area. They told me I had to
14 go to the basement.

15 When I went to the basement, they kept
16 me waiting around, and then finally after making
17 some comments which I'm not going to repeat
18 here, sent me back to a holding pen area. There
19 was a correction officer standing right next to
20 me that refused to give me any privacy with my
21 client.

22 There was an argument about that. I
23 had to speak with the captain.

24 THE COURT: I was here until 6:00. I
25 wish you had called me.

1 MR. MEGARO: I was directed to go back
2 to the third floor.

3 I went back to the third floor and
4 waited and waited and waited and finally my
5 client came up quite some time later and I spoke
6 with him however briefly, but --

7 THE COURT: Okay. Well, it's his right
8 to decide whether to testify or not.

9 MR. MEGARO: Right, and I want to speak
10 with him after we break from the People's case,
11 I'm going to ask the Court for some time to
12 speak with him, again.

13 THE COURT: We have motions we have to
14 deal with, and I will get you time to do that.

15 MR. MEGARO: Thank you.

16 THE COURT: Okay.

17 MR. MEGARO: Other than that, I'm ready
18 to go.

19 THE COURT: The best I can tell is
20 this, if you want to file a formal complaint, I
21 have no idea what good it will do, but if I had
22 known you had had that difficulty, I was here
23 until 6:00, and I certainly would have tried to
24 resolve it and I know -- Mr. LaRose it wasn't
25 Little League baseball last night, was it?

1 Well, no -- what I'm saying is usually he is
2 around. I know he spoke with Mr. Palmer around
3 5:00 yesterday. So, had we known, we would have
4 expedited this.

5 MR. MEGARO: Maybe that was an isolated
6 incident. I would like to think this is not a
7 pattern of their conduct at least as far as I'm
8 concerned, but I'll get my time today.

9 THE COURT: So, all the jurors are
10 here.

11 MS. NICOLAZZI: Your Honor, I told
12 Mr. Megaro the custodians are our first
13 witnesses. If he wants to speak with them, they
14 are right outside.

15 THE COURT: Why don't we do that. Why
16 don't you introduce him to the phone people
17 before we proceed this morning. Let him go do
18 that.

19 (Whereupon, a recess was taken.)

20 THE COURT: Okay. So, how many
21 witnesses? I know you have the criminalist.

22 MS. NICOLAZZI: DNA.

23 THE COURT: That's all of what, less
24 than 15 minutes?

25 MS. NICOLAZZI: Yeah, probably 20 by

1 the time I do some mapping realistically, and
2 then we will take a break, and the last witness
3 is Mrs. Timoshenko.

4 THE COURT: Okay. This is the
5 criminalist, the high copy?

6 MS. NICOLAZZI: Yes.

7 THE COURT: The high sensitivity DNA.

8 MR. HALE: High sensitivity, low copy.

9 THE COURT: Mr. Megaro, you have spoken
10 to the telephone people?

11 MR. MEGARO: Yes, I've had an
12 opportunity.

13 THE COURT: Are you satisfied?

14 MR. MEGARO: Satisfied as I can be
15 under the circumstances.

16 THE COURT: Is it likely you are going
17 to challenge them on the location of their cell
18 units?

19 MR. MEGARO: Probably not.

20 THE COURT: Okay. I thought not.

21 Bring them right in.

22 THE COURT OFFICER: Jury entering.

23 (Whereupon, the jury panel entered the
24 courtroom.)

25 THE COURT: Mr. LaRose.

1 THE CLERK: Case on trial. All parties
2 are present.

3 Both sides waive the reading of the
4 roll of the jury?

5 MS. NICOLAZZI: Yes.

6 MR. MEGARO: Yes.

7 THE COURT: Jurors. Good morning.

8 THE JURY PANEL: (In unison) Good
9 morning, Your Honor..

10 THE COURT: Let me apologize about the
11 delay. It was unavoidable, just unavoidable.

12 All right. People.

13 MS. NICOLAZZI: People call Brian
14 Watkinson from Virgin Mobile.

15 THE CLERK: Please remain standing.
16 Raise your right hand.

17 B R I A N W A T K I N S O N, called as a witness by
18 the People, having been first duly sworn,
19 was examined and testified as follows:

20 THE CLERK: Thank you. Please be
21 seated.

22 Please speak into the microphone.
23 State your name. Spell your last name, please.

24 THE WITNESS: Brian Watkinson,
25 W-a-t-k-i-n-s-o-n.

1 THE CLERK: Thank you. You can adjust
2 it to whatever you want, if you want to slide
3 forward.

4 THE COURT: Sir, if you will continue
5 to speak into the microphone. Don't volunteer
6 anything. If you don't understand the question,
7 ask the question to be repeated.

8 You may inquire.

9 MS. NICOLAZZI: Thank you, Your Honor.

10 DIRECT EXAMINATION BY

11 MS. NICOLAZZI:

12 Q Good morning, Mr. Watkinson.

13 A Good morning.

14 Q Who are you employed by?

15 A Virgin Mobile US ALP.

16 Q What is Virgin Mobile generally?

17 A Virgin Mobile is a prepaid company operating
18 under the Sprint network.

19 Q When you say it's operated under the Sprint
20 network, what does that mean?

21 A We receive all our numbers from Sprint and
22 operate from that network using their towers.

23 Q What are your duties and responsibilities as
24 an employee of Virgin Mobile?

25 A I'm an L.E.A processor as well as a

1 certified custodian of records.

2 Q When you say a certified custodian of
3 records, are you a custodian of all the telephone
4 numbers that have been purchased by Virgin mobile?

5 A Yes, I am.

6 Q With respect to the phone numbers that are
7 purchased by Virgin Mobile, is it part of the duty of
8 your business to keep and maintain the records of
9 those phone calls incoming and outgoing as part of
10 your regular business?

11 A Yes, it is.

12 Q I'm going to ask you to take a look at
13 what's been deemed People's 150 for identification.
14 I've already shown to defense counsel.

15 THE COURT: Is it one or two pages,
16 ma'am? How many pages?

17 MS. NICOLAZZI: Seven in total.

18 THE COURT: This document is seven
19 pages, Mr. LaRose.

20 Q I'm going to ask you to just take a look at
21 that, Mr. Watkinson, and tell us what that is?

22 A The records that I have in front of me are a
23 standard response to request for subscriber and call
24 detail information regarding phone number

25 (347) 522-3796.

1 Q And is that one of the phone numbers that
2 belongs after repurchase to Virgin Mobile?

3 A That is correct.

4 Q And what is the date range for the phone
5 records that you have in front of you?

6 A The date range is July 8, 2007, through July
7 10, 2007.

8 Q And what type of information is contained
9 within those phone records?

10 A The information contained here is basic
11 subscriber information and call detail for those
12 dates.

13 Q Could you just tell the members of the jury
14 what that means, call detail?

15 A Call detail is all the phone calls that were
16 either made or received as well as any text messages
17 that were sent and received without content.

18 Q And with respect to I guess any tracking of
19 geographic locale or cell site information, is that
20 records that Virgin Mobile keeps or Sprint Nextel
21 keeps since they are the carrier that you buy the
22 phone number from?

23 A That will be Sprint Nextel.

24 Q Those phone records that are in front of
25 you, 150, again, are they made in the regular part of

1 your business to keep and maintain those records?

2 A Yes, they are.

3 Q Is the information recorded at the time
4 those calls were placed or received or at a
5 reasonable time thereafter?

6 A Yes.

7 MS. NICOLAZZI: I offer those into
8 evidence as People's 150.

9 THE COURT: Any objection?

10 MR. MEGARO: No.

11 THE COURT: Marked and received in
12 evidence.

13 (At this time, phone records are
14 received as People's Exhibit 150 in evidence.)

15 Q Lastly, now that those records are in
16 evidence, the phone number that you just told the
17 members of the jury that those calls pertain to
18 (347) 522-3796, if you could just tell them who is
19 the subscriber for that phone number?

20 A Sure, the name that we have is Nicole
21 Bostic, B-o-s-t-i-c.

22 Q And at what address?

23 A The address that we have is 1430 Gateway
24 Boulevard, Far Rockaway, New York 11691.

25 MS. NICOLAZZI: I have nothing further

1 for this witness, Your Honor.

2 MR. MEGARO: No questions, thank you.

3 THE COURT: Thank you, very much, sir.

4 (Witness excused.)

5 THE COURT: Witness?

6 MS. NICOLAZZI: People call Dan Jensen
7 from Sprint Nextel.

8 THE CLERK: Please remain standing.

9 Thank you.

10 D A N J E N S E N, called as a witness by the
11 People, having been first duly sworn, was
12 examined and testified as follows:

13 THE CLERK: Thank you. Please be
14 seated.

15 Please adjust the microphone to your
16 height. Speak into it. For the record, please
17 state your name.

18 THE WITNESS: Dan Jensen.

19 THE CLERK: Please spell your last
20 name.

21 THE WITNESS: J-e-n-s-e-n.

22 THE COURT: If you will, sir, continue
23 to speak into the microphone. Do not volunteer
24 anything.

25 If you don't understand the question,

1 ask to repeat the question.

2 DIRECT EXAMINATION BY

3 MS. NICOLAZZI:

4 Q Good morning, Mr. Jensen. Who are you
5 employed by?

6 A Sprint Nextel.

7 Q And what are your duties and
8 responsibilities as an employee of Sprint Nextel?

9 A My duties include responding to legal
10 demands such as subpoenas, search warrants and court
11 orders looking for information on our customers and
12 from time to time I testify in court to those phone
13 records.

14 Q And are you familiar with the way that
15 Sprint Nextel works in terms of the maintaining of
16 its records including geographic locale or cell site
17 information?

18 A Yes.

19 Q Now, first of all, with respect to this
20 case, I'm going to ask you to take a look at two
21 items. First is what's been marked 151 which is a CD
22 Sprint Nextel for (347) 522-3796 as well as a
23 printout on some of the information on the CD marked
24 as People's 152.

25 Now, prior to your testimony here today this

1 morning, did you have the opportunity to look at the
2 contents on that CD?

3 A Yes, I did.

4 Q And the contents are specifically call
5 detail and cell site information that is on that CD
6 for the phone number I just mentioned the (347) 522
7 number, are those records that are maintained and
8 kept by Sprint Nextel?

9 A Yes.

10 Q Now, when we talk about cell site, if you
11 could just explain to the members of the jury what is
12 cell site information?

13 A Cell site information will tell me on each
14 incoming and outgoing call which set of radio
15 frequency antennas were used. The radio frequency
16 antennas are what make the radio connection or the
17 wireless link or a wireless system. These
18 communicate wirelessly to our handsets so handsets
19 can make and receive phone calls.

20 Q Now, are the cell site -- is the cell site
21 information listed for that phone number the
22 (347) 522-3796 contained on that CD rom People's 151
23 and also the printout 152 for the date range July 8,
24 2007, through July 10th of 2007?

25 A Yes.

1 Q And is that information -- is Sprint Nextel
2 under a duty to maintain and keep the records for
3 that particular phone number, the call detail, and
4 the cell site information for these phone numbers?

5 A Yes.

6 Q And are those records maintained and kept in
7 the regular course of Sprint Nextel business?

8 A Yes.

9 MS. NICOLAZZI: I offer those in
10 evidence as People's 151 and 152.

11 THE COURT: Any objection?

12 MR. MEGARO: No.

13 THE COURT: Mark and received
14 Mr. LaRose in evidence.

15 (At this time, a CD and printout of
16 phone records are received as People's Exhibits
17 151 and 152 in evidence.)

18 MS. NICOLAZZI: Can I just approach the
19 printout?

20 THE COURT: Do you want both items?

21 MS. NICOLAZZI: No. Just the printout.

22 Q Just so it's clear, 151 is a CD that
23 contains the phone records that have been printed out
24 on 152?

25 A Correct.

1 Q I'm putting on the monitor. I'm going to
2 ask you generally, Mr. Jensen, if you can tell the
3 members of the jury what is the information that is
4 contained on this, and we will use the first number
5 on top, just explain what each column is.

6 THE COURT: If you want to step down to
7 the microphone monitor with your notes.

8 THE WITNESS: I'm fine right here.

9 Q What does this column stand for?

10 A The first column is the calling number.
11 This is the phone number that is originating the
12 phone call or the phone number that is making the
13 call.

14 The second column, called number, this is
15 the number that is actually connected to on the
16 particular phone call.

17 Q So, for example, in this case, the phone
18 records says (347) 522, the first line here is a call
19 that was received by that phone number 522 where the
20 second column would be a phone number that that 522
21 number actually placed?

22 A Correct.

23 Q Okay. Now moving on to the third column?

24 A Dial digits column will tell me what digits
25 were actually punched into the handset to start the

1 phone call.

2 The fourth column marked MR number sign
3 stands for mobile roll number. This will tell me
4 whether it was an outgoing call, an incoming call or
5 a routed call.

6 Q When you say routed call, what does that
7 mean?

8 A Routed call can mean a few different things.
9 Typically the call is routed into the subscriber's
10 voicemail box so the person could leave a message.
11 So, generally all voicemail voice calls are routed to
12 a different phone switch to complete the phone call.

13 Q Next column?

14 A Start date and time, this will tell me the
15 date and time that the call first came on to the
16 network and it's always in military time.

17 Q This one would be -- the start date would be
18 July 8th of 2007. The time says military time would
19 then be 4:18 p.m. and 59 seconds?

20 A Correct.

21 Q What is the end date?

22 A End date and time would be the date and time
23 that the call has terminated or ended off our
24 network.

25 Q The next column?

1 A Next column is duration. This will tell me
2 how long the call lasted and this is always listed in
3 seconds.

4 Q Next column here where it says repoll?

5 A Next column repoll number, this will tell me
6 what phone switch, in this case, mobile switching
7 center was used to route the call.

8 And the last two columns, first cell and
9 last cell will tell me the sector and cell site used.
10 The first cell tells me the sector and cell site that
11 used the call first came on and the last call will
12 tell me the call that was used when the call has
13 ended.

14 Q When someone is placing the call based on
15 these phone records, how is the information of where
16 that call is being placed from how do you figure that
17 out from these records?

18 A We would look at the last three columns in
19 this case repoll, first cell and last cell. From
20 that information you can gain from the location from
21 the actual cell site that was used on that call.

22 Q When someone is placing a call, is that call
23 literally bouncing off and hitting a particular tower
24 and that's what we're looking for to see what tower
25 is closest to where that call was placed?

1 A Yes. You're looking for what tower was used
2 on that call.

3 Q What kinds of ranges was used if someone is
4 using a metropolitan area such as New York City?

5 A The range is going to depend on several
6 factors: Power output, the height of the antenna,
7 the direction of the antenna, down tilt, if it has
8 any, then you also have to take into account terrain,
9 buildings, man-made objects and foliage. All those
10 factors come into play when determining the coverage
11 area of the cell site.

12 Q So, coverage of say a suburban area versus
13 a metropolitan area like New York City, what is the
14 difference in range?

15 A The difference in range is generally much
16 smaller in an urban environment as compared to a
17 suburban or rural on a highway environment.

18 Q What type of range then just generally would
19 there be have you seen in metropolitan areas like New
20 York City?

21 A I've seen coverage areas of maybe a couple
22 of blocks to quarter or half mile in a dense urban
23 environment.

24 Q Is that because of the number of people or
25 the population there are more cell sites for those

1 phones to be carried by?

2 A Generally speaking, yes.

3 Q When it's, for example, a block or two of
4 range, are you able to tell from the cell site if the
5 person is standing next to the tower or one or two
6 blocks away?

7 A No, we cannot tell.

8 MS. NICOLAZZI: I have nothing further
9 of this witness.

10 THE COURT: Any cross?

11 MR. MEGARO: No.

12 THE COURT: Thank you, Mr. Jensen. You
13 can step down.

14 (Witness excused.)

15 THE COURT: Witness.

16 MS. NICOLAZZI: The People call
17 Detective McCusker from the TARU Unit.

18 THE COURT OFFICER: Witness entering.

19 THE CLERK: Detective, raise your right
20 hand.

21 R I C H A R D M C C U S K E R, a Detective bearing
22 Shield Number 5844 called as a witness by
23 the People, having been first duly sworn,
24 was examined and testified as follows:

25 THE CLERK: Thank you. Please be

1 seated.

2 Detective, please speak into the
3 microphone. Please state your name spelling
4 your last name, your shield and command.

5 THE WITNESS: Richard, last name
6 McCusker, M-c-C-u-s-k-e-r, Shield 5844, command
7 is TARU.

8 THE CLERK: Thank you.

9 THE COURT: All right. Continue to
10 speak into the microphone, sir.

11 You may inquire.

12 DIRECT EXAMINATION BY

13 MS. NICOLAZZI:

14 Q Detective McCusker?

15 A Good morning.

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

18 A Almost twenty years.

19 Q How long have you been assigned to the TARU
20 or Technical Assistance Response Unit?

21 A Ten years.

22 Q How long have you held the rank of
23 detective?

24 A I was promoted in '96. So --

25 Q What are your basic duties and

1 responsibilities as a member of the TARU Unit?

2 A The installation, maintenance and repair of
3 electronic surveillance.

4 Q With respect to electronic surveillance, do
5 you also do various phone work?

6 A I do.

7 Q Were you requested to or given an assignment
8 with respect to the investigation of the shooting of
9 two New York City police officers that occurred back
10 in July of 2007?

11 A Yes.

12 Q What was your assignment with respect to
13 this investigation?

14 A During that particular investigation, I was
15 breaking down the call detail report received from
16 Sprint Nextel and plotting locations.

17 Q When you say plotting the locations, could
18 you tell the members of the jury what you were doing?
19 What does that mean?

20 A When a cell phone is being used, it's
21 reporting to a cell tower. That particular cell
22 tower has locations and if an individual is
23 traveling, that's where we would actually plot out
24 the locations they traveled from, to, remained in and
25 possibly left.

1 Q And do you utilize --

2 THE COURT: You mean the cell phone
3 itself?

4 THE WITNESS: Yes.

5 Q And do you utilize the, in this case, you
6 said Sprint Nextel, the information or reports from
7 Sprint Nextel to actually then plot out or map out
8 the geographic location of where that particular
9 phone is for a particular phone call?

10 A Yes.

11 Q And did you do that in this case?

12 A I did.

13 Q And did you do that in this case with
14 respect to a phone number (347) 522-3798 for the
15 dates of in between July 8 through July 10, 2007?

16 A I did.

17 Q I'm going to ask you to take a look at
18 what's been marked People's 153 for identification.
19 I've already shown to defense counsel.

20 MR. MEGARO: Stipulated, Your Honor.

21 Q Just for the record, it's various Sprint
22 cell site maps, maps number one up and through
23 chronologically 27?

24 THE COURT: All right. He will
25 identify them for the record, but they are going

1 to be marked and received in evidence without
2 objection, I believe.

3 You want him to identify each one; is
4 that correct?

5 Q Just in general terms, do you recognize
6 what's been handed to you, those Sprint Nextel or the
7 maps numbered 1 through 27?

8 A I do.

9 Q Who prepared them?

10 A I have.

11 Q And what are they generally? You don't have
12 to go through each one?

13 A This is basically off the call detail report
14 how I plotted the particular phone in question.

15 Q When you're saying off the call detail
16 report, I believe you have in front of you People's
17 152 call details or -- no, it's coming in front of
18 you.

19 Are those the specific call detail records
20 that you used to make the maps that are in front of
21 you People's 153?

22 A Yes, it is.

23 Q And do the maps that are in front of you
24 that you prepared fairly and accurately reflect the
25 cell site tower for the particular phone calls listed

1 on that detail?

2 A Yes, it does.

3 MS. NICOLAZZI: I'd offer that into
4 evidence as People's 153.

5 THE COURT: Any objection?

6 MS. NICOLAZZI: No marked and received.

7 (At this time, call detail reports are
8 received as People's Exhibit 153 in evidence.)

9 MS. NICOLAZZI: Your Honor, I can just
10 take those and ask the witness to step down for
11 a moment.

12 THE COURT: Detective, step down.
13 Right in front of the microphone.

14 Q Now, I'm just going to use one by way of
15 example Detective McCusker, I'm putting up what here
16 is Map 1. Now, where it says Map 1, is that where
17 you were listed on each map how you numbered them?

18 A That's correct.

19 Q And then again just so the jury can see,
20 using the phone records which are in evidence as
21 People's 152, so, if the members of the jury are
22 looking at the phone records themselves, it would
23 correspond to what is here in the farthest right
24 where it says Map 1, 2, so on and so forth?

25 A Yes.

1 Q Who put those numbers there giving the
2 various map designation by number?

3 A I did.

4 Q That was after plotting out the geographic
5 locale for each one?

6 A That's correct.

7 Q Can you explain to the members of the jury
8 Map 1? What are they looking at here and what did
9 you do?

10 A Using the second phone call on page 14, I
11 went off of the last cell tower. It's reflected as
12 40:59, but I used character 059. At that point, I
13 would compare it to the repoll number which is the
14 actual switch and then plot it into a mapping
15 software and come up with physical location.

16 Q So, the cell site information that is on the
17 phone records both called repoll first cell and
18 second cell, you input that into mapping software and
19 it gives off actual geographic location?

20 A Yes.

21 Q And does it give you a geographic location
22 both in latitude and longitude and street address?

23 A It does.

24 Q For example, what's listed as Map 1, you
25 listed the street address is 2210, 2216 New Haven?

1 A Correct.

2 Q All right. Now, I'm going to ask you on
3 this, some of the phone records, the phone records
4 for this number come back to the address of 1430
5 Gateway Boulevard. Do you know, first of all, is
6 that on this map here?

7 A The physical address is not listed, but it
8 is on the map.

9 Q I'm going to ask if you can show the members
10 of the jury where that is on this map, Map 1.

11 A Be over by Gateway and Mott in the vicinity
12 of right about here (indicating).

13 Q I'm going to ask if you can make an X here
14 where that address would be basically 1430 Gateway
15 Boulevard?

16 A (Witness complied.)

17 Q Where is that in relation to the 101st
18 Precinct?

19 A The 101st is located to the north.

20 Q If you can just make a circle there and
21 write 101 PCT for precinct?

22 A (Witness complied.)

23 Q So, for example, now Map 1 wherever it says
24 Map 1 on those phone records would be for this
25 geographic location which is maybe about five blocks

1 or so from the Gateway Boulevard address that you
2 just marked?

3 A That's correct.

4 Q Okay. You can have a seat for a moment.
5 Then I'm probably going to ask you to come back down.

6 Now, Detective McCusker, I'm going to ask
7 you to take a look at two maps that have been marked
8 People's 154 which is the larger of the two and
9 People's 155 for identification.

10 THE COURT: Have you seen them,
11 Mr. Megaro?

12 MR. MEGARO: Yes.

13 MS. NICOLAZZI: 154 is the larger one
14 and the blowup is 155.

15 MR. MEGARO: No objection.

16 THE COURT: Let me identify it. They
17 will be marked in evidence in a moment.

18 Q Do you recognize what those items are?

19 A I do.

20 Q Now, the larger of the two, People's 15,
21 what is it that's shown on that map generally?

22 A It's a map of the Sprint cell tower
23 locations.

24 Q When you're saying a map of the Sprint cell
25 tower locations, on that map, does it plot out by way

1 of numbers that correlate to the map numbers that you
2 applied to the various calls based on that number
3 through the date range that you looked at going from
4 1 through I believe 22 if I'm not mistaken?

5 A Yes, it does.

6 Q Does that fairly and accurately reflect
7 generally where the cell towers are that those
8 particular calls were hitting off of that you
9 plotted?

10 A Yes, it does.

11 MS. NICOLAZZI: I offer People's 154
12 into evidence.

13 THE COURT: Any objection, again?

14 MR. MEGARO: No.

15 Q Now, 15, what's in that?

16 A It's also a map of cell tower location.

17 Q And particularly what cell tower locations
18 by way of numbers are contained on that map?

19 A 14, 15, 16 and 17.

20 Q And are those based on your mapping all in
21 Brooklyn?

22 A Yes, it is.

23 Q And do those four designations on that map
24 fairly and accurately reflect the way where those
25 geographic areas are by way of the cell site mapping

1 that you did in this case?

2 A Yes, it does.

3 MS. NICOLAZZI: Offer that into
4 evidence, People's 155.

5 THE COURT: Again, any objection?

6 MR. MEGARO: No, Your Honor.

7 THE COURT: All right. Mr. LaRose,
8 both are in evidence.

9 (At this time, two maps are received as
10 People's Exhibits 154 and 155 in evidence.)

11 Q With respect to the larger of the two, can
12 we put that one on the easel?

13 While that's being done, Detective McCusker,
14 looking if you would on the evening of July 8th into
15 the early morning hours of July 9th, what is the map
16 number that those calls were hitting off of which
17 cell tower just the evening of the 8th first into the
18 early morning hours of the 9th?

19 A At 22:54:19 hours, it strikes off of Map
20 number 1.

21 Q But backing up, if you look at all the calls
22 placed on the 8th, starting at about 4:00 in the
23 afternoon going up and through past midnight, are
24 those all hitting off of Map 1 or a few blocks away
25 from that Gateway Boulevard address?

1 A Yes, it is, Map 1.

2 Q Now, what time is it in the early morning
3 hours of July 9th of 2007 that now a different cell
4 tower is first hit off of?

5 A At approximately 649 hours.

6 Q I'm talking to you about July 9th of 2007
7 when it first leaves Map 1?

8 A Okay.

9 Q If you look in the 1:00 to 3:00 range?

10 A 03:00 hours, 03:14:45.

11 Q So, at 3:14:45 is the first time it's a
12 different map from Map 1?

13 A That's correct.

14 Q And that would be to Map 2?

15 A Correct.

16 Q And then you have various maps until what
17 time do you next have a call back at that Map 1 or
18 near that Gateway Boulevard address on that date?

19 A I show to be at 08:21 hours.

20 Q So, then no calls are back at that address
21 until 8:21 that morning on July 9th?

22 A Correct.

23 Q With the Court's permission, if you can step
24 down to the large map here that's in front of the
25 jury.

1 I'm going to ask you in general terms if you
2 can explain to the members of the jury what it is
3 that they are looking at here starting with one?

4 A This would be --

5 THE COURT: Keep your voice up, sir.

6 A -- the first cell tower that was hit by the
7 phone, this will be the second. This is the third
8 all the way up north the Cross Island Parkway to the
9 fourth, the fifth, the sixth, the seventh, the
10 eighth, the ninth, the tenth, the eleventh, the
11 twelfth, thirteenth, fourteenth, fifteenth,
12 sixteenth, seventeenth, eighteenth and nineteenth.

13 Q Based on this, Detective, starting here, you
14 go up to three, that basically goes up the Cross
15 Island and then coming down Grand Central and then
16 various locations along Conduit into and around the
17 Crown Heights vicinity here in Brooklyn?

18 A Yes.

19 Q Okay. Now, if I can just have the second
20 map, the small one. I'm going to ask if we can
21 approach this document. This is what's in evidence
22 as People's 155.

23 What are the members of the jury looking at
24 in this map?

25 A They are looking at towers 14, 15, 16 and

1 17.

2 Q If you can, first of all, on this map is the
3 location of Lefferts Avenue and Kingston Avenue
4 shown, and if you need to come around this way to
5 look, that's fine?

6 A Yes, it is.

7 Q And if you can just mark that by way of an X
8 where Lefferts and Kingston is?

9 A (Witness complied.)

10 Q So, basically, those four cell towers are
11 basically around that area both north, south, east
12 and west?

13 A Correct.

14 Q You can have a seat because I'm going to ask
15 you some questions from the phone records now.

16 Now, Detective McCusker, it's Maps 14, 15,
17 16 and 17 here what time on the morning of July 9th
18 of 2007, do you first see this phone hit at the tower
19 of Map 14?

20 A The cell phone reported to tower number 14
21 at approximately 03:47:31 hours.

22 Q So, about 3:47 a.m. in the morning?

23 A Correct.

24 Q And then is it fair to say based on the
25 phone records that are in evidence for quite some

1 time I'll ask you specifically in a moment then the
2 phone call keeps hitting off those four different
3 towers and only those four different towers?

4 A Yes, it does.

5 Q What time is it that that phone last hits
6 off any one of those towers? I believe it's a Map 17
7 call?

8 A The phone starts to move away from the
9 location at approximately 06:49:22 hours.

10 Q So, it's in that location just in those
11 areas up until the time of 6:49 a.m.?

12 A Yes.

13 MS. NICOLAZZI: I have nothing further.

14 THE COURT: Any cross-examination?

15 MR. MEGARO: No. Thank you.

16 THE COURT: Thank you, very much sir.

17 (Witness excused.)

18 THE COURT: Why don't we take a break.

19 Be back shortly.

20 (Whereupon, the jury panel exited the
21 courtroom.)

22 THE COURT: You have two witnesses
23 remaining?

24 MR. HALE: Right.

25 THE COURT: Okay. About five minutes.

1 (Whereupon, a recess was taken.)

2 THE CLERK: Case on trial. All parties
3 are present.

4 People, you have two witnesses and
5 that's it for you.

6 MR. MEGARO: That's correct, Your
7 Honor.

8 THE COURT: Mr. Megaro, is there
9 anybody other than the defendant that can
10 possibly testify here?

11 MR. MEGARO: I don't anticipate.

12 THE COURT: Once we finish with the two
13 People's witnesses, I will entertain motions. I
14 will allow you then to talk to your client,
15 Captain Magliano and the sergeant here have made
16 sure that the Corrections will make him
17 accessible to you, okay. I will be here in the
18 building so you can talk to him as long as you
19 like, but come 2:00 is the moment of truth,
20 okay.

21 MR. MEGARO: There is a distinct
22 difference between the way your court staff
23 treats me and the way Corrections treats me,
24 Your Honor.

25 THE COURT: Yes, sir, but these guys

1 have been here with me for years. They know
2 what they are doing. They really do. I really
3 mean that.

4 MR. MEGARO: Absolutely.

5 THE COURT OFFICER: Jury entering.

6 (Whereupon, the jury panel entered the
7 courtroom.)

8 THE CLERK: Case on trial. All parties
9 present.

10 Do both sides waive the reading of the
11 roll?

12 MR. MEGARO: Yes.

13 MS. NICOLAZZI: Yes.

14 THE COURT: Jurors, we have at least
15 two more witnesses. One witness I anticipate
16 his testimony will probably be rather long.

17 After that witness's testimony, we will
18 take a break, and then we will have the second
19 witness.

20 I'm not playing musical chairs with
21 you. What's going to happen is you're going to
22 have that one witness. Once that witness
23 completes his or her testimony, you will be
24 taken out and brought back, and we will finish
25 with the second witness.

1 Mr. Hale.

2 MR. HALE: People call Rebecca
3 Mikulasovich.

4 THE COURT OFFICER: Witness entering.

5 THE CLERK: Please raise your right
6 hand.

7 R E B E C C A M I K U L A S O V I C H, called as a
8 witness by the People, having been first
9 duly sworn, was examined and testified as
10 follows:

11 THE CLERK: Thank you. Please be
12 seated.

13 For the record, please state your name.

14 THE WITNESS: Rebecca Mikulasovich,
15 M-i-k-u-s-a-s-o-v-i-c-h.

16 THE COURT: Good morning.

17 THE WITNESS: Good morning.

18 THE COURT: Continue to speak into the
19 microphone.

20 Mr. Hale.

21 MR. HALE: Thank you.

22 DIRECT EXAMINATION BY

23 MR. HALE:

24 Q Ms. Mikulasovich, where are you employed?

25 A I'm currently employed at the Office of the

1 Chief Medical Examiner Department of Forensic
2 Biology.

3 Q What does the Department of Forensic Biology
4 do?

5 A We examine evidence submitted to our lab for
6 the presence of biological fluids and ultimately
7 attempt to generate a DNA profile from those samples.

8 Q Your position with the Forensic Biology Unit
9 is what?

10 A I am currently a criminalist level four.

11 Q And you've been working there for how long?

12 A Approximately five years, started in April
13 2004.

14 Q In general terms, what are the natures of
15 your duties?

16 A As a criminalist level four, I am a
17 supervising criminalist, meaning I supervise the work
18 going on on the various other levels within the lab.

19 Q Do you supervise a particular sub unit
20 within the Forensic Biology Unit?

21 A I am specifically assigned to the high
22 sensitivity DNA lab.

23 Q What is high sensitivity DNA and how does it
24 differ from other types of DNA testing?

25 A We have the high sensitivity lab and we high

1 copy number testing available at our laboratory. The
2 difference between the two is that in the high
3 sensitivity group, we tend to test samples with lower
4 amounts of DNA.

5 The only difference between the two groups
6 is testing that we do the process itself is the same
7 is that we will make more copies of the DNA should we
8 identify it. We will concentrate the samples, and we
9 will also inject more DNA onto the instruments we use
10 to visualize the DNA.

11 Q You're familiar with a Ms. Ahmed, are you
12 not?

13 A Yes, I am.

14 Q How does her particular job function differ
15 from yours?

16 A She is a criminalist level three in the high
17 copy number group. So, she performs and has
18 testified to high copy number cases whereas I am
19 competent to testify in both high sensitivity and
20 high copy number cases.

21 Q What sort of evidence would go to one unit
22 or the other versus the high copy versus the low copy
23 high sensitivity.

24 A This is putting it very generally, but the
25 high copy number group will generally test biological

1 fluid.

2 So, if something if blood saliva or semen is
3 identified on an item, that will typically go to the
4 high copy number group first.

5 If we're looking at biological material,
6 something like skin cells that have eroded onto an
7 item, that's something that will particularly come to
8 the high sensitivity group.

9 Q Now, with regard to a shooting of two New
10 York City police officers which occurred on July 9th
11 of 2007, did you work on testing different items with
12 regard to that case?

13 A Yes, we did.

14 Q And is it fair to say that you worked in
15 conjunction with or supplemental to the unit that
16 Ms. Ahmed was working with with regard to the same
17 pieces of evidence?

18 A That would be correct.

19 Q Ma'am, what is it that allows you -- what
20 sort of training have you had or education have you
21 had that allows you to perform your job function?

22 A I have a bachelors of science in biomedical
23 science from Texas A & M University. I'm currently
24 completing my master's degree in forensic science at
25 Pace University, and on the job we undergo a

1 six-month training program to become what we call
2 reporting analysts meaning that we are capable of
3 interpreting DNA results. Part of that training is
4 actual lab bench work making sure that we're
5 competent to perform the assays that we testify to.
6 Another part of that would be attending lectures in
7 continuing education in all topics that we testify
8 to.

9 Q Does that include competency examinations
10 and/or certifications?

11 A Yes, it does.

12 Q Have you been found to be competent through
13 these examinations that were conducted at the Office
14 of the Chief Medical Examiner?

15 A Yes. We perform a competency test on every
16 assay that we perform.

17 Q Have you ever been called upon to testify
18 before concerning your findings, your analysis of
19 various biological samples at the Office of Chief
20 Medical Examiner?

21 A Yes.

22 Q That would be testifying to DNA, the
23 presence of DNA, and the categorization and matching
24 of DNA?

25 A Correct.

1 Q How many times have you testified before?

2 A Approximately 12 times.

3 Q And what courts?

4 A I've testified in Brooklyn, Bronx,
5 Manhattan, and Staten Island.

6 Q On the occasions when you have testified,
7 have you been found to be an expert in your field
8 forensic biology, I guess specifically DNA typing
9 categorization and matching?

10 A Yes, I have.

11 Q Ever been denied expertise?

12 A No, I haven't.

13 MR. HALE: I would offer the witness as
14 an expert in the field of forensic biology with
15 the DNA extraction type and categorization that
16 she described for the Court.

17 MR. MEGARO: She is an expert, I agree.

18 THE COURT: All right.

19 Again, the witness will be allowed to
20 give an opinion. Her testimony is treated like
21 any other witness's testimony. You can accept
22 it or reject it. The opinion will be based on
23 observable fact or what the lawyer would ask to
24 assume certain facts.

25 Q As you said in July 2007 and thereafter, you

1 were working in conjunction and supplemental to the
2 unit with, Ms. Ahmed analyzing certain evidence
3 relating to the shooting of two New York City police
4 officers that occurred July 9, 2007; is that correct?

5 A Yes.

6 Q And specifically what sort of evidence out
7 of the evidence that your unit that includes the
8 items that were submitted to and testified by Ms.
9 Ahmed, what sort of items were you testing at that
10 time in a general nature?

11 THE COURT: Just a moment. Could we
12 have Ms. Price?

13 Are you ready? Yes. Okay.

14 (Whereupon, Phyllis Price relieved
15 Dianne Adkins-Forte as official court reporter.)

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1 THE COURT: Mr. Hale, I am going to ask you to
2 rephrase.

3 Q With regard to all of the evidence that was received
4 by the forensic biology unit, what general types of evidence
5 was your unit, the one that you supervised, tasked to examine,
6 as opposed to the items that were tasked to be examined by
7 Miss Ahmed?

8 A There were a number of items that initially were
9 assigned to Miss Ahmed to test. After she proceeded with
10 quantifying, or determines how much DNA was there, if samples
11 was insufficient for her type of testing, they would be
12 forwarded to me.

13 There was also a number of items where Miss Ahmed
14 initially examined an item and determined they were eligible
15 for our testing, so those samples were forwarded to us.

16 And there were some samples, evidentiary samples,
17 given to us based on the context of the samples.

18 Q When you testified about samples that Miss Ahmed
19 examined?

20 A For the presence of a biological fluid.

21 In this case we were looking for blood. It was not
22 present, but it could have been eligibility for, or it could
23 have been a source of touch DNA. So, it was forwarded to your
24 group.

25 Q And your group, primarily, you are focusing on touch

1 DNA?

2 A Samples with small amounts of DNA.

3 Q We heard a little bit about biological samples, the
4 obvious ones, blood, semen, saliva.

5 What is it that you are looking for when you are
6 saying a touch sample? What sort of -- how is that to be
7 transferred from a human being?

8 A You want to think of a sample that someone would come
9 in contact with. And for some permanent and leave behind some
10 biological material.

11 This cup would be an example of that. I have now
12 handled this cup, my biological material could be on this cup,
13 it could be swabbed to determine that.

14 Q I think you said something right there, it could be
15 on the cup; would that be correct?

16 A It most likely is. But, there is a number of factors
17 that might influence how much would be there.

18 Q The finding of DNA transferred onto any particular
19 item, is that a hundred percent thing, or a chance thing?

20 A Regarding transference of DNA, or biological matters?

21 Q Say if you picked up the cup. That is a hundred
22 percent your DNA would be there, 50 percent, or just a chance
23 it may be there, it may not be there?

24 A It may be there, may not be there.

25 But, if you are touching something with a bare hand,

1 physiologically, you are leaving a little bit of yourself
2 behind. I would say something is there, it is just a matter of
3 how much is there, and whether we can detect it.

4 Q And, again, the amount of it is probably the chance
5 thing, not whether it is there or not?

6 A Correct.

7 Q Now, as part of the testing, and prior to the
8 sampling that was given to you, had your unit, I guess,
9 through Miss Ahmed, already generated DNA profiles for five
10 known individuals for which you had biological samples?

11 A At some point during the testing, I believe we had
12 certain profiles as well. But she did generate those
13 profiles.

14 Q Let me show you what's been marked as People's
15 exhibit 137 in evidence.

16 Ma'am, you seen this table before, have you not?

17 A Yes, I have.

18 Q And this table reflects the DNA profiles of five
19 known individuals taken from known samples, Dexter Bostic,
20 Robert Ellis, Lee Woods, Officer Russell Timoshenko, and
21 Officer Hermann Yan, correct?

22 A Correct.

23 Q Did you use this table, or the results that made up
24 this table, at some point during your examination, to make
25 comparisons with the results that you found?

1 A Yes, we did.

2 Q Now, during the course of your testing did you, in
3 fact, generate reports and documents, including your notes
4 contemporaneously made at the time of the examination, and the
5 analysis of the material that you examined?

6 A Yes.

7 Q I am going to show you what's been marked People's
8 156 for identification.

9 MR. MEGARO: I have those.

10 Q Have you seen those before?

11 A Do you mind if I open them real fast?

12 Q Be my guest.

13 Q Ma'am, do you recognize those items?

14 A Yes, I do.

15 Q What do you recognize them as?

16 A These are certified copies of the case files
17 generated for, pending our examination of evidence submitted
18 for FB 071409.

19 Q That is the case that involves the shooting of the
20 two New York City Police Officers?

21 A Yes, it is.

22 Q And are those documents, are you required to keep
23 those in the regular course of business, so that there is a
24 record of what was done with regard to your particular case?

25 A Yes, we are.

1 Q And those records are maintained by the Office of
2 Chief Medical Examiner in the regular course of their
3 business?

4 A Yes.

5 MR. HALE: I will offer those as People's 156 in
6 evidence.

7 THE COURT: Any objection?

8 MR. MEGARO: No, your Honor.

9 THE COURT: Marked and received in evidence.

10 (People's 156, marked in evidence.)

11 DNA records

12 Q And, ma'am, I notice you have another copy of a lot
13 of documents up there. Is that the same thing as the evidence
14 which was just submitted?

15 A Yes, it is. These are the original documents.

16 Q Please, if you need to refer to either one during the
17 course of your testimony, please let us know, and go ahead and
18 do that.

19 Ma'am, during the course of your examination, you
20 received a number of items that came from the New York City
21 Police Department; is that correct?

22 A Yes, it is.

23 Q And did you, in fact, examine those items using the
24 low copy high sensitivity method of DNA before you could
25 categorize, or classify the DNA with regard to that evidence?

1 A Yes, we did.

2 Q Now, ma'am, you are familiar with the term single
3 source contributor; are you not?

4 A Yes.

5 Q What is that, generally?

6 A When we mention the term, or phrase single source
7 contributor, means we have tested an item, generated a
8 profile, and that profile is indicative of only one person
9 having contributed to the sample.

10 Q Does that mean, ma'am, that for each of the marker
11 locations that you have here that are listed, it would have
12 the matching quantified number for whatever allele it is under
13 each marker for you to make a single source identification?

14 A Just to rephrase it a little bit.

15 Looking at that profile to determine whether it is
16 single source or not, at any one of those markers, you will
17 have a maximum of two alleles.

18 Q And so, but, you would be looking for a match of
19 those alleles to say this is the single source, this is a
20 person I can identify to it as a single source?

21 A Yes. We would take this known single source profile,
22 and compare it to evidence generated, single source profiles.

23 Q Of the evidence that you examined, and that you
24 analyzed, did you come up with any items that had a single
25 source contributor profile which matched one or more of the

1 individuals that are listed on the table?

2 A Yes.

3 Q Let me start first with Dexter Bostic who is on top
4 of the table right there.

5 What item, or items did you analyze that came back to
6 a single source contribution by Dexter Bostic?

7 THE WITNESS: If I could refer to my case files?

8 THE COURT: Yes, ma'am. By all means, please
9 do.

10 THE WITNESS: Thank you.

11 A I am looking in the evidence file FB 071409, at my
12 report dated December 12, 2007.

13 On the third page we have a number of single source
14 profiles that are consistent with male donor here, who is the
15 leader, to be Dexter Bostic.

16 Q What item, or items were those?

17 A That included swab S11 from the trigger of item J30C.

18 Sample 7D from the Dole juice bottle.

19 Sample 2B from the chicken bones.

20 And swab MG1S1 from what was indicated, frame of gun.

21 Q Let me back up for just a moment now.

22 The swab that you identified as coming from item

23 J30C, a gun, was that a swab -- well, let me ask you this.

24 Was that something that was swabbed at your office?

25 That is, was the actual firearm swabbed at your laboratory, or

1 office? Or, was that a swab that came from the New York City
2 Police Department?

3 A Swab S11 was a swab that was submitted to us from the
4 New York City Police Department.

5 Q So, you did not actually extract it from the firearm?

6 A No.

7 Q How about with regard to the swab from the Dole juice
8 bottle?

9 A Also submitted to us by the New York City Police
10 Department.

11 Q Same thing as MG1S1?

12 A Correct.

13 MR. HALE: And, your Honor, for the record. As
14 per our stipulation yesterday, that is, the swab that was
15 generated by Meredith Gitter, the criminalist, from the
16 frame of item J30C, which was the 45-caliber Llama pistol.

17 MR. MEGARO: Agreed.

18 Q Now, how about with regard to the sample -- you had
19 something with chicken bones; is that correct?

20 A Sample 2B from the chicken bones.

21 Q Was that an examination of the chicken bones and the
22 swab you took, or was that a swab generated by the New York
23 City Police Department?

24 A That was a swab generated by the New York City Police
25 Department.

1 Q So when you are saying where these things came from,
2 this is where it was reported to you, or marked on the
3 packages that it came from, correct?

4 A Correct.

5 Q Now, all of those were single source contributions by
6 Dexter Bostic; is that correct?

7 A Yes.

8 Q Does your office maintain, and are you familiar with
9 a frequency under which various matches, such as the one you
10 just talked about with Dexter Bostic on the single source
11 contribution, would occur in the population?

12 A Yes.

13 Q What is the frequency that that same profile would
14 reoccur within the population for Dexter Bostic?

15 A Reported in my report dated December 12, 2007, we
16 report the statistics for swab S11, having come from the
17 trigger of J30C, we would expect to see that profile in one in
18 greater than one trillion Blacks, one in one greater than with
19 one trillion Caucasians, one in greater than one trillion
20 Hispanics, and one in greater than one trillion Asians.

21 Q Now, ma'am, was there any other single source
22 contribution for the person you have listed second on the
23 table, Robert Ellis?

24 A Robert Ellis was later associated with male donor B.
25 For our testing sample, 2D, which was indicated as having come

1 from the chicken bones, generated a profile that was the same
2 as that of male donor B.

3 Q And, again, this was a swab that was submitted to
4 you, not actually you swabbing the chicken bone?

5 A Correct.

6 Q Under what voucher number was that particular chicken
7 bone, ma'am; do you have that?

8 A Voucher N, as in Nancy, 585649.

9 Q Was this the same voucher number as the chicken bone
10 that had come up with the single source profile for Mr.
11 Bostic?

12 A Yes, it was.

13 Q Were there any other single source profiles from the
14 evidence that you examined, that came back to match Mr. Ellis?

15 A No.

16 Q Ma'am, did you derive, or did you find any other
17 single source contributions on the evidence that you examined,
18 that matched the DNA profile of the third person on the table,
19 Lee Woods?

20 A Lee Woods was later associated with male donor C from
21 our testing sample. 7D from the Dole -- having indicated
22 coming from the Dole juice bottle, generated the same DNA
23 profile of that of donor C.

24 Q What voucher number was that?

25 A N, as in Nancy, 737355.

1 is included as a contributor to that sample.

2 Q When we talk about exclusion, we heard the term the
3 other day called major contributor and cannot be excluded.

4 Can you just tell us, what those terms mean within
5 the idea of analyzing a mixture?

6 A When you refer to a major contributor, you are
7 referring to that DNA profile that contributes the most to the
8 sample.

9 When you are talking about, cannot be excluded, you
10 are talking about having made a comparison between a known
11 sample, and an evidence sample, a mixture, and determining
12 that some of that person, that known sample's DNA alleles are
13 present at enough locations for you not to be able to exclude
14 them.

15 So we call it, cannot be secluded.

16 Q Now, with regard to the two contributions that you
17 talked about having been coming from Mr. Bostic, are those
18 major contributions included as a contributor, or cannot be
19 excluded?

20 A The two that I just covered are included in the
21 mixture.

22 Q Included in the mixture, is that somewhere between
23 the major contributor, and cannot be excluded?

24 A That means, all that person's alleles are present at
25 every location in that mixture.

1 Q But, again, you cannot say whether they are the major
2 contributor from the mixture?

3 A Correct.

4 Q Was there any other items that you analyzed, to which
5 Derrick Bostic was a contributor, in whole or part?

6 THE COURT: Dexter?

7 Q Dexter, my fault.

8 A Male donor A cannot be excluded from the mixtures we
9 collected from swab S12, as having coming from the front strap
10 of J30C, swab S16, having been collected from the screw
11 driver, and swab 5B, having been collected from the zip lock
12 bag.

13 Q There were how many contributors to each of those
14 profiles that you talked about?

15 A Those were mixtures from at least two people.

16 Q And, again, Dexter Bostic could not be excluded from
17 those mixtures?

18 A Correct.

19 Q Were you able to exclude any of the other individuals
20 whose known profiles you had, from contributing to those
21 mixtures?

22 A We were able to exclude Russell Timoshenko, Hermann
23 Yan, and male donors B, C, and D from those samples.

24 Q D the unknown, and B, and C being Mr. Ellis and Mr.
25 Woods?

1 A Correct.

2 Q Was there any other mixture, with regard to Dexter
3 Bostic being a contributor, that there was more than two
4 contributors, identifiably more than two contributors?

5 A On swab 5A, from the seal of zip lock bag, we
6 detected a mixture from at least three people. And male donor
7 A could not be excluded from that mixture.

8 Q Could you, however, exclude the other profiles of the
9 known donors that you had?

10 A Yes.

11 Q That particular zip lock bag, that was under what
12 voucher number; do you have that?

13 A N, as in Nancy, 737356.

14 Q Now, I believe you already talked about the mixture
15 of the chicken bones that included Mr. Ellis, along with Mr.
16 Bostic; is that correct?

17 A Yes.

18 Q Besides that particular mixture, were there any other
19 mixtures that you detected among evidence examined to which
20 Robert Ellis was a contributor?

21 A On swab two, indicated as having been collected from
22 the screw driver handle, we detected a mixture of at least two
23 people, and male donor B could not be excluded as a
24 contributor.

25 Q Could you exclude the other people from the profiles

1 you had?

2 A We could exclude Timoshenko, Yan, and male donors B
3 and C. Male donor A was included in the contribution of that
4 sample.

5 Q Again, there is a mixture of Mr. Ellis and Mr.
6 Bostic; is that correct?

7 A Definitely Mr. Bostic. Mr. Ellis could not be
8 excluded as a contributor.

9 Q What other mixture, to which Mr. Ellis was, or could
10 not be excluded as a contributor?

11 A On swab four, indicated as having been collected from
12 the handle of the plastic bag, we determine that was mixture
13 from at least two people. Male donor B could not be excluded
14 as a contributor to that mixture.

15 Q How about the other individuals whose profiles you
16 had, you were able to choose them?

17 A The other known profiles were excluded from that
18 sample.

19 Q All right now, ma'am, let's talk about Lee Woods,
20 whose profile is up there as male C.

21 Were you able to find any items and categorize those
22 items for DNA to which Lee Woods' profile would be a
23 contributor?

24 A Yes.

25 Q What item, or items were those?

1 A We already discussed the single source item.

2 There was also two items that indicated mixtures of
3 DNA from at least two people. Those items were; swab S1,
4 indicated as having been collected from the back strap of item
5 J30A, and swab S9 from the back strap of item J30C, to which
6 we determine male donor C could be a major contributor.

7 Q Which one was he a major contributor?

8 A Both those samples.

9 Q When you say, a major contributor, tell us what that
10 means again?

11 A The DNA profile that contributes the most to the
12 sample, that we detected.

13 Q Were you able to exclude the other contributors to
14 that DNA, from the other individuals whose profiles you had?

15 A Yes, we were able to exclude all others.

16 Q And both those items came from, or was reported to
17 you as coming from part of a firearm; is that correct?

18 A S1 from the back strap of J30A, and A9 from the back
19 strap of J30C.

20 Q Was there anything else detected, as opposed to a
21 mixture that came from J30A, and identifiable to any person,
22 or persons whose profile you had?

23 A Yes. Swab S4, indicated as having come from the
24 front strap of item J30A, we also detected a mixture of at
25 least two people. Male donor C, and male donor D could not be

1 excluded as contributors to that mixture.

2 Q So then, we are talking about Lee Woods, male donor
3 C, and your unknown contributor, male D; is that correct?

4 A Correct.

5 Q And both of those were -- could not be excluded; is
6 that correct?

7 A Correct.

8 Q Ma'am, were you able to determine any other DNA
9 profiles, either single source or mixtures, from the items
10 that you examined, that came back to and matched, in any
11 fashion, the known profiles of the five individuals who we
12 have on the table?

13 A I believe we covered all of them.

14 Q Thank you, ma'am.

15 MR. HALE: I don't have any further questions.

16 THE COURT: Any cross-examination?

17 MR. MEGARO: Yes, I will be quick.

18 THE COURT: Sure, take your time.

19 CROSS-EXAMINATION

20 BY MR. MEGARO:

21 Q How are you?

22 Now it is afternoon, good afternoon.

23 How do you pronounce your last name?

24 A Mikulasovich.

25 Q Just to recap, very quickly.

1 NYPD took all these swabs, right?

2 A Yes, all the swabs that I have covered today.

3 Q And all of these swabs were submitted to you -- I'm
4 sorry -- let me backtrack a second.

5 You don't know how they were taken, right?

6 A I was not present when they were collected, no.

7 Q So, you don't know where the evidence was when the
8 swabs were taken, or what the condition of that evidence was?

9 A No, that would be in the NYPD notes.

10 Q Now, we talked about -- you talked about male donor
11 D, this unknown profile, this is a sixth person in addition to
12 those?

13 A Correct.

14 Q Let me just make sure. Okay, that is the sixth
15 person.

16 Male donor D's DNA was found on which items again?

17 A Initially on swab S13, indicated as having come from
18 the knife blade of J30D. That was a single source profile
19 where we initially gave it the moniker, male donor D.

20 And there was a mixture of at less two people we
21 detected on swab S4, indicated as having been collected from
22 the front strap of item J30A, from which male donor D could
23 not be excluded.

24 Q And J30A was a firearm, right?

25 A It is indicated as J30A. I couldn't specify what

1 firearm that would be.

2 Q But a firearm, whichever one that is?

3 A Yes.

4 Q Now, you also said Mr. Woods' -- I'm sorry, let me
5 backtrack again.

6 Mr. Ellis' DNA, male donor B, was found on the handle
7 of a plastic bag?

8 A I believe you are referring to swab four from handle
9 of plastic bag.

10 Q And the plastic bag, which one does that refer to?
11 Was it assigned an item, or item number?

12 A What we received in the lab was a swab of that bag.

13 Q So the swab didn't specify which bag it came from, or
14 what bag that number -- what number that bag was assigned?

15 A No, it was indicated as swab. I may actually have
16 that information.

17 So, we are talking about swab four from handle of
18 plastic bag, swab four from handle of plastic bag, K5.

19 Q And do you have the voucher number for that?

20 A That was on voucher N, as in Nancy, 737356.

21 Q And you testified that Mr. Woods' DNA profile was
22 secluded from that particular plastic bag?

23 A Male donor C was excluded. Correct.

24 MR. MEGARO: Thank you very much.

25 Have a nice day.

1 THE COURT: Any further questions?

2 MR. HALE: No thank you, your Honor.

3 THE COURT: Ma'am, you may step down.

4 THE WITNESS: Thank you.

5 (Witness is excused.)

6 THE COURT: Witness then, Miss Nicolazzi?

7 MS. NICOLAZZI: People call Mrs. Tatyana
8 Timoshenko.

9 T A T Y A N A T I M O S H E N K O, called as a witness on
10 behalf of the People, having been first duly sworn, was
11 examined and testified as follows:

12 THE CLERK: For the record, please state your
13 name.

14 THE WITNESS: My name is Tatyana Timoshenko.

15 THE CLERK: Spell your last name, pleas.

16 THE WITNESS: T-I-M-O-S-H-E-N-K-O.

17 THE COURT: You may inquire.

18 MS. NICOLAZZI: Thank you.

19 DIRECT EXAMINATION

20 BY MS. NICOLAZZI:

21 Q Good afternoon, Miss Timoshenko?

22 A Good afternoon.

23 Q I will try to be brief.

24 Are you married, ma'am?

25 A Yes, I am.

1 Q Who is your husband?

2 A My husband, Leonard Timoshenko.

3 Q And do you have any children?

4 A None, not anymore.

5 Q Did you have any children?

6 A I had one child.

7 Q And what was your child's name?

8 A Russell Timoshenko.

9 Q Back in July of 2007, how old was your son?

10 A My son was 23 years old.

11 Q And where are you from, Miss Timoshenko?

12 A We came in '93 from the Republic of Bellarose.

13 Q You came together with your husband, and your son?

14 A Yes, we did.

15 Q What type of work did your son, Russell Timoshenko,
16 do?

17 A He was police officer.

18 Q Back in July of 2007, how long had your son been a
19 New York City police officer?

20 A One year.

21 Q And where did he live in July?

22 A He lived with us, with my husband and me.

23 Q I am going to direct your attention to the date of
24 July 8th of 2007.

25 Did you see your son on that day?

1 A Yes.

2 Q Did you see him before he left for work?

3 A Yes, I did.

4 Q And then, at sometime on July 9th of 2007, did you
5 receive a phone call informing you that something had happened
6 to your son?

7 A Yes, I did.

8 Q And after you received that phone call, where did you
9 go?

10 A We went to the hospital.

11 Q Did you go to --

12 THE COURT: Just a moment. Give her a moment.

13 (Pause in the proceedings.)

14 A We went to hospital, Kings County Hospital.

15 Q And for the next several days, did you, together with
16 your husband and family, did you spend those days at the
17 hospital with your son?

18 A Five days, 24 by seven.

19 Q And were you with your son when he passed away at the
20 hospital on July 14, 2007?

21 A Yes, we were.

22 Q And prior to your testimony here today, sometime
23 before, were you asked to identify a photograph taken at the
24 morgue under medical examiner number K 073286?

25 A Yes, I did. I never forget this picture.

1 Q And that was a photograph of your son?

2 A It was.

3 Q Russell Timoshenko?

4 A It was.

5 MS. NICOLAZZI: I have nothing further, your
6 Honor.

7 THE COURT: Any cross-examination?

8 MR. MEGARO: No, your Honor.

9 THE COURT: All right.

10 Ma'am, you can step down.

11 THE WITNESS: Thank you.

12 (Witness is excused.)

13 THE COURT: Clearly, jurors, it may be difficult
14 for this last witness to testify without being emotional.
15 But please, make your determination as to the guilt or
16 non-guilt of the defendant based solely on the evidence. P
17 proceed.

18 We are going to break for lunch now.

19 Ask you, please be back in the jury room as close to
20 2:00 as possible.

21 Keep my warnings in mind. See you this afternoon.

22 (Whereupon, the jury exits the courtroom.)

23 THE COURT: Miss Nicolazzi, at this point you
24 are going to rest. But, I will have you rest in front of
25 jury this afternoon.

1 Mr. Megaro, any motions you want to address at this
2 point, since you know the People are not calling any
3 further witnesses at this point?

4 MR. MEGARO: Yes, your Honor.

5 At the close of the People's case, I am moving to
6 dismiss at least five counts that are submitted, right?

7 THE COURT: Yes, sir. The aggravated murder of
8 Timoshenko, and the attempted aggravated murder of Yan.
9 And also, the three weapons counts.

10 MR. MEGARO: People's theory of the case is that
11 my client was the driver, not a shooter. And, therefore,
12 to be found guilty of acting in concert, the State must
13 prove that he aided, importuned, etcetera, according to
14 the language of the statute and jury instructions.

15 There has been no evidence, prior to the shooting, or
16 during the shooting itself, that my client aided,
17 commanded, importuned -- which I had to look up and find
18 out what that word meant, but it basically means beg or
19 nag -- or otherwise intentionally aided Bostic and Ellis
20 in shooting these two police officers.

21 There is no evidence that Mr. Woods acted with the
22 same state of mind. There is no evidence that he shared
23 that intent. And I think the -- I am asking the Court to
24 address the evidence immediately prior, during, and
25 immediately after the shooting.

1 Obviously, there is no evidence that my client was
2 the shooter. The evidence merely shows his presence. And
3 in this particular case, flight is not responsive because,
4 his flight was occasioned by the return of fire by Officer
5 Yan, which any person would have done under those
6 circumstances.

7 In addition, I am asking the Court to dismiss the
8 firearm counts. I believe the People are relying on a
9 theory of actual possession.

10 THE COURT: Constructive?

11 MR. MEGARO: Actual, and constructive.

12 THE COURT: And also, the automobile
13 presumption?

14 MR. MEGARO: I think the evidence negates those
15 presumptions, and for the following reasons.

16 Ellis is accused of shooting Officer Yan with the
17 high point .9mm therefore, he possessed that firearm.
18 Mr. Woods is not accused of that.

19 Bostic was convicted of shooting Officer Timoshenko
20 with the 45-caliber. Therefore, he possessed that
21 firearm.

22 The evidence as presented by the People indicates,
23 the Tech pistol belonging to, and in the possession of
24 Bostic and Ellis, that was direct evidence tying that
25 firearm was found in their apartment, not Mr. Woods'.

1 So, therefore, I would ask the Court to dismiss all
2 these counts for People's failure to make a prima facia
3 case.

4 THE COURT: These are two arguments.

5 One, the prima facia, he is saying you have not made
6 out also.

7 But please respond.

8 MS. NICOLAZZI: I believe the evidence makes out
9 each and every count that we have asked the Court to
10 submit to the jury, under the acting in concert theory,
11 that the defendant, under the law, is responsible, not
12 only for his own actions, but that of the two partners he
13 worked with. In this case, Bostic and Ellis.

14 So, based on all the evidence that has come before
15 the jury, there is a prima facia case for those counts to
16 go.

17 And certainly, under the weapons counts, we are going
18 under the theory of actual possession, constructive
19 possession, and automobile presumption under any and all
20 those theories, there is evidence to go to the jury.

21 THE COURT: The Court agrees, Mr. Megaro. Your
22 motion to the prima facia case is denied. People have
23 made out a prima facia case with respect to the counts we
24 have discussed.

25 So, it is denied.

1 Now, Mr. Woods, this afternoon when we come back,
2 what is going to happen is this.

3 The People are going to rest. And then I am going to
4 ask your lawyer whether he wishes to put on a case. And he
5 will tell me, at that point, whether he will or not.

6 Now I know you gave -- your lawyer gave me a witness
7 list. But, I gleaned from him this morning, apparently
8 none of those people will be called. And I think Margraf
9 was on that list, and he has, essentially, been examined.

10 So the bottom line is, when you come back, the
11 question is, whether you want to testify or not?

12 You and your lawyer, over lunch, are going to discuss
13 this. He is going to recommend a course of conduct for
14 you. That is all he can do is recommend. Ultimately,
15 whether you testify or not -- and you are not required
16 to -- is your call.

17 So, if your lawyer says he thinks you shouldn't do
18 it, you can still testify. But, you are not required to.

19 You understand that?

20 If he recommends you testify, and you don't want to
21 testify, that's your call again.

22 If you do not testify, there is an instruction that I
23 will give this jury. They are to draw no inference from
24 your failure to testify. And, certainly, if you do
25 testify, the same instructions I gave before about your

1 testimony to be treated like any other witness, will be
2 given.

3 So, between now and this afternoon, let your lawyer.
4 know what you want to do. And when I ask him whether the
5 Defense wishes to call any witnesses, he will let me know.
6 If you want to testify you can testify.

7 You understood everything that I have said?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: See you this afternoon.

10 Now, Captain Magliano and Chris, you spoke to
11 Corrections downstairs?

12 CAPTAIN: Yes.

13 THE COURT: The Sergeant is going to walk down
14 with you. He is going to remind them they are to make
15 access, allow you access to your lawyer. And he will tell
16 me if it is not happening.

17 Thank you very much.

18 MR. MEGARO: Thank you.

19 THE COURT: Folks, two p.m.

20 (Whereupon, a luncheon recess was held.)
21
22
23
24
25

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

2 THE CLERK: Case on trial. All parties are
3 present.

4 THE COURT: All right, Mr. Megaro. Have you and
5 your client consulted?

6 MR. MEGARO: Yes, we have, your Honor.

7 THE COURT: Mr. Woods, what is your pleasure?
8 Do you wish to testify, or you do not wish to testify?

9 THE DEFENDANT: Well, I wanted to wait to see if
10 the DA rested their case.

11 THE COURT: In a moment they are going to rest
12 their case.

13 THE DEFENDANT: Well --

14 THE COURT: Mr. Woods, this is what is going to
15 happen.

16 Jury is going to come in. I am going to ask Miss
17 Nicolazzi, or Mr. Hale if they have any further evidence.
18 They are going to say they rest.

19 We have already made a -- your lawyer has already
20 made a motion to dismiss on the grounds that they have not
21 made out a prima facia case. I denied that.

22 THE DEFENDANT: I know that.

23 THE COURT: The next question becomes now, at
24 this point, if they have no other witnesses, whether the
25 Defense puts a case in, because I will be asking your

1 lawyer that. And he will tell me, at that point, whether
2 you want to testify, or whether he is calling any
3 witnesses.

4 THE DEFENDANT: Yes.

5 THE COURT: That's basically where we are.

6 But, I am not going to take the jury in and out to do
7 that.

8 THE DEFENDANT: All right. At that time I will
9 let you know.

10 THE COURT: Okay. Very well, sir.

11 Let's get this jury in, please.

12 THE COURT: Well, let me ask you this. Let's
13 assume, for the moment, Mr. Woods decides not to
14 testify -- harking back to the days when I was in
15 practice, and Judge Brome was the judge -- could you sum
16 up in an hour or tomorrow?

17 MS. NICOLAZZI: Tomorrow, Judge.

18 MR. MEGARO: Tomorrow.

19 THE COURT: All right. We will do it tomorrow.

20 But 9:30.

21 MS. NICOLAZZI: That's fine.

22 THE COURT: All right. Okay.

23 COURT OFFICER: Ready for the jury?

24 THE COURT: Bring them right in, please.

25 COURT OFFICER: Jury entering.

1 (Whereupon, the jury enters the courtroom, and
2 is seated in the jury box.)

3 THE CLERK: Case on trial. All parties are
4 present.

5 Both sides waive a reading of the roll?

6 MR. MEGARO: Yes.

7 MS. NICOLAZZI: Yes.

8 THE COURT: Good afternoon, folks.

9 JURORS: Good afternoon, your Honor.

10 THE COURT: I know we are a little late, but
11 again, I am sorry.

12 Lunch okay?

13 JURORS: Yup.

14 THE COURT: Tomorrow I am sure Mr. LaRose is
15 going to spring for lunch. So don't make any lunch plans.

16 People, any further witnesses?

17 MS. NICOLAZZI: No, your Honor. At this time
18 People rest our direct case.

19 THE COURT: Mr. Megaro, does the Defense wish to
20 put on a case?

21 MR. MEGARO: Your Honor, at this time the
22 Defense rests.

23 Thank you, ladies and gentlemen.

24 THE COURT: With that, that concludes the case.
25 Tomorrow it will be given to you. I would like to do it

1 today, but we are not prepared to do it, okay.

2 Now, it's imperative that the warnings I gave you
3 really are complied with, okay?

4 You can't form, or express any opinion as to the
5 guilt or non guilt of the defendant until you heard all
6 the evidence, the lawyers have summed up, I have
7 instructed you on the law, and you go into the jury room
8 to begin jury deliberations. Then, at that point, you can
9 voice any opinion you might have.

10 Please do not discuss this case with your fellow
11 jurors. Do not permit anyone to talk with you, or in your
12 presence about this case.

13 Do not visit any location mentioned.

14 It is important also that you not read, view, or
15 watch any news coverage of the case. I am sure there may
16 be some, but don't do it. It must be decided on the basis
17 of the evidence, and not on the basis of what's in the
18 newspaper, or on television.

19 Now, again, you are to report any attempt by anyone
20 to approach you, or your fellow jurors.

21 And once the case is over with, you can write the
22 novel. But before hand, you can't discuss, or accept any
23 compensation for supplying information about this case.
24 Once it is over you can do what you want to do with it.

25 With that, have a pleasant day. Please be in the jury

1 room tomorrow morning 9:30.

2 COURT OFFICER: Jurors follow me.

3 (Jury exits the courtroom.)

4 THE COURT: All right. At the end of the entire
5 case, motions, Mr. Megaro?

6 MR. MEGARO: Yes, your Honor.

7 I incorporated the same motion I made earlier for the
8 same reasons, nunc pro tunc, as if it was made again here.

9 THE COURT: Miss Nicolazzi, anything you want to
10 say?

11 MS. NICOLAZZI: No. I rely on the record.

12 THE COURT: The Court is satisfied there is
13 legally sufficient evidence to submit the case to the
14 jury.

15 Defense motion, at this point, is denied.

16 Let's see if we can do a charge conference.

17 Just as last time, the Court will make a pre-
18 summation, or give pre-summation instructions. I will
19 explain to the jury the lawyers have been given an
20 opportunity, at this point, to review and summarize the
21 evidence as they see it. Of course, it is ultimately a
22 jury question as to what facts they will accept in the
23 end.

24 Then there will be a post-summation instruction about
25 following the law. And the specific general principles

1 will include; the indictment is not evidence.

2 There will be a statement about the presumption of
3 innocence. I will indicate to this jury, they are to make
4 the factual determination based solely on the evidence.

5 I will talk about testimony, direct and cross.

6 Exhibits admitted. Stipulations being evidence.
7 Statements which are not evidence. Testimony which was
8 stricken, or to which an objection was sustained.
9 Exhibits that were just marked and not received in
10 evidence.

11 And I will also indicate, they are not to speculate.

12 There will be a statement on questions of rulings of
13 law. They must follow the Court's directions made upon
14 these rulings.

15 You will recall, during the course of the trial, the
16 Court made statements about the video animation, how it
17 was not evidence, but illustrative of the witness'
18 testimony.

19 There was a statement about the x-rays.

20 Also, during the testimony of Yero and Margraf, they
21 related the substance of certain interviews conducted by
22 them leading up to the defendant's arrest. I believe at
23 the time that this came into evidence, I indicated it was
24 offered for a limited purpose. Not for the truth of what
25 was said, but to explain the police conduct following what

1 was said.. And that's how I will tell the jurors they are
2 to consider that.

3 And I think that relates to the conversation he had
4 with Bostic's brother. Also, Margraf had conversations
5 with several women who knew the defendant, and may have
6 described themselves as girlfriends. I won't summarize,
7 but indicate those kinds of things were allowed for the
8 purpose of explaining the police action leading up to the
9 arrest of the defendant.

10 Credibility, how they should evaluate testimony. The
11 same tests they use in their daily dealings are tests they
12 should use here. .

13 I will give them some suggestions.

14 The personal history of a witness, if any is in
15 evidence.

16 The interest, or lack of interest.

17 Any motive.

18 The age, appearance, manner in which the witness gave
19 his or her testimony.

20 The opportunity the witness had to observe, and the
21 facts about which he or she is testifying. The ability to
22 recall those facts.

23 Whether the witness made statements at trial that
24 were inconsistent with each other. Whether the witness
25 said something different at an earlier time. And that's

1 only used to evaluate the truthfulness and accuracy of the
2 testimony. It is not evidence in chief.

3 And, any other personal everyday tests for truth, or
4 falsity they find reliable.

5 I will indicate how they are to resolve conflicts in
6 the evidence, or in the testimony, if there are conflicts.

7 Also, there will be a statement about, if they find
8 that a witness has testified falsely as to any --
9 intentionally, as to one material fact, they could
10 disregard the witness' testimony in its entirety. Or, they
11 may disregard so much of it as they find to be untruthful,
12 and accept so much that they find to be truthfully given.

13 There will be a statement about police testimony. It
14 is to be treated the same as any other witness.

15 Witness preparation, or witness pre-trial
16 preparation. The law does not prohibit it.

17 The statement with respect to the defendant not
18 testifying is as follows:

19 Defendant has an absolute right not to testify. The
20 fact that Mr. Woods did not testify must not be considered
21 by you in any way, or even discussed in your
22 deliberations. I remind you, it is up to the People to
23 prove the defendant not guilty beyond a reasonable
24 doubt -- it is up to the People to prove defendant is
25 guilty beyond a reasonable doubt. It is not up to the

1 defendant to prove he is not guilty.

2 Expert testimony. It is pretty consistent with what I
3 have said. Ultimately, it is a question of fact for the
4 jury to determine whether they accept it, or reject it,
5 given the witness' education, experience, and explanation
6 for the opinions, and all the other evidence in the case.

7 Sympathy, punishment being matters they are not to
8 consider in their deliberations.

9 Proof beyond a reasonable doubt. It's pretty
10 consistent with the CJI. It indicates, that no conviction
11 of an offense by verdict is valid unless based upon trial
12 evidence which is legally sufficient, in that it
13 establishes, beyond a reasonable doubt, every element of
14 each offense, and the defendant's commission thereof.

15 Then I go on to indicate, what does our law mean when
16 it requires proof of guilt beyond a reasonable doubt? The
17 term proof beyond a reasonable doubt tells you how
18 convincing the evidence of guilt must be to permit a
19 verdict of guilty. It is not proof beyond all possible
20 doubt. People are not required to prove the defendant's
21 guilt beyond all possible doubt, and it is not sufficient
22 to prove the defendant probably guilty. It is proof beyond
23 a reasonable doubt.

24 I will go on to define reasonable doubt as an honest
25 doubt of a defendant's guilt for which a reason exists

1 based upon the nature and quality of the evidence. It is
2 an actual doubt, not an imaginary doubt. It is a doubt
3 that a reasonable person acting in a matter of this
4 importance would be likely to entertain because of the
5 evidence that was presented or because of the lack of
6 convincing evidence.

7 Then I will go on to indicate, that in determining
8 whether or not the People have established the defendant's
9 guilt beyond a reasonable doubt, they should be guided
10 solely by a full and fair evaluation of the evidence. And
11 after carefully evaluating the evidence, each juror must
12 decide, whether or not, the evidence convinces him or her
13 of the defendant's guilt beyond a reasonable doubt.

14 In terms of the charges, Aggravated Murder in the
15 First Degree involving Russell Timoshenko. Included in
16 there, not only is the charge definitions, but also the
17 acting in concert concept. And it reads, in pertinent
18 part, like this:

19 This means, when two or more people are acting
20 together to commit a crime, such as aggravated murder, and
21 each does an act, or acts that tends to accomplish their
22 common criminal purpose, all are equally guilty of the
23 crime. Each of the participants is an accomplice of the
24 other, and a principal in the crime, whether he takes a
25 major or minor part in the commission of the crime.

1 To be criminally liable as a participant in a crime,
2 a defendant must be more than simply present at the scene.
3 And mere association with another person whose conduct
4 constitutes criminal activity does not, in itself, make an
5 individual an accomplice to a crime. He must willfully
6 associate himself, in some way, with the criminal venture,
7 assist, or willfully participate in the criminal venture,
8 and wilfully take some action to help make the venture
9 succeed.

10 A defendant can be guilty of the crime of aggravated
11 murder based upon his own act, or the acts of someone
12 else.

13 If the People establish, beyond a reasonable doubt,
14 that the defendant had the intent to cause the death of
15 Russell Timoshenko, and acting with that intent, he
16 solicited, commanded, or did something else to
17 intentionally aid someone else to cause the death of
18 Russell Timoshenko.

19 Again, if proven, beyond a reasonable doubt, that the
20 defendant is criminally liable for the conduct of another,
21 the extent, or the degree of the defendant's participation
22 in the crime does not matter. A defendant proven, beyond a
23 reasonable doubt, to be criminally liable for the conduct
24 of another in the commission of a crime is as guilty of
25 the crime as if he, the defendant, personally had

1 committed every act constituting the crime.

2 I will also conclude, as you know the People contend
3 the defendant, Lee Woods, acting in concert with Dexter
4 Bostic, and Robert Ellis who are not here on trial. You
5 must not speculate on the present status of Mr. Bostic, or
6 Mr. Ellis. You must not draw any inference from their
7 absence. And, you must not allow their absence to
8 influence your verdict. You are here to determine whether
9 the People have proven, beyond a reasonable doubt, that
10 the defendant, Lee Woods, here on trial is guilty of a
11 charged crime.

12 Then I will go on to give the elements.

13 The second count is going to be Attempted Aggravated
14 Murder, it applies to Mr. Yan -- Police Officer --
15 Detective Yan, now.

16 Essentially, it is the completed crime with the added
17 element of the attempt aspect. And the attempt aspect will
18 be read as follows:

19 A person is guilty of attempting to commit a crime,
20 in this case aggravated murder, when, with intent to
21 commit that crime, he engages in conduct which tends to
22 effect the commission of such crime.

23 Now, the meaning of this statute, as it applies to
24 this case is that, if a person intends to commit
25 aggravated murder, that is, his conscious objective is to

1 commit aggravated murder, and acting with such intent he
2 engages in conduct which tends to effect the commission of
3 the murder, he has then committed and may be found guilty
4 of an attempt to commit aggravated murder even though the
5 murder was not completed or accomplished.

6 To constitute an attempt to commit a crime, more is
7 needed than a mere design or intention to commit it. An
8 overt act, beyond mere preparation, in furtherance of that
9 design, promotive thereof is necessary. Positive steps
10 beyond mere preparation must be made. The overt act must
11 come very near, or within dangerous proximity to the
12 accomplishment of the intended crime.

13 It is immaterial that the murder was not completed by
14 reason of some unforeseen obstacle or because of an
15 ineffectual overt act which prevented the actor from
16 achieving his goal.

17 The law requires that there be conduct which tends to
18 effect the commission of the crime contemplated. The act
19 need not be the final one towards the commission of the
20 offense, but it must carry the project forward within
21 dangerous proximity to the criminal end sought to be
22 attained.

23 The implied conduct must be related to and directed
24 towards the accomplishment of the murder, conduct which
25 goes beyond mere preparation and planning, conduct so

1 related to the commission of the murder that, in all
2 reasonable probability, the murder would have been
3 committed, but for some interference or intervention.

4 Therefore, you must determine whether the prosecution
5 has convinced you, beyond a reasonable doubt, that the
6 defendant intended to cause the death of Hermann Yan.
7 And, at the time and place in question, that he engaged in
8 conduct which tended to effect, that is, to bring about
9 the death of Hermann Yan.

10 Then I will have the acting in concert component. It
11 is pretty much the same as the other.

12 And following that, it will -- I will give the
13 elements that the People must prove.

14 With respect to the aggravated murder, the elements
15 are as follows -- so you have some idea, as to Timoshenko.

16 In order for you to find the defendant guilty of this
17 crime, the People are required to prove from all the
18 evidence in the case, beyond a reasonable doubt, each of
19 the following five elements:

20 One, that on July 9, 2007, County of Kings, the
21 defendant personally, or by acting in concert with another
22 person, caused the death of Russell Timoshenko.

23 Two, the defendant did so with intent to cause the
24 death of Russell Timoshenko.

25 Three, at the time of the killing, Russell Timoshenko

1 was a police officer engaged in the course of performing
2 his official duties.

3 Four, at the time of the killing, the defendant knew,
4 or reasonably should have known that Russell Timoshenko
5 was a police officer.

6 Five, that the defendant was more than 18 years old
7 at the time of the commission of the crime.

8 With respect to the attempt, the elements are the
9 same. It is just the intent component is added in.

10 In order for you to find the defendant guilty of this
11 crime, the People are required to prove from all the
12 evidence in the case, beyond a reasonable doubt, each of
13 the following five elements:

14 One, that on July 9, 2007, in the County of Kings,
15 the defendant personally, or by acting in concert with
16 another person, attempted to cause the death of Hermann
17 Yan.

18 Two, the defendant did so with intent to cause the
19 death of Hermann Yan.

20 Three, that at the time of the attempted killing,
21 Hermann Yan was a police officer engaged in the course of
22 performing his official duties.

23 Four, at the time of the attempted killing the
24 defendant knew, or reasonably should have known that
25 Hermann Yan was a police officer.

1 Five, that the defendant was more than 18 years old
2 at the time of the commission of the crime.

3 Now, with respect to the intent element in
4 Timoshenko's case, it is rather full. I start out by
5 indicating, intent means conscious objective or purpose.
6 Thus, a person intends to cause the death of another
7 person when, his conscious objective or purpose is to
8 cause the death of that person.

9 Premeditation, or advanced planning is not a
10 prerequisite in determining intent, nor is it necessary
11 for the People to prove that the intent to kill was
12 present in the defendant's mind for any particular period
13 of time. Intent can be formed, and need only exist at the
14 very moment the defendant acted, or engaged in the
15 conduct.

16 Then I will go on to explain how they can determine
17 intent. To make this determination they must decide if
18 the required intent can be informed, beyond a reasonable
19 doubt, from the proven facts.

20 In doing so they may consider the person's conduct,
21 and all of the circumstances surrounding that conduct
22 including, but not limited to, what, if anything, did the
23 person do or say? What results, if any, followed the
24 person's conduct. And, was the result the natural, and
25 necessary, and probable consequences of that conduct?

1 And I will conclude, therefore, in this case, from
2 the facts you find to have been proven, decide whether or
3 not you can infer, beyond a reasonable doubt, that the
4 defendant had the intent required for the commission of
5 the crime.

6 So, it is a full language of intent, just like we did
7 the last time.

8 With respect to the weapons counts. What we are
9 talking about here is Criminal Possession of a Weapon
10 Second Degree, outside home or place of business. The
11 count is essentially the same as to all three. We are
12 talking about the 45, we are talking about the .9mm high
13 point, and also the Intra Tech.

14 But, essentially, I will define firearm, loaded
15 firearm, possess. I will give the added definition of
16 constructive possession. Person can have -- well the law
17 says, that you can possess an item in two ways. You can
18 have physical possession of it by holding it in your
19 hands, or carrying it on your person, or body.

20 And second, constructive possession, and I will go on
21 to define that. And, specifically, what I am going -- just
22 like I did at the last trial -- the law recognizes it is a
23 possibility that two or more individuals can jointly have
24 property in their constructive possession. Two or more
25 persons have property in their joint constructive

1 possession when, they each exercise dominion or control
2 over the property by having sufficient level of control
3 over the area which the property is found, such as to give
4 each of them the ability to use, or dispose of the
5 property.

6 I also will give the automobile presumption. And it
7 goes as follows:

8 Under our law, the presence in an automobile of any
9 firearm is presumptive evidence of its possession by all
10 persons occupying such automobile at the time the weapon
11 was found.

12 What this means is, if the People have proven beyond
13 a reasonable doubt that any firearm was present in the
14 automobile, and the defendant was occupying such
15 automobile at the time such firearm was found, then you
16 may, but you are not required, to infer from those facts
17 that the defendant possessed the firearm.

18 I will go on to define knowing. I will also add the
19 acting in concert component. And in the end the
20 charges -- the elements with respect to all three counts
21 will read as follows:

22 The People are required to prove four elements.

23 That on or about July 9, 2007, in the County of
24 Kings, the defendant personally, or by acting in concert
25 with another person, possessed a firearm.

1 Two, that the defendant did so knowingly.

2 Three, that the firearm was loaded and operable.

3 Four, that the defendant possessed such firearm in a
4 place that was not the defendant's home or place of
5 business.

6 Now, that is it in terms of the charge. You want to
7 be heard?

8 MR. MEGARO: Judge, just with respect to the
9 auto presumption. I think that was one of the points I
10 raised, but the auto presumption applies to a firearm
11 found in an automobile. These firearms were not found in
12 an automobile, but for the fact they were taken out.

13 I am satisfied giving it that way, but for the fact
14 that they were moved, they would have been found.

15 THE COURT: Okay.

16 MR. MEGARO: Other than that, no, nothing else.

17 THE COURT: Miss Nicolazzi?

18 MS. NICOLAZZI: Nothing, your Honor.

19 THE COURT: How long do you think, in the
20 morning, you will be, Mr. Megaro?

21 MR. MEGARO: 45 minutes or less.

22 MS. NICOLAZZI: About an hour.

23 THE COURT: Okay.

24 Hopefully, if everybody shows up 9:30, we can get
25 started. We are going to do a full day, but if it is

1 approaching six, I am inclined to let them go at 6:00,
2 because it would have been a long day. Because they will
3 hear two summations, and my charge on the law, okay? And
4 I think about six they may be drained.

5 MR. MEGARO: That's fine.

6 MR. HALE: Okay.

7 THE COURT: Friday we are going to be in
8 session.

9 Now, what I need to know from you, he can let me know
10 once we have done this. Once I charge the jury, will he
11 consent to the substitution of an alternate?

12 You don't have to tell me now, but tomorrow. He will
13 be asked again, by Mr. LaRose, or myself -- Mr. LaRose
14 will remind me, so he needsto let us know.

15 I believe one of the jurors may not be -- one
16 alternate; is that correct?

17 COURT OFFICER: Three.

18 THE COURT: I will bring her in in the morning,
19 and let you talk to her. She is a third alternate. And,
20 at this point, she has some home care issues she needs o
21 deal with.

22 But if you are telling me you will not consent to the
23 substitution of the alternates, I will let them all go.

24 MR. MEGARO: I think I discussed this with him
25 already. And in light of the last trial, he will not

1 consent to any alternates.

2 THE COURT: I understand.

3 With that then, folks, I will see you in the morning,
4 9:30.

5 Sleep well.

6 (Whereupon, the trial proceedings were adjourned
7 until March 12, 2009.)

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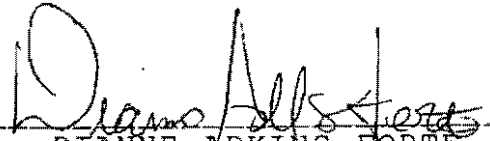
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IT IS HEREBY CERTIFIED THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS.



DIANNE ADKINS-FORTE, RPR
Official Court Reporter



PHYLLIS PRICE
Official Court Reporters

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM: PART: 37

3 -----X

4 PEOPLE OF THE STATE OF NEW YORK, : Index
: No. 6797/07

5 -against- :

6 LEE WOODS, ..:

7
8 Defendant. :

9 -----X

10 320 Jay Street
11 Brooklyn, New York
12 March 12, 2009

13 B E F O R E:
14 HONORABLE PLUMMER LOTT
15 Supreme Court Justice

16 A P P E A R A N C E S:

17 (As previously mentioned.)

18 PHYLLIS PRICE
19 OFFICIAL COURT REPORTER

20 * * * * *

21 THE CLERK: Case on trial. All parties are
22 present.

23 THE COURT: Counsels, have you seen the verdict
24 sheet?

25 MR. MEGARO: Yes.

MS. NICOLAZZI: Yes.

THE COURT: I would ask you to review it and
then initial it. It contains the five counts we discussed

1 since the prima facia case. Aggravated murder as to
2 Timoshenko, Attempted Aggravated Murder as to Yan,
3 Criminal Possession of a Weapon in the Second Degree,
4 outside the home or place of business. Counts three, four,
5 and five. They will render a verdict on each and every
6 count.

7 Once you look at it, and satisfy yourself, give it
8 back to Mr. LaRose.

9 MR. MEGARO: I have looked at it, your Honor.

10 THE COURT: Is there anything else either side
11 wants to discuss in terms of the charges?

12 MS. NICOLAZZI: No.

13 MR. MEGARO: Judge, other than the fact that --
14 I guess we will deal with that after the charge -- but I
15 would object to the submission of the auto presumption. My
16 reading of the law was that the auto presumption applies
17 to firearms found in a car, and occupants of the car, or
18 in the immediate vicinity. Meaning, the case law that I
19 reviewed is, underneath the car, or immediately adjacent
20 to the car.

21 We can address that again.

22 THE COURT: The thrust of the People's case is,
23 that these guns were possessed at the time that both
24 officers were shot. That's what we are talking about, not
25 subsequent.

1 So, I am satisfied that the presumption should apply
2 in that instance. The whole thrust of the case is, not
3 that they possessed these guns sometime later. If you
4 look at the charge, it is acting in concert to possess at
5 the time that Timoshenko and Yan were shot. And, clearly,
6 if you look at the evidence, it is established there were
7 three guns in the car with the defendants. But for them
8 removing it, they would have been found.

9 MR. MEGARO: If you remove it?

10 THE COURT: Okay. All right.

11 Anything further?

12 MR. MEGARO: Nothing further at this time.

13 THE COURT: All right.

14 COURT OFFICER: Ready for the jury, your Honor?

15 THE COURT: Bring them right in, please.

16 COURT OFFICER: Jury entering.

17 (Whereupon, the jury enters the courtroom, and
18 is seated in the jury box.)

19 THE CLERK: Case on trial. All parties present.

20 Both sides waive a reading of the roll of the jury?

21 MR. MEGARO: Yes.

22 MS. NICOLAZZI: Yes.

23 THE COURT: Folks, good morning.

24 JURORS: Good morning.

25 THE COURT: I am sorry we are unable to control

1 the temperature in here. I know it may be cold.

2 Both sides rest?

3 MR. MEGARO: Yes.

4 MS. NICOLAZZI: Yes.

5 THE COURT: Members of the jury, you have heard
6 and received all of the evidence that is to be presented
7 in this case. The next step is for counsel to give you
8 their closing arguments. Remember, nothing the lawyers say
9 at any time is evidence. So nothing the lawyers say in
10 their summation is evidence.

11 Even though the arguments they are going to make to
12 you do not constitute evidence, you should consider them
13 very carefully. In their arguments counsel may draw your
14 attention to the evidence which they consider to be
15 material, and may ask you to draw certain inferences from
16 that evidence.

17 Now, if you find the evidence as summed up and
18 analyzed by a lawyer is accurate, and if you find the
19 inferences and conclusions you are asked to draw from the
20 evidence reasonable, logical, and consistent with the
21 evidence, then you may adopt such inferences and
22 conclusions.

23 Also, if a lawyer asserts a fact, something that is
24 not based on the evidence, disregard it.

25 Now bare in mind jurors the following. You are the

1 finder of facts. It is for you, and you alone to
2 determine the facts from the evidence which you find to be
3 truthful and accurate. Thus, whatever the lawyers say, or
4 however they may say it, you are not bound by their
5 recollection of the evidence. It is your recollection,
6 understanding, evaluation of the evidence that controls,
7 regardless of what the lawyers say, or will say about the
8 evidence.

9 Now, if during deliberations you need your
10 recollection with respect to the evidence refreshed, you
11 may have all, or any portion of the evidence read back to
12 you.

13 Now, the lawyers may also call to your attention
14 certain principles during their argument. Please
15 understand that both sides have reviewed the instructions
16 on the law that I will give you following the summations,
17 and they are permitted to refer to those instructions
18 during their summations. However, even though the lawyers
19 may refer to portions of my charge, please remember that I
20 am responsible for setting forth the law, not the lawyers.
21 So, you must apply the law which I instruct you, and only
22 that law to the facts as you find them.

23 Now, if during summations I sustain an objection to a
24 comment of a lawyer, the comment is stricken from the
25 record, must be disregarded as if it was never said. If I

1 overrule the objection, it will stand. Now, whether I
2 sustain or overrule an objection, my ruling indicates only
3 that the comment does, or does not violate one of the
4 rules set down for lawyers to follow during summations.
5 It is not an indication that I have any opinion about what
6 was said, or about the facts of the case, or whether the
7 defendant is guilty or not guilty, I have no such opinion.

8 Remember now, under our law you are the sole judges
9 of what, if any, facts were proven, whether the defendant
10 is guilty or not guilty.

11 With that, we now move to the next phase, which is a
12 closing statement by Defense.

13 MR. MEGARO: Thank you.

14 Good morning, ladies and gentlemen.

15 JURORS: Good morning.

16 During this case several pieces of evidence were
17 introduced here. A lot of pieces of evidence introduced
18 by the District Attorney were reproductions, reenactments,
19 not the original evidence. The crime scene photos, the
20 missing pieces of evidence, the 3D animation, this
21 fingerprint blowup, that power point slide show we saw
22 this past Tuesday, these are all recreations, not the
23 original evidence, but something that has been put
24 together, something that has been magnified, something
25 that has been altered from its original state, changed,

1 manipulated, something that is not the real thing, but a
2 glossed over reproduction, that is exactly what the entire
3 case is, something that has been put together,
4 manipulated, changed, altered, and in some cases,
5 completely fake, and fabricated. And just like these
6 pieces of evidence, just like that 3D animation, just like
7 those photographs by Detective Newman, by the time this
8 case makes it to court, it is much different than the real
9 thing, it is not the real thing.

10 Now the problem in this case is, that you cannot rely
11 on the District Attorney's evidence. You cannot trust it,
12 you cannot rely on it. You cannot find it believable, it
13 is not credible.

14 Witnesses came in here, they took that witness stand,
15 they got up here, they took an oath to tell the truth,
16 they didn't tell the truth. Some of them lied to your
17 faces, ladies and gentlemen. You don't have to take my
18 word for it, the evidence and the proof is right here,
19 right here, it is all in front of your faces.

20 The photographs taken by Detective Newman, these
21 photographs say it all. Take a look at the scene.
22 Popeye's chicken box on the ground, one, two, three pieces
23 of evidence on that driver's side. At the precinct now
24 there is four pieces of evidence. Remember, she couldn't
25 offer any explanation as to how this happened, missing

1 piece of evidence. Proof is right there in front of you,
2 folks. The proof is in Detective McDermott's testimony,
3 how he picked up Officer Yan's gun at the scene and
4 sometime later he was told to put it back down on the
5 ground, to try and recreate the crime scene, not as it
6 was, as close as he can possibly get it. Proof is also on
7 the knife that is supposedly found with these guns.

8 Now, the District Attorney is going to tell you
9 nobody touched that evidence, nobody touched the guns,
10 nobody touched the knife, nobody moved it around. Well, we
11 have Detective Curry's testimony, and her photographs that
12 suggest otherwise. There is one shot of how Detective
13 Curry found this evidence, and now here is another. So,
14 stuff was moved, we know that for a fact.

15 And, we also know that male donor D, whoever he may
16 be, his DNA was found, not only on the knife, but on one
17 of the guns. So, it is a very important fact, male donor
18 D, male police officer touching the guns, you be the judge
19 of that.

20 We also know female DNA was found on the jacket that
21 my client is supposedly wearing. We also know the female
22 DNA is found on the hat my client was supposed to have
23 been wearing. Female police officer, you be the judge of
24 that.

25 Sergeant Derrick Johnson came in and testified this

1 past Tuesday. He is the one who says he found these guns
2 and the Popeye's bag. He found them, according to his
3 testimony, at 7:15 a.m. on July 9, 2007, behind 591
4 Lefferts. Remember what he says. He found three guns and
5 one knife in this bag. But, he never said anything about a
6 Popeye's chicken box, never said anything about chicken
7 bones, which are not even in this photo, never said any of
8 that.

9 Again, here it is, Detective Curry's picture, the
10 magically appearing, and disappearing evidence. You see
11 the pattern here?

12 When I confronted Detective Newman here about the
13 inconsistencies between her photos, remember what her
14 response was? I don't know. Well, Detective Newman, how
15 did this piece of evidence end up in this particular
16 picture? I don't know. Detective Newman, who put this
17 piece of evidence into this picture where it wasn't
18 before? I don't know. Every time she says I don't know,
19 that is a reason for doubt.

20 In contrast, remember Detective Curry, how she got
21 very hostile when I confronted her about her pictures, and
22 the difference in the evidence, and how it was found?
23 Hostility, it is a defense mechanism, that's how people
24 get when you get caught in a lie, get nasty, that's how
25 you defend yourself.

1 And her testimony is inconsistent with Sergeant
2 Johnson. So, she said the guns -- she gets there at 6:30
3 a.m., he says he got there at 7:15. They can't both be
4 right. She says the guns were found hours earlier, he
5 says he found them, and nobody else had found them at
6 7:15. You can't both be right. Someone is wrong, someone
7 is not telling the truth, or someone is lying, you be the
8 judge.

9 There is no eye witness that definitively proved that
10 Lee Woods was in the back of 591 Lefferts Avenue. Nobody
11 came in here and said, I saw him back there. There is no
12 evidence presented to you.

13 Now, if you want the answer to whether Lee Woods went
14 back there and stashed these guns like they claim, all you
15 have to do is look at People's 91 in evidence.

16 Now remember what Detective Johnson said. He said
17 his chief had reviewed evidence, video evidence that
18 showed that someone had gone back there, okay. What
19 evidence are they referring to? Perhaps these two cameras
20 at the back of that scene? There is your missing witness,
21 cameras one and two. And it is not like -- it didn't
22 escape the attention of the NYPD, they have it on their
23 diagram, they saw those cameras there, and those cameras
24 cannot lie to you. They could have definitively proved,
25 without a doubt, whether he was back there, or whether

1 Bostic and Ellis was back there, and he wasn't.

2 But, this evidence was not presented to you, and you
3 have to ask yourselves why not? It is not like there
4 wasn't a team of detectives from the technical assistance
5 response unit gathering video from all over the place,
6 they went out there. It is not like they didn't know these
7 cameras were there, they saw them. This evidence was not
8 presented, and you have to ask yourselves why not? We will
9 never know the answer, no.

10 Take a look at the inconsistent and incredible
11 testimony. When you first walked into this courtroom when
12 you were coming in for jury selection, you walked in that
13 same door that I walked in, and I didn't see a sign
14 outside that courtroom that says leave your common sense
15 in the hallway. As a matter of fact, everybody has been
16 telling you, throughout the whole trial, use your common
17 sense. And when we use our common sense, that's how we
18 determine whether strangers, people we never met before,
19 are telling us the truth, the whole truth, and nothing but
20 the truth. When you apply your common sense to the
21 testimony that was given in this case, you are going to
22 see a lot of these witnesses are not telling the truth.

23 Let's take a couple of examples where people came in
24 here and lied to make a bust. I think a lot became
25 abundantly clear from Miss Buggs' testimony. She was

1 forced to testify the way she did. She did not want to be
2 here. The police put a gun to her head, figuratively, and
3 told her to say that Lee Woods stashed the gun. I think
4 that came through as clear as day, and her testimony is
5 not truthful.

6 How do we know that? One thing we look at when
7 someone is telling the truth is, what they said in the
8 past. What did she say in the past? In the past she said,
9 two occasions read into the transcripts -- you don't have
10 to take my word for it -- not that Lee Woods said, I
11 stashed the guns, but Nicole Bostic said she went back to
12 get the gun. Not that Lee Woods said he went back to get
13 the gun, Nicole Bostic said, I went back to get the guns,
14 not him, two times.

15 How else do we know she didn't tell the truth? She
16 admitted to lying in the past. She lied to the police
17 when they first came to her. She lied to the police when
18 the police went to her job that morning of the murder, all
19 right.

20 Remember what they did? They followed her around,
21 they went into her job, they harassed customers, they
22 harassed her coworkers, and they handcuffed her, publicly
23 embarrassed her in front of everybody. He essentially
24 took her hostage until they let her go. The next day they
25 kick down the door to her grandfather's house, claim they

1 have an warrant, tell her she is in a bunch of trouble,
2 and about to handcuff her in front of her three-year old
3 child. And eight hours later she is in the District
4 Attorney's office after she has been in police custody
5 saying what they want her to say. She is never prosecuted.

6 Do I blame her? No. Can anybody blame her? I don't
7 think anybody can. What would 99 percent of the people do
8 in that situation, where they threaten to put you in jail,
9 separate you from your child, arrest you in front of your
10 three-year old child? She is vulnerable. They took
11 advantage of her vulnerability, just like Robert Ellis
12 took advantage of her, they get her.

13 Do I blame her? No. But that doesn't make it right.
14 That doesn't mean she is automatically telling the truth.
15 That doesn't mean anybody on this jury should credit her
16 testimony for one minute.

17 How do we know when people are lying? Sometimes they
18 let the truth slip out. She did let the truth slip out.
19 And if you remember, she started crying on this witness
20 stand. Not because of something I did, but when the
21 District Attorney continuously pressed her to say Lee
22 Woods said he stashed the guns, she didn't want to do
23 that, that's why she started crying. She knew what she
24 was doing was wrong, not like she had a choice.

25 Detective Habert, I want you all to think back in

1 your minds and remember Detective Habert. That is the
2 detective that -- well, he says he didn't arrest Mr.
3 Woods, but we will get to that -- found Mr. Woods in
4 Nicole Bostic's apartment.

5 Think back to his mannerism, the way his voice
6 cracked on the stand, the way he did what you call, as an
7 example, coughing in stead of answering questions, buying
8 an extra second, what does that tell you? The way he
9 didn't answer my questions directly. What does your gut
10 instinct tell you? This is a guy who is telling you the
11 truth, the whole truth, and nothing but the truth?

12 Forget about that, let's evaluate his story. His
13 story is that, with eight to 10 other detectives, they go
14 to Nicole Bostic's house. They find Lee Woods, put a gun
15 on him, a loaded gun, throw him onto the floor, and they
16 just sit down on the couch and have a normal conversation
17 as if nothing had happened. And this guy, who has been
18 thrown on the floor by police officers, eight to 10
19 surrounding this building, has a gun put on him and says,
20 sure, I'll help you guys. Oh, I am a CI. Yes, please,
21 please take me from Far Rockaway to the 67th Precinct in
22 Brooklyn. And oh, Detective, by the way, I have two
23 requests. Could you please handcuff me? Could you please
24 put me in the back of a police car? I am willing to help,
25 but only if you do that for me.

1 Oh -- and, by the way, he is free to leave whenever
2 he wants? Does he expect us to buy that? Anybody asked to
3 be handcuffed? Would anybody ask to be brought back to the
4 67th Precinct in Brooklyn? Does that story have the ring
5 of truth to it? Does it sound plausible, believable?
6 Obviously not. Likely to be truth, or untrue? It doesn't
7 matter what I think, it matters what you think.

8 So, Lee Woods went to that precinct just about as
9 willingly as Tamika Buggs went along with the police. And
10 if they got down right nasty with her, who wasn't even
11 there when the shooting occurred, how do you think they
12 treated him?

13 Again, use your common sense. What did Habert think?
14 Dexter Bostic was at the 67th Precinct, and Lee Woods was
15 trying to help find him there? They know Bostic is a
16 resident of Brooklyn.

17 Remember I asked Detective Habert, if he is helping
18 you find Dexter Bostic, and you know he is a Queens
19 resident, I wouldn't bring him back to Brooklyn. Couldn't
20 this all be resolved in Nicole's living room? He didn't
21 have an answer to that. And the one thing that could have
22 lead the police to Dexter Bostic, this mysteriously
23 disappearing cell phone that had Dexter Bostic's phone
24 number in it, supposedly my client's, they just left it
25 there. What does that tell you.

1 When I say, brought to the precinct, did anybody ask
2 him to help him find Dexter Bostic? Anybody get that
3 phone? Anybody put him on the phone saying, call this
4 guy? Nobody asked him to do that, which leads me to the
5 next witness, Detective Yero.

6 Look at his testimony and see if his story has the
7 ring of truth, whether that is plausible. This is his
8 testimony.

9 After being taken, at gunpoint, in handcuffs from
10 Queens to Brooklyn, Lee Woods was free to leave the 67th
11 Precinct for eight to nine hours. He could have left any
12 time he wanted. And Detective Yero says to this guy, who
13 is an eye witness to the shooting, who has inside
14 information, hey, you want to hang out, hang out. I don't
15 know when I will be back. I don't know if I will be back.
16 You want to hang out, hang out. Nine hours later he is
17 just there hanging out?

18 If you went to the doctor's office -- and we have all
19 had this experience going to the doctor's office -- you go
20 to the waiting room, you wait, you wait, you wait. How
21 long until you ask the receptionist, when am I going to
22 see the doctor?

23 If you are in the doctor's office, the doctor walks
24 out, grabs his coat, says, oh, I am leaving. I don't know
25 when I will be back, but if you want to hang out, hang

1 out, how many people would sit here and wait nine hours?
2 Defies common sense, defies logic.

3 Oh, how many of you would sit in a precinct, in an
4 interrogation room, in a secure facility in a detective
5 squad? Forget about someone who is in his position. Any
6 person? Nobody would want to sit in a precinct
7 interrogation room, even if you have done nothing wrong,
8 and you don't know anything, is that the kind of place you
9 would want to hang out in for nine hours? As if he had
10 nothing else better to do. So, we already know from
11 Detective Yero, that part of what he is saying doesn't
12 make any sense.

13 Now, Yero also tells us that a suspect's written
14 statement is one of the most important pieces of evidence
15 in a case. He's received training on how to take
16 statements. He's received training on how to document
17 statements. Lots, and lots, and lots of training, because
18 that is such a crucial piece of evidence.

19 So, according to Yero, as Lee Woods is putting pen to
20 paper, writing out a statement that he knows is going to
21 be used in court, that is so important, he doesn't even
22 stick around to watch him finish it? He doesn't even stay
23 there to watch him continue finishing this crucial piece
24 of evidence? And what is his explanation as to why he
25 doesn't stick around? Oh, Mr. Woods, I have to go and

1 check and see whether you can really make a U-turn on
2 Rogers Avenue or not. That stupid, meaningless, minor
3 detail, it must have taken a really long time to see if
4 you can make a U-turn on Rogers Avenue, which is only a
5 few blocks away, because he didn't come back to the
6 precinct for another six or seven hours. You be the judge
7 of whether that is plausible or not.

8 So, has this even been proven to you that this is Lee
9 Woods' handwriting? Has this be proven to you that this is
10 his signature? We know this is not signed, that's People's
11 140. Lee Woods signs this Miranda warning card, according
12 to Yero, right? There is his signature. We have his
13 Learners' permit, People's 142 in evidence, there is his
14 signature. And now we have People's 141, another written
15 statement the detective wants you to believe was signed by
16 Lee Woods. So, we have 139, 141 -- I'm sorry 140 -- my
17 fault -- 142, and now we have 141, does that match up? You
18 be the judge. No, obviously not.

19 The question then becomes, who wrote this? Who put
20 his name on the paper? Perhaps the lead detective on the
21 case looking to solve the case, looking to get somebody
22 and prosecute them for killing a fellow police officer?

23 And when you take this testimony, together with the
24 fact that in the 24 hours that Lee Woods is at this
25 precinct, eight to nine, where he is free to leave at any

1 time, 24 hours of sitting in the same interrogation room,
2 never leaving once except to go to the bathroom, nobody
3 ever once even tried to tape record him, or video tape
4 him? And it is not as if they didn't have the
5 technological ability to do so. According to Yero, he
6 didn't even ask during that time to video tape him. The
7 only time they ask, supposedly, when I enter the situation
8 and told them not to question him any further. Tamika
9 Buggs was recorded, she was not even there at the
10 shooting. Got to make you wonder why he wasn't recorded.
11 Got to make you wonder why the police wouldn't record this
12 crucial statement from an eye witness giving them inside
13 information.

14 Now, think about this. Most of the stuff found in
15 these statements is stuff that Detective Yero knew from
16 his own, didn't need him to tell him. This is stuff he is
17 getting from the field. This is stuff he verified
18 himself. Again, raises the distinct possibility Yero
19 created this evidence.

20 Perfectly logical explanation, maybe, just maybe, Lee
21 Woods never said these things. Has it be proven to you?
22 Absolutely not. And since there is no recording of a video
23 tape that shows otherwise, it has to make you wonder.

24 Detective Walker, his testimony was directly at odds
25 with Detective Yero. Yero said he called Walker at

1 eight p.m., said, lock the door, Lee is not free to leave.
2 Walker says, never got that call. So, either a call was
3 made or it wasn't.

4 He says that Yero locked the door. Yero says he
5 locked the door. Either he locked the door, or he didn't.

6 He says that Yero -- Yero says he got back to the
7 precinct 9:30. Walker says he got there 8:00. Again, too
8 mutually exclusive, they both can't be correct.

9 Back to Detective Curry for a second. She gets caught
10 in lies about who moved evidence. She gets down right
11 nasty, and copped an attitude when she was confronted with
12 it. Did any of the other witnesses who testified
13 truthfully at this trial ever cop a attitude? Not at all.
14 Compare Detective Curry's testimony with Miss Ahmed's.
15 Miss Ahmed did not cop an attitude. She was not being
16 nasty.

17 While we are on the subject of Miss Ahmed, let's turn
18 to the DNA evidence. They want you to believe there is
19 only one possible explanation as to how my client's DNA
20 got on these guns. They want you to believe that his DNA
21 got on these guns because he touched them. We know that is
22 not true. Scientists told us differently. There is lots of
23 ways DNA can travel. There is lots of ways DNA can get on
24 other items.

25 Remember Miss Ahmed, she gave us that example of

1 someone spitting on the ground. And you come along, and
2 walking, and stepping in it. If that person goes straight,
3 you make a left, go into the bank, his DNA on the bottom
4 of your foot gets tracked into that bank. Does that mean
5 he was there? Absolutely not.

6 Now you apply that same logic to the manner in which
7 this evidence was supposedly found. Chicken bones, pieces
8 of food all coming together with three firearms and a
9 knife. Same guns and knife that was probably moved by some
10 police officer.

11 Is there a chance that someone who is moving this
12 stuff around caused it to come in contact with something
13 else? You bet. That's a perfectly logical, reasonable
14 explanation, consistent with the evidence in this case,
15 and consistent with innocence.

16 Another perfectly logical, reasonable explanation.
17 When Dexter Bostic and Robert Ellis are stashing these
18 guns -- because it is their guns, I will get to that in a
19 moment -- do you think they are going to take the same
20 type of caution? Lee Woods has this, let's make sure this
21 doesn't come in contact with our guns, because his DNA
22 might get on our guns? Not at all.

23 The bottom line, when I am talking about all these
24 witnesses, point to one thing. If Tamika Buggs comes in
25 here and tells a lie, that is one thing. It is something

1 else entirely when New York City Police Officers come in
2 here, they are not truthful with you. Something else
3 entirely when those who are sworn to uphold the law, break
4 the law. And, listen, police officers are human too. They
5 are just like everybody else, and we can understand why
6 they might want to shape the truth. They want to make
7 somebody pay for killing one of their fellow officers.
8 You can understand that, but that doesn't make it right.
9 That is no excuse.

10 And, ladies and gentlemen, lies, fabricated evidence,
11 that cannot be proof beyond a reasonable doubt. That's not
12 the kind of evidence that you convict a man on.

13 Now, the theory that the District Attorney wants you
14 to believe is that these three guys had that master plan
15 to kill police officers because that car had bad license
16 plates on it. Not because it was reported stolen, because
17 it wasn't, because it had bad license plates on it. This
18 theory doesn't make sense, and there is no evidence to
19 back up that that was the plan.

20 If there was a plan he would have been in
21 Pennsylvania with those other two guys. He is part of
22 their team, he would have been in Pennsylvania with them.

23 If there was a plan, those two wouldn't have hidden
24 in the woods by a wooden median of the highway.

25 If there was as plan, this is a bad place to set up

1 an ambush, parked right behind a parked car.

2 If this is a plan, why would he put the BMW in park?
3 The fact was, this was no plan. This is a spur of the
4 moment decision, decision taken by Robert Ellis and Dexter
5 Bostic's decision that this guy had nothing to do with,
6 that he had no control over. And when you think about it,
7 who would ever expect someone to shoot a police officer in
8 the face? That is a pure act of complete madness. No
9 matter what you think of a person, would you ever suspect
10 someone you are riding in a car with would ever shoot a
11 police officers in the face? Nobody.

12 Now, let's talk about what really happened. There is
13 only a few things we know for sure in this case. We know
14 for sure that the Five Towns Mitsubishi had a big problem
15 with Dexter Bostic taking cars without permission. Then we
16 saw that video of Robert Ellis, not him, Robert Ellis
17 taking that car off of the lot of the Five Town BMW. Lee
18 Woods is not there, he is not even there, he is not even
19 close to there.

20 We know for sure that Lee Woods did not know this car
21 was stolen, or it had stolen plates on the car. There is
22 no evidence to suggest otherwise.

23 Now, we know for sure that Lee Woods is the driver of
24 this BMW. We know for sure that Dexter Bostic shot Officer
25 Timoshenko, that he had the 45-caliber. Watch this video.

1 (Whereupon, Video played in open court.)

2 We know for sure that Robert Ellis had the high point
3 .9mm and shot Officer Yan.

4 We know for sure that Officer Yan activated his
5 lights three car lengths from that red light, not down the
6 block, but three car lengths like he had been saying all
7 along.

8 We know for sure that there is nowhere for Lee Woods
9 to pull over. There is parked cars, he is in the middle
10 of the street. We know for sure Lee Woods can't drive
11 through that red light. We know for sure, ladies and
12 gentlemen -- and watch this video -- that he pulls over as
13 soon as he is able to. In fact, he is so close to the curb
14 they are in the crosswalk.

15 We know for sure that he puts the car in park, lights
16 change. Officer Yan told you he put the car in park. The
17 worse possible gear to be in, by the way, if you need to
18 make a quick getaway.

19 We know for sure, within a couple of seconds that
20 shooting starts immediately, not enough time for him to
21 formulate a plan, not enough time to assist Bostic and
22 Ellis, not enough time to get them ready.

23 He didn't ask them to do this. He didn't tell them
24 to do this. He didn't help them do this. He didn't order
25 them to do this. And, he didn't even know they were going

1 to do this.

2 Is there any evidence here that suggests otherwise?
3 Absolutely not, none, because it doesn't exist. And we
4 know for sure that Officer Yan shot at that car. Remember
5 what he said? He is aiming for the driver. He did not
6 pull the trigger, he is getting shot at.

7 What is he supposed to do in that situation? There
8 is two guys in that car shooting guns at police officers,
9 and there is a police officer shooting back. Is he
10 supposed to get out of the car and say, wait, I don't have
11 anything to do with this? I suppose he could have, but
12 then we wouldn't be here right now.

13 What else do we know for sure? We know for sure that
14 Robert Ellis, and Dexter Bostic shared an apartment.

15 We know for sure that the tech nine was there,
16 because this is the case that had that gun, and it was
17 found in their apartment. We know for sure Bostic 45,
18 Ellis .9mm, not his guns.

19 What else do we know for sure? We have video.

20 (Whereupon, video played in open court.)

21 Look at the video of Lee Woods getting out of that
22 BMW -- People's 37, in case you want to look at it later --
23 we know for sure, in an act of panic, he driver the car
24 the wrong one down a one-way street, pretty good plan.

25 You know for sure that Lee Woods is the first one out

1 of that BMW. And there he is leaving those two behind,
2 not waiting for them. I want you to watch this part very
3 carefully. Here is Ellis running, slowing down, starting
4 to run again. And here is Bostic with something in his
5 hand, watch this carefully. There is Lee Woods, gone.
6 Ellis running, touching his waistband where he would be
7 hiding a gun. And Dexter Bostic following with something
8 in his hand. We know that for sure.

9 Ladies and gentlemen, when you look at all of this
10 evidence, there is only one thing you should know for
11 sure, this is a two-man team. This crime was perpetrated
12 by a two-man team, not a three-man team, not including
13 him, but these two. These two who lived together, had guns
14 together, fled together. This is your team, don't let
15 anybody tell you anything differently.

16 Now, what they want you to do is hold him responsible
17 for the actions of this two-man team. Just like when you
18 were in grade school, one or two kids goofing around in
19 class, and the teacher made the whole class stay after
20 school, and punished everybody for something you did not
21 do. That's what they want you to do.

22 My whole point here is that, there is very little
23 evidence presented to you that you can trust. It is very
24 little evidence that was credible, very little evidence
25 that was reliable. You can't trust everything these

1 witnesses have told you, because they lied. You can't
2 trust everything, all this evidence, because there is some
3 inconsistencies. You can't trust this evidence because it
4 has been manipulated, altered, sometimes destroyed,
5 changed, and flat out fake. And they did it to themselves.
6 All I did was point out the inconsistencies. All I did was
7 show you the missing pieces of the puzzle. I don't have to
8 prove that he did, or didn't do it, that's their job. You
9 can't convict unless it is proof beyond a reasonable
10 doubt. The Judge is going to tell you that in his
11 instructions very clearly.

12 And if the District Attorney hasn't convinced you
13 that all these witnesses have told you the complete truth,
14 if they have not convinced you that you can trust this
15 evidence, then acquit him. Not, this is a horrible
16 tragedy, we all feel for the Timoshenko family. But that
17 doesn't mean you convict him out of a desire for
18 vengeance. That doesn't mean you substitute logic and
19 reason from -- emotion for logic and reason. That's not
20 what this means. You look at the evidence in this case,
21 and the evidence is extremely lacking.

22 In one minute I will be done with my closing
23 argument, my favorite part of the trial, because I don't
24 have to say anything more, but your work is just going to
25 begin.

1 In a moment the District attorney is going to get up
2 here and explain to you why you should disregard the
3 missing pieces of the puzzle. They are going to tell you
4 why you should put Humpty Dumpty back together again. The
5 holes in this case are too big, too important, there is
6 too many holes to plug, and there are so many reasons to
7 doubt.

8 At the end of this case, when you go back and
9 deliberate, you are going to be convinced there is only
10 one verdict, that is not guilty on all counts.

11 Thank you.

12 THE COURT: You need a moment?

13 MS. NICOLAZZI: Yes, your Honor.

14 THE COURT: Take the jurors out.

15 (Jury exits the courtroom.)

16 (Whereupon, a brief recess was taken.)

17 THE COURT: Bring the jury in, please.

18 COURT OFFICER: Jury entering!

19 (Whereupon, the jury enters the courtroom, and
20 is seated in the jury box.)

21 THE COURT: Both sides waive a reading of the
22 roll of the jurors?

23 MS. NICOLAZZI: Yes.

24 MR. MEGARO: Yes.

25 THE COURT: Miss Nicolazzi.

1 MS. NICOLAZZI: Thank you, your Honor.

2 Still good morning, ladies and gentlemen, barely.

3 JURORS: Good morning.

4 MS. NICOLAZZI: If the truth would have set this
5 defendant free, he would have told it. He lied to the
6 police over and over again because he was an active and
7 willing participant in every one of these crimes. He was
8 part and parcel of this. This defendant, Lee Woods, he
9 drove the BMW. His two partners fired the shots. Together
10 the three of them ambushed two New York City Police
11 Officers. This defendant, together with his partners, is
12 responsible for the execution of Russell Timoshenko, and
13 the attempted execution of his partner, Hermann Yan.

14 Now, I am going to go through the evidence and show
15 you, each and every one of you, how all that evidence
16 proves this defendant's guilt beyond any reasonable doubt.

17 Let's start with the car stop and the shooting
18 itself. When Officers Timoshenko and Yan ordered the BMW
19 to pull over, there were three men inside that vehicle.
20 This defendant, Dexter Bostic, and Robert Ellis. And you
21 know that through a variety of types of evidence.

22 You know that because all three of them, their
23 fingerprints and DNA was both inside and outside of that
24 car.

25 You know because the three of them talked about it in

1 front of Tamika Buggs. And you know that because of this
2 defendant's words out of his own mouth when he spoke to
3 the police.

4 You also know that because you saw the three of them
5 fleeing outside of the BMW just minutes after that
6 shooting had occurred.

7 And you also know that inside that BMW with those
8 three men was not one, not two, but three handguns. And
9 you know that those loaded firearms were inside that
10 vehicle with them, because of all the ballistics evidence
11 recovered, both inside and outside of that car at the
12 scene of the shooting, and inside the BMW, bullets
13 recovered from Officer Timoshenko's body, and the bullet
14 recovered from the bulletproof vest that Officer Yan had
15 been wearing.

16 You know that because the three guns, together, were
17 found in the garage where you know this defendant put
18 them. That -- those guns had the DNA of this defendant and
19 Bostic all over them.

20 So you know that from the git-go. This is what was
21 going on inside of that car. And it is clear, from
22 Officer Yan's testimony, along with the video that you saw
23 for yourself, that when Officers Timoshenko and Yan put on
24 their lights and ordered the BMW to pull over, it did not
25 stop. That vehicle proceeded along the street. It went to

1 the light, it stayed at the light. And then it made a
2 right onto Rogers Avenue. Never even turning on the signal
3 before it turned onto that quieter, darker street.

4 Now, defense counsel has argued that the defendant
5 couldn't pull over because of the cars that were on the
6 side of that road. But come on, ladies and gentlemen, it
7 was 2:00 in the morning. There was not traffic out and
8 about, they could have pulled over even right where they
9 were. Or, at the very least, could have continued on
10 ahead as any reasonable person would have before they
11 stopped. What reasonable person, when they are being
12 pulled over by the police, not going to stop, and without
13 signalling, decide to turn down another street? No one
14 would have, unless they were up to no good, as you saw
15 they were moments later, ladies and gentlemen.

16 Let's play that part again, just the stop.

17 (Whereupon, video played in open court.)

18 I suggest that when the police lights came on behind
19 that car, those three panicked. That they waited, they
20 waited on the block, they schemed for all that time it
21 took until they finally turned the corner and pulled over,
22 because they were trying to come up with a plan. They were
23 driving around in a stolen car, with stolen license
24 plates, with three loaded guns inside with them.

25 And so, clearly by their actions, you know that the

1 plan of this team of three, came up with was, they clearly
2 decided they couldn't out drive, or out run the cops, so
3 what they decide to do, to try and get away, is to shoot
4 and kill those two police officers in an attempt to get
5 away. And that's exactly what they did only moments
6 later.

7 Now, in the defendant's statement to Detective Yero,
8 in the one that he finally admitted, that at least he had
9 been driving the car at the time, then in one of his
10 attempts to give an innocent explanation for his conduct
11 he says, yeah, I didn't stop right away. But the reason I
12 didn't -- I wanted to stop -- but Roger and Dexter didn't
13 want me to. I said to them, listen, I am a CI. I will
14 tell that to the cops, this won't be a problem. That makes
15 no sense, ladies and gentlemen, it is impossible, based on
16 other things you know, that he ever said that to them.

17 Think about it for a moment. Detective Habert told
18 you, when he went and met Lee Woods for the first time
19 inside of Bostic's apartment, when they didn't know who he
20 was, if he had any relationship to the investigation at
21 all except that he knew Bostic he said, listen, I will go
22 and help you guys if you are asking. However, make sure
23 you handcuff me when you take me out of here because I
24 don't want anybody to know that I am cooperating with the
25 police, because if anyone were to ever think that I was a

1 snitch, me or my family could be killed.

2 So you think for a moment, when he is in that car in
3 the middle of the night, in the stolen car, with the
4 stolen plates, with the guns, with his friends, that he is
5 going to tell them these guys, not only had guns, but he
6 knows they sold guns less than an hour before at Bostic's
7 brother's house. That he is going to tell them I am a CI?
8 Never, ladies and gentlemen. Just an attempt on his part
9 to give an innocent explanation for his criminal conduct.
10 This defendant proves himself to be a liar over and over
11 again.

12 Now, what about the motive? As the Judge will tell
13 you, we don't have to prove motive, it is not the element
14 of any crime. However, it is clear what the motive in this
15 case was, ladies and gentlemen. This defendant, together
16 with his partners, was driving in a stolen car that had
17 stolen license plates, and there were three guns in this
18 car. And you know this defendant knew that the car was
19 stolen, the car he is driving around still has the dealer
20 plate -- excuse me -- the dealer tag attached to it. And
21 the plate that have been put on it from the Mitsubishi
22 Outlander, for the license plate is sitting right in the
23 back of that car. You think these three guys was not
24 driving around in that car, talking about the sweet ride
25 they had that night? Of course they were. And whether it

1 was based on their conversation, or just common sense, of
2 course he knew. This defendant had the same motivation as
3 the other two of them, to not get caught. Any and all
4 three of them, if the police figure out the plate was
5 stolen, the car was stolen, that they had those guns in
6 that car, all three were going to jail. So that is
7 exactly what their motive was here.

8 Now, after the defendant finally decided to stop the
9 car, after the three of them had time to come up with
10 their plan, then Officers Yan and Timoshenko got out of
11 their car, the marked car, and approached the BMW. It was
12 not until they made it right up to the front doors of that
13 car when, simultaneously, gun fire came out at them from
14 both sides. There is no way that that happened without it
15 having been planned.

16 The defendant told you himself, through his
17 statements, that he was driving the car, and Bostic and
18 Ellis fired guns. It could not have happened, this crime,
19 without the active participation of all three. It took two
20 people to fire the guns, and it took one of them to drive
21 and control that car.

22 Think about it for a moment. Once they decided what
23 their plan was, then, all of a sudden, the defendant
24 pulled over, they had to make sure that these officers
25 were not on any sort of higher alert. So when the police

1 car now pulled up behind them on Rogers and directed them
2 to put the car in park, the defendant complied.

3 So when Officers Yan and Timoshenko got out of their
4 car and approached the BMW, they had no reason to be on
5 any higher alert, or anything more than a routine traffic
6 stop. Little did they know, this defendant, together with
7 his partners, were setting a trap.

8 Think of what was going on in the car at that time.
9 There was no way this wasn't a plan. Because now, once the
10 car is parked, think of everything that happened inside
11 for those simultaneous shots to come out. The guns had to
12 come out, the safety had to be taken off each of these
13 weapons the way that Detective Kraljic explained it to
14 each of you, each of those weapons had to be racked and
15 ready to be fired. You heard the sounds those guns made
16 when you rack them. They had to be aimed and positioned
17 just so, so when the officers got in exactly the position
18 that was the best position for this team to make sure that
19 they could shoot those officers at close range, hoping to
20 mortally wound them, and then drive away into the night,
21 all of that had to happen before those gunshots went off,
22 ladies and gentlemen. Of course he knew, of course there
23 was a plan.

24 I am going to ask you to watch that video again.
25 And, specifically, look at the timing.

1 (Whereupon, video played in open court.)

2 It took over 30 seconds for that BMW to decide, and
3 finally pull over. Yet, it took only two seconds for this
4 defendant to speed away when the shots were fired.

5 If you have any questions, of course you can have any
6 evidence during your deliberation. You can watch things
7 for yourselves, if you want to talk about it amongst
8 yourselves. But when you watch that from the time that we
9 can first see, so we don't even know how many seconds
10 transpired when the lights went on, but a few when Officer
11 Yan told you where the BMW was, it took 30 seconds. That
12 is a very long time to sit there -- and time it
13 yourselves. And then it took just a second, or two for
14 those guns to shoot, and the defendant to speed himself,
15 and his partners away into the night.

16 That right there, the timing, is proof that this was
17 a plan. That this was intentional conduct on the part of
18 all three. And you know that there is no way this
19 defendant, as the Defense argued, was pulling away,
20 because Officer Yan was firing. He pulls away within
21 seconds. And you know that because the officer goes up,
22 you see Officer Timoshenko collapse, and the BMW is gone.

23 There is no way that Officer Yan's gun would have
24 even been out at the time. And you know that because, when
25 you look at the BMW, and hear the ballistics evidence, and

1 saw the trajectory evidence where Officer Yan, when he was
2 able to get a round off after the BMW that attacked them,
3 he is firing this way.

4 And you know, from inside the BMW where those shots
5 are coming out at him from that, that car is moving as
6 Officer Yan is being fired at. Because the bullets, the
7 holes are going towards the back.

8 You know Officer Yan was right by the front door when
9 he first hears the gunshots, and felt that he had been
10 hit, this defendant is already off and running with his
11 team. And they are still shooting to make sure their
12 purpose is achieved. And that's how you know that the
13 only reason the defendant fled when he did, was because he
14 was part and parcel of this plan, the plan to kill the
15 cops, what they decided was their best efforts, their best
16 chance of getting away without being held accountable for
17 the crimes that they were committing at the time they were
18 stopped.

19 And in the defendant's statements to the police, in
20 his last statement to Detective Yero, that statement he
21 claims, the only reason he drove away was because Ellis
22 put a gun to his head and told him to drive.

23 Well, that is impossible too, because you know the
24 gunfire that hit Officer Yan was coming from the back
25 seat.

1 You know that from the trajectory evidence that was
2 shown to you. You know that because Criminalist Smith,
3 through the simulation display, those bullets emanated
4 from inside going out.

5 You know that Dexter Bostic had to be in the front
6 passenger seat.

7 You know that from the position he held in the car.
8 It is his DNA on the 45. The way the seat was positioned,
9 the farthest back, and he is the largest of the three. So
10 that's how you know it was Ellis in the back seat firing
11 that gun. And you know he is firing at Yan as the car is
12 moving.

13 So, there is no way that he has a gun at this
14 defendant's head, and that is the only reason this
15 defendant is driving away.

16 On top of which, it is also impossible because, this
17 defendant said, in his statement, that when the gun was to
18 his head, Ellis was yelling, go, go.

19 Remember Officer Yan, now Detective Yan, told you
20 that both of those windows were down at the time -- excuse
21 me -- at the time he approached. He saw the driver's
22 window down, you know the other window was down too
23 because of the shots, and the way the BMW was recovered.
24 He did not hear any sounds coming from that car except for
25 the sounds of the shots. He would have heard something,

1 voices, whether you can make out what they were saying or
2 not, if that -- if this defendant's words is being
3 truthful.

4 Ladies and gentlemen, it is just lie after lie. The
5 defendant spinning, trying to give an innocent explanation
6 for his clearly guilty conduct. There is no reasonable
7 explanation for anything he did, except that he was part
8 and parcel of this plan.

9 If he wasn't part of it, what could he have done?
10 There are some things, whether it was to try and help the
11 cops, whether just to make sure he wasn't held responsible
12 for something these other guys were going to do.

13 He could have sped away. The police would have at
14 least been on high alert.

15 He could have pulled the car over right away. He
16 could have stopped the BMW, jumped out with his hands up,
17 I am not part of anything going on in this car. He could
18 have yelled out some sort of warning to the police.

19 He could have driven erratically, putting them on
20 high alert, which could have saved them.

21 He could have refused to put that car in stop. He
22 didn't do any of those things. He did nothing but make
23 sure that the purpose, the plan that these three had come
24 up with was achieved. He waited until they had the plan,
25 until he decided to stop the car. He held the car just

1 long enough until the officers was in the best position
2 for the two shooters to be in the position to shoot and
3 kill, and then he sped them away into the night. This
4 defendant was down with them, with Ellis and Bostic every
5 step of the way.

6 This crime took three things in order for it to be
7 able to happen. It took this .9mm high point, and Robert
8 Ellis to fire it. It took this 45-caliber Llama, and
9 Dexter Bostic to fire it. And, it took one person to drive
10 and control this car, and that is this defendant, Lee
11 Woods.

12 Let's now turn to the flight of the three defendants,
13 and the guns that were found inside the garage.

14 (Whereupon, video played in open court.)

15 The defendant abandoned the BMW within ten minutes of
16 the shooting, and it was on a number of blocks away. Drove
17 down the wrong way street. Finally, at the end, gets out
18 of the car with the other two and flees. First out this
19 defendant.

20 Now, when he comes out what did you notice about him,
21 ladies and gentlemen? He is not wearing -- we will get to
22 the Popeye's bag in a few moments -- he is wearing a
23 jacket, he is wearing a hat, the same jacket you know, and
24 hat that are found in the back of the garage with the
25 guns. And what's in his hand? A white plastic bag, the

1 white bag that you know contained the guns that was found
2 in the back of the garage where these defendants fled to.

3 Next, Robert Ellis putting his sweat jacket on.
4 Doesn't appear to be anything in his hand except for the
5 jacket that he is wearing. And, he also appeared to come
6 out of that side a little farther behind, indicating he
7 was the back seat passenger.

8 And there comes Dexter Bostic, clearly coming from
9 the passenger side of that vehicle, the right side, if you
10 are behind the car. Again, more evidence that he is the
11 person who shot and killed Officer Timoshenko. But, you
12 also see he has nothing in his hand other than -- and if
13 you can just play it forward -- when you look at him
14 running forward, the only thing in his hand is a
15 sweatshirt. And you know that a red sweatshirt was
16 recovered right by the driveway where this team fled to.

17 Roger Ellis, Dexter Bostic, clearly, what is in his
18 hand? It is flopping, nothing like a gun, or anything so
19 concrete.

20 Now, right there, defense counsel -- what is he
21 doing? Does he have something, there, is it a gun? I
22 can't tell you for sure, ladies and gentlemen, I wasn't
23 there. Is it possible he is holding one of the guns there,
24 putting it in the bag later? It is possible. It is just
25 as possible that he is zipping up that sweatshirt he is

1 wearing. But either way, the important thing is, that you
2 know that the person who comes out of that car, the only
3 one holding the bag that you know all three guns are found
4 in, the guns that had this defendant's DNA on them -- and,
5 by the way, when defense counsel talked about the
6 commingling of DNA, the only DNA in that bag was --
7 belonged to this defendant. The chicken didn't have his
8 DNA on it, it was his fingerprint on the chicken box.

9 So, there is no commingling that would have somehow
10 transferred someone's else's DNA onto the guns being
11 inside that bag. Again, just speculation, not based on
12 evidence. An attempt to get you away from the objective,
13 credible evidence in this case, Lee Woods, Robert Ellis,
14 and Dexter Bostic.

15 And when you watch that video, ladies and gentlemen,
16 if you watch it closely right now, up here at the top,
17 defense counsel said that Sergeant Johnson said that he
18 was directed specifically into that back driveway because
19 they had said there had been some -- in the video, --
20 people may have gone back there.

21 This is the video.

22 (Whereupon, video played in open court.)

23 You can see the three of them with this defendant
24 leading the way. Stop. You can see them go to the left.
25 So, of course, this is the video that is being spoken of,

1 that leads them to go back there. And focus on that
2 garage when, hours later, they had downloaded this
3 video -- right there -- they are stopping at the top. And
4 there, you see them there, going straight to the left,
5 right there, and then they are gone.

6 When the defense counsel said, what about these
7 cameras -- I am just not going to put it on the document
8 camera -- you know what, I am just going to do it for a
9 second -- talked about evidence that wasn't shown to you.

10 First of all, speculation, but come on. First of all,
11 these cameras are in a totally separate back alleyway. So
12 the people that are living in these homes, those are their
13 cameras trying to protect their property and keep them
14 safe. Where do you think the cameras are pointed, within
15 their own property, ladies and gentlemen. Common sense
16 tells you that.

17 So, there is nothing suspect about nothing coming
18 from these cameras, there wouldn't be. And if you
19 remember, Sergeant Johnson, or -- excuse me, it was
20 Sergeant Zacaese from K9, telling you this is a fenced
21 area right here. So, the camera's nose is from this
22 building that points here, that showed this team of three
23 together fleeing that way where you know the guns were
24 found that had this defendant's prints and DNA all over
25 it.

1 Now back to the jacket and the hat that you saw the
2 defendant wearing. Well, when you watch the Popeye's
3 video, they were there at 2:08 in the morning. The time
4 stamp shows the time that he and Ellis left was 2:14, just
5 four minutes before the shooting happens, which is 2:18.
6 And when you look at what the defendant is wearing, he is
7 wearing a T-shirt, and that's it. Remember, it is July, it
8 is warm out, T-shirt, same hat. And then you will see
9 Ellis come in and he too is wearing a T-shirt. But yet,
10 for whatever reason, whenever you see them fleeing, when
11 this team of three in a stolen car, with stolen plates,
12 with three loaded guns is driving around on a warm summer
13 night, now they are all dressed in jackets with hoods.

14 But, what's important about what he is wearing when
15 he runs is that, that clothing is found back with the
16 guns. And if this defendant didn't do anything wrong, if
17 he wasn't part of it, why is he so desperate to change the
18 way he looks, just in case someone saw him? That that
19 jacket is clearly thrown, just torn off in haste. His hat
20 is taken off his head and put underneath. There is only
21 one reason for that, ladies and gentlemen, his guilty
22 mind. He was in it beginning to end.

23 The Defense wants to talk about a team of two, it is
24 a team of three. And, if anything, more than half of the
25 time this defendant is not only part of the team, he leads

1 the team.

2 He is the one driving and in control of the car. He
3 is the one who decides when and where to stop. He is the
4 one who has that car in place, and keeps it still just
5 long enough for Officers Timoshenko and Yan to get up
6 there and be shot.

7 It is he who is in control, and leads, and decides
8 when that car speeds away.

9 It is this defendant who leads and decides when and
10 where to abandon that BMW.

11 It is this defendant that leads the other two when
12 they flee. He goes first and the other two clearly
13 follow.

14 He is the one that stays behind for hours in an
15 attempt to get back those guns.

16 He is the one who, together with Nicole Bostic, goes
17 and picks up the other two. He is not only part of it, at
18 many points he leads, never follows. In it to the very
19 end. Active, and willing participant, guilty of all these
20 crimes.

21 You also know the defendant put those guns there
22 himself because, whenever Sergeant Zaccarese sent them to
23 cut that piece of seat out to give to his dog, Scooby made
24 a B line right down Lefferts, right down Kingston, left on
25 Lefferts, left into that second driveway, all the way to

1 the back, right into that garage, right into the back.
2 They don't see any people there they leave. Dog keeps
3 doing circles, more evidence that this defendant is the
4 one who placed guns there.

5 So, we will go to the charges later, but right there,
6 that is actual possession of all three, guilty on those
7 counts.

8 And when you look at the defendant's statements when
9 he finally admitted he was the driver even, always still
10 trying to distance himself, he went out of his way in his
11 written statement, or maybe it was an oral statement of
12 Detective Yero, I went with them from the car. We went to
13 the driveway. I never went to the back of the driveway.
14 Why put in a detail like that, ladies and gentlemen?
15 Because he knew the guns were in the back of the driveway.
16 So, in to the very end, always trying to distance himself,
17 put a spin on it in any way he could.

18 Now I want to talk about Tamika Buggs for a few
19 moments.

20 First of all, Defense wants to talk about harassment,
21 and how they went about, with all these police officers,
22 to go and find her. Why did they come up with her in the
23 first place? Because she had Dexter Bostic's phone. A
24 person they believed was responsible, or potentially
25 responsible for the shooting of officers, of course they

1 are going to go there. They checking phone sites, all of a
2 sudden, there she is.

3 She speaks to them, she lies. They go back and she
4 comes. She told you she didn't want to be involved, and
5 you know what, who can blame her? And we will get to that
6 in a few minutes.

7 First, what do you know about Tamika Buggs? You know
8 she knows this defendant because he dated her aunt. You
9 knew she had never had any problems with him.

10 In fact, when she had problems with her landlord, the
11 family called this defendant to help her out. When she
12 needed a place to stay, it was this defendant who got her
13 a place.

14 Again, thick as thieves with those two. He calls
15 Ellis and Bostic. This girl you don't even know, help her
16 out, she needs a place to stay. The two of them do just
17 that. They were in it together, the three of them, from
18 beginning to end.

19 She told you, after she and Ellis left a McDonald,
20 they went to a specific location where they were picked up
21 by this defendant and Nicole. Well, of course there was
22 communication for them to know where to get them. So,
23 still with them.

24 This is not a guy who is trying to get away from the
25 other two. There is communication between the two of them.

1 And then they go and pick up Bostic. Again, these three
2 are still communicating because they are in it until the
3 very end. And you know that everything she told you is
4 true because it is corroborated by other evidence.

5 She told you, when the team of three got back
6 together, one of the first things this defendant went on
7 to say is that he and Nicole had gone back for the guns,
8 but there was too many police in the area so they couldn't
9 get them, so they had to leave them behind. You know
10 that's true because Nicole Bostic's license plate is
11 captured on the plate rear at 6:07 p.m.

12 And you also know that because of all her phone
13 records and cell site information you got in evidence
14 yesterday, which shows her leaving Far Rockaway at about
15 3:15 in the morning, coming into Brooklyn, being right in
16 the vicinity around the guns by 3:45, circling. When you
17 look at the phone for three hours, and you know she is
18 with this defendant, why else would -- he said in his
19 statement, he was with her and went back to her home. And
20 then they leave, and go back at about 7:00 that morning.
21 So you know Tamika Buggs is being truthful about that.

22 And she also tells you, that inside that car that
23 this defendant said, listen, I got nothing to worry about.
24 The only thing I am guilty of is moving the guns. Those
25 are the words she said he used.

1 Think about that for a moment. This is a guy who's
2 always spinning a tale. He puts a spin on everything that
3 he is confronted with by police. And whether he is
4 spinning it for Tamika's benefit at that point, or someone
5 close to her family, whether for Nicole and her daughter
6 inside, or whether it is for the benefit of Bostic and
7 Ellis, making it clear, listen, guys, this is on you. I
8 didn't pull the trigger in this case, that was you.

9 But, ladies and gentlemen, it is the law of acting in
10 concert that controls, not the world according to Lee
11 Woods. Because this defendant may have thought that he
12 didn't have anything to worry about because he didn't
13 actually pull the trigger, it's all about the law that you
14 will be given by this Judge that, no matter what your
15 degree of participation, no matter what your roll, if you
16 are helping, if you are aiding, you are guilty as if you
17 committed each and every act yourself.

18 So, maybe he is spinning for the benefit of the
19 people in the car. Or maybe, just because he wants to now
20 distance himself after the fact. By trying to distance
21 himself after the fact, does nothing to exculpate him from
22 what he choose to do at the time these two young officers
23 were shot.

24 And, ladies and gentlemen, look at those phone
25 records that you have in evidence. Detective Margraf told

1 you about a lot of phone numbers he got during the course
2 of this investigation. The phone numbers of women
3 associated with this defendant, Cora Thompson,
4 347-454-6042, Leandra Stays, her number, 917-769-8073.
5 And Robert Ellis' cell phone number, 347-891-4472 -- and I
6 am not going through all the tickets, these are the first
7 six. Dexter Bostic, 718-666-1977, Frederick Bostic,
8 718-350-6641. Those phone numbers appear on Nicole
9 Bostic's records over and over again, beginning at about
10 3:15 a.m., going up and until the time that you know this
11 defendant left willingly with the police to go back to the
12 precinct.

13 So, I suggest that you can infer, based on that, that
14 he was using Nicole Bostic's phone. But whether it was his
15 voice on the line or her's, you know, at the very least,
16 she is making calls on behalf of him. Just to Ellis alone
17 there are 25 calls between 3:15 and nine p.m.. You can
18 almost hear the panic that was going over those lines.

19 Now where are you? Where are you? What are we going
20 to say? What do you think they know? Did you see the
21 news? Did you see the guns? Where we going to pick you
22 up? Once they them up, once they drop off Bostic and
23 Ellis, where are you going? I am going here.

24 These three, beginning to end, still working
25 together, figuring it out together. Their initial purpose

1 is to try and get away, and they are still doing just
2 that. Just more proof they are a team of three all the way
3 through.

4 And then, when it comes to Tamika Buggs, don't forget
5 that it was this defendant, not Bostic, not Ellis, who
6 said to her, before she left the car, to keep her mouth
7 shut or she would be next. By saying, not to open her
8 mouth or she would be next, is the clear implication that
9 this defendant was part of what happened. And that he
10 would make sure she met the same fate if she even thought
11 about opening her mouth.

12 So I suggest, that right there is reason enough for
13 her to not to want to get involved. And maybe why she
14 originally lied to the police. Or maybe, just because she
15 didn't want to get involved. She had just been with people
16 that she knew just finished talking about shooting two
17 police officers. Why would she put herself and her family
18 at risk? But she told you, when she was at risk, if she
19 kept lying to the police, that's when she came clean.

20 But you can trust what she told you because it is
21 corroborated by other pieces of evidence in this case.

22 And that the defendant went to Far Rockaway, rather
23 than flee with the other two into the woods, into the
24 middle of the highway median in the Poconos, because he
25 is, maybe, just a little bit smarter than the other two

1 who are going to stick out like sore thumbs. These guys
2 going in and out of the woods on a highway median, that is
3 a recipe to get caught. Maybe, just maybe, if he goes back
4 to his neighborhood where nothing is amiss, he can blend
5 into the city scape, just maybe, he won't be identified,
6 he won't be caught.

7 So, the fact that he didn't meet with the other two,
8 shows nothing indicating innocence on his part. And,
9 again, whatever he chose to do after the fact, in no way
10 minimizes his conduct at the time of the crime.

11 Now, I just want to talk about his statements to the
12 police for a little bit. I don't think we have to go
13 through them all, you can certainly look at them all if
14 you want to, or ask to have testimony read back. But the
15 insinuation that the cops is making this up?

16 First of all, let's just talk about the CI stuff for
17 a moment. The defendant said to Detective Habert that he
18 was a CI. Why do you say that?

19 First of all, you knew they checked it out and said
20 he had been a CI at the 101st Precinct. All you need to
21 know is, any common sense, a CI is someone who, at some
22 point, has given police information to get some sort of
23 benefit for themselves, right? That's what it is.

24 I suggest, the only reason he told them that, at that
25 moment, in an attempt to ingratiate himself to the police.

1 Remember, he is someone, by being a CI, reads at some
2 point that he could help himself by being with the police.
3 And here now, when he is in contact with them, because he
4 happens to be at Nicole Bostic's house when they come
5 looking for Dexter, he comes with them willingly.

6 Does that indicate some sort of willingness on his
7 part? No. This is a guy who likes to spin, who likes to
8 talk. It is all about self preservation. He goes with
9 them, tries to find out what they know. Even back there
10 he says, this must be very serious for all these cops to
11 be there. And then in the precinct he stays? Think about
12 it.

13 In his mind, his guilty mind, he does anything to act
14 suspect, then maybe the police focus on him. But if he
15 stays cooperative, tries to spin his tale, maybe he either
16 is never found out, or if so, he could put his best foot
17 forward, which he did, which he tried to do with all his
18 changing statements.

19 And that's the reason he went with the police, and
20 the only reason he mentioned being a CI, is trying to
21 ingratiate with them. But all his actions indicate the
22 opposite. But that the detectives maybe wrote these
23 statements, or told him what to say?

24 First of all, about the difference in the signatures.
25 Well, this is just silly. Because here, that is just

1 that, it is a signature, it is script. Where here he is
2 printing, and the printing matches everything in the
3 statement, every single word. You think the police are
4 going to make up and write a statement that he puts
5 himself in another car? Of course not. That makes
6 absolutely no sense.

7 You think that they are going to write out a
8 statement that he gives an excuse, an explanation for his
9 conduct? That he had a gun to his head, giving him a
10 potential defense to this whole thing? Of course not.
11 These are the words of a guy who tries to say only as much
12 as he thinks he has to.

13 Initially he tells Detective Habert, and then
14 Detective Yero, I have not seen Dexter in a few days. And
15 he was not doing that to help his friend, he was doing
16 that to help himself. You know he is a CI, he has no
17 problem giving people up. And when push comes to shove,
18 he tried to do that, give up Dexter and Ellis. And if the
19 police went to North Carolina on a wild goose chase, maybe
20 he would not get caught.

21 But when Yero told him, we have information, then his
22 mind gets working. Who do he knows that knows all three of
23 them, the defendant's brother Frederick. This -- they go
24 to him, says they were all three together. He tells them
25 what happens at Frederick Bostic's house, they had seen

1 guns, he touched guns, been there for a gun sale.

2 I suggest he only gave them something that he
3 thought, maybe the police would have known by talking to
4 someone else. But once the team of three leave, Frederick
5 Bostic, that's where he dips with more lies. Because,
6 that's now when there is no one but the three of them
7 there, he puts himself in this totally separate car.

8 He only gives information he thinks the police can
9 name on their own. And that does not indicate criminal
10 conduct. He goes on to admit, they went to Caribbean City.
11 Maybe people saw them there, knew them, gave their names.
12 There is no crime being out at night talking to girls.

13 And then he admits they went to Popeye's to go get
14 food. Again, they were in a place with other people. Maybe
15 the police could find that out. And no crime to being
16 hungry late at night, so he gives them that. But then,
17 whenever it is something that there is no other people
18 around, or doesn't implicate him in criminal activity in
19 any way, that's when he starts to lie over and over again.

20 So I suggest, ladies and gentlemen, when you look at
21 this evidence, this is not a case about what Lee Woods
22 says. It is about what the objective evidence shows you.

23 Almost done, hang on with me another five or
24 10 minutes. You okay?

25 JURORS: Yes.

1 MS. NICOLAZZI: And when Defense talked about,
2 you can't believe detectives because they contradict each
3 other, and he used the example Detective Walker saying
4 that about when he was told that the defendant wasn't free
5 to leave. And when it was that Yero said that, that is
6 not inconsistent at all. Detective Walker said, I never
7 got a phone call telling me that, because he said it was
8 in person, and that's exactly what Detective Yero said he
9 told him in person.

10 So, you start to wonder about any of those types of
11 things, go back to the transcript, look for yourselves and
12 you will see there is no inconsistencies here. I suggest
13 to you, the witnesses who came in here were candid and
14 honest with you, they were candid.

15 Detective Newman who told you herself, on direct, you
16 know what, when I first was at that car and photographed
17 it, that Popeye's bag wasn't there in front. She told you
18 that. But then, when I took some later photographs, it was
19 there. I can't tell you, she said, how that got there.
20 That is someone who is being candid and honest. And you
21 know what, sometimes things just aren't explainable.
22 Obviously, someone put it there, we know that. But what
23 does that do to this case either way? Nothing. There is no
24 evidence that came from this bag. And because this chicken
25 bone, she said to you, I don't know where it went. Again,

1 something happened, there was some mishandling or
2 something, but I suggest there is nothing sinister about
3 that, in light of everything you know in this case.

4 This defendant, through his statements which counsel
5 argued here to you puts himself in that car, and makes him
6 the driver, so what does any of that mean? Nothing, ladies
7 and gentlemen. I suggest, when you look at it all, this is
8 not a case of coercion, or conspiracy. People getting
9 together, doing the best they could, getting here and
10 testifying truthfully to you, you know that from their
11 demeanor, and when you put all the evidence together in
12 this case, under the law, if this defendant was in for a
13 penny, he was in for a pound. He was in it with them all
14 the way.

15 He waited to pull over until this team came up with
16 their plan. He held that car just long enough to let the
17 officers come up to where they could be in the best
18 position. He waited for the other two to fire their guns.
19 And in that split second, he drove them away in an attempt
20 to get away, as they ultimately planned to do. In that
21 moment he knew what they had planned. And when he stopped
22 that car and waited in those moments alone, at the very
23 least he helped them. And in those moments, his intention
24 must must have been the same as theirs. And that aid makes
25 him guilty under the law.

1 Just lastly, I am going to talk to you a little bit
2 about the charges.

3 You are going to get five counts in this case. Three
4 counts of Criminal Possession of a Weapon in the Third
5 Degree for each of those three guns. And one count of
6 aggravated murder, and one of attempted aggravated murder.

7 With respect to the guns, this defendant, Lee Woods,
8 together with his partners, possessed all three guns
9 inside that BMW with the automobile presumption that you
10 will hear the law on, that alone makes him guilty of those
11 guns.

12 Ellis used the high point to shoot Officer Yan,
13 Bostic used the 45 to shoot Officer Timoshenko, the other
14 gun was in the car with them. By being in that automobile,
15 this defendant had as much access, or potential control to
16 each one of those guns if he had chosen to use it. So, he
17 constructively possessed each one of them right there.

18 When you hear the law on constructive possession, you
19 know he is guilty for that theory as well. He also is
20 the one who placed that bag with all three guns in the
21 back of the garage. So, at the very least, right there he
22 actually possessed each one of those guns. And you know
23 his DNA is on two of them, the high point and the Intra
24 Tech. So, he is guilty under actual possession as well.
25 Any one of those theories, all three guilty beyond any

1 reasonable doubt.

2 Then you will be given a count of attempted -- or,
3 the count of attempted aggravated murder, and aggravated
4 murder. That this defendant, acting in concert with his
5 two partners, attempted to kill Hermann Yan, and killed
6 Russell Timoshenko intentionally.

7 And that, at the time of the crime, Officers Yan and
8 Timoshenko were performing their official duty. And that
9 this defendant knew, or reasonably should have known that.

10 And he was over 18 at the time -- and he was 29 back
11 then.

12 This defendant, remember, is charged under acting in
13 concert. Each one of you during jury selection said that
14 you understood that under the law, a person could be held
15 responsible, not only for their own actions, but for the
16 actions of someone else, if it was proven to you that they
17 had participated in. And that the degree of participation
18 did not matter. And each one of you have assured us you
19 would follow the law.

20 What the 12 of you that deliberate must agree upon,
21 under acting in concert, was that this defendant
22 intentionally aided the others in some way. And I say that
23 because you don't need to, all of you, agree on what role
24 it was that he played. And I say that because, maybe one
25 or more of you thinks, well, there is also some evidence

1 showing he may have actually been the guy in the back seat
2 firing the guns, and there is some compelling evidence to
3 show you that. You have his DNA on the high point, you
4 have his Dole juice bottle that we saw him buy in the
5 Popeye's restaurant in the back seat. But, you also have
6 him coming out of the car first. You have what Tamika
7 Buggs tells you he says in the company of all three. You
8 have his statements saying he was the driver of the car.

9 But whether he is the driver, or the shooter it
10 doesn't matter, because all three in that car are equally
11 responsible under the law. All three played a role that
12 was necessary to commit these crimes. That is what is
13 important, and what you must remember when you deliberate
14 on this case.

15 The evidence proves this defendant was in it from the
16 beginning to the end.

17 There is no question that Officers Timoshenko and Yan
18 were performing their lawful duties at the time they were
19 stopping the car. There is no question that this
20 defendant reasonably should have known that. You could see
21 the marked police car behind them flashing. He says in the
22 statement himself, Officer Timoshenko and Yan were in
23 uniform, they were working at the time. So those elements
24 are met right there.

25 Now, let's talk about intent for a moment, because

1 these counts, they both require that you find the
2 defendant, together with the others, that he acted
3 intentionally. I suggest to you intent is the natural and
4 probable consequences of someone's actions. And I suggest
5 to you, that what you know is that the only natural and
6 probable consequences when you shoot someone at close
7 range, in the face, is that they will die. And that when
8 you shoot someone in the chest, where you know Officer Yan
9 was shot, the only thing that saved him from Russell
10 Timoshenko's same fate, was that bulletproof vest that he
11 wore. You saw the bruise and the scar that remains on his
12 chest where Dr. Cruz described he would be dead, but for
13 that vest, the natural and probable consequences of those
14 gunshots, is that two officers would die.

15 So, first of all, this was an execution and an
16 attempted execution. There is no requirement, under the
17 law, for premeditation. No one is coming in here and
18 saying these three woke up that morning and said, let's go
19 out and kill some cops, no. I suggest the evidence makes
20 clear, that this is a plan that three of them form in the
21 heat of the moment when, now, they were confronted with
22 being pulled over in a stolen car, with stolen plates,
23 with three loaded guns inside.

24 This defendant pulled the car over after the three
25 had come up with a plan, and by stopping, and by waiting

1 there, the officers were in the perfect position for the
2 other two to fire the guns. He helped them to commit
3 those crimes. Thus, at that very moment, which is all that
4 is required under the law, at that moment that he is
5 holding that car in place for the other two to shoot, he
6 intended for those officers to die. There is no other way
7 to look at it. You know it is about to happen. You help
8 in some way. Your intention is the same. That is proof
9 beyond any reasonable doubt.

10 Each one of them played the role, whether it is
11 driver, whether it is shooter, this defendant is guilty,
12 beyond any reasonable doubt, for the attempted aggravated
13 murder of Hermann Yan, and the aggravated murder of
14 Russell Timoshenko. At 23 years old, Russell Timoshenko,
15 a young man, a New York City Police Officer, and only
16 child, his life was taken from him way before his time.

17 This defendant is responsible by law, in these facts,
18 based on this evidence for that. And he is as responsible,
19 and as guilty, based on these facts, under this evidence,
20 under this law for the attempted murder of Hermann Yan.
21 The evidence, I suggest, proves that to each and everyone
22 of you. He chose to be part of these brutal crimes that
23 day.

24 When you deliberate on this case, ladies and
25 gentlemen, do not compromise. Each of you assured us you

1 would take the evidence as you saw it, coupled with the
2 law, and come back with a verdict. And I suggest, if you
3 do that the verdict will be just one.

4 Now, ladies and gentlemen, you have all been patient,
5 you have been attentive during the course of the trial,
6 you certainly spent some of your time waiting on us. Now
7 it is our time to wait on you.

8 You are going to be given the law in this case, and
9 when you go back in the jury room to deliberate, please
10 take as much, or as little time as each one of you, and
11 collectively, as you need to. And then come back into this
12 courtroom with the verdict that justice demands in this
13 case. That based on the evidence, the only verdict that
14 is just is that this defendaht is guilty of everything he
15 is charged with. He is guilty of possessing each one of
16 those guns. He is guilty of the attempted aggravated
17 murder of Hermann Yan. And, he is guilty of the
18 aggravated murder of Russell Timoshenko.

19 Thank you very much, ladies and gentlemen.

20 THE COURT: Take the jurors outside for a
21 minute, and we will have them back.

22 (Jury exits the courtroom.)

23 (Whereupon, a brief recess was taken.)

24 THE CLERK: Case on trial. All parties are
25 present. Defendant being present in court.

1 THE COURT: Counsel, Mr. Woods, as you know we
2 got a late start. The juror's lunch is here. I am going to
3 bring them out, and ask them whether they would like to
4 eat lunch first before I give my charge, which is about
5 30 minutes, and see where we are.

6 Any objection?

7 MR. MEGARO: No.

8 MS. NICOLAZZI: No.

9 MR. HALE: That's fine.

10 THE COURT: Let's get them out.

11 COURT OFFICER: Ready?

12 THE COURT: Bring them right in, please.

13 COURT OFFICER: Jury entering.

14 (Whereupon, the jury enters the courtroom, and
15 is seated in the jury box.)

16 THE CLERK: Case on trial. All parties are
17 present.

18 Both sides waive a reading of the roll?

19 MS. NICOLAZZI: Yes.

20 MR. MEGARO: Yes.

21 THE COURT: Jurors, I have brought you out for
22 this reason. Your lunch that you ordered is here.

23 Now, I need to know whether you would like to eat
24 your lunch first, and after you eat your lunch I charge
25 you on the law. Or, can you wait until my charge? My

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

2 THE CLERK: Case on trial. All parties are
3 present.

4 THE COURT: All right, it is about 2:00. Either
5 side want to put anything on the record?

6 MS. NICOLAZZI: No.

7 THE COURT: The jurors are coming down.

8 Bring them right in.

9 COURT OFFICER: Jury entering.

10 (Whereupon, the jury enters the courtroom, and
11 is seated in the jury box.)

12 THE CLERK: Case on trial. All parties are
13 present.

14 Both sides waive a reading of the roll of the jury?

15 MS. NICOLAZZI: Yes.

16 MR. MEGARO: Yes.

17 THE COURT: Members of the jury, now that all
18 the evidence has been presented, the attorneys have made
19 their closing arguments, it becomes my duty to instruct
20 you on the law that you must apply to the evidence.

21 In reaching your verdict, it is your duty to apply
22 only the law on which I instruct you to the evidence
23 because, at the beginning of the trial you promised that
24 you would decide this case justly and impartially, to the
25 best of your judgment and render a verdict according to

1 the law and the evidence.

2 The instructions that I gave you at the beginning of
3 the trial, those given during the trial, will apply,
4 including instructions given just before summations and
5 during summations.

6 Now, whatever I say, or have said about the law, you
7 must apply in your jury deliberations. While the lawyers
8 may comment on some of these rules, you must be guided
9 only on what I instruct you about them. You must follow
10 all these rules as I explain them to you, you may not
11 follow some and ignore others. Even if you disagree, or
12 don't understand the reasons for some of the rules, you
13 are bound to follow them.

14 Now, you can ask me to repeat or clarify any
15 instruction and I will do so here in court. I am not
16 allowed to send you anything in writing.

17 Now, as I have previously instructed you, and do
18 again, the indictment filed against the defendant is the
19 means by which the People give notice to the defendant of
20 charges against him, and brings the defendant before the
21 Court. The indictment is an accusation and nothing more.
22 It is not evidence, and you are to give no weight to it in
23 arriving at your verdict. As I had previously instructed
24 you, and do again throughout these proceedings the
25 defendant is presumed to be innocent. As a result, you

1 must find the defendant not guilty unless, on the evidence
2 presented at this trial, you conclude the People have
3 proven the defendant's guilt beyond a reasonable doubt.

4 Now, you may not disregard the presumption of
5 innocence by saying, or feeling that the defendant must be
6 guilty. You must start your deliberations by saying that
7 the defendant is not guilty. And only after you have
8 considered the evidence and accept and believe that it
9 convinces you, beyond a reasonable doubt, may the
10 presumption be disregarded and a verdict of guilty
11 returned. Then, and only then is the presumption
12 destroyed.

13 Now, in making the factual determinations upon which
14 your verdict will be based, you are to consider only
15 matters which were admitted in evidence, and remained in
16 evidence. Namely, exhibits which were marked and received
17 into evidence, sworn testimony of witnesses, both direct
18 and cross-examination, as you heard in this courtroom,
19 plus any concessions, or agreements between the parties
20 known as stipulations. Again, stipulation is information
21 that the parties agree to present to the jury as evidence,
22 without calling a witness to testify.

23 Now, certain things are not evidence and must,
24 therefore, be disregarded by you in deciding what the
25 facts are. You may not infer any fact from the mere asking

1 of a question, nor draw any inference from any unanswered
2 question, it is the answer coupled with the question that
3 constitutes evidence. Testimony of witnesses which were
4 stricken from the record, or to which an objection was
5 sustained must be disregarded.

6 Exhibits that were just seen during the trial, or
7 marked for identification but not received in evidence are
8 to be totally disregarded by you. Obviously, anything you
9 may have seen or heard outside the courtroom is not
10 evidence.

11 Any comments, or all comments I should say, or
12 remarks between the lawyers, or between the Court and
13 lawyers must be disregarded. I caution you, in arriving at
14 your verdict, it is your duty as jurors to determine the
15 guilt, or non-guilt of the defendant solely on the facts
16 in this case. You should not speculate on the existence,
17 or non existence of facts not presented here at trial.
18 Leave speculation out of your deliberations entirely.

19 Now, during the course of the trial I made certain
20 rulings on objections made by counsel. Some of which I
21 sustained, others which I overruled. I may have also
22 granted or denied, at various times during the trial,
23 certain motions to strike testimony, possibly some other
24 motions. All these rulings relate to questions of law
25 which were for me to decide. As such, they have nothing

1 to do with your determination of the facts in this case,
2 which is for you to decide. You are the only judges of the
3 facts. You should not infer, in the slightest degree, that
4 I have any opinion as to how you should find the facts in
5 this case from the rulings I have made. You must, however,
6 take my instructions that I made on these rulings, any
7 evidence rejected, excluded must be completely
8 disregarded, or ignored by you. Any statement or
9 direction by you which I limit the use, or affect of any
10 matter must be scrupulously observed.

11 Now, during the testimony of Michael Dingman, I
12 permitted a video animation which he created to be
13 received in evidence. Specifically referring to People's
14 134. Again, it is not a recreation of the actual episode
15 of the shootings of Officers Timoshenko and Yan, it was
16 created by the Prosecution after the alleged events of
17 July 9, 2007. It is illustrative of the witness' testimony
18 and theory of the alleged event. Like all other evidence,
19 it may be accepted or rejected by you, in whole or in
20 part.

21 Now, in this case I permitted photographic evidence
22 to be received. Specifically, I am referring to People's
23 114 and 115. As you know, these are photographs of x-rays
24 which depict the location of ballistics in the neck of
25 Officer Timoshenko.

1 Now, you may find these photographs grim and
2 unpleasant. However, they have been admitted into
3 evidence to illustrate certain matters. As I previously
4 charged you, you are not to dwell upon these photographs
5 when you view them. Please do so, look at them calmly and
6 without emotion. I further charge you, you must make your
7 determination of the weight, if any, you see fit to give
8 these photographs objectively, without emotion and without
9 prejudice.

10 Now if, at the end of the case, after you have
11 evaluated all of the evidence in the case, you decide that
12 the People have not proven the defendant's guilt with
13 respect to any crime charged, you must find the defendant
14 not guilty. You must not hold the defendant responsible
15 because you find photographs upsetting, and believe a
16 serious crime took place, and you want someone to pay for
17 that crime.

18 Also, you heard testimony from Detective Yero and
19 Margraf relating to certain interviews conducted by them
20 leading up to the defendant's arrest. I allowed receipt of
21 this evidence for a limited and particular purpose. Such
22 evidence was not offered for the truth of what was said
23 but, rather, to explain the police conduct following what
24 was said. In that situation, it does not matter whether
25 what was said was true or false. It only matters that

1 someone made the statement, and that the police, upon
2 hearing the statements, did something.

3 You may not consider what Detectives Yero and Margraf
4 were told for the truth of the words said. You may only
5 consider the words for the reasons they were offered, that
6 is, to explain the actions of the police leading up to the
7 arrest of the defendant. To the extent that such evidence
8 does not explain those actions, you are to disregard it.

9 Now, you are the sole judges of what the facts are,
10 and which facts you will accept in arriving at your
11 verdict. In deciding what the facts are, you have to
12 decide what testimony you believe, and what testimony you
13 do not believe. You may believe all of what a witness had
14 to say, only part of it, or none of it. You must consider
15 and weigh the testimony of each witness, and give it such
16 weight as in your judgment it is fairly entitled to
17 receive.

18 The matter of credibility of a witness, that is,
19 whether his or her testimony is believable, accurate, in
20 whole, in part, or not at all, is solely for your
21 determination. You and you alone are the final authority
22 to determine who is to be believed, and to what extent.

23 Now, there is no magical formula for evaluating the
24 truthfulness, or accuracy of another person's statements,
25 or testimony. You bring with you to the courtroom all

1 your various experiences. In your every day affairs you
2 determine for yourselves the truthfulness, or accuracy of
3 statements made by others. The same tests you use to make
4 those decisions, are the tests you should apply in your
5 deliberations when evaluating the testimony.

6 Now, some of the considerations may be, the personal
7 history of a witness, if any, is in evidence.

8 The interest, or lack of interest of any witness in
9 the outcome of the case.

10 Whether the witness had, or did not have a motive to
11 lie. If the witness had a motive to lie, you may consider
12 whether, and to what extent, if any, that motive affects
13 the witness' testimony. If the witness did not have a
14 motive to lie, you may consider that as well in evaluating
15 the witness' truthfulness.

16 Any demonstrated bias, or prejudice, or hostility
17 that affects the truthfulness of the witness' testimony.

18 The age, the appearance, the manner in which the
19 witness gave his or her testimony on the witness stand.
20 As well as the behavior, and demeanor of the witness on
21 the witness stand.

22 The opportunity the witness had to observe the facts
23 about which he or she is testifying, or testified about.
24 And, the ability of the witness to recall those events
25 accurately.

1 Whether the witness made statements at this trial
2 that are inconsistent with each other.

3 Whether the witness said something different at an
4 earlier time.

5 Now, the testimony of a witness may be discredited,
6 or impeached by showing that he or she previously made
7 statements which are inconsistent with his or her present
8 trial testimony. If you are satisfied that a prior
9 statement was in fact made by a witness, and that such
10 prior statement was inconsistent with the witness' present
11 trial testimony, then you may consider such evidence only
12 to evaluate the truthfulness and accuracy of the witness'
13 testimony here at trial.

14 The extent to which a witness' testimony is
15 consistent with other evidence that you believe.

16 The probability, or improbability of a witness'
17 testimony when viewed in light of all the other evidence
18 in the case.

19 And, any other personal everyday tests for truth or
20 falsity which, in your own life, you find practical and
21 reliable.

22 If such consideration makes it appear there is a
23 conflict in the testimony, you should first try to
24 reconcile, that is, fit together any conflict in the
25 testimony, if you can fairly do so. If, however, that is

1 not possible, you will then have to determine which of the
2 conflicting versions you accept. And in making this
3 decision, consider whether the conflict involves a matter
4 of importance to your decision, or merely some unimportant
5 detail. Whether the conflict is brought about by an
6 innocent mistake, or intentional falsehood. Keep in mind
7 the other factors already discussed which go into deciding
8 whether or not to believe a particular witness.

9 Now, if you find that a witness has testified
10 falsely, or did so intentionally about a material fact
11 that is necessary for your decision in this case, you may
12 disregard that witness' testimony entirely, or disregard
13 so much of it as you find was untruthful, and accept so
14 much of it as you find was truthfully and accurately
15 given.

16 Now in this case, you heard testimony of police
17 officers. The testimony of such a witness should be
18 evaluated in the same manner as the testimony of any other
19 witness. You should not presume that a police officer's
20 testimony is any more or less credible, or his or her
21 testimony is entitled to any more or less weight than any
22 other person's testimony who may have testified.

23 There is evidence at this trial about the prosecutor
24 speaking to a witness before the witness testified here at
25 trial. The law does not prohibit the prosecutor from

1 speaking to a witness about the case before that witness
2 testifies. Nor does the law prohibit the prosecutor from
3 reviewing with the witness the questions that will be
4 asked at trial. Also, the law does not prohibit the
5 witness from reading certain materials pertaining to the
6 case before that witness testifies at trial.

7 Now, a defendant has an absolute right not to
8 testify. The fact that Mr. Woods did not testify must not
9 be considered by you in any way, or even discussed in your
10 jury deliberations. I remind you, it is up to the People
11 to prove the defendant guilty beyond a reasonable doubt.
12 It is not up to the defendant to prove that he is not
13 guilty.

14 Now, during the course of the trial there were any
15 number of witnesses who described themselves as experts.
16 Just a few trauma surgeons who was also involved in the
17 critical surgical care, fingerprint examiner, high copy
18 and high sensitivity DNA crime scene reconstruction,
19 medical examiner, firearm and ballistics experts. And,
20 there was some others, I think, who were stipulated, their
21 expertise was stipulated to in stipulations.

22 Now, when a case involves a matter of science or art
23 that requires special knowledge or skill not ordinarily
24 possessed by the ordinary person, an expert is permitted
25 to state his or her opinion as to any such matter which he

1 or she is specifically qualified and verse, and which is
2 material to the case for information of the Court and
3 jury.

4 Now, the opinions stated by such expert is based upon
5 a particular fact as the expert observed them, or as the
6 attorney asked the expert to assume. Now, merely because a
7 person has expressed an opinion does not mean that you
8 must accept this opinion. It is solely within your
9 province to determine the credibility and weight that
10 should be given an expert's opinion, in light of all the
11 other evidence.

12 Although you may not arbitrarily disregard the
13 testimony of an expert witness, if you find that his or
14 her opinion is not based on fact, or contrary to the
15 evidence you should disregard it. In other words, you are
16 not required to accept an expert's opinion to the
17 exclusion of the facts and circumstances disclosed by the
18 other evidence. Such opinion is subject to the same rules
19 concerning the reliability as the testimony of any other
20 witness. It is given to assist you in reaching a proper
21 conclusion. It is entitled to such weight as you think it
22 deserves considering the expert's education, experience.
23 Reasons given for his or her opinion must be considered by
24 you, but is not controlling upon your judgment.

25 Now, in reaching your verdict you are not to be

1 influenced in any way by bias, prejudice, or sympathy for
2 anyone, including the defendant.

3 What the reaction of the parties or public to your
4 verdict may be. Whether it will please or displease
5 anyone, be popular or unpopular. Or, indeed, any
6 consideration outside the case as it has been presented in
7 this courtroom should have nothing to do with your
8 determination of the case. You should consider only the
9 evidence, both the testimony and exhibits. Find the facts
10 from which you consider to be the believable evidence and
11 apply the law which I now give to you to those facts. Your
12 verdict will be determined by the conclusion thus reached,
13 no matter whom the verdict helps or hurts.

14 Now, in arriving at your verdict you should disregard
15 entirely any question of punishment in the event the
16 defendant should be found guilty by you. In so stating, I
17 do not imply, in the slightest degree, that your verdict
18 should be guilty. Punishment, however, is solely my
19 responsibility and should be removed from your mind
20 absolutely and completely.

21 Proof beyond a reasonable doubt. No conviction of an
22 offense by verdict is valid unless based on trial evidence
23 which is legally sufficient in that it establishes, beyond
24 a reasonable doubt, every element of such offense and the
25 defendant's commission thereof.

1 Now, what does our law mean when it requires proof of
2 guilt beyond a reasonable doubt? The law uses the term
3 proof beyond a reasonable doubt to tell you how convincing
4 the evidence of guilt must be to permit a verdict of
5 guilty.

6 Proof beyond a reasonable doubt does not mean proof
7 of guilt beyond all possible doubt. It is not necessary
8 for the People to prove the guilt of this defendant beyond
9 all possible doubt.

10 On the other hand, it is not sufficient to prove the
11 defendant is probably guilty. In a criminal case the proof
12 of guilt must be stronger than that, it is proof beyond a
13 reasonable doubt.

14 Now, a reasonable doubt is an honest doubt of the
15 defendant's guilt for which a reason exists, based upon
16 the nature and quality of the evidence. It is an actual
17 doubt, not an imaginary doubt. It is a doubt that a
18 reasonable person acting in a matter of this importance
19 would be likely to entertain because of the evidence that
20 was presented, or because of the lack of convincing
21 evidence.

22 Proof of guilt beyond a reasonable doubt is proof
23 that leaves you so firmly convinced of the defendant's
24 guilt that you have no reasonable doubt as to the
25 existence of any element of the crime charged, or of the

1 defendant's identity as the person who committed that
2 crime.

3 Now, in determining whether or not the People have
4 proven the defendant's guilt beyond a reasonable doubt,
5 you should be guided solely by a full and fair evaluation
6 of the evidence. After carefully evaluating the evidence,
7 each of you must decide whether or not that evidence
8 convinces you beyond a reasonable doubt of the defendant's
9 guilt.

10 Whatever your verdict may be, it must not rest upon
11 speculation, nor may it be influenced in any way by bias,
12 prejudice, sympathy, or by a desire to bring about an end
13 to your jury deliberations, or to avoid an unpleasant
14 duty.

15 Now, if you are not convinced, beyond a reasonable
16 doubt, of the defendant's guilt of the crimes charged, you
17 must find the defendant not guilty of that crime. If you
18 are convinced, beyond a reasonable doubt, of the
19 defendant's guilt with respect to a crime charged, then
20 you must find the defendant guilty of that crime.

21 Now, before I instruct you on the crimes charged, let
22 me just explain the difference between motive and intent.

23 Motive is the reason, or reasons that a person
24 chooses to engage in conduct, or to do an act.

25 Intent is a state of mind, and refers to what a

1 person's conscious objective or purpose was in doing an
2 act.

3 Thus, a person commits a criminal act with intent
4 when, that person's conscious objective or purpose is to
5 engage in the act which the law forbids.

6 Criminal intent is an essential element of the first
7 two crimes I am going to give you in the indictment,
8 Aggravated Murder and Attempted Aggravated Murder, and
9 must be proved by the People beyond a reasonable doubt.

10 On the other hand, motive is not an element of any
11 crimes charged that the People are required to prove. They
12 have no obligation to do so. Nevertheless, the existence
13 of motive, or lack of motive when established by the
14 evidence, must be considered by the jury.

15 For example, if you find from the evidence that the
16 defendant had a motive to commit the crimes charged, that
17 is a circumstance you may wish to consider as tending to
18 establish guilt.

19 On the other hand, if you find the People established
20 the defendant had no motive to commit the crimes charged,
21 that is a circumstance you may wish to consider tending to
22 prove the defendant's innocence of the crimes charged.

23 Now, the first count to be submitted for your
24 consideration charges Aggravated Murder. This applies to
25 Officer Timoshenko. The indictment related to this crime

1 reads as follows:

2 The defendants, each aiding the others, on or about
3 July 9, 2007, in the county of Kings, being 18 years old
4 and more on the date of the commission of the crime, with
5 intent to cause the death of another person, namely,
6 Russell Timoshenko, caused the death of Russell Timoshenko
7 by shooting him with a deadly weapon, namely a handgun,
8 thereby inflicting various wounds on Russell Timoshenko.

9 Thereafter, on July 15, 2007, Russell Timoshenko died
10 of those wounds.

11 And Russell Timoshenko was a police officer as
12 defined in subdivision 34 of Section 1.20 of the Criminal
13 Procedure Law, who was killed in the course of performing
14 his official duties.

15 And the defendant knew, or reasonably should have
16 known that Russell Timoshenko was a police officer.

17 Now under our law, a defendant is guilty of
18 Aggravated Murder when, with intent to cause the death of
19 another person, he causes the death of such person who was
20 a police officer who was, at the time of the killing,
21 engaged in the course of performing his official duties.

22 And the defendant knew, or reasonably should have
23 known that the victim was a police officer.

24 And the defendant was more than 18 years old at the
25 time of the commission of the crime.

1 Now intent means conscious objective or purpose.
2 Thus, a person intends to cause the death of another
3 person when, his conscious objective or purpose is to
4 cause the death of that person.

5 Premeditation or advanced planning is not a
6 prerequisite in determining intent, nor is it necessary
7 for the People to prove that the intent to kill was
8 present in the defendant's mind for any particular period
9 of time. Intent can be formed and need only exist at the
10 very moment the defendant acted, or engaged in the
11 conduct.

12 Now, the question naturally arises as to how to
13 determine whether or not the defendant had the intent
14 required for the commission of the crime.

15 To make that determination in this case, you must
16 decide if the required intent can be inferred beyond a
17 reasonable doubt from the proven facts.

18 In doing so, you may consider the person's conduct
19 and all the circumstances surrounding that conduct,
20 including, but not limited to the following:

21 What, if anything, did the person do or say.

22 What result, if any, followed the person's conduct.

23 And, was the result the natural, necessary, and
24 probable consequences of that conduct.

25 Therefore, in this case, from the facts you find to

1 have been proven, decide whether or not you can infer
2 beyond a reasonable doubt that the defendant had the
3 intent required for the commission of this crime.

4 Now, a person knows that his intended victim is a
5 police officer when, he is aware that such intended victim
6 is a police officer.

7 A person reasonably should have known that his
8 intended victim was a police officer if, in the same
9 circumstances, a reasonable person in the same position
10 and possessing the same knowledge, would know that such
11 intended victim is a police officer.

12 A police officer is engaged in the course of
13 performing his official duties when, he is acting pursuant
14 to his occupation as a police officer, rather than a
15 private citizen.

16 Now, the Prosecution's theory for this count of
17 Aggravated Murder is that the defendants, Dexter Bostic,
18 Robert Ellis, and Lee Woods participated together in the
19 commission of the crime. The indictment charges the
20 defendants with each aiding the others, also known as
21 acting in concert.

22 Now our penal law defines acting in concert, and each
23 aiding the other as follows:

24 When one person engages in conduct which constitutes
25 an offense, such as aggravated murder, another person is

1 criminally liable for such conduct when, acting with the
2 state of mind required for the commission of such crime,
3 he solicits, requests, commands, importunes, or
4 intentionally aids such person to engage in such conduct.

5 This means, that when two or more people are acting
6 together to commit a crime, such as aggravated murder, and
7 each does an act or acts which tends to accomplish their
8 common criminal purpose, all are equally guilty of the
9 crime, each is a participant, or accomplice of each other,
10 and a major player.

11 As a participant in a crime, a defendant must be more
12 than simply present at the scene, and mere association
13 with another person whose conduct constitutes criminal
14 activity does not, in itself, make an individual an
15 accomplice to a crime. To be criminally liable as a
16 participant in a crime, he must wilfully associate himself
17 in some way with the criminal venture, wilfully
18 participate, or assist in the criminal venture and
19 wilfully take some action to make the venture succeed.

20 Thus, under the law of acting in concert, the
21 defendant, Lee Woods, can be guilty of the crime of
22 Aggravated Murder based upon his own act, or the acts of
23 someone else, if the People establish, beyond a reasonable
24 doubt, that he had the intent to cause the death of
25 Russell Timoshenko. And acting with that intent, he

1 solicited, requested, or did something else to
2 intentionally aid someone else to cause the death of
3 Russell Timoshenko.

4 Now if proven, beyond a reasonable doubt, that the
5 defendant is criminally liable for the conduct of another,
6 the extent, or degree of the defendant's participation in
7 the crime does not matter. A defendant proven, beyond a
8 reasonable doubt, to be criminally liable for the conduct
9 of another in the commission of a crime is as guilty of
10 the crime as if the defendant personally had committed
11 every act constituting the crime.

12 As you know, the People contend that the defendant,
13 Lee Woods, acted in concert with Dexter Bostic and Robert
14 Ellis, who are not here. Now you must not speculate on
15 the present status of Mr. Bostic or Mr. Ellis. You must
16 not draw any inference from their absence, and you must
17 not allow their absence to influence your verdict. You are
18 here to determine whether the People have proven, beyond a
19 reasonable doubt, the defendant, Lee Woods, here, is
20 guilty of a crime charged.

21 Now, in order for you to find the defendant guilty of
22 this crime -- this is Aggravated Murder as to Russell
23 Timoshenko -- the People are required to prove, from all
24 the evidence in the case, beyond a reasonable doubt, each
25 of the following five elements:

1 One, that on or about July 9, 2007, in the county of
2 Kings, the defendant personally, or by acting in concert
3 with another person, caused the death of Russell
4 Timoshenko.

5 Two, the defendant did so with intent to cause the
6 death of Russell Timoshenko.

7 Three, at the time of the killing of Russell
8 Timoshenko -- strike that.

9 At the time of the killing, Russell Timoshenko was a
10 police officer engaged in the course of doing his official
11 duties.

12 Four, at the time the defendant knew, or should have
13 known that Russell Timoshenko was a police officer.

14 Five, that the defendant was more than 18 years at
15 the time of the commission of the crime.

16 Therefore, if you find that the People have proven,
17 beyond a reasonable doubt, each of those five elements,
18 you must find the defendant guilty of the crime of
19 Aggravated Murder as charged in the first count.

20 On the other hand, if you find the People have not
21 proven beyond a reasonable doubt any one or more of those
22 elements, then you must find the defendant not guilty of
23 the crime of Aggravated Murder as charged in the first
24 count.

25 The second count charges Attempted Aggravated Murder.

1 It is essentially the same crime, but we are talking about
2 here an attempt, and it applies to Hermann Yan.

3 The indictment related to this count reads as;
4 follows:

5 The defendants, each aiding the others, on or about
6 July 9, 2007, in the county of Kings, being 18 years old
7 or more on the day of the commission of the crime, with
8 intent to cause the death of another person, namely,
9 Hermann Yan, attempted to cause the death of Hermann Yan
10 by means of shooting him with a deadly weapon, namely a
11 handgun.

12 And Hermann Yan was a police officer as defined in
13 subdivision 34 of 1.20 of the Criminal Procedure Law, who
14 was injured at the time of the attempted killing while in
15 the course of performing his official duties.

16 And the defendant knew, or had reason to know, or
17 reasonably should have known that Hermann Yan was a police
18 officer.

19 Now, again, our law provides, a defendant is guilty
20 of Aggravated Murder when, with intent to cause the death
21 of another person, he causes the death of another person
22 who was a police officer who was, at the time of the
23 killing, was engaged in the course of performing his
24 official duties.

25 And the defendant knew, or should have known that the

1 person was a police officer.

2 And the defendant was more than 18 years old at the
3 time of the commission of the crime.

4 The same definition I give you with respect to
5 intent, when a person knows or reasonably should have
6 known a person was engaged in official duties applies
7 here. But, what we are talking about here is an attempt.
8 The Penal Law defines an attempt to commit a crime as
9 follows:

10 A person is guilty of attempting to commit a crime,
11 in this case Aggravated Murder when, with intent to commit
12 a crime, he engages in conduct which tends to affect the
13 commission of such crime.

14 The meaning of the statute as it applies in this case
15 is, if a person intends to commit aggravated murder, that
16 is, his conscious objective is to commit aggravated
17 murder, and acting with such intent he engages in conduct
18 which tends to affect the commission of the murder, he is
19 then committed, and may be found guilty of an attempt to
20 commit Aggravated Murder, even though the murder was not
21 committed or accomplished.

22 Now, to constitute an intent to commit that crime,
23 more is needed than mere design, an overt act in mere
24 preparation in furtherance of that design is necessary.
25 Preparation must be made. The overt act must come very

1 near, or within dangerous proximity to the accomplishment
2 of the intended crime. It is immaterial the murder was not
3 completed by some unforeseen action his gel. The law
4 requires that it is conduct which tends to affect the
5 commission of the crime contemplated. The act need not be
6 the final one towards the commission of the offense, but
7 it must carry the project forward within dangerous
8 proximity to the crime and to be obtain. The required
9 conduct must be related to and directed towards the
10 accomplishment of the murder. Conduct which goes beyond
11 mere preparation and planning, conduct so to the murder
12 that, in all reasonable probability the murder would have
13 been committed except for some interference or
14 interjection.

15 Therefore, you must find that the People, at the time
16 and place in question. And that he engaged in conduct
17 which tended to affect, that is, to bring about the death
18 of Hermann Yan.

19 Now, again, the Prosecution theory for this crime of
20 Attempted Aggravated Murder is, the defendants, Dexter
21 Bostic, Robert Ellis, and Lee Woods participated together
22 in the crime. The indictment charges each aiding the
23 others, again, known as each acting in concert.

24 When one person engages in conduct which constitutes
25 an offense, such as aggravated murder, another person is

1 criminally liable for such conduct when, acting with the
2 state of mind required for the commission of such crime,
3 he solicits, requests, commands, or importunes such person
4 to engage in such conduct.

5 This means, when two or more people are acting
6 together to commit such a crime as aggravated murder, and
7 each does an act, or acts which tends to accomplish the
8 common criminal purpose, all are equally guilty of the
9 crime. Each of the participants is an accomplice of each
10 other, and a principal in the crime, whether they take a
11 major or minor part in the crime.

12 Mere presence at the scene, and mere association with
13 another person whose conduct constitutes criminal activity
14 does not, in itself, make an individual an accomplice to
15 the crime. He must wilfully associate himself with the
16 venture, wilfully participate, or join in the venture.

17 Thus, under the law of acting in concert, the
18 defendant, Lee Woods, can be found guilty of the crime of
19 Attempted Aggravated Murder based upon his own act, or the
20 acts of someone else if the People establish, beyond a
21 reasonable doubt, that he had the intent to attempt to
22 cause the death of Hermann Yan. And acting with that
23 intent, he solicited, requested, or did something else to
24 intentionally add someone else to cause the death of
25 Hermann Yan.

1 Now, again, if proven beyond a reasonable doubt that
2 the defendant is criminally liability for the conduct of
3 another, the extent or degree of the defendant's
4 participation in the crime does not matter. A defendant
5 proven beyond a reasonable doubt to be criminally
6 liability for the conduct of another in the commission of
7 a crime is as guilty of the crime as if the defendant
8 personally had committed every act constituting the crime.

9 Also, as you know, the People contend that the
10 defendant, Lee Woods, acted in concert with Dexter Bostic
11 and Robert Ellis who are not here on trial. You must not
12 speculate on the present status of Mr. Ellis and Mr.
13 Bostic. You are not to draw any inference from their
14 absence. You must not allow their absence to influence
15 your verdict. You are here to determine whether or not the
16 People have proven, beyond a reasonable doubt, the
17 defendant, Lee Woods, guilty of the crimes charged.

18 In order for you to find the defendant guilty of this
19 crime, Attempted Aggravated Murder, the People are
20 required to prove, from all the evidence in the case,
21 beyond a reasonable doubt, each of the following five
22 elements:

23 One, that on or about July 9, 2007, in the county of
24 Kings, the defendant personally, or by acting in concert
25 with another person, attempted to cause the death of

1 Hermann Yan.

2 Two, the defendant did so with intent to cause the
3 death of Hermann Yan.

4 Three, that at the time of the attempted killing,
5 Hermann Yan was a police officer engaged in the course of
6 performing his official duties.

7 Four, at the time of the attempted killing the
8 defendant knew, or reasonably should have known that
9 Hermann Yan was a police officer.

10 Five, that the defendant was more than 18 years old
11 at the time of the commission of the crime.

12 Therefore, if you find the People have proven, beyond
13 a reasonable doubt, each of those elements, you must find
14 the defendant guilty of the crime of Attempted Aggravated
15 Murder as charged in the second count.

16 However, if you find that the People have not proven,
17 beyond a reasonable doubt, one or more of those elements,
18 you must find the defendant not guilty of the crime of
19 Attempted Aggravated Murder in the second degree as
20 charged in the second count of the indictment.

21 Now the next counts three, four, and five is Criminal
22 Possession of a Weapon in the Second Degree. So the law
23 that applies to one, applies to them all. The only
24 difference is count three applies to the 45-caliber
25 pistol, count four applies to the .9mm high point, and

1 count five applies to the .9mm Intratec.

2 Third count of the indictment, the defendants, each
3 aiding the others, on or about July 9, 2007, in the county
4 of Kings, knowingly and unlawfully possessed a loaded
5 firearm, namely, a 45-caliber pistol. Such possession not
6 being in the defendants' homes or place of businesses.

7 Under our law, a person is guilty of Criminal
8 Possession of a Weapon in the Second Degree when, that
9 person knowingly possesses any loaded firearm. Now, such
10 possession shall not constitute a violation of this law if
11 possession takes place in such person's home or place of
12 business.

13 Firearm means any pistol or revolver.

14 Under the law, a firearm must be operable. That is,
15 the firearm must be capable of discharging ammunition.

16 A loaded firearm means, any firearm loaded with
17 ammunition, or any firearm possessed by one who possesses
18 ammunition which may be used to discharge the firearm.

19 Possess means to have physical possession, or
20 exercise dominion or control over tangible property.

21 Thus, a person may possess property in one of two ways:

22 First, a person may have physical possession of it by
23 holding it in his hands, or carrying it in or on his body,
24 or his person.

25 Second, a person may constructively, that is, he must

1 exercise dominion or control over property which is not in
2 his physical possession.

3 Under our law, a person has tangible property in his
4 constructive possession when, that person exercises a
5 level of control over the area in which the property is
6 found, or over the person from whom the property is
7 seized, sufficient to give him the ability to use or
8 dispose of the property.

9 Now, additionally, the law provides, or recognizes
10 the possibility that two or more individuals can jointly
11 have property in their constructive possession. Two or
12 more persons have property in their joint constructive
13 possession when, they each exercise dominion or control
14 over the property, when they have control over the area
15 where the property was found, such as to give each of them
16 the ability to use or dispose of the property.

17 Now under our law, the presence in an automobile is
18 presumptive evidence of its possession by all persons
19 occupying such automobile at the time such weapon is
20 found.

21 What this means is, if the People have proven beyond
22 a reasonable doubt that any firearm was present in the
23 automobile that the defendant was occupying such
24 automobile at the time such weapon was found, then you
25 may, but you are not required to infer from those facts

1 that the defendant possessed the firearm.

2 Now, a person knowingly possesses a loaded pistol or
3 revolver when, that person is aware that he is in
4 possession of such loaded pistol or revolver.

5 Now, again, the Prosecutor's theory for this crime is
6 that the defendants, Dexter Bostic, Robert Ellis, and Lee
7 Woods participated together in the commission of the
8 crime. The indictment charges the defendant with each
9 aiding the others, also known as acting in concert.

10 Now, under our law, acting in concert, and each
11 aiding the others is as follows:

12 When one person engages in conduct which constitutes
13 an offense, such as Criminal Possession of a Weapon in the
14 Second Degree, another person is criminally liable for
15 such conduct when, acting with the state of mind required
16 for the commission of such crime, he solicits, requests,
17 commands, importunes, or intentionally aids such person to
18 engage in such conduct.

19 This means, that when two or more people are acting
20 together to commit the crime, such as Criminal Possession
21 of a Weapon in the Second Degree, and each does an act or
22 acts which tends to accomplish the common criminal
23 purpose, all are equally guilty of the crime. Each of the
24 participants is an accomplice of the other, and a
25 principal in the crime, whether he takes a major or minor

1 part in the commission of the crime.

2 To be criminally liable as a participant in the
3 crime, a defendant must be more than merely present at the
4 scene and does not, itself make an individual an
5 accomplice to a crime. He must wilfully associate himself
6 in some way with the criminal venture, wilfully
7 participate or assist in the criminal venture, or take
8 some action to make the venture succeed.

9 Under the law, the defendant may be found guilty of
10 the Criminal Possession of a Weapon in the Second Degree
11 based on his own act, or the acts of someone else, if the
12 People establish, beyond a reasonable doubt, that he
13 knowingly possessed a load firearm, and with that
14 knowledge, he solicited, requested, commanded, importuned,
15 or intentionally aided someone else to possession that
16 firearm.

17 If proven, beyond a reasonable doubt, that the
18 defendant is criminally liable for the conduct of another,
19 the extent or degree of the defendant's participation in
20 the crime does not matter. And the defendant proven,
21 beyond a reasonable doubt, to be criminally liable for the
22 conduct of another in the commission of the crime, he is
23 as guilty as if the defendant had personally committed
24 every act constituting the crime.

25 Also, the People contend that the defendant, Lee

1 Woods, participated with Dexter Bostic and Mr. Ellis who
2 are not here. You are not to draw any inference from
3 their absence, or allow their absence to influence your
4 verdict. You are here to determine whether the People have
5 proven, beyond a reasonable doubt, that Lee Woods, here on
6 trial is guilty of the crimes charged.

7 In order for you to find the defendant guilty of this
8 crime, the People are required to prove, from all the
9 evidence in the case, beyond a reasonable doubt, each of
10 the following four elements:

11 One, that on or about July 9, 2007, in the county of
12 Kings, the defendant personally, or by acting in concert
13 with another person, possessed a firearm.

14 Two, the defendant did so knowingly.

15 Three, that the firearm was loaded and operable.

16 Four, that the defendant possessed such firearm in a
17 place that was not the defendant's home or place of
18 business.

19 Therefore, if you find the People have proven beyond
20 a reasonable doubt each of those elements, you must find
21 the defendant guilty of Criminal Possession of a Weapon in
22 the Second Degree as charged in the third count.

23 On the other hand, if you find that the People have
24 not proven beyond a reasonable doubt anyone or more of
25 those elements, you must find the defendant not guilty of

1 Criminal Possession of a Weapon in the Second Degree as
2 charged in the third count.

3 Now, again, the fourth count is the same, it just
4 applies to the high point. The instructions that I gave
5 you with respect to firearm, loaded firearm, operability,
6 possess, constructive possession, knowing, and also the
7 automobile presumption applies here. I have, also, the
8 theory of acting in concert. The instruction I gave you
9 previously applies here.

10 Now, in order for you to find the defendant guilty of
11 this crime -- this is the fourth count -- the People are
12 required to prove, from all the evidence in the case,
13 beyond a reasonable doubt, each of the following four
14 elements:

15 One, that on or about July 9, 2007, in the county of
16 Kings, the defendant personally, or by acting in concert
17 with another, possessed a firearm.

18 Two, the defendant did so knowingly.

19 Three, the firearm was loaded and operable.

20 Four, the defendant possessed such firearm in a place
21 that was not defendant's home or place of business.

22 Therefore, if you find the People have proven beyond
23 a reasonable doubt each of those elements, you must find
24 the defendant guilty of the crime of Criminal Possession
25 of a Weapon in the Third Degree as charged in the fourth

1 count.

2 On the other hand, if you find that the People have
3 not proven, beyond a reasonable doubt, any one or more of
4 those elements, you must find the defendant not guilty of
5 the crime of Criminal Possession of a Weapon in the Third
6 Degree, the fourth count.

7 Criminal Possession of a Weapon, the fifth count,
8 same elements apply, and it relates to the Intratec. My
9 instructions with respect to acting in concert also apply.

10 In order for you to find the defendant guilty of this
11 crime, the People are required to prove from all the
12 evidence in the case, beyond a reasonable doubt, each of
13 the following four elements.

14 One, that on or about July 9, 2007, in the county of
15 Kings, the defendant personally, or by acting in concert
16 with another persons possessed a firearm.

17 Two, the defendant did so knowingly.

18 Three, the firearm was loaded and operable.

19 Four, the defendant possessed such weapon in a place
20 that was not the defendant's home or place of business.

21 Therefore, if you find the People have proven beyond
22 a reasonable doubt even one of those elements, you must
23 find the defendant guilty of Criminal Possession of a
24 Weapon in the Second Degree, as charged in the fifth
25 count.

1 On the other hand, if you find that the People have
2 not proven beyond a reasonable doubt any one or more of
3 those elements, you must find the defendant not guilty of
4 Criminal Possession of a Weapon in the Second Degree the
5 fifth charge.

6 That concludes my charges on the law. I have
7 outlined the rules which I feel are applicable to the case
8 and the process by which you weigh the evidence and
9 determine the facts. In a few moments you are going to go
10 into the jury room to retire and start your deliberations.
11 You are to decide this case without sympathy, without
12 prejudice. You must decide this case objectively,
13 impartially, without the influence of emotion.

14 In order to return a verdict, each juror must agree
15 on that verdict. Majority vote is not permitted.

16 And when you deliberate, you may find there is
17 disagreement among you. I can't urge too strongly that
18 you consider the evidence carefully and thoroughly. Listen
19 to the opinions and arguments of your fellow jurors and do
20 not hesitate to produce your own views and opinions. It
21 is the duty of each of you to consult with one another and
22 to deliberate with a view towards reaching a verdict if
23 you can do so without violating your own individual
24 judgment and conscience.

25 You must not deliberate with a closed mind. You must

1 never refuse to listen or to discuss the evidence with
2 your fellow jurors. Remember, the other jurors are just
3 as interested in you in reaching an honest verdict. You
4 should not hesitate to re-examine your views and change
5 your opinion if you feel your opinion is incorrect.

6 Don't change your mind for any other reason such as
7 the hour is late, or you are being outvoted. At the same
8 time you must not stubbornly stick to your views just
9 because you started with them. If you believe that your
10 opinion is correct after you listen and discuss your views
11 the other jurors, you have a right and obligation to stick
12 with your views. But, if you have differences try to
13 resolve them and reach an agreement if you can do so,
14 again, without violating your individual judgment and
15 conscience.

16 When you go into the jury room to begin considering
17 the evidence, the first thing I suggest you do is elect
18 one of your members to act as your foreperson. It is the
19 foreperson's job to make sure deliberations are done in an
20 orderly manner and to report to the court your verdict.
21 Traditionally, juror occupying seat number one serves as
22 the foreperson. But in the event juror number one doesn't
23 want to do it, you can select whoever you want to act as
24 the foreperson. Again, the person's function is to help
25 you, guide you through your deliberations and if you need

1 to communicate with me by sending a note through your
2 foreperson. The foreperson's opinion and vote is entitled
3 to no greater weight than any other juror.

4 Do not ask the court officer anything about the case,
5 or about your deliberations. You can ask the court officer
6 to call someone at home, or to send out for refreshments.
7 But, any request for refreshments will take at least a
8 half hour at a minimum.

9 If any of the first 12 have to step out, there is to
10 be no deliberating or talking about the case until all 12
11 of you are together again in the jury room.

12 In terms of what you are allowed to examine during
13 the course of your deliberations. Any requests should be
14 in writing signed by your foreperson. Now the foreperson
15 doesn't have to write the note, only agree with the
16 content. But, the foreperson's signature only
17 authenticates that the request is coming from the jury.

18 You can request any exhibit that is in evidence.

19 Now, there is ballistics and some other stuff that is
20 in evidence that will probably have to come in under the
21 supervision of an officer. So, you will only be able to
22 visually view the item. While the officer is in the jury
23 room with you, please, please don't make any comments or
24 statements about the item. Look at it, satisfy yourself,
25 and once the officer is out, then you can resume

1 deliberations.

2 If you want to look at any of the video evidence, it
3 will have to be in the courtroom here. We are not set up
4 to do it in the jury room. You can request any and all
5 testimony that you heard. If you want a portion of it
6 that helps, try to identify the portion that you want,
7 whether it is direct, cross, redirect, you can even
8 specify a lawyer. But, if you want it all read back you
9 can have it all read back.

10 If you find during deliberations it is not clear in
11 your mind what I have said about the law, about any given
12 point, you can request that my instructions on the law, on
13 any portion of it be read back or clarified.

14 Now, again, if you find during your deliberations it
15 is not clear in your mind what I may have said about the
16 law, feel free to send a request for further instructions
17 or clarifications on the law. Do not feel embarrassed, we
18 asked him once and we don't want to ask him again. I will
19 give it to you as many times as you want it.

20 With that, I am going to step outside with these
21 lawyers, see if I have to give you any further
22 instructions. Case has not been given to you. Don't start
23 your deliberations.

24 Counsel.

25 (Whereupon, a side bar discussion ensued outside

1 the presence of the jury.)

2 THE COURT: Exceptions?

3 MS. NICOLAZZI: None.

4 MR. MEGARO: The automobile presumption, for
5 reasons I stated earlier. My increasing paranoia with
6 Appellate Courts -- as I am sure you will become familiar
7 with soon enough -- the automobile presumption, I believe,
8 should not apply in this case. I think it is confusing to
9 the jurors. And the perimeters of the presumption itself,
10 I don't believe are supported by the evidence, because
11 where the firearms are found and where the occupants are
12 later found.

13 Other than that, no other exceptions.

14 MS. NICOLAZZI: I think the law, at this point,
15 is actually clear.

16 THE COURT: For reasons stated, your request is
17 denied. That's why I charged it. And if there is an
18 adverse decision, we will see where it goes.

19 Anything else in terms of exceptions?

20 MR. MEGARO: No. I don't have any problem with
21 sending any of the physical exhibits into the jury room
22 without bringing them out, if they request -- you know --
23 some of the photographs.

24 THE COURT: Photographs are not a problem. I am
25 more concerned about the guns and ballistics.

1 MR. MEGARO: That has to go in with a court
2 officer. And the video, as your Honor said, would have to
3 be played in the courtroom, yeah.

4 THE COURT: Any exceptions?

5 MS. NICOLAZZI: No.

6 THE COURT: Any requests on your part of the
7 charge?

8 MR. MEGARO: No.

9 MS. NICOLAZZI: No.

10 THE COURT: What about the alternates now?

11 MR. MEGARO: Keep them for a while. We will make
12 a decision, hopefully, if it doesn't come up. But, we
13 will make a decision when and if.

14 THE COURT: I will hold them. They will be kept
15 separate and apart, and not deliberate.

16 (Whereupon, the following was held in open court
17 before the jury.)

18 THE COURT: Folks, I don't have to give you any
19 further instructions.

20 I have provided a verdict sheet for you. It lists the
21 four charges you will consider, and it provides a space
22 for you to make your choices, as I have instructed.

23 You will render a verdict on each and every charge,
24 it is on the verdict sheet.

25 The first count is Aggravated Murder, it applies to

1 Russell Timoshenko. You will render a verdict on this
2 count; not guilty, or guilty.

3 The Attempted Aggravated Murder Hermann Yan. You
4 render a verdict on this count; not guilty, or guilty.

5 The third count is Criminal Possession of a Weapon in
6 the Second Degree, the 45-caliber pistol. You will render
7 a verdict on this count; not guilty, guilty.

8 The fourth count Criminal Possession of a Weapon in
9 the Second Degree, the .9mm pistol high point. Render a
10 verdict on this count; guilt, or not guilty.

11 And the fifth count is Criminal Possession of a
12 Weapon in the Second Degree, the .9mm pistol Intratec.
13 You will render a verdict on this count; not guilty,
14 guilty.

15 What I have just told you is right on the verdict
16 sheet. But if you have any question, again, about the
17 charges, about the law, I will read back or clarify
18 anything you want. Everybody understand that?

19 JURORS: Yes.

20 THE COURT: Now, the alternates will be kept
21 separate and apart. If they have personal belongings, let
22 them get their personal belongings out, and put them into
23 a separate jury room.

24 Alternates, you are not to deliberate at all amongst
25 yourselves.

1 The first 12 can commence deliberations. With that,
2 follow the officers.

3 (Whereupon, deliberating jury exits courtroom.)

4 THE COURT: If you are going to leave, leave a
5 number where you can be reached. If you don't hear
6 anything about 6:00 you should be back here.

7 MR. MEGARO: Understood.

8 THE COURT: All right.

9 (Whereupon, the trial stands in recess, awaiting
10 a verdict from the deliberating jury.)

11 Time 3:00 p.m.

12 Time is 4:25 p.m.

13 THE CLERK: Case on trial. All parties are
14 present.

15 THE COURT: Both sides seen the note?

16 MS. NICOLAZZI: Yes, I have. And I showed it to
17 my client as well.

18 THE COURT: Let me read it into the record.

19 Jurors need a reread of the charge related to counts
20 three, four, and five.

21 And then, specifically, if defendant is in car with
22 guns, is defendant guilty of Criminal Possession of a
23 Weapon -- criminal possession, rather -- if he doesn't
24 know guns are in car?

25 I invite your suggestions.

1 MR. MEGARO: Judge, I think the note is very
2 specific and it is asking for a very specific answer. This
3 is exactly why I had objected to the automobile
4 presumption, and I would do so again, at this time.

5 Putting that aside.

6 THE COURT: Wait a minute, there are two
7 questions, with all due respect.

8 MR. MEGARO: I understand.

9 THE COURT: I know both of you have positions
10 you want to argue.

11 They are asking, initially, for a reread, three,
12 four, and five. I am prepared to give them that.

13 Now the second part they are asking, really, more
14 specific, if he is in the car and he doesn't know that the
15 guns are in the car is he guilty?

16 MR. MEGARO: My interpretation of the note is,
17 they are just asking, specifically, for the Court to
18 answer a question, which you probably could not answer
19 because that would require you making a finder of fact, or
20 quasi finding of fact.

21 Nevertheless, the answer I believe should be, simply,
22 for the Court to reread the elements of criminal
23 possession in the second degree, and explain to the jury
24 that they must find each of those elements have been
25 proven, beyond a reasonable doubt, in order to convict him

1 for charges three, four, or five, or any combination
2 thereof.

3 That, to me, specifically, they are asking about the
4 auto presumption as it relates to three, four, and five.

5 THE COURT: It would be, if they were talking
6 about possession. But they are asking about his knowledge,
7 which is the mental state for the crime.

8 MR. MEGARO: Only one element out of the bunch.

9 THE COURT: The automobile presumption really
10 only goes to the possession issue, it doesn't go to
11 knowing possession. It doesn't presume because you possess
12 you know it.

13 MR. MEGARO: Right, whether the automobile
14 presumption applies or not, the People still have to prove
15 knowing possession.

16 THE COURT: Yes, sir.

17 MR. MEGARO: And I am asking the Court not to
18 reread the entire charge. I think the honed in on the
19 specific area that they are looking for guidance from this
20 Court. And --

21 THE COURT: Well, they have asked for an
22 entire -- as far as I am concerned, the note says they
23 want a reread. I have no problem doing that. I am trying
24 now to address the second portion of the note, which
25 relates to the specific question.

1 MR. MEGARO: The issue I have with an entire
2 reread is that, if I were a juror, I would think that the
3 Court is inviting me to find him guilty on a different
4 theory, placing -- forget about the automobile
5 presumption -- but consider these other two theories as
6 well, which I don't believe they are asking for.

7 Judge, if we want a definitive answer, ask the jurors
8 to clarify whether they want everything reread for three,
9 four, or five, or just this particular question.

10 THE COURT: Mr. Megaro, with all due respect,
11 jurors need reread of charges relating to three, four, and
12 five. If you somehow think that is not clear, I'll ask
13 them to clarify the note.

14 MR. MEGARO: Okay.

15 THE COURT: People, you want to be heard?

16 MS. NICOLAZZI: Yes.

17 First, Judge, I think it is clear, so why are we
18 sending them back when they are asking to have it reread?
19 I would ask the Court reread, as the Court already
20 discussed, the entire charge, which is all three counts,
21 which includes the elements, it includes the three
22 different theories, that is part of the entire charge, and
23 they are saying three, four, and five.

24 The second part of what I think, when you read that
25 note where they are asking, is he guilty? Clearly, the

1 People's theory, the way it is charged in the indictment,
2 the way the evidence, the knowledge -- there always must
3 be knowledge, of course -- while I agree with the Court
4 that the Court, by answering that note would, in fact,
5 become, potentially, a fact finder and cannot answer, in
6 the second part in the charge it says knowledge at any
7 point. Otherwise, it would be -- it goes, against the
8 evidence and also the way it is charged, because the
9 defendant can be guilty of knowing possession at any point
10 within that time frame, whether it is in the car, in the
11 garage, transporting it to and from.

12 So I would ask, at any point be given within that
13 charge, to the actual knowledge portion. Because that is
14 an accurate reading of the law.

15 THE COURT: I will ask them to try and clarify
16 the note. Let's get them in.

17 COURT OFFICER: Jury entering.

18 (Whereupon, the jury enters the courtroom, and
19 is seated in the jury box.)

20 THE CLERK: Case on trial. All parties present.
21 Both sides waive a reading of the roll?

22 MS. NICOLAZZI: Yes.

23 MR. MEGARO: Yes.

24 THE COURT: Jurors, good afternoon.

25 JURORS: Good afternoon.

1 THE COURT: I have your communication. You go
2 from a general request to a more specific request, and I
3 am going to read it into the record.

4 "Jurors need a reread of charge related to counts
5 three, four, and five." Now those are the weapon counts.

6 Then the note says, "Specifically, if the defendant
7 is in car with the guns, is defendant guilty of criminal
8 possession if he doesn't know the guns are in the car?"

9 Now what I really need from you is this. If you would
10 like a rereading of the entire charge I am prepared to do
11 that. But, I am trying to make some sense out of what you
12 are asking specifically with respect to the second
13 portion.

14 You have to go into the jury room, and I am not in
15 any way trying to discourage you from writing any request,
16 but we will try to respond as meaningfully as we can. You
17 start out by saying you want a reread of the counts. And
18 then in a matter that is really specific, and I am not
19 exactly sure within the context of rereading, how that
20 would apply.

21 So, I am going to ask you to go out quietly with
22 this, send us another note in.

23 (Jury exits the courtroom.)

24 THE COURT: Stand by. We will see what they are
25 going to do.

1 (Awaiting communication from the deliberating jury.)

2 THE COURT: The jury took the note they
3 initially sent out back, and they have sent this out
4 instead of it.

5 "Jurors need a reread of charge related to count
6 three. And a review of the five video clips taken at
7 Rogers and Lefferts, and Kingston and Lefferts."

8 Apparently they got in parenthesis, two and three.
9 And then there is a request, as close to the screen as
10 possible.

11 Show this to both sides, please.

12 (Handing.)

13 Both sides, are the clips you used in summations, is
14 that what they are talking about?

15 MS. NICOLAZZI: Yes. Also, on the first video
16 is actually -- when they are saying five -- there is two,
17 the stop is two views, one is on Lefferts and one is on
18 Rogers, so that's technically two.

19 THE COURT: The note has the parenthesis in two.

20 MS. NICOLAZZI: And the three is Kingston. The
21 car coming down, them fleeing out, and them running. So I
22 understand why they are saying three, even though it is
23 altogether. Three different viewpoints, that would be
24 five.

25 THE COURT: You want to look at the note? I

1 just want to make sure that is responsive.

2 MS. NICOLAZZI: But I think we have to give them
3 the car stop on Rogers and Lefferts, two of them, the
4 compilation is three.

5 MR. HALE: That's basically what we showed
6 during summation.

7 THE COURT: I understand that it is on
8 summation.

9 MS. NICOLAZZI: But it is in evidence the same
10 way.

11 THE COURT: Can we isolate that?

12 MR. MEGARO: I think it is already isolated.

13 THE COURT: Just so we understand.

14 I believe that they can get a video monitor that we
15 can put in the jury room.

16 MR. HALE: That would be fine. The only question
17 is, the video monitor can be played off of a DVD, or a
18 laptop with it?

19 THE COURT: I don't know until we get it down
20 here.

21 (Pause in the proceeding.)

22 THE COURT: All right, Counsels, Mr. Woods, we
23 have this monitor provided by OCA. It does not read the
24 disk.

25 What I am going to do, since the jurors want to look

1 at these items, I am going to try and situate this as
2 close to the jury room as I possibly can.

3 A court officer will be operating the machine. And
4 they will just simply look at it and not discuss anything
5 about it. And once they are through, then they will tell
6 him they are through, and we will resume with the second
7 part of the read back. They want to be as close as
8 possible. And sitting over there, and watching this big
9 screen is not as clear as we'd like.

10 (Pause in the proceeding.)

11 THE COURT: Counsels, I am going to bring these
12 jurors in. I am going to tell them the courtroom, for part
13 of the request of reviewing the videos, will be the jury
14 room. There will be nobody in here but the court officer
15 and the clerk, and Eddie, the jury officer. And they will
16 look at it without discussion or comment. And then, once
17 they have satisfied themselves of it, then we will resume
18 with the second portion of the read back.

19 MS. NICOLAZZI: It is set up already.

20 THE COURT: It is just as if we had it set up in
21 the jury room where they could do it. But, unfortunately,
22 when they did this they never consulted people who
23 actually do this for a living -- strike that.

24 What I am saying is --

25 MR. MEGARO: I understand.

1 THE COURT: They probably are going to want to
2 leave the jury box and go to the screen and look at it,
3 and look at it as many times as they like. They are not
4 going to make any comments about what they see. If they
5 want it ran back, the foreperson will say run it back,
6 that's all.

7 MR. MEGARO: We will not be in here?

8 THE COURT: No, sir, just as if they are in the
9 jury room looking at the exhibit, but no deliberations.

10 MS. NICOLAZZI: And we isolated and agreed on,
11 exactly what those videos consists of, your Honor.
12 People's numbers two and 37 in evidence.

13 THE COURT: So, at this point then, if you will,
14 Mr. Megaro, step outside. Take Mr. -- I'm sorry, does your
15 client understand what is happening, for the record?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Does he want to be heard?

18 MR. MEGARO: Nothing we can do. This is the
19 jury room, we wouldn't be allowed in there anyway.

20 THE COURT: That's my thinking on it. But like
21 I said, I have been doing this for a long time and I am
22 always willing to listen to argument.

23 Folks in the audience, you have to step out, please.
24 We will have you back as well.

25 MR. MEGARO: Judge, shall we clear our desk as

1 well?

2 THE COURT: No. That's why the officer is going
3 to be in here. They will not be allowed to go anywhere
4 near to touch the material on the desk.

5 Miss Nicolazzi, why don't you stay with Mr. Hale.
6 Miss Nicolazzi, Mr. Megaro, I am going to go on the record
7 with this.

8 Let's get them in.

9 COURT OFFICER: Jury entering.

10 (Whereupon, the jury enters the courtroom, and
11 is seated in the jury box.)

12 THE CLERK: Case on trial. All parties are
13 present. Both sides waive a reading of the roll of the
14 jury?

15 MS. NICOLAZZI: Yes.

16 THE COURT: Jurors, I have your latest note
17 which is in response to the -- my request about
18 clarification of the first note.

19 Now, you need a rereading of the charge related to
20 count three that I am going to give you. It is the second
21 portion of your note where you want to view videos. And
22 the last part said, as close to the screen as possible.

23 That's fine. What is going to happen is this. We are
24 going to clear the courtroom. It is going to be as if you
25 are in the jury room looking at the exhibit yourself,

1 okay. I have a court officer who is going to operate the
2 machine, the clerk will be here.

3 Please, no discussions about what you are looking at,
4 okay? If you want it run back, just simply have your
5 foreperson say to the officer, run it back. But, you will
6 be able to look at it as much as you like.

7 Now, once that's done you will tell us you are
8 through. We will bring you back in and respond to the
9 second part of your note, and everybody will be present at
10 that point.

11 Do you understand that?

12 Now, I am going to ask you, just for the moment, step
13 outside. We will have you back in a moment.

14 (Whereupon, the jury exits the courtroom.)

15 THE COURT: Mr. Megaro, People, just stand
16 outside. Let's put Mr. Woods in. And Miss Price, if you
17 will, ma'am.

18 (Whereupon, all occupants of the courtroom exit,
19 with the exception of the jury. And the jury is allowed
20 to view the video in the courtroom alone.)

21 THE CLERK: Case on trial. All parties are
22 present.

23 THE COURT: The jurors have now seen the
24 requested video.

25 Let's deal, if we can, with the reread of the gun

1 charge. Look, based on the discussions we had earlier
2 with respect to the note, if I can -- in answering this
3 note -- if I can, consent of the parties, I will eliminate
4 the automobile presumption and simply reread the charge to
5 reflect the element of knowing possession, without
6 specifying, at what point in time we are talking about.
7 But, I won't do it unless I get consent from the parties
8 here.

9 MR. MEGARO: Fine on our end.

10 MS. NICOLAZZI: Can we just have a moment,
11 Judge?

12 THE COURT: Yes, ma'am.

13 (Whereupon, DA conferring with colleague.)

14 MS. NICOLAZZI: But Judge, that part of the
15 charge will be the actual constructive.

16 THE COURT: Miss Nicolazzi, the automobile
17 presumption focuses on a specific point in time. Your
18 argument to this jury was not only the automobile, but
19 also when the guns were placed in the garage.

20 You eliminate the automobile presumption, then it is
21 just knowing possession period.

22 MS. NICOLAZZI: I understand that. But I am
23 asking you, when you give them the charge, part of your
24 charge originally told them that when you talked about
25 possession, it could mean actual construction.

1 THE COURT: I assure you I am quite precise in
2 what I say. I am eliminating the automobile presumption,
3 the constructive possession will be there.

4 MS. NICOLAZZI: I understand that, I just wasn't
5 clear. We consent on the automobile presumption portion. I
6 just wanted to make sure on the other.

7 MR. MEGARO: Fine with us. I was saying that
8 all along.

9 THE COURT: All right. Bring the jury in.

10 COURT OFFICER: Jury entering.

11 (Whereupon, the jury enters the courtroom, and
12 is seated in the jury box.)

13 THE CLERK: Case on trial. All parties present.
14 Both sides waive a reading of the roll?

15 MR. MEGARO: Yes.

16 MS. NICOLAZZI: Yes.

17 THE COURT: All right, jurors. We have honored
18 your request with respect to the video.

19 I am now going to instruct you with respect to the
20 gun charges, three, four, and five.

21 Please, you are to consider the charges, my
22 instructions on those charges as I am reading it to you
23 now.

24 Understand that?

25 JURORS: Sure, yes.

1 THE COURT: Again, three relates to the 45, four
2 the .9mm high point, and five the Intratec, it is the same
3 crime.

4 Third count, the defendants, each aiding the others,
5 on or about July 9, 2007, in the county of Kings,
6 knowingly and unlawfully possessed a loaded firearm,
7 namely, a 45-caliber pistol. Such possession not being in
8 the defendants' homes or places of business.

9 Under our law, a person is guilty of Criminal
10 Possession of a Weapon in the Second Degree when, that
11 person knowingly possesses any loaded firearm. Such
12 possession shall not constitute a violation of this law if
13 possession takes place in such person's home -- strike
14 that -- such possession shall not constitute a violation
15 of this law if such possession takes place in such
16 person's home or place of business.

17 Firearm means any pistol or revolver.

18 Under the law, a firearm must be operable. That is,
19 the firearm must be capable of discharging ammunition.

20 A loaded firearm means any firearm loaded with
21 ammunition, or any firearm possessed by one who, at the
22 same time, possesses a quantity of ammunition which may be
23 used to discharge such firearm.

24 Possess means to have physical possession, or
25 otherwise to exercise dominion and control over tangible

1 property. A person may possess property in one of two
2 ways.

3 First, a person may have physical possession of it by
4 holding it in his hand, or carrying it in or on his body
5 or person.

6 Second, a person may constructively possess property.
7 That means, he may exercise dominion or control over
8 property which is not in his physical possession.

9 Under our law, a person has tangible property in his
10 constructive possession when, that person exercises a
11 level of control over the area in which the property is
12 found sufficient to give him the ability to use or dispose
13 of the property.

14 Additionally, the law recognizes that possibility
15 that two or more individuals can jointly have property in
16 their constructive possession. Two or more persons have
17 property in their joint constructive possession when, they
18 each exercise dominion or control over property by having
19 a sufficient level of control over the area in which the
20 property is found, such as to give each of them the
21 ability to use or dispose of the property.

22 A person knowingly possesses property -- strike that.

23 A person knowingly possessed a loaded pistol or
24 revolver when, that person is aware he is in possession of
25 such loaded pistol or revolver.

1 Now, the Prosecution's theory for this crime is that
2 the defendants, Dexter Bostic, Robert Ellis, and Lee Woods
3 participated together in the commission of the crime. The
4 indictment charges the defendants each aiding the others,
5 also known as acting in concert.

6 Our Penal Law defines acting in concert, and each
7 aiding the other as follows:

8 When one person engages in conduct which constitutes
9 an offense such as Criminal Possession of a Weapon in the
10 Second Degree, another person is criminally liable for
11 such conduct when, acting with the state of mind required
12 for the commission of such crime, he solicits, requests,
13 or intentionally aids such person to engage in such
14 conduct.

15 This means, that when two or more people are acting
16 together to commit a crime such as Criminal Possession of
17 a Weapon in the Second Degree, and each does an act, or
18 acts that tends to accomplish the common criminal purpose,
19 all are legally guilty of the crime. Each of the
20 participants is an accomplice of the other, and principal
21 in the crime, whether he takes a major or minor part in
22 the commission of the crime.

23 To be criminally liable as a participant in a crime,
24 a defendant must be more than simply present at the scene.
25 And mere association with another person whose conduct

1 constitutes criminal activity does not, in itself, make an
2 individual an accomplice to a crime. He must wilfully
3 associate himself in some way with the criminal venture,
4 wilfully participate or assist in the criminal venture,
5 and wilfully take some action to make the venture succeed.

6 Under the law of acting in concert, the defendant,
7 Lee Woods, can be guilty of the crime of Criminal
8 Possession of a Weapon in the Second Degree based upon his
9 own act, or the acts of someone else if the People
10 establish, beyond a reasonable doubt, that he knowingly
11 possessed a loaded firearm. And acting with that
12 knowledge he solicited, requested, or did something else
13 to intentionally aid someone else to knowingly possess
14 such firearm:

15 If it is proven beyond a reasonable doubt that the
16 defendant is criminally liable for the conduct of another,
17 the extent or degree of the defendant's participation in
18 the crime does not matter. A defendant proven, beyond a
19 reasonable doubt, to be criminally liable for the conduct
20 of another in the commission of the crime is as guilty of
21 the crime as if the defendant permanently had committed
22 every act constituting the crime.

23 As you know, the People contend that the defendant,
24 Lee Woods, acted in concert with Dexter Bostic and Robert
25 Ellis who are not here. You must not speculate on the

1 present status of Mr. Bostic, or Mr. Ellis. You must not
2 draw any inference from their absence. You must not allow
3 their absence to influence your verdict. You are here to
4 determine whether the People have proven, beyond a
5 reasonable doubt, that the defendant, Lee Woods, here on
6 trial is guilty of the crimes charged.

7 In order for you to find the defendant guilty of this
8 crime, the People are required to prove, from all the
9 evidence in the case, beyond a reasonable doubt, each of
10 the following four elements:

11 One, that on or about July 9, 2007, in the county of
12 Kings, the defendant personally, or by acting in concert
13 with another person possessed a firearm.

14 Two, that the defendant did so knowingly.

15 Three, that the firearm was loaded and operable.

16 Four, that the defendant possessed such firearm in a
17 place that was not the defendant's home or place of
18 business.

19 Therefore, if you find the People have proven beyond
20 a reasonable doubt each of those elements, you must find
21 the defendant guilty of the crime of Criminal Possession
22 of a Weapon in the Second Degree as charged in the third
23 count.

24 On the other hand, if you find the People have not
25 proven beyond a reasonable doubt any one or more of those

1 elements, you must find the defendant not guilty of the
2 crime of Criminal Possession of a Weapon in the Second
3 Degree as charged in the third count.

4 Again, the fourth count is the same crime, it relates
5 to the .9mm high point. The same definitions that I gave
6 you with respect to firearm, loaded firearm, operability,
7 possess, constructive possession, and knowing apply here
8 to this crime.

9 Also, again, the People's theory is that the
10 defendant acted in concert with Mr. Bostic and Mr. Ellis
11 to possess the weapon. So the instruction I gave you with
12 respect to the acting in concert applies here.

13 In order for you to find the defendant guilty of this
14 crime, the People are required to prove, from all the
15 evidence in the case, beyond a reasonable doubt, each of
16 the following four elements:

17 One, that on or about July 9, 2007, in the county of
18 Kings, the defendant personally, or by acting in concert
19 with another person, possessed a firearm.

20 Two, that the defendant did so knowingly.

21 Three, that the firearm was loaded and operable.

22 Four, that the defendant possessed such firearm in a
23 place that was not the defendant's home or place of
24 business.

25 The fifth and final count, same count different gun,

1 the Intratec. Again, my instruction with respect to
2 firearm, loaded firearm, operability, possess,
3 constructive possession, knowing, applies here.

4 Also, my instruction with respect to acting in
5 concert applies here.

6 In order for you to find the defendant guilty of this
7 crime, the People are required to prove, from all the
8 evidence in the case, beyond a reasonable doubt, each of
9 the following four elements:

10 One, that on or about July 9, 2007, in the county of
11 Kings, the defendant personally, or by acting in concert
12 with another person possessed a firearm.

13 Two, defendant did so knowingly.

14 Three, that the firearm was loaded and operable.

15 Four, that the defendant possessed such firearm in a
16 place that was not the defendant's home or place of
17 business.

18 Therefore, if you find the People have proven beyond
19 a reasonable doubt each of those elements, you must find
20 the defendant guilty of the crime of Criminal Possession
21 of a Weapon in the Second Degree as charged in the fifth
22 count.

23 On the other hand, if you find the People have not
24 proven, beyond a reasonable doubt, any one or more of
25 those elements, you must find the defendant not guilty of

1 the crime of Criminal Possession of a Weapon in the Second
2 Degree as charged in the fifth count.

3 Now that concludes your requested read back. You have
4 any further requests, put them in writing.

5 Resume your deliberations. Alternates to be kept
6 separate and apart, and do not deliberate.

7 COURT OFFICER: Jurors follow me.

8 (Whereupon, deliberating jury, as well as
9 alternate jurors exit courtroom.)

10 Time: 6:00 p.m.

11 THE COURT: Any exceptions?

12 MS. NICOLAZZI: No.

13 MR. MEGARO: None.

14 THE COURT: Stand by please.

15 (Whereupon, the trial stands in recess, awaiting
16 a verdict from the deliberating jury.)

17 Time 6:50 p.m.

18 THE CLERK: Case on trial. All parties are
19 present.

20 THE COURT: All right, it is five to seven, I am
21 going to put this jury to bed.

22 MR. MEGARO: Sounds good.

23 MR. HALE: Fair enough.

24 THE COURT: Bring them in.

25 COURT OFFICER: Jury entering.

1 (Whereupon, the jury enters the courtroom, and
2 is seated in the jury box.)

3 THE CLERK: Case on trial. All parties present.

4 Both sides waive the reading?

5 MR. MEGARO: Yes.

6 MS. NICOLAZZI: Yes.

7 THE COURT: All right, jurors, I am going to ask
8 you to cease deliberations. We are going to break for
9 today. I am going to ask you to be in the jury room
10 tomorrow morning 9:30.

11 The first 12 jurors will resume deliberations then.
12 The alternates will go to their jury room, you are not to
13 discuss the case.

14 Now, while we are in recess the warnings that I gave
15 you during the trial apply. It is just as if we were
16 taking testimony. You are to adhere to my rules in terms
17 of not discussing the case, not reading about the case.
18 Those rules are still -- those rules still apply between
19 now and in the morning.

20 When the 12 of you are back in the jury room tomorrow
21 morning, resume deliberations. The rules obviously do not
22 apply at that point.

23 With that, see you all tomorrow.

24 COURT OFFICER: Jurors follow me.

25 (Jury exits the courtroom.)

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Time: 6:55 p.m.

THE COURT: Hopefully they will be here 9:30, they will start deliberations.

I guess you should call about ten, unless you are just going to come. If you are going to be here fine, if you want to call first you can.

With that see you tomorrow.

(Whereupon, the trial proceedings were adjourned until March 13, 2009.)

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF KINGS: CRIMINAL TERM: PART: 37

3 -----X

4 PEOPLE OF THE STATE OF NEW YORK, : Index
 : No.6797/07

5 -against- :

6 LEE WOODS, :

7
8 Defendant. :

9 -----X

10 320 Jay Street
11 Brooklyn, New York
12 March 13, 2009

13 B E F O R E:
14 HONORABLE PLUMMER LOTT
15 Supreme Court Justice

16 A P P E A R A N C E S:

17 (As previously mentioned.)

18 PHYLLIS PRICE
19 OFFICIAL COURT REPORTER

20 * * * * *

21 THE CLERK: Case on trial. All parties are
22 present. Defendant being present in court.

23 THE COURT: All right, Counsels, Mr. Woods. I
24 have handed you a note from the jury. They are requesting
25 the testimony of at least eight, if not ten witnesses.

They have not indicated that they want anything other than
the entire testimony.

They also requested photographs, charts, grafts, and

1 the cell phone lists. And we sent those two items in,
2 that series of items in. So, we are just dealing with the
3 witnesses' testimony.

4 What I propose to do is this. We will tell these
5 jurors we are prepared to respond to their request in
6 terms of the read back. But that because their request is
7 rather lengthy, perhaps they should try to be as accurate
8 as possible in isolating what it is they want in terms of
9 the testimony. Because otherwise I am sure, at minimum, we
10 are talking an hour or better with each request. That's a
11 full day.

12 And so, what I will do is, I will give them the note.
13 They will go back in and I will ask them to try and
14 isolate as best they can who the witnesses, and what it is
15 that they want. Whether it is direct, cross, or whatever.

16 Is that okay?

17 MR. MEGARO: Or specific portion, or specific
18 issue.

19 THE COURT: I am just going to try and say
20 isolate as accurately as possible what they want. I will
21 keep it as neutral as possible.

22 MR. MEGARO: That's fine by us.

23 MS. NICOLAZZI: Fine.

24 COURT OFFICER: Ready for the jury, your Honor?

25 THE COURT: Yes, sir, I certainly am.

1 COURT OFFICER: Jury entering.

2 (Whereupon, the jury enters the courtroom, and
3 is seated in the jury box.)

4 THE CLERK: Case on trial. All parties present.

5 Both sides waive a reading of the roll?

6 MR. MEGARO: Yes.

7 MS. NICOLAZZI: Yes.

8 THE COURT: Good afternoon.

9 JURORS: Good afternoon, your Honor.

10 THE COURT: I have your first note of the day,
11 and your third note in total. I am just going to read in
12 the record what you are requesting.

13 Jury request testimony read back for the following
14 witnesses.

15 Dog handler, fingerprint expert, DNA expert, PO who
16 did grid search, detective who first went to Gateway,
17 Detective at 67th Precinct who did interview, cell phone
18 technicians, Hermann Yan.

19 You also requested the following physical evidence,
20 all photos, charts, and grafts, cell phone lists.

21 Now, you have seen, I believe, the photographs,
22 charts, and grafts, and also the cell phone list.

23 Now your request, in terms of the testimony, look, we
24 are prepared to honor your request in full if that's what
25 you want. But the request, as you give it, is rather

1 lengthy because it seems to indicate you want the entire
2 testimony read back. Now we want to avoid rereading
3 testimony needlessly.

4 So, what I would like for you to do is this, take the
5 note back in. As to each request try to isolate as
6 accurate as possible what it is you want with respect to
7 that witness' testimony.

8 But, again, if you want it all say all. But if it is
9 something, only a small portion of that witness'
10 testimony, indicate it and we will respond that way.
11 Otherwise we are looking, at least, eight to 10 hours of
12 read back. That is not to discourage you. But I am
13 telling you, if you want it in full, that's what we are
14 looking at.

15 I can't honor any requests, vocal requests at this
16 point. Go inside and try to isolate as best you can what
17 you want.

18 COURT OFFICER: Jurors, follow me.

19 (Jury exits the courtroom.)

20 THE COURT: Since this is going to take some
21 time, we can send him down, let him eat. And then we will
22 resume in about half an hour.

23 (Whereupon, a brief recess was taken.)

24

25

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

2 THE CLERK: Case on trial. All parties are
3 present.

4 THE COURT: Counsels, we have now the revised
5 note by the jury with respect to -- I said note number
6 three, but it was note number four; is that correct, Mr.
7 LaRose?

8 THE CLERK: That would be correct, your Honor.

9 THE COURT: And both sides have seen it; is that
10 correct?

11 MR. MEGARO: Yes.

12 THE COURT: They were requesting, "with respect
13 to the dog handler, what time did he get to the scene?
14 What the dog handler did from the time that they got to
15 the alley, until the dog left the garage for the second
16 time?"

17 There is a request from a fingerprint expert. "What
18 prints were on what gun?" But we are clear there is no
19 testimony regarding fingerprints on the guns; is that
20 correct?

21 MS. NICOLAZZI: Right.

22 MR. MEGARO: That's correct.

23 THE COURT: And the third request is, "PO on the
24 grid search. What time did the grid search begin? What
25 did he see and do in the garage?"

1 And the fourth question is, "detective at Gateway."

2 MR. MEGARO: Yes.

3 MS. NICOLAZZI: Gateway?

4 THE COURT: Testimony dealing with cell phone.

5 And the fifth request is, "cell phone technician.

6 Whose cell phone number belong to whom?" And, it is not
7 the technician, but Margraf who provided the information;
8 is that correct?

9 MS. NICOLAZZI: Yes.

10 THE COURT: You have worked out the appropriate
11 pages. Miss Price is going to read.

12 MS. NICOLAZZI: Yes.

13 MR. MEGARO: Yes.

14 THE COURT: The other request is one by a
15 juror. "Can the jury be given written transcript as we
16 need them. If not, please ignore our request."

17 Any response?

18 MS. NICOLAZZI: No.

19 MR. MEGARO: I guess we should ignore it.

20 THE COURT: I will tell them I cannot send them
21 anything in writing.

22 Let's get this jury out, please.

23 COURT OFFICER: Ready for the jury, your Honor?

24 THE COURT: Bring them right in, please.

25 COURT OFFICER: Jury entering.

1 (Whereupon, the jury enters the courtroom, and
2 is seated in the jury box.)

3 THE CLERK: Case on trial, all parties present.
4 Both sides waive a reading of the roll?

5 MR. HALE: Waived.

6 MR. MEGARO: Waived.

7 THE COURT: Members of the jury, I have your
8 latest communications, you sent me two.

9 The first asks, "Can the jury be given written
10 transcripts as we need them. Or if not, please ignore our
11 request."

12 I am not allowed to send you in anything in writing.
13 So the answer is no.

14 With respect to the request where we asked you to try
15 to narrow down your request with respect to the testimony.
16 We are going to respond to that.

17 The first, Miss Price is going to read the request
18 relating to the dog handler. You asked, "what time did he
19 get to the scene? What the handler did from the time they
20 got to the alley, until the dog left the garage for the
21 second time?"

22 If you will, please proceed.

23 (Whereupon, requested portion of the record
24 was read by the reporter.)

25 THE COURT: Now the second request was,

1 "fingerprint expert. What prints were on what gun?"

2 There is no testimony relating to fingerprints on a gun.

3 The third request, "PO on grid search. What time did
4 the grid search begin? What did he see and do in the
5 garage?"

6 Miss Price.

7 (Whereupon, requested portion of the record
8 was read by the reporter.)

9 THE COURT: The next request is, "detective at
10 Gateway." Testimony dealing with cell phone.

11 (Whereupon, requested portion of the record
12 was read by the reporter.)

13 THE COURT: The final request is, "cell phone
14 technician. Whose cell phone numbers belong to whom?"
15 Actually, the technician didn't give you that information,
16 it was Detective Margraf.

17 I am going to have her read Detective Margraf. If
18 you want the technician you can have it. In any event,
19 read Detective Margraf's testimony.

20 (Whereupon, requested portion of the record
21 was read by the reporter.)

22 THE COURT: All right, ladies and gentlemen,
23 that concludes the requested read back. If you have any
24 further requests, put them in writing.

25 I am going to ask you now to resume your

1 deliberations.

2 (Whereupon, deliberating jury exits courtroom.)

3 Time:

4 THE COURT: All right, Counsels, sort of stand
5 by. If you are going to leave the floor leave your number
6 with Mr. LaRose.

7 (Whereupon, the trial stands in recess, awaiting
8 a verdict from the deliberating jury.)

9 Time: 3:15.

10 Time: 4:20.

11 THE COURT: We have a note from the jury. "Any
12 DNA evidence on the guns. And if so, whose DNA on which
13 weapon?"

14 THE COURT: Have we found the appropriate
15 section?

16 MS. NICOLAZZI: We have.

17 MR. MEGARO: And I think it probably would be
18 wise to tell the jury, J30A equals the high point .9mm,
19 because the testimony from the DNA expert just speaks in
20 numbers and not moniker.

21 MS. NICOLAZZI: And they are asking which
22 weapon.

23 THE COURT: Why don't you do it then.

24 MS. NICOLAZZI: All right.

25 THE COURT: So help their understanding.

1 MR. HALE: Right.

2 THE COURT: Okay.

3 Just a matter of stipulation.

4 MR. MEGARO: Yes.

5 THE COURT: Bring them right in, please.

6 COURT OFFICER: Jury entering.

7 (Whereupon, the jury enters the courtroom, and
8 is seated in the jury box.)

9 THE CLERK: Case on trial. All parties are
10 present. Both sides waive a reading of the roll?

11 MR. MEGARO: Yes.

12 MR. HALE: Yes.

13 THE COURT: Jurors, I have your latest
14 communication, I shared it with the parties. "DNA evidence
15 on the guns. And if so, whose DNA is on which weapon?"

16 Miss Price is going to read you the section that is
17 responsive to your note. Then there is going to be a
18 stipulation offered by the People and the Defense to
19 indicate which gun they are talking about, okay?

20 (Whereupon, requested portion of the record
21 was read by the reporter.)

22 THE COURT: Mr. Hale, if you will now.

23 MR. HALE: Sure, your Honor.

24 It is stipulated by and between counsel for the
25 Prosecution and counsel for the Defense, that as referred

1 to by the witness whose testimony you just heard, that
2 item J30A is the Intratec .9mm -- I'm sorry -- J30A is the
3 high point .9mm pistol. J30B is the Llama 45-caliber
4 pistol, and J30C is the Intratec .9mm pistol.

5 Is that stipulated?

6 MR. MEGARO: Right.

7 THE COURT: With that, I am going to ask you to
8 resume your deliberations. If you have any further
9 requests, put them in writing please.

10 COURT OFFICER: Jurors, follow me.

11 (Whereupon, deliberating jury exits courtroom.)

12 Time: 4:33

13 THE COURT: Case on trial.

14 Counsel, alternate number two has to be at the
15 pharmacy by when now?

16 SERGEANT: 7:00.

17 THE COURT: And she said she has to leave here
18 by 6:30.

19 What are we going to do with the alternates? I will
20 bring her out and let you talk to her. She is the only one
21 who indicated she has a problem.

22 MR. MEGARO: Number two, or number three?

23 THE COURT: Number three, there is no problem.

24 MR. MEGARO: My client would let her go.

25 COURT OFFICER: Ready for the juror, your Honor?

1 THE COURT: Yes.

2 COURT OFFICER: Juror entering.

3 (Whereupon, the alternate juror enters the
4 courtroom, and is seated in the jury box.)

5 THE COURT: Good evening.

6 ALTERNATE JUROR: Good evening.

7 THE COURT: You are alternate number two?

8 ALTERNATE JUROR: Yes.

9 THE COURT: You advised us that you have to be
10 at the pharmacy by 6:30, or 7:00 tonight?

11 ALTERNATE JUROR: Yes.

12 THE COURT: The parties have consented to
13 discharge you from further jury service?

14 ALTERNATE JUROR: Thank you.

15 THE COURT: Now look, you are going to be
16 excused. I am going to ask you to refrain from talking
17 about the case at all to anybody for a couple of days, all
18 right? Can you do that?

19 JUROR: Yes, sir.

20 THE COURT: Thank you very much, ma'am.

21 JUROR: Thank you.

22 THE COURT: I guess you have been here at least
23 three weeks. So, it is eight years before they call you
24 again.

25 Its been a pleasure.

1 ALTERNATE JUROR: Thank you.

2 (Whereupon, alternate juror number two exits the
3 courtroom.)

4 Time 6:45.

5 THE CLERK: Case on trial continues. All parties
6 are present. Defendant present with his attorney. The
7 jury is not present.

8 THE COURT: Counsel, Mr. Woods, you have seen the
9 note. The jurors have indicated they wish to suspend their
10 deliberations for the weekend to allow for individual
11 contemplation. They said they are tired.

12 Either side want to respond?

13 MS. NICOLAZZI: No, your Honor.

14 THE COURT: I will give them the admonitions,
15 and break for the weekend.

16 Let's get all the jurors in, including the
17 alternates, please.

18 MR. MEGARO: Judge, what is the note time?

19 THE COURT: 6:36 p.m.

20 COURT OFFICER: Ready for the jury, your Honor?

21 THE COURT: Please bring them in.

22 COURT OFFICER: Jury entering.

23 (Whereupon, the jury enters the courtroom, and
24 is seated in the jury box.)

25 THE CLERK: Case on trial continues. All parties

1 are present.

2 Both sides waive the reading of the roll call?

3 MR. MEGARO: Yes.

4 MS. NICOLAZZI: Yes.

5 THE COURT: Jurors, I have your latest
6 communication where you have indicated you wish to suspend
7 deliberations for the weekend to allow for individual
8 contemplation. And you are tired.

9 You are to cease deliberations. Again, you cannot
10 reach a decision as to the guilt, or non-guilt of the
11 defendant until you are together deliberating, and that
12 will be Monday.

13 Please, you are to be in the jury room at 9:30. I am
14 going to ask you, please try to observe that time, okay?
15 I know we got a late start this morning. Monday, please be
16 there at 9:30.

17 Look, while we are in recess, additionally, you are
18 not to discuss this case with anyone, not even your fellow
19 jurors.

20 You are not to permit anyone to talk with you about
21 this case.

22 And, you are to report any attempts by anyone to
23 approach you but your service on this case.

24 Now, I don't expect you to see the parties outside.
25 But if you do, again, you are not to talk with them not

1 even to say hello, or just past the time of day.

2 There may be accounts of this case in the media.
3 Don't read, watch, listen to those accounts, please. And
4 don't surf the Internet trying to get information about
5 the case, or anyone involved in the case.

6 Do not go to the scene. Don't try to do any
7 investigations on your own.

8 Until you are discharged, you are not to accept, or
9 discuss any compensation for supplying information about
10 this case. Everybody understand that?

11 JURORS: Yes, your Honor.

12 THE COURT: Have a pleasant weekend. I guess
13 Syracuse is playing this weekend. Let's hope they do well.

14 With that, see you Monday morning 9:30.

15 COURT OFFICER: Jurors, follow me.

16 (Jury exits the courtroom.)

17 THE COURT: I guess one or two of the women are
18 Syracuse fans. The men all said Uh-huh in a low tone.

19 Please have a pleasant weekend. And see you Monday
20 morning at ten a.m.

21 (Whereupon, the trial proceedings were adjourned
22 until March 16, 2009.)

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS: CRIMINAL TERM: PART: 37

-----X

PEOPLE OF THE STATE OF NEW YORK, : Index
 : No.6797/07

-against- :

LEE WOODS, :

Defendant. :

-----X

320 Jay Street
Brooklyn, New York
March 16, 2009

B E F O R E:
HONORABLE PLUMMER LOTT
Supreme Court Justice

A P P E A R A N C E S:

(As previously mentioned.)

PHYLLIS PRICE
OFFICIAL COURT REPORTER

* * * * *

THE COURT: Case on trial.

Good morning Counsels, Mr. Woods.

MR. MEGARO: Good morning.

MS. NICOLAZZI: Good morning.

THE COURT: We have a note from the jury. Both sides seen the note. Let me read it into the record.

"If the defendant hid the murder weapons after the shooting, can he be considered to be acting in concert

1 regarding the underlying murder?"

2 I read it accurately?

3 MR. MEGARO: Yes.

4 MS. NICOLAZZI: Yes.

5 THE COURT: I'll hear you.

6 MR. MEGARO: Judge, I don't think the Court can
7 answer that question. I think the jury is asking this
8 Court whether it should consider a particular piece of
9 evidence. And also, how it should consider that evidence,
10 which is their province exclusively.

11 Any response would signal, number one, they should
12 consider it. And, possibly, could signal they just should
13 give it some sort of weight, which intrudes on their
14 province.

15 I think the only proper response is, the jury alone
16 determines what the facts are, and whether those facts
17 apply to the law -- how to apply those facts to the law,
18 as the Court has given it to them.

19 That's pretty much it.

20 THE COURT: Okay.

21 Mr. Hale, Miss Nicolazzi?

22 MS. NICOLAZZI: Your Honor, I think, not only
23 should the Court answer, I think you must. I agree,
24 certainly, the Court cannot direct the jury what to do
25 with any particular facts. However, they are clearly, by

1 their note, looking for guidance. And to me, the answer to
2 that note, that would be appropriate using the
3 instructions that the Court has already given this jury,
4 is basically saying -- that the jury is using the law --
5 they must find the defendant had the mental state at the
6 time of the commission of the crime, period.

7 However, with respect to their note, that fact may be
8 used by you. Because they are asking you, can they use it?
9 Because the Court specifically, in your instructions, say,
10 any fact they find before, during, or after that is in the
11 charge. This is something, clearly, that they are talking
12 about.

13 THE COURT: Miss Nicolazzi, this is the second
14 trial I had with Mr. Woods. I have repeated acting in
15 concert numerous times.

16 Now I'd like for you to show me, in the Court's
17 charge, where I have delineated facts they could take into
18 account both during, and after an event.

19 MS. NICOLAZZI: It is the intent portion.

20 THE COURT: The charge as read is that -- at
21 best -- is that Mr. Woods can be guilty of the crime of
22 Aggravated Murder, or Attempted Aggravated Murder based on
23 his own act, or the acts of someone else if the People
24 establish, beyond a reasonable doubt, that he had the
25 intent to cause the death of Russell Timoshenko, or the

1 intent -- attempt to cause the death of Hermann Yan, and
2 acting with that intent, he solicits, requests, or does
3 something else to intentionally aid someone else to cause
4 the death of Russell Timoshenko, or attempt to cause the
5 death of Hermann Yan. That's the way the charge reads. And
6 what you are suggesting though is, I am to somehow tell
7 them that a circumstance, that subsequent to the actual
8 shooting, is an event they can take into account in making
9 a determination as to what is acting in concert.

10 MS. NICOLAZZI: That is not what I am saying.

11 THE COURT: What are you saying?

12 MS. NICOLAZZI: If you look at what you charged
13 the jury in the intent portion, expanded intent, in
14 determining intent is one of the things they can
15 consider -- I don't remember the specific language --
16 before, during, and after.

17 While I am not saying you should say they are to
18 consider it, they can consider anything. But they can
19 consider the fact before, during, and after. And that is
20 from the expanded intent portion of the charge.

21 THE COURT: Yes, ma'am. In doing so you may
22 consider the person's conduct and all of the circumstances
23 surrounding that conduct including, but not limited to
24 what, if anything, did the person do or say, what results,
25 if any, follow the person's conduct, and was the results

1 the natural, necessary, and probable consequences of that
2 conduct?

3 MS. NICOLAZZI: That's what I was referring to.

4 THE COURT: That's how the intent language goes.

5 MS. NICOLAZZI: That's what I am asking they be
6 given with that. Because, I believe that's what they are
7 asking for. I am, in no way, suggesting the Court talk
8 about the specific facts, what they do with them. But
9 giving them the acting in concert with intent, that is the
10 guidance they are looking for, in how to use something
11 they may, or may not choose to find on their own, but to
12 use something that may have happened afterwards.

13 MR. MEGARO: Judge, the charge the Court just
14 read about intent is nothing about the fact, what he did
15 after the alleged incident. And I think the intent is
16 formed at the time of the shooting, not after.

17 THE COURT: What she is suggesting, in
18 formulating the intent, they can consider the total
19 circumstances, which is what was going on in his mind at
20 the time, and subsequent.

21 MS. NICOLAZZI: Right.

22 MR. MEGARO: I agree that is the instruction.
23 But in this particular instance, the problem is,
24 highlighting this one specific fact, and basically telling
25 them, sure consider that as part of whether he formed the

1 intent at the time --

2 THE COURT: No, I am not highlighting that, I am
3 not going to do that. I am inclined to, at least, try to
4 give them the acting in concert charge and have them
5 reflect, specifically, on an intent to cause the death of
6 Russell Timoshenko and an intent to cause the death of
7 Hermann Yan, and then try to incorporate in that what
8 intent means.

9 I mean, that's the only thing I can do without --
10 otherwise, I would be fact finding.

11 MR. MEGARO: Judge, they have not asked for a
12 definition of intent, or acting in concert.

13 THE COURT: I beg to differ with you, sir. By
14 asking this question they are asking for a definition of
15 acting in concert.

16 MR. MEGARO: So, the Court intends to read
17 acting in concert?

18 THE COURT: I would be thinking about it. I
19 would be inclined to give them, again, the two essential
20 elements required in order to convict the defendant of the
21 murder and the attempted murder with respect to acting in
22 concert. And then, further try to define what intent means
23 with respect to that issue.

24 If the defendant hid the murder weapons after the
25 shooting, can he be considered to be acting in concert?

1 That's what they are asking, acting in concert regarding
2 underlying murder.

3 What I am saying is, in my mind, they are asking,
4 again, what is acting in concert, as the charge points to
5 two things, a mental state, and the defendant doing
6 something. And defining that mental state intent, perhaps
7 they may be able to gleam the answer they want ultimately.
8 Because, it does refer to the circumstances, all the
9 circumstances.

10 In my mind, I think that is the appropriate response.

11 MR. MEGARO: There is nothing in the note that
12 says anything about intent, only acting in concert. I
13 understand what the Court is saying.

14 THE COURT: Yes, but in giving acting in
15 concert, I am trying to give them some guidance as to what
16 mental state is requires. It is intentional conduct. And
17 in saying intentional conduct, I think it wouldn't be
18 meaningful unless I were to give them also the definition
19 of intent. That's what I am saying.

20 MR. MEGARO: The Defense takes exception.

21 THE COURT: I understand. But I guess that's
22 your argument.

23 MS. NICOLAZZI: That's exactly what I am asking
24 for, your Honor.

25 THE COURT: Let me think about it for a minute

1 and be back in about five minutes.

2 (Whereupon, a brief recess was taken.)

3 THE CLERK: Case on trial. All parties are
4 present.

5 THE COURT: Either side want to be heard any
6 further?

7 MR. MEGARO: No.

8 MR. HALE: No, your Honor.

9 THE COURT: I viewed this note, as I initially
10 said, as a request to instruct this jury with respect to
11 the concept of acting in concert. I am, in no way, going
12 to try to fact find for them.

13 I will make it clear that in order for the People to
14 prevail on the murder counts, two essential elements must
15 be established.

16 The first being that the defendant acted with the
17 mental culpable required for the commission of this crime.
18 In this case intent to cause the death of Timoshenko, and
19 intent to cause the attempted death of Yan.

20 And secondly, the People must establish also that
21 that the defendant either solicited, requested, or did
22 something to intentionally aid someone else to cause the
23 death of Timoshenko, or the attempted death of Hermann
24 Yan.

25 Then I will reread the definition, and also will

1 reread the definition of intent.

2 Let's get the jury in.

3 (Awaiting the arrival of the jury.)

4 Bring them right in, please.

5 COURT OFFICER: Jury entering.

6 (Whereupon, the jury enters the courtroom, and
7 is seated in the jury box.)

8 THE CLERK: Case on trial. All parties are
9 present.

10 Both sides waive a reading of the roll of the jury?

11 MR. MEGARO: Yes.

12 MS. NICOLAZZI: Yes.

13 THE COURT: Good morning, folks.

14 JURORS: Good morning.

15 THE COURT: I have your communication this
16 morning, time about 11:03. I have shared it with the
17 parties. I am going to read it into the record. It
18 requests the following.

19 "If the defendant hid the murder weapons after the
20 shooting, can he be considered to be acting in concert
21 regarding the underlying murder?"

22 Now, folks, there are two essential elements of
23 criminal liability for the conduct of another. And each of
24 which must be proved by the People, beyond a reasonable
25 doubt.

1 The first is that, the defendant Woods possessed a
2 particular mental state required for the commission of the
3 crimes charged. With respect to the aggravated murder of
4 Police Officer Timoshenko and the attempted aggravated
5 murder with respect to Police Officer Yan.

6 Now Detective Yan, the People must prove that Woods
7 acted with the intent to cause the death of Timoshenko,
8 and he acted with intent to attempt to cause the death of
9 Hermann Yan.

10 The second essential element is, defendant Woods
11 either solicited, requested, or intentionally did
12 something -- strike that. Solicited, requested, or did
13 something else to intentionally aid someone else to cause
14 the death of Hermann -- cause the death of Russell
15 Timoshenko, or the attempted death of Hermann Yan.

16 Now, I am going to again reread acting in concert.
17 And, I am also going to follow it up with the definition
18 of intent.

19 Our Penal Law defines acting in concert, and each
20 aiding the other as follows:

21 When one person engages in conduct which constitutes
22 an offense, such as aggravated murder or attempted
23 aggravated murder, another person is criminally liable for
24 such conduct when, acting with the state of mind required
25 for the commission of such crime he solicits, requests, or

1 intentionally aids such person to engage in such conduct.

2 This means, that when two or more people are acting
3 together to commit a crime, such as aggravated murder or
4 attempted aggravated murder, and each does an act or acts
5 that tends to accomplish the common criminal purpose, all
6 are equally guilty of the crime. Each of the participants
7 is an accomplice of the other, and principle of the crime
8 whether he takes a major or minor part in the commission
9 of the crime.

10 To be criminally liable as a participant in a crime,
11 a defendant must be more than simply present at the scene.
12 Mere association with another person whose conduct
13 constitutes criminal activity does not, in itself, make an
14 individual an accomplice to a crime. He must wilfully
15 associate himself in some way with the criminal venture,
16 wilfully participate or assist in the criminal venture,
17 and wilfully take some action to make the venture succeed.

18 Under the law acting in concert the defendant, Lee
19 Woods, can be guilty of the crime of aggravated murder and
20 attempted aggravated murder based upon his own act, or the
21 acts of someone else if the People establish, beyond a
22 reasonable doubt, that he had the intent to cause the
23 death of Russell Timoshenko, or the intent to attempt to
24 cause the death of Hermann Yan. And acting with such
25 intent he solicited, requested, or did something else to

1 intentionally aid someone else to cause the death of
2 Russell Timoshenko, or attempted death of Hermann Yan.

3 And if it is proven that the defendant's
4 participation in the crime does not matter, a defendant
5 proven, beyond a reasonable doubt, to be criminally liable
6 for the conduct of another in the commission of a crime is
7 as guilty of the crime as if the defendant personally had
8 committed every act constituting the crime.

9 Again, as you know, the People contend that the
10 defendant, Lee Woods, acted in concert with Dexter Bostic,
11 Robert Ellis who are not here. You must not speculate on
12 the present status of Mr. Bostic, or Mr. Ellis. You must
13 not draw any inference from their absence. You must not
14 allow their absence to influence your verdict. You are
15 here to determine whether the People have proven beyond a
16 reasonable doubt that the defendant, Lee Woods, here on
17 trial is guilty of the crimes charged.

18 Now, with respect to intent. Now in aggravated murder
19 it is an intent to cause the death. Attempted aggravated
20 murder it is an intent to attempt to cause the death.

21 Intent means conscious objective or purpose. Thus, a
22 person intends to cause the death, or attempt to cause the
23 death of another person when, his conscious aim or
24 objective is to cause the death of that person.

25 Premeditation, or advanced planning is not a prerequisite

1 in determining intent. Nor is it necessary for the People
2 to prove that the intent to kill was present in the
3 defendant's mind for any particular period of time. Intent
4 can be formed, and need only exist at the very moment the
5 defendant acted or engaged in a criminal conduct.

6 The question naturally arises on how to determine
7 whether or not the defendant had the intent required for
8 the commission of the crime.

9 To make that determination in this case, you must
10 decide if the required intent can be inferred beyond a
11 reasonable doubt from the proven facts.

12 In doing so, you may consider the person's conduct
13 and all of the circumstances surrounding that conduct,
14 including, but not limited to the following:

15 What, if anything, did the person do or say?

16 What result, if any, followed the person's conduct?

17 And was that result the natural and necessary and
18 probable consequences of that conduct?

19 Therefore, in this case, from the facts you find to
20 have been proven, decide whether or not you can infer,
21 beyond a reasonable doubt, that the defendant had the
22 required intent required for the commission of the crime.

23 I am going to ask you to resume your deliberations.
24 If you have any further requests, please put them in
25 writing.

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(Whereupon, deliberating jury exits courtroom.)

Time: 12:15

THE COURT: Any exceptions.

MR. MEGARO: I just except, again, for the reasons I stated earlier.

THE COURT: Okay.

Please stand by.

MS. NICOLAZZI: Yes, Judge.

(Whereupon, the trial stands in recess, awaiting a verdict from the deliberating jury.)

Time: 12:45

(Whereupon, a luncheon recess was held.)

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

2 THE CLERK: Case on trial. All parties are
3 present.

4 THE COURT: Mr. Woods, Counsels, we got a second
5 note from the jury.

6 "If the defendant did not knowingly and willingly
7 participate in the actual shooting of the officers, but
8 did assist the shooter, after the shooting, in escaping
9 from the scene and hiding the weapons, does that
10 constitute acting in concert with the shooter in
11 committing aggravated murder and attempted aggravated
12 murder?"

13 Either side want to be heard?

14 MS. NICOLAZZI: I mean, your Honor, I think it
15 is basically the same note written differently. So, I
16 don't know what the Court intends -- it seems to me --

17 THE COURT: Hang on. As we speak here comes the
18 sergeant with another note, a third note now.

19 "Jurors would like to see the video footage taken at
20 Rogers and Lefferts Avenue again, to confirm timing of
21 events. The weapons."

22 In the interim, Sergeant, can you make sure someone
23 takes the weapons in? They are to stay with them,
24 consistent with my other instructions.

25 SERGEANT: Yes.

1 MR. MEGARO: Judge, can you read the last part
2 again?

3 THE COURT: I am going to give it to you. The
4 last thing they wanted the weapon. First part, "Jurors
5 would like to see the video footage taken at Rogers and
6 Lefferts Avenue again, to confirm time of events."

7 I will let you figure it out.

8 (Pause in the proceeding.)

9 THE COURT: Both sides seen the second note; is
10 that correct?

11 MS. NICOLAZZI: Yes.

12 MR. HALE: Yes.

13 THE COURT: Miss Nicolazzi, would you respond
14 just to the first note.

15 MS. NICOLAZZI: Your Honor, the first note, I
16 believe, basically asking the same thing as the note we
17 received previously just worded somewhat differently.
18 Because, of course, words such as participator, ambiguous,
19 actual.

20 So, I don't see any response other than,
21 unfortunately, the same response that the Court gave to
22 the last note. Because, again, without getting into
23 directing them to any specific, or getting into the facts,
24 they seem to be asking the same thing in a different way.

25 MR. MEGARO: Judge, it is the same exact

1 question just worded in the negative, the same
2 handwriting.

3 So, I guess it is the same person who has the same
4 question.

5 THE COURT: I am going to try to reply
6 meaningfully. In my mind the appropriate instruction would
7 go something like this.

8 That it's not -- it is my job to instruct them on the
9 law, and not to decide facts. This request is asking me
10 to make a factual determination. It is not my job, it is
11 theirs. And I can only instruct them, they are to apply
12 the facts, and apply it to the law. Otherwise, I am going
13 to get a third request similar.

14 But, I will hear you on it.

15 MR. MEGARO: That's fine, your Honor. That's
16 exactly what I proposed the first time. I think that is
17 the only instruction we can give them at this point.

18 THE COURT: They have to determine what the
19 acting in concert, factually, what it means in this case
20 because they have been given correct law.

21 MR. MEGARO: Over and over.

22 THE COURT: Now the video, we have to clear the
23 courtroom to show that again; is that correct?

24 MR. HALE: The same fashion as you did the last
25 time.

1 MR. MEGARO: Judge, should we just ask them if
2 they want to move closer to the screen? Perhaps they
3 don't, at this time --

4 THE COURT: For fear I will get a note -- I am
5 going to try and accommodate them. Clear the courtroom,
6 let them look at it, and then, when they are through, they
7 will let us know. Because, I don't want to do it and have
8 someone say, can we look at it closer?

9 MR. MEGARO: I understand.

10 THE COURT: Let's see if we can get the jury in.

11 MR. MEGARO: Judge, to be clear on the response
12 the Court is going to give them to the first note.
13 Essentially, ladies and gentlemen, you find the facts,
14 apply it to the law.

15 THE COURT: What they are asking me to do here
16 is make a factual determination.

17 MR. MEGARO: Yes.

18 THE COURT: I have given them acting in concert,
19 the essential elements. They must decide factually whether
20 it happened.

21 Now, are we sure of the second note, in terms of the
22 Rogers and Lefferts? Anything left out?

23 MS. NICOLAZZI: No, Judge, that is already set
24 up, People's two, it is two segments which shows the
25 Rogers, Lefferts sequence. We have agreed on that.

1 MR. MEGARO: Yes.

2 (Awaiting the arrival of the jury panel.)

3 COURT OFFICER: Ready for the jury, your Honor?

4 THE COURT: Bring them in, please.

5 COURT OFFICER: Jury entering.

6 (Whereupon, the jury enters the courtroom, and
7 is seated in the jury box.)

8 THE CLERK: Case on trial. All parties present.
9 Both sides waive a reading of the roll?

10 MS. NICOLAZZI: Yes.

11 MR. MEGARO: Yes.

12 THE COURT: Good afternoon.

13 JURORS: Good afternoon, your Honor.

14 THE COURT: How was lunch?

15 JURORS: Good.

16 JUROR: Tasty.

17 THE COURT: Folks, I have your first
18 communication, time at 1:12 p.m. and it requests the
19 following.

20 "If the defendant did not knowingly and willingly
21 participate in the actual shooting of the officers, but
22 did assist the shooter, after the shooting, in escaping
23 from the scene and hiding the weapons, does that
24 constitute acting in concert with the shooter in
25 committing aggravated murder, and attempted aggravated

1 murder?"

2 I have shown this to the parties and my response --
3 our response to that is as follows.

4 My role at this trial is similar to any judge's role.
5 I instruct you with respect to the law. I do not decide
6 facts in the case.

7 Your request is asking the Court to make a factual
8 determination, that's not my job. You and you alone decide
9 what the facts are, and you apply it to the law as I give
10 it to you.

11 Now, with respect to the second note. You are
12 requesting to view video footage taken at Rogers and
13 Lefferts Avenue again, to confirm timing of events. And
14 you want to look at the weapons.

15 Give me a second. I am going to ask you to step out.
16 I am going to bring you back in. You will be able to look
17 at the video tape here in the courtroom, as close as you
18 like, under the same conditions we allowed you to do it
19 earlier. No deliberations, whatsoever, just look at it.
20 Any thoughts you might have about it keep to yourself. And
21 once you are back in the jury room, at that point, you can
22 talk about it.

23 Also, at the same time, we are going to allow you to
24 look at the weapons again, just look at them. Do not, I
25 repeat, not make any comments about them. When you are

1 back in the jury room you will be allowed to talk as much
2 as you like about them.

3 With that, I am going to ask you to step outside. We
4 will have you back in a moment.

5 COURT OFFICER: Jurors, follow me.

6 (Jury exits the courtroom.)

7 THE COURT: Either side any exceptions?

8 MS. NICOLAZZI: No.

9 MR. MEGARO: None.

10 THE COURT: Folks, if you will, step out of the
11 courtroom. I will allow the jurors to use this as the jury
12 room. We will have you back shortly.

13 (Whereupon, all occupants of the courtroom exit,
14 with the exception of the jury. And the jury is allowed
15 to view the video in the courtroom alone.)

16 THE CLERK: Case on trial. All parties are
17 present.

18 THE COURT: Mr. Woods, Counsels, while the
19 jurors were watching the requested video, the foreperson
20 requested People's 37. Mr. LaRose called me upstairs. They
21 took the jurors out of the jury room, found 37, queued it
22 up, brought the jurors back in and played 37.

23 MR. MEGARO: That's fine. Save us the trouble.

24 THE COURT: Yes, sir. Let's bring them in.

25

1 COURT OFFICER: Jury entering.

2 (Whereupon, the jury enters the courtroom, and
3 is seated in the jury box.)

4 THE CLERK: Case on trial. All parties present.
5 Both sides waive a reading of the roll?

6 MS. NICOLAZZI: Yes.

7 MR. MEGARO: Yes.

8 THE COURT: Folks, I am not playing musical
9 chairs with you, I just want to make sure. During the
10 viewing of your request for video of Lefferts and Rogers,
11 your foreperson made a request for Exhibit 37, and you saw
12 that as well; is that correct?

13 FORPERSON: That's correct.

14 THE COURT: I am going to ask you to now,
15 please, resume your deliberations. Thank you very much.

16 COURT OFFICER: Jurors, follow me.

17 (Whereupon, deliberating jury exits courtroom.)

18 Time: 2:46.

19 THE COURT: All right, unless you hear from us,
20 about 4:30.

21 THE CLERK: Case on trial. All parties are
22 present.

23 THE COURT: Counsels, Mr. Woods, the jury has
24 reached a verdict.

25 Now listen to me very carefully. Those of you who are

1 in the audience observing this matter, please, if you feel
2 as if you got to make some kind of audible response, do it
3 outside the courtroom not here.

4 Sergeant, show the note to both sides.

5 (Handing.)

6 MR. MEGARO: We have seen it, your Honor.

7 THE COURT: Okay. Any comments?

8 As you note, the first portion of the note looks like
9 they are trying to make a Q, then it is drawn through. And
10 then, we have reached a verdict.

11 MR. MEGARO: Yes.

12 THE COURT: Either side wish I address the
13 issue? Or just leave it as is?

14 MS. NICOLAZZI: Leave it as is, Judge.

15 MR. MEGARO: As is.

16 COURT OFFICER: Ready for the jury?

17 THE COURT: Yes, sir.

18 COURT OFFICER: Jury entering.

19 (Whereupon, the jury enters the courtroom, and
20 is seated in the jury box.)

21 THE CLERK: Case on trial. All parties are
22 present.

23 Both sides waive the reading of the roll?

24 MR. MEGARO: Yes.

25 MS. NICOLAZZI: Yes.

1 THE COURT: Members of the jury, I understand
2 you have reached a verdict. I have shared the note with
3 the lawyers. Mr. LaRose is now going to take the verdict.

4 If you will, Mr. LaRose.

5 THE CLERK: Will the foreperson please rise.

6 In the matter of the People of the State of New York
7 against Lee Woods, has the jury agreed upon a unanimous
8 verdict?

9 FORPERSON: Yes, we have.

10 THE COURT: As to the defendant on the first
11 count charging the crime of Aggravated Murder, what is
12 your verdict?

13 FORPERSON: Guilty.

14 THE CLERK: As to the defendant on the second
15 count charging the crime of Attempted Aggravated Murder,
16 what is your verdict?

17 FORPERSON: Guilty.

18 THE CLERK: As to the defendant on the third
19 count charging the crime of Criminal Possession of a
20 Weapon in the Second Degree, what is your verdict?

21 FORPERSON: Not guilty.

22 THE CLERK: As to the defendant on the fourth
23 count charging the crime of Criminal Possession of a
24 Weapon in the Second Degree, what is your verdict?

25 FORPERSON: Guilty.

1 THE CLERK: As to the defendant on the fifth
2 count charging the crime of Criminal Possession of a
3 Weapon in the Second Degree, what is your verdict?

4 FORPERSON: Guilty.

5 THE CLERK: Foreperson will please be seated.

6 Members of the jury, here your verdict as it stands
7 recorded.

8 You said that you find the defendant guilty on the
9 first count charging the crime of Aggravated Murder.

10 You say you find the defendant guilty on the second
11 count charging the crime of Attempted Aggravated Murder.

12 You said that you find the defendant not guilty on
13 the third count charging Criminal Possession of a Weapon
14 in the Second Degree.

15 You say that you find the defendant guilty on the
16 fourth count charging the crime of Criminal Possession of
17 a Weapon in the Second Degree.

18 You say you find the defendant guilty on the fifth
19 count charging the crime of Criminal Possession of a
20 Weapon in the Second Degree.

21 Members of the jury, is this your verdict and so say
22 you all?

23 JURORS: So say we all.

24 THE CLERK: Attorneys request a polling of the
25 jury?

1 MR. MEGARO: Yes.

2 THE CLERK: Members of the jury, hear your
3 verdict as it stands recorded. Please answer the following
4 question. Is the verdict announced by your foreperson
5 your verdict in all respects?

6 THE CLERK: Juror number one, is this your
7 verdict?

8 JUROR: Yes.

9 THE CLERK: Juror number two, is this your
10 verdict?

11 JUROR: Yes.

12 THE CLERK: Juror number three, is this your
13 verdict?

14 JUROR: Yes.

15 THE CLERK: Juror number four, is this your
16 verdict?

17 JUROR: Yes.

18 THE CLERK: Juror number five, is this your
19 verdict?

20 JUROR: Yes.

21 THE CLERK: Juror number six, is this your
22 verdict?

23 JUROR: Yes.

24 THE CLERK: Juror number seven, is this your
25 verdict?

1 JUROR: Yes.

2 THE CLERK: Juror number eight, is this your
3 verdict?

4 JUROR: Yes.

5 THE CLERK: Juror number nine, is this your
6 verdict?

7 JUROR: Yes.

8 THE CLERK: Juror number 10, is this your
9 verdict?

10 JUROR: Yes.

11 THE CLERK: Juror number 11, is this your
12 verdict?

13 JUROR: Yes.

14 THE CLERK: Juror number 12, is this your
15 verdict?

16 JUROR: Yes.

17 THE CLERK: Your Honor, the jury polled all
18 answering the verdict as their own.

19 THE COURT: With your service you are
20 discharged. I want to thank you. Its been a pleasure.

21 Now that the case is over with, you can talk to
22 whomever you like about the case.

23 And its been a pleasure. This is my last trial as a
24 trial judge.

25 Good luck to you.

1 JURORS: Good luck to you.

2 COURT OFFICER: Jurors, follow me.

3 (Whereupon, discharged jury exits the
4 courtroom.)

5 THE COURT: Mr. Megaro, Miss Nicolazzi, Mr.
6 Hale, obviously you cannot get a presentence report in the
7 next two days. So I guess somebody else will have to do
8 it.

9 How much time do you think you need, sir?

10 THE CLERK: Ten days.

11 THE COURT: I understand that.

12 Mr. Megaro?

13 MR. MEGARO: One moment. April 2nd?

14 THE COURT: Why don't we do this. I have to
15 figure out what is happening here. We have to find out who
16 is going to take the sentencing.

17 I guess we can do it in ten days. What do you want?

18 MR. MEGARO: April 2nd?

19 THE COURT: April 2nd.

20 MR. MEGARO: Will it be Part 37, or a different
21 part?

22 THE COURT: It will be Part 37, but who the
23 judge is, I have no idea.

24 And also, does the family wish to be heard, Miss
25 Nicolazzi?

1 MS. NICOLAZZI: Yes, your Honor.

2 THE COURT: Why don't you speak to them right
3 quick.

4 MS. NICOLAZZI: The only thing, we have some
5 directives, it has to be now ten days.

6 THE CLERK: 13 working days. April 2nd is 13
7 working days.

8 THE COURT: I can assure you, if I was still
9 sitting I would do it. But I really don't know what is
10 going to happen.

11 MR. HALE: April 2nd is fine.

12 THE COURT: It will be in the afternoon. I will
13 submit whoever to that.

14 And serve written notice in any event.

15 MS. NICOLAZZI: Yes, we will.

16 THE COURT: Defendant is remanded.

17 * * *

18 Certified to be a true and accurate
19 transcript of the foregoing proceedings.

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