

No. _____

IN THE
Supreme Court of the United States

CITY OF NEWARK,

Petitioner

v.

THE ESTATE OF ADRIANO ROMAN, JR.,

Respondent

On Petition for Writ of Certiorari to the United
States Court of Appeals for the Third Circuit

**VOLUME II OF APPENDIX TO PETITION FOR
WRIT OF CERTIORARI**

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April 29, 2019

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ADRIANO ROMAN,
Plaintiff,

Civil Action No:
16-1110-SDW-
LDW

v.

CITY OF NEWARK, RODGER
C. MENDES, ALBANO
FERREIRA, ONOFRE H.
CABEZAS, JOSEPH CUETO,
FNU RESSURREICAO, FNU
GOLPE, JOYCE HILL
individually and their capacity
as police officers, JOHN DOES
1-20 as fictitious name for
presently unknown agents,
members, commissioners and
chiefs.

Defendants.

FIRST AMENDED COMPLAINT AND JURY DEMAND

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The Plaintiff, Adriano Roman, currently residing at 96 Clifford Street, Newark, New Jersey 07105 by way of complaint against Defendants herein states as follows:

JURISDICTION AND VENUE

1. This Court has federal question jurisdiction under 28 U.S.C. §§1331 and 1343(0)(3). This Court has supplemental jurisdiction over state law causes of action under 28 U.S.C. §1367(a).

2. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(2) because the events/omissions given rights to these cause of actions all occurred in the District of New Jersey.

PARTIES

3. Plaintiff, Adrian Roman, (hereinafter "Plaintiff" was born May 9, 1989 and is a person of Dominican and Puerto Rican descent and was at all times mentioned herein a citizen of the United States of America who, at the time the events in this Complaint took place lived at 86 Napoleon Street, Newark, New Jersey, and now resides at 96 Clifford Street, Apt. 3, Newark, New Jersey 07105.

4. Plaintiff; at all times relevant hereto, is a member of a protected class, being a Dominican and Puerto Rican descent, and duly recognized as a protected class by the U.S. Constitution, the New Jersey Constitution and Section 42 U.S.C. § 1983 and § 1985.

5. Defendant City of Newark is a New Jersey municipal corporation, organized and existing under and by virtue of the Constitution and law of the State of New Jersey, and is located at 920 Broad Street, Newark, New Jersey 07102, (hereinafter referred to as the "City").

6. Defendant, Rodger C. Mendes, badge number 9438, is and at all times mentioned was duly appointed, employed and acting police officer of Defendant City, State of New Jersey (hereinafter referred to as "Defendant Mendes"). Defendant Mendes is named in his personal and official capacity.

7. Defendant, Albano Ferreira, badge number 7120, was and is at all times mentioned a duly appointed, employed and acting police officer of Defendant City, State of New Jersey (hereinafter referred to as "Defendant Ferreira"). Defendant Ferreira is named in his personal and official capacity.

8. Defendant, Onofre H. Cabezas, is and at all times mentioned was duly appointed, employed and acting police officer of Defendant City, State of New Jersey (hereinafter referred to as "Defendant Cabezas"). Defendant Cabezas is named in his personal and official capacity.

9. Defendant, Joseph Cueto, is and was at all times mentioned a duly appointed, employed and acting police officer of Defendant City, State of New Jersey (hereinafter referred to as "Defendant Cueto"). Defendant Cueto is named in his personal and official capacity.

10. Defendant, FNU (First Name Unknown) Ressurreicao, is a municipal employee in the position of police officer for the Police Department (hereinafter referred to as "Defendant Ressurreicao"). Defendant Ressurreicao is named in his personal and official capacity.

11. Defendant, FNU (First Name Unknown) Golpe, is a municipal employee in the position of police officer for the Police Department (hereinafter referred to as "Defendant Golpe"). Defendant Golpe is named in his personal and official capacity.

12. Defendant Sgt. Joyce Hill is a municipal employee in the position of Police Sergeant for the Police Department (hereinafter referred to as "Defendant Hill") who approved and supervised the aforementioned police officers in connection with their illegal arrest, seizure, malicious prosecution, assault, battery and civil rights violations of the Plaintiff. Defendant Hill is named in his personal and official capacity.

13. At all times mentioned, Defendant Police Officers were the employees, agents, and servants of Defendant City and the Newark Police Department and were at all times acting under color of law and in the course of their employment with the police department.

14. At all times relevant herein, Defendants, John Does 1-20 (fictitious names) were agents, servants, supervisors, employees, or representatives of the Defendant City and the Newark Police Department who were acting under the color of law and in the course of their employment and are

unknown at this time to be later named during the discovery process.

CAUSE OF ACTION

15. On or about May 2, 2014, the Plaintiff, was in full compliance with all laws of the State of New Jersey while walking to his residence at 86 Napoleon Street, Newark, New Jersey 07105.

16. Defendant Police Officers Mendes, Cabezas, Cueto, Ressurreicao, Golpe, Ferriera, and along with other unknown officers (hereinafter collectively "Defendant Officers") and Defendant John Does 1-20 (fictitious names), after having the opportunity to observe that the Plaintiff was a person of Latino descent, initiated an illegal search and seizure of the Plaintiff's residence.

17. Defendant Officers and Defendant John Does 1-20 (fictitious names) unlawfully and without Plaintiff's consent, or probable cause, forcibly entered the Plaintiff's apartment located 86 Napoleon Street, Newark, New Jersey (the "Residence"), and handcuffed and arrested Plaintiff and then commenced an exhaustive search of the Residence for over an hour.

18. The Defendant Officers and Defendant John Does 1-20 (fictitious names) did not have a warrant to search the residence.

19. The Defendant Officers and Defendant John Does 1-20 (fictitious names) did not have a warrant for the Plaintiff's arrest.

20. The Defendant Officers and Defendant John Does 1-20 (fictitious names) failed to seek a warrant to search or seize.

21. The Defendant Officers and Defendant John Does 1-20 (fictitious names) failed to present a warrant to the Plaintiff or any of the occupants of the residence.

22. The Defendant Officers and Defendant John Does 1-20 (fictitious names) illegally assaulted the Plaintiff, throwing him against a wall and handcuffing him.

23. All of the Defendant Officers and Defendant John Does 1-20 (fictitious names) were out of uniform but still acting under the color of law.

24. The Defendant Officers and Defendant John Does 1-20 (fictitious names) acted illegally by searching the Plaintiff's residence without a valid search warrant or probable cause.

25. The actions and inactions of the Defendant Officers and Defendant John Does 1-20 (fictitious names) were the proximate cause of Plaintiff's damages.

26. This search, seizure and arrest was made in violation of the Fourth and Fourteenth Amendments and the New Jersey Constitution and common law.

27. The Defendant Officers and Defendant John Does 1-20 (fictitious names) improperly, illegally and unconstitutionally, searched and seized the

plaintiff, and falsely, illegally, improperly and unconstitutionally arrested and imprisoned him and otherwise deprived him of his civil rights.

28. After completing the illegal search, Defendant Officers Defendant and John Does 1-20 (fictitious names) arrested Plaintiff and falsely charged him with possession of a controlled dangerous substance and possession with the intent to distribute same.

29. No drugs were found in the possession of Plaintiff.

30. The Defendant Officers and Defendant John Does 1-20 (fictitious names) demanded that Plaintiff call someone to bring drugs to the residence and told him that if he did so they would "make a deal" and "let him go."

31. Plaintiff refused the unlawful demands of the Defendant Officers and Defendant John Does 1-20 (fictitious names).

32. The Defendant Officers and Defendant John Does 1-20 (fictitious names) made the same unlawful demands on other occupants of the apartment promising that they would let Plaintiff go if they got someone to bring drugs to the apartment.

33. These demands were similarly rejected.

34. The Defendant Officers and Defendant John Does 1-20 (fictitious names) took Plaintiff to the police department and subsequently transported him to the Essex County Jail and falsely imprisoned

Plaintiff, in a locked jail cell from May 2, 2014 to late December 2014 when he was released after a judicial determination that the search was illegal.

35. A decision was made by the State of New Jersey not to file an appeal and the underlying criminal charges were dismissed.

36. During the period of false imprisonment, Plaintiff was subjected by Defendant Officers and Defendant John Does 1-20 (fictitious names) to fingerprinting, photographing, and intermittent interrogation.

37. At no time was Plaintiff permitted to make bail, post bond, or be released on his own recognizance.

38. None of the Defendant Officers and Defendant John Does 1-20 (fictitious names), at the time of the above-mentioned illegal search or at any time during the subsequent detention of Plaintiff, had in their possession any warrant issued by any Judge, or Magistrate authorizing a search of the Residence, nor had any warrant in fact been issued by any Court, Judge, or Magistrate for such search and arrest.

39. There was no reasonable basis for the search, seizure and arrest.

40. There was no probable cause for Plaintiff's search, seizure and arrest.

41. The acts alleged above were committed either on the instruction of Defendant Officers and Defendant John Does 1-20 (fictitious names), by the

Defendant Officers and Defendant John Does 1-20 (fictitious names) or with the knowledge and consent of these Defendant Officers and Defendant John Does 1-20 (fictitious names), or were thereafter approved and ratified by these Defendant Officers and Defendant John Does 1-20 (fictitious names) and their supervising Officers and the Newark Police Department.

42. Subsequent to the above-described warrantless search and seizure, on or about December 18, 2014, Bahir Kamil, Judge of the Superior Court of New Jersey, Essex County dismissed the criminal complaint filed against Plaintiff in its entirety.

43. This dismissal arose from a motion filed by the State of New Jersey confirming that the trial court had suppressed all evidence as illegally gathered, that there was no lawfully gathered evidence and no appeal filed. A copy of the dismissal is attached to the Complaint, as Exhibit "A".

44. As a result of Defendant Officers and Defendant John Does 1-20 (fictitious names) unlawful conduct Plaintiff suffered great humiliation, separation from his family, friends and loved ones, loss of employment and income, opportunities for employment, embarrassment and mental suffering, all to Plaintiffs damage.

45. Plaintiff is entitled to seek damages suffered as a result of the illegal and wrongful arrest.

46. Each of the Defendant Officers and Defendant John Does 1-20 (fictitious names), individually and in conspiracy with the others, acted

under pretense and color of law and their official capacity, but such acts were beyond the scope of their authority, jurisdiction and without authorization of law.

47. Each Defendant Officers and Defendant John Does 1-20 (fictitious names), individually and in conspiracy with the others, acted maliciously, wantonly, unlawfully, willfully, knowingly, and with specific intent to deprive Plaintiff of his rights to freedom from illegal searches and seizure of their persons, papers, and effects, and of their rights to freedom from unlawful arrest, detention, and imprisonment, all of which rights are secured to Plaintiff by the Fourth, Sixth and Fourteenth Amendments of the Constitution of the United States, and the laws of the State of New Jersey.

48. The Defendant Officers and Defendant John Does 1-20 (fictitious names), through their actions, inactions, course of conduct, poor or non-existent training and deficient supervision caused and/or permitted to be caused constitutional violations and illegal deprivation of Plaintiff's liberty.

49. As a result of the Defendant Officers' and Defendant John Does 1-20 (fictitious names) improper, illegal and unconstitutional actions, Plaintiff was further deprived of his liberty without due process of law in violation of the Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution and the New Jersey Constitution.

50. As a direct and proximate cause thereof, Plaintiff was deprived of his liberty, sustained emotional pain and suffering, sustained physical

damages, lost his time, freedom and rights and privileges as a citizen and was caused to suffer other damages.

51. Plaintiff's losses and damages are cognizable under 42 U.S.C. §1983 and §1985.

52. Pursuant to 42 U.S.C. §1983 and §1985 Plaintiff is entitled to reasonable attorneys' fees and costs of suit.

* * * *

COUNT THREE

MUNICIPAL LIABILITY

42 U.S.C. §1983 and the New Jersey Civil Rights Act N.J.S.A. §10:6-2 et seq.

63. Plaintiff repeats and realleges each of the foregoing Paragraphs 1 to 62 of the Complaint as set forth at length herein.

64. At all times mentioned, Defendant Officers and Defendant John Does 1-20 (fictitious names) were the employees, agents, and servants of the Newark Police Department and were at all times acting in the course of their employment with the police department and in their individual capacities.

65. Acting with the approval of one or more supervisors, on or about May 2, 2014, individual Defendant Officers and Defendant John Does 1-20 (fictitious names) unlawfully and without Plaintiff's consent forcibly entered the Residence, illegally searched, seized and falsely imprisoned Plaintiff.

66. The conduct of these Defendant Officers and Defendant John Does 1-20 (fictitious names) acting individually and together with the other Defendants, resulted in Plaintiff being falsely, maliciously and unlawfully arrested, detained and imprisoned, thereby depriving Plaintiff of his right to be free from unreasonable and unlawful seizure of person, to the equal protection of the law and to due process of the law in violation of their rights secured under the Fourth and Fourteenth Amendments to the Constitution of the United States and the laws of the State of New Jersey.

67. The Defendant Officers and Defendant John Does 1-20 (fictitious names) were improperly trained in law enforcement, improperly trained as to the requirements of obtaining a search warrant and/or arrest warrant and improperly supervised in the administration of their duties.

68. The Defendant Officers and Defendant John Does 1-20 (fictitious names) were so poorly trained, poorly supervised and poorly managed that on or about July 22, 2014, more than two months after Plaintiff's false arrest and illegal search and seizure, a Federal Monitor was put in place to reform the Newark Police Department. Defendants have been found to have engaged in a pattern or practice of constitutional violations. (see generally:

http://www.nj.com/essex/index.ssf/2014/07/justice_department_calls_for_federal_monitor_of_newark_police_department.html, last visited January 4, 2016).

As reported by the United States

Attorney's Office for the District of New Jersey,

"A three-year investigation by the Justice Department and the New Jersey U.S. Attorney's Office revealed a pattern or practice of constitutional violations. The agreement and a summary of the Justice Department's findings were announced in July 2014."

69. See: <http://www.justice.gov/usao-nj/pr/justice-department-requests-applicants-federal-monitor-newark-police-department>, last visited January 5, 2016.

70. During the three (3) years prior to July 22, 2014, the Newark Police Department had continued to engage in a pattern of practice of constitutional violations in its activities.

71. During that three (3) years investigation had the Newark Police Department not been engaging in a pattern of practice of constitutional violations, the Justice Department and the New Jersey U.S. Attorney's Office would not have been required to put into place a Federal Monitoring program.

72. At all relevant times, Defendant City and/or the Newark Police Department was the employer of the individual Defendant Officers and Defendant John Does 1-20 (fictitious names) and the individual Defendant Officers and Defendant John Does 1-20 (fictitious names) were acting as its agents, servants and employees.

73. Defendant City and the Newark Police Department failed to use reasonable care in its selection of its employees, agents and/or servants, failed to properly train and/or supervise the individual Defendant Officers and Defendant John Does 1 -20 (fictitious names) and failed to provide appropriate safeguards to prevent the deprivation of the Plaintiff s civil rights.

74. Defendant City and the Newark Police Department acted under color of law pursuant to the official policy or custom and practice of the City of Newark, Newark Police Department and intentionally, knowingly, recklessly or with deliberate indifference failed to properly and adequately control and discipline on a continuing basis its employees, agents, and/or servants and/or otherwise failed to prevent the individual Defendant Officers and Defendant John Does 1-20 (fictitious names) from unlawfully and maliciously conducting, permitting or allowing the use of search and seizure practices upon Plaintiff in violation of his rights, privileges and immunities guaranteed to Plaintiff by the Constitution of the United States and/or the State of New Jersey.

75. Defendant City and the Newark Police Department had knowledge of, or, had it diligently and reasonably exercised its duties to instruct, supervise, control and/or discipline its employees, agents, and/or servants would have had knowledge of the wrongful acts and/or omissions identified above and intentionally, knowingly, or with deliberate indifference to Plaintiff's rights failed or refused to prevent their commission and/or omission.

76. Defendant City and the Newark Police Department therefore directly or indirectly and under the color of law, thereby approved or ratified the unlawful, malicious, and wanton conduct of the individual Defendant Officers and Defendant John Does 1-20 (fictitious names).

77. More specially, Defendant City failed to train their officers on what constitutes and lawful search, and/or issuing truthful investigative reports and corresponding charges.

78. Defendant City knew or have known that its officers would have to make decisions daily regarding the legality of search and seizures and probable cause.

79. Indeed, the lack of training of the officers led to these officers violating the Plaintiff's constitutional rights regarding the illegal search and seizure of him and his home and the right to be free from unlawful arrest and prosecution.

80. Additionally, the policy maker for the Defendant City knows the glaring need for training as they were being investigated by the United States Justice Department and/or the United States Attorney's office.

81. Nonetheless the policy maker for the Defendant City refused to train or retrain its officers, create a legitimate Internal Affairs ("IA") Department or properly investigate and discipline instances of the police misconduct.

82. The lack of training and/or inadequate

training in these areas is tantamount to a custom and/or policy that encourages, and indeed as occurred here, necessitates, the violation of these fundamental rights.

83. In addition, the failure to train the individual officers in these areas is tantamount to the Defendant City's deliberate indifference to these rights.

84. Moreover, Defendant City had a custom and practice of inadequately investigating, if investigating at all, citizens' complaints regarding illegal search and seizure as well as unlawful arrest and prosecution.

85. What is more, Defendant City has a policy and practice of not disciplining officers if they are found to have violated a citizen's constitutionally protected rights and immunities as evidenced by the Federal Monitoring program that was put in place more than two (2) months after the Plaintiff's wrongful arrest and search and seizure.

86. Indeed, Defendant City does not conduct investigations into allegations of police misconduct, and they failed to conduct an investigation into the instant conduct.

87. The policies and procedures, in addition to the failure to train these officers in the relevant constitutional laws, reveal a deliberate indifference by Defendant City regarding the rights of such as the Plaintiff

88. This deliberate indifference to citizens'

rights is a proximate cause of Plaintiff's injuries.

89. This deliberate indifference to citizens' rights is what led to the imposition of a Federal Monitor program being put in place after the Plaintiff's false arrest and warrantless seizure.

90. Indeed, had Defendant City properly trained its officers in lawful search and seizures and unlawful arrest, then the violation of these rights would not have occurred.

91. What is more, had Defendant City employed a meaningful IA Department, rather than employing one that shields and insulates officers from liability, then perhaps the individual officers here would not have felt they have the freedom to willfully and purposely violate the Plaintiff's constitutional rights without any regard for consequences.

92. The complete lack of accountability, record keeping, as well as investigation into IA complaints renders the IA Department nothing more than an arm of the police department that shields officer from liability.

93. Finally, that the IA Department does not investigate complaints of illegal search and seizures is tantamount to the approval of the tactic.

94. The failure to correct or cull the unlawful activities of individual officers as exposed by previous complaints caused Plaintiff's injuries here as the officers acted in a cavalier manner due to the fact that they knew there would be no professional consequences for their action.

95. Defendant City failed to train its officers in the use of search and seizure techniques, probable cause, and/or methods to properly obtain a search warrant.

96. Indeed, Newark police officers are not trained to on a proper method to obtain legal search warrants and therefore, officers do not know how, when, and in what circumstances a search is may be conducted.

97. For example, as in the case here, the Defendants, without having any probable cause and/or a search warrant, conducted a search of the Plaintiffs apartment and residence unlawfully and against his consent, and in violation the Fourth Amendment.

98. Despite the failure to train these officers in the proper methods for obtaining probable cause, conducting a search and seizure, the Defendant City nonetheless equips its officers with the power to effectuate searches and seizures and sends them into the streets with this powerful instrument of force, all but guaranteeing it will be misused, as it was here.

Wherefore, Plaintiff demands judgment for:

- (1) Actual damages;
- (2) General damages;
- (3) Compensatory damages;
- (4) Punitive damages against the Defendant Officers and Defendant

John Does 1-20 (fictitious names)
only;

- (5) Prejudgment and post judgment
Interest of such damages at the
statutory rate until paid;
- (6) Reasonable attorneys' fees, lawful
interest, and costs of suit;
- (7) An order compelling the Newark
Police Department receive proper
training in the administration of its
duties
- (8) Any other relief the Court deems
equitable and just.

COUNT FOUR

UNLAWFUL SEARCH — N.J. CONSTITUTION **ARTICLE I, PARAGRAPH 7**

99. Plaintiff repeats and realleges each of
the foregoing Paragraphs 1 to 98 of the Complaint as
set forth at length herein.

100. The Defendants' illegally searched
Plaintiff and the premises in violation of the New
Jersey Constitution.

Wherefore, Plaintiff demands judgment for:

- (1) Actual damages;
- (2) General damages;

- (3) Compensatory damages;
- (4) Punitive damages against the Defendant Officers and Defendant John Does 1-20 (fictitious names) only;
- (5) Prejudgment and post judgment Interest of such damages at the statutory rate until paid;
- (6) Reasonable attorneys' fees, lawful interest, and costs of suit;
- (7) Any other relief the Court deems equitable and just.

* * * *

COUNT SIX

UNLAWFUL SEARCH — U.S. CONSTITUTION **AMENDMENT IV**

103. Plaintiff repeats and realleges each of the foregoing Paragraphs 1 to 102 of the Complaint as set forth at length herein.

104. The Defendants' actions constitute an illegal search in violation of the United States Constitution.

Wherefore, Plaintiff demands judgment for:

- (1) Actual damages;
- (2) General damages;

- (3) Compensatory damages;
- (4) Punitive damages against the Defendant Officers and Defendant John Does 1-20 (fictitious names) only;
- (5) Prejudgment and post judgment Interest of such damages at the statutory rate until paid;
- (6) Reasonable attorneys' fees, lawful interest, and costs of suit;
- (7) Any other relief the Court deems equitable and just.

* * * *

COUNT SIXTEEN

NEW JERSEY CIVIL RIGHTS

114. Plaintiff repeats and realleges each of the foregoing Paragraphs 1 to 113 of the Complaint as set forth at length herein.

115. The New Jersey Civil Rights Act states:

Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution

or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. N.J.S.A. 10:6-2(c). 79.

116. The Defendant Officers, Defendant John Does 1-20 (fictitious names) and Supervisors, the City of Newark and its Police Department, and the remaining defendants in their official and individual capacities are liable to plaintiff under N.J.S.A. 10:6-2(c), the New Jersey Civil Rights Act, because they deprived plaintiff of substantive due process, and privileges and immunities secured to him by the Constitution and laws of the State of New Jersey and the Constitution and laws of the United States.

117. Moreover, defendants interfered with plaintiff's exercise and enjoyment of those substantive rights, privileges and immunities by fabricating evidence, violating plaintiff's constitutional rights, including but not limited to plaintiff's right to due process and unlawfully restraining plaintiff's liberty.

Wherefore, Plaintiff demands judgment for:

- (1) Actual damages;
- (2) General damages;
- (3) Compensatory damages;

- (4) Punitive damages against the Defendant Officers and Defendant John Does 1-20 (fictitious names) only;
- (5) Prejudgment and post judgment Interest of such damages at the statutory rate until paid;
- (6) Reasonable attorneys' fees, lawful interest, and costs of suit;
- (7) Any other relief the Court deems equitable and just.

Dated: 2-22-17

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* * * *

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES)	No. 2:16-cv-01731-MCA-MAH
OF AMERICA,)	
Plaintiff,)	CONSENT DECREE
)	
v.)	
)	
CITY OF NEWARK,)	
Defendant.)	
_____)	

* * * *

I. INTRODUCTION

1. Pursuant to the authority granted under 42 U.S.C. § 14141, the United States has filed a complaint in the United States District Court for the District of New Jersey seeking declaratory or equitable relief to remedy a pattern or practice of conduct by the Newark Police Division that deprives individuals of rights, privileges, and immunities secured by the Constitution and federal law.

2. In lieu of litigation, and noting the general principle that settlements are to be encouraged, particularly settlements between government entities, the United States and the City of Newark (“City”) (collectively “the Parties”) enter into this Consent Decree (“Agreement” or “Decree”) with the goals that police services delivered to the people of Newark fully comply with the Constitution and the laws of the United States, promote public and officer safety, and increase public confidence in the Newark Department of Public Safety and Newark Police Division (collectively “NPD”) and its officers. The Parties recognize that NPD is also committed to these objectives and is taking steps to better achieve them.

3. The City and NPD do not admit to the allegations of the complaint. Nothing in this Agreement will be construed as an acknowledgment, agreement, admission, statement, or evidence of liability of the City, NPD, or any of its officers or officials under 42 U.S.C § 14141.

* * * *

XVII. COURT JURISDICTION, MODIFICATION, AND ENFORCEMENT

215. This Agreement will become effective upon entry by the Court. To ensure that the requirements of this Agreement are properly and timely implemented, the Court will retain jurisdiction of this action for all purposes until such time as the Court determines the City has achieved full and effective compliance with this Agreement and maintained such compliance for no less than two consecutive years.

216. This Agreement is enforceable only by the Parties. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action. Accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement.

217. The City and NPD will bear the burden of demonstrating full and effective compliance with this Agreement. DOJ acknowledges the good faith of the City in trying to address measures that are needed to promote police integrity and ensure constitutional policing in Newark. DOJ, however, reserves its right to seek enforcement of the provisions of this Agreement if it determines that the City has failed to fully comply with any material provision. DOJ agrees to consult with officials from the City before instituting such enforcement proceedings.

218. The City and DOJ may jointly stipulate to make changes, modifications, and amendments to this Agreement, which will be subject to Court approval.

Such changes, modifications, and amendments to this Agreement will be encouraged when the Parties agree, or where the reviews, assessments, and/or audits of the Monitor demonstrate that the Agreement provision as drafted is not furthering the purpose of the Agreement, or that there is a preferable alternative that will achieve the same purpose. Where the Parties or the Monitor are uncertain whether a change to the Agreement is advisable, the Parties with Court approval may agree to suspend the current Agreement requirement for a time period agreed upon at the outset of the suspension. During this suspension, the Parties with Court approval may agree to temporarily implement an alternative requirement. The Monitor will assess and report to the Court whether the suspension of the requirement and the implementation of any alternative provision is as, or more, effective at achieving the purpose as was the original/current Agreement requirement, and the Parties will consider this assessment in determining whether to request that the Court approve the suggested change, modification, or amendment.

219. The Parties will defend the provisions of this Agreement. The Parties will notify each other and the Court of any court or administrative challenge to this Agreement. In the event any provision of this Agreement is challenged in any court other than the Court, removal, transfer, or consolidation to this Case in the Court will be sought by the Parties, to the extent permitted by law.

220. The City and NPD will promptly notify DOJ if any term of this Agreement becomes subject to

collective bargaining and consult with DOJ in a timely manner regarding the position the City and NPD will take in any collective bargaining consultation connected with this Agreement.

221. The City and NPD will require compliance with this Agreement by their respective officers, employees, departments, assigns, or successors.

222. In the event the NPD or the City fails to fulfill any obligation under this Agreement, the DOJ shall, prior to pursuing any remedy with the Court, give written notice of the failure to the NPD and the City. The NPD and the City shall have 30 days from receipt of such notice to cure the failure. However, if DOJ determines that an emergency condition exists that places persons at risk of serious and imminent harm, DOJ may immediately seek a remedial order from the Court. At the end of the 30-day period, in the event DOJ determines that the failure has not been cured, DOJ may, upon three days notice to the City (excluding weekends and federal or state holidays), at its election seek a remedy from the Court.

XVIII. TERMINATION OF THE AGREEMENT

223. The City and NPD will endeavor to reach full and effective compliance with this Agreement within five years of its Effective Date. The Parties may jointly ask the Court to terminate this Agreement after this date, provided that the City has been in full and effective compliance with this Agreement for two years. "Full and Effective Compliance" will be defined to require sustained compliance with all material

requirements of this Agreement and sustained and continuing improvement in constitutional policing, as demonstrated pursuant to the Agreement's outcome measures, all as determined by the Court.

224. If after seven years from the Effective Date, the Parties disagree whether the City has been in full and effective compliance for two years, either Party may file a motion requesting that the Court terminate all or part of this Agreement. In the case of termination sought by the City, prior to filing a motion to terminate, the City agrees to notify DOJ and the Monitor in writing when the City has determined that it is in full and effective compliance with this Agreement and that such compliance has been maintained for no less than two years. Thereafter, the Parties and the Monitor will promptly confer as to the status of compliance. DOJ and the Monitor will have a period of 45 days, unless extended by mutual agreement or order of the Court, for consultation and the completion of any audit or evaluation necessary to assess the City's compliance, including on-site observations, document review, or interviews with City and NPD personnel. If the Parties and the Monitor cannot then resolve any compliance issues, the City may file a motion requesting that the Court terminate this Agreement. If the City moves for termination of this Agreement, DOJ will have 60 days after the receipt of the City's motion to object to the motion. The Court will hold a hearing on the motion and the burden will be on the City to demonstrate that it is in full and effective compliance with this Agreement and has maintained such compliance for at least two years.

225. Upon the Court's determination that the City and NPD have achieved full and effective compliance and have maintained such compliance for at least two years, the Court will terminate the Agreement and dismiss the case.

IT IS SO ORDERED this 5 day of *May*, 2016.

s/Madeline Cox Arleo
MADELINE COX ARLEO ,
UNITED STATES DISTRICT JUDGE

* * * *

Department of Justice
U.S. Attorney's Office
District of New Jersey

FOR IMMEDIATE RELEASE

Friday, January 16, 2015

**Justice Department Requests Applicants for
Federal Monitor of Newark Police Department**

NEWARK, N.J. – The U.S. Department of Justice is now accepting applications from individuals and organizations interested in serving as the federal monitor of the Newark Police Department (NPD), U.S. Attorney Paul J. Fishman and Acting Assistant Attorney General for Civil Rights Vanita Gupta announced today. The Justice Department reached an agreement in principle with Newark to undertake wide-ranging reforms within the police department, including an independent court-appointed monitor, and to incorporate those reforms into a judicially enforceable consent decree.

A three-year investigation by the Justice Department and the New Jersey U.S. Attorney's Office revealed a pattern or practice of constitutional violations in areas including stop and arrest practices, use of force, and theft by officers. The agreement and a summary of the Justice Department's findings were announced in July 2014.

* * * *

Updated March 24, 2015

Justice Department calls for federal monitor of Newark Police Department

By **Thomas Zambito** | **NJ Advance Media for NJ.com**

Email the author | **Follow on Twitter**

on July 22, 2014 at 12:07 PM, updated January 04, 2016 at 1:36 PM

NEWARK — The U.S. Justice Department announced today it had reached an agreement with the city of Newark to allow a federal monitor to watch over a municipal police force that it found had repeatedly violated the rights of its citizens, especially blacks, in the state's largest city.

New Jersey U.S. Attorney Paul Fishman announced the results of a three-year review of the Newark Police Department at a news conference, saying, "the people of Newark deserve to be safe, and so do the thousands who come here."

"They also need to know the police protecting them are doing that important — and often dangerous — work while respecting their constitutional rights," Fishman said.

Newark will become the first municipal police agency in state history to operate under a federal watchdog — and the 13th in the nation — in just the latest development in a decades-long pattern of oversight.

* * * *

The review, led by the Justice Department civil

rights division, found that police failed to provide sufficient constitutional reason for about 75 percent of pedestrian stops; blacks make up nearly 54 percent of the city's population but account for 85 percent of pedestrian stops and nearly 80 percent of arrests; more than 20 percent of officers' reported use of force was unreasonable and violated the constitution; and officers assigned to narcotics and gang units and prisoner-processing stole from those they arrested.

‘Opportunity to build’

* * * *

The city has agreed to cooperate with the federal monitor as part of a court-enforced pact. The monitor, who will be chosen jointly by the city and the Justice Department, must be approved by a federal judge in Newark — something Fishman said would probably take place by mid-September.

The monitor will remain in place until the Justice Department is satisfied that the necessary changes have been made.

Under the agreement, the city has promised to train officers on how to carry out stops and arrests that are constitutionally sound. "With this agreement, we're taking decisive action to address potential discrimination and end unconstitutional conduct by those who are sworn to serve," Attorney General Eric Holder said.

* * * *

DISMISSAL

STATE OF NEW JERSEY,	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	ESSEX COUNTY –
	LAW DIVISION
-vs-	INDICTMENT NO.:
	14-07-01782
Adriano Roman,	
Defendant.	<u>CRIMINAL</u>

DATE: 12/18/14

Date of Birth	PROSECUTOR'S
xx/xx/89	RECOMMENTIOAN FOR
S.B.I. #:	DISMISSAL OF
630280D	INDICTMENT/
Date of Arrest:	ACCUSATION
05/02/14	
Date Ind./Acc.	
File:	
07/16/14	
CC #	14- Prosecutor's No.:
22571	14002716
Defense Counsel:	Dana Scarillo
Asst. Prosecutor:	Sarah Chambers
	CAROLYN A. MURRAY
	ACTING ESSEX
	COUNTY
	PROSECUTOR

ORIGINAL CHARGES: *(IF DEFENDANT HAS A
PREVIOUS RECORD,
ATTACH COPY HERE)*

<u>IND./ACC. NO.</u>	<u>CT.</u>	<u>DESCRIPTION</u>	<u>DEGREE</u>	<u>STATUTE</u>
14-07- 01782	1	Poss CDS Cocaine	3 RD	2C:35-10a
14-07- 01782	2	PWID	3 RD	2C:35- 5a(1);b(3)
14-07- 01782	3	PWID W/IN 1000'	3 RD	2C:35-7a
14-07- 01782	4	Poss CDS Heroin	3 RD	2C:35-10a
14-07- 01782	5	PWID	3 RD	2C:35- 5a(1);b(3)
14-07- 01782	6	PWID W/IN 1000'	3 RD	2C:35-7a

**COUNTY PROSECUTOR:
ESSEX COUNTY, NEW JERSEY**

DEAR MADAM:

After a thorough and complete investigation of the facts in this case, I respectfully recommend that the charge(s) made against this defendant be dismissed for the following reasons:

All drugs in this case were suppressed. All charges in the indictment were related to the narcotics seized from Defendant Adriano Roman. Therefore, the State cannot meet its burden of proof at the time of trial.

(State v. Adriano Roman)
(Ind. # 14-7-1782)

Respectfully submitted

s/Sarah Chambers
SARAH CHAMBERS
ASSISTANT PROSECUTOR

APPROVED BY

s/Roger Imhof 12/19/14
ROGER IMHOF
DEPUTY CHIEF ASST. PROSECUTOR

DISMISSAL ON MOTION OF THE PROSECUTOR
GRANTED BY:

(JUDGE'S SIGNATURE) s/Bahir Kamil

(JUDGES NAME PRINTED) BAHIR KAMIL J.S.C.

DATE: 12/19/14

(Revised 7/11/06)

DANA M. SCARRILLO, ESQ.
(Attorney Id.# 051211996)
395 Franklin Street
Bloomfield, New Jersey 07003
(862) 368-3200

STATE OF NEW	:	SUPERIOR COURT
JERSEY,	:	OF NEW JERSEY
	:	LAW DIVISION –
	:	ESSEX COUNTY
vs	:	Indictment #
	:	14-07-01782
ADRIANO ROMAN,	:	CRIMINAL ACTION
	:	
Defendant.	:	ORDER
	:	SUPPRESSING
	:	EVIDENCE
	:	

THIS MATTER having been opened to the court by Dana M. Scarrillo., Esq., Attorney for Defendant, Adriano Roman, for an Order suppressing physical evidence, upon notice to the Essex County Prosecutor's Office (Sarah Chambers, Esq. appearing), the court having considered the moving papers, the testimony of both State and defense witnesses, having heard the argument of counsel, and for good cause shown;

IT IS ON THIS 8th DAY OF *December*, 2014

ORDERED as follows:

A. Defendant's motion to suppress all evidence in the form of controlled dangerous substances recovered

from the hallway of property located at 86 Napoleon Street, Newark, New Jersey is hereby:

GRANTED ✓ DENIED

B. Defendant's motion to suppress all evidence in the form of controlled dangerous substances recovered from the downstairs apartment number 10 at 86 Napoleon Street, Newark, New Jersey is hereby:

GRANTED ✓ DENIED

A copy of this Order shall be served upon the parties within seven days of the date of this Order.

s/Bahir Kamil
HON. BAHIR KAMIL, J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
ESSEX COUNTY
INDICTMENT NO. 14-07-1782-I
A.D. NO. _____

STATE OF NEW JERSEY,) TRANSCRIPT OF
vs.) MOTION TO
ADRIANO ROMAN,) SUPPRESS
Defendant.) HEARING

Place: Essex Cty. Courthouse
50 West Market Street
Newark, NJ 07102

Date: December 8, 2014

BEFORE:

HONORABLE BAHIR KAMIL, J.S.C.

TRANSCRIPT ORDERED BY

WILSON D. ANTOINE, ESQ. (Assistant
Corporation Counsel, City of Newark)

APPEARANCES:

SARAH E. CHAMBERS, ESQ. (Assistant
Prosecutor) Attorney for the State of New
Jersey

DANA M. SCARRILLO, ESQ. (Sole
Practitioner) Attorney for the Defendant

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Recording Operator: K. Goines

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MS. SCARILLO [Mr. Roman's Counsel]:

* * * *

Now, we're to believe that the drugs are sitting there in plain view, that they come down -- he's holding 126 decks of heroin in a bag. * * *
* Then there's cocaine sitting on the bed.

* * * *

[JUDGE BAHIR KAMIL:]

This comes before me on a motion to suppress evidence as a result of a warrantless search. A warrantless search is presumed to be invalid unless it falls into one of the well recognized exceptions.

The exception being articulated here for the warrantless search to fall into the category of is plain view doctrine the material facts must be disputed in order to have an evidentiary hearing. I find that the - - and the disputed facts must present a factual dispute in order that testimony be taken to the facts and that dispute must relate to a Fourth Amendment issue.

I find that the matter of the facts being disputed are based -- the matter I find as a matter of fact that the -- the -- there is clear and credible evidence that the material facts in this case clearly point to a factual dispute and concern the Fourth Amendment, no question about it.

In a warrantless search case, the State has the burden of establishing the constitutionality of the

search or given seizure by a preponderance of evidence. The State must establish that the desired inference is more probable than not and that the search falls within one of the exceptions to a warrant requirement and the exception here, as I stated previously, is a plain view doctrine and essentially three elements must be shown that the person has the right to be at the particular place and time to see and seize the evidence or the item. It must be merely apparent to them that -- what the evidence or contraband is and discovery was inadvertent.

The stories can be -- the stories here are in opposite, they are contradictory. One story or one -- the State's position is that -- and the testimony was from the -- one moment -- Mendes that he was on the captain's squad, quality of life issues. He testified they were in plainclothes but he testified the badges were displayed. They say they were in that area on May 2nd due to numerous complaints of CDS and the parked the vehicle and observed the area. They observed the area until approximately, I think it was 8:30, the testimony was, and then went out to examine the building. Didn't say that -- there was no testimony that he saw individuals going in and out of the building, didn't say that there were individuals frequenting and coming out, no high traffic, no high nothing, just that he went out to examine the building, not that I went out to -- he went out to examine people coming in and out of the building, he's testifying he examined the structural building and, to that extent, when you examine the building from the outside, it appears his testimony, while standing outside the building, this is testimony, he heard a commotion. He then went inside the building but he didn't really say

how he got inside the building because this number has a number of locks on it that several of the -- Mr. Diliberti testified to, Melissa, her last name escapes me, Melissa --

MS. SCARRILLO: Isaksem.

THE COURT: Isaksem testified to it, that this building has several layers of doors and locks but it was never stated on the record how he, in fact, got into this -- this building but, nevertheless, he went in. As he went in he heard more -- he heard the argument escalate and then he said while he was -- the argument escalating. His testimony was then he went down the staircase, it was a narrow corridor, and he walked down the stairs of this -- and observed the suspect standing and he -- and then when he saw him disregard (sic) a bag what appeared to have glassine envelopes in it. That was his testimony, and this was outside. And, at that point, he placed him under arrest and as he was placing him under arrest in that position he saw additional contraband on the bed and the arrest took place in the doorway, clearly, and that's where he's putting the cuffs on Mr. Roman and, at that point, what was discarded which is State's S-1, what he's being arrested for, he saw additional contraband on the bed, on the top -- on the top of the bed and I think it's Cabaris (phonetic) or whatever his name is, the officer, Cabezas, I'm not sure, actually obtained the additional CDS that was on the bed.

He testified, he testified that the incident took a total of five to ten minutes, that was his testimony.

* * * *

On cross-examination he testified that Miss Reyes was not handcuffed but he testified Miss Reyes was present. Also, when mentioned about Miss Isaksem, he didn't recall. He's the officer that initially made the arrest from the alleged testimony of the CDS dropping but Miss Isaksem was not mentioned in his testimony, no references to her, as if she wasn't even there. I find that incredible that he has no – no real comments or testimony from the stand about Miss Isaksem. That's -- I have to find it incredible in light of the testimony of Miss Isaksem, Miss Reyes and the father, and I'll get to that.

On cross-examination he said he started -- startled both parties, and this is on cross, he startled both parties and saw Roman throw the CDS. That's on cross. He stayed consistent with that. Also, he talked about that he saw him from the hallway and that he saw on top of the bed the CDS with the purple tops and the other powder that was – powder inside the -- that was contained with the bag that included the purple top CDS and the other white powder and at that time, on cross-examination, he talked about back up units coming in and entering and that's when the protective sweep occurred and they entered from the other surveillance car that was out there surveilling the building.

* * * *

Mr. Charles Diliberti testified and he was brought in to demonstrate that the apartment that was actually searched was the apartment of Adriano Roman. He said that basically him, his wife, him and his mother maintains and manages the property and

he said he picks up the rent, but one thing I noticed he didn't [s]how is a rent receipt. That doesn't mean he didn't pick up the rent, that means that he had an arrangement with him that he probably just paid cash and didn't give him a receipt for if that's -- but that's his testimony but there is no real indicia except his word that the apartment was rented to Adriano Roman.

Now, it's a material fact that's in dispute but does it go to the search, the Fourth Amendment issue? Yes, because in the sense that he has to have some possessory interest in the property. I find that Adriano Roman frequented that apartment. I find that Adriano Roman may have even paid rent at that apartment. I find it, but if -- when I listen to the testimony of Miss Reyes she said the apartment was hers.

Now, that does pose an issue, but does it pose an issue as to this search? I think not. I think that's an issue that goes to his presence in the apartment. Clearly, he was present in both apartments. One, because he family lived in one apartment; two, because he was there with his girlfriend in the other.

On cross-examination Mr. Diliberti said that Adriano Roman lived there. He said basically he was living there for four or five months, five to six months, actually. Also, he said he would -- he's been there at least ten times. He said he does not recall the female except -- doesn't really recall the female, he mentioned that, and he talked about some walls being broken and he saw clothing throughout the apartment and that was the extent of his testimony and he was brought in

to establish that Roman, Adriano Roman, had some interest in that apartment. I don't think his testimony addresses anything other than did he rent the apartment to Adriano Roman and was the girlfriend living in there, what the arrangement was. I don't think that's an issue in terms of what happened as far as a search is concerned and that's what Mr. Diliberti's testimony.

Miss Reyes testified that she was watching television with her boyfriend who was Adriano Roman and Melissa and four or five guys bum rushed. She said they were not in uniform and they put them all in handcuffs and that they stated where's the drugs or call somebody to buy drugs, bring us somebody to get drugs. She said that was -- that was their mantra. They were basically telling her that they wanted somebody or whoever they got the drugs from. That's what her tes -- she testified to. She testified that -- she testified that she didn't want to be there and that she came through a subpoena. She said that they found drugs but it was all the way in the back in the kitchen in the apartment. She said, also that the police were in the apartment for about an hour and that they went to the family's apartment, which was next door. Said when they brought -- when they said Adriano Roman, when they found the drugs, Adriano Roman said that it wasn't his drugs and actually said he started crying. He made statements saying I don't want to go back to jail, I'm on ISP, and Mendes was talking to her saying give them some -- give them someone. This was not a part of Mendes' testimony and I don't know -- it just wasn't.

I found her to be very credible in terms of

stating what happened inside that apartment building. She stated that she was here because of a subpoena. I don't think she wanted to be involved. It was a very bad affair. She's moved on from this gentleman but she told what she's here to -- they came into the apartment with Melissa and they opened the door because of Melissa.

On cross-examination she said Adriano Roman would sleep with her but live with his parents, that's what she testified to. She also testified that the kitchen and laundry room were somewhere -- the drugs were found somewhere near the kitchen and laundry room, and that was on cross-examination. She did deny seeing the drugs. She did deny seeing the drugs. She denied sale and drug use on the cross-examination. She did pose an interesting point because she said Adriano did not pay the rent, she said that. She said she was startled when strangers came into the apartment and that's credible because it says that the officers came into the apartment and she said she was startled but she says they came in with Melissa.

Now, there were some issues -- there were some issues that she -- that she talked about in terms of -- issues in terms of how did she feel the apartment was being -- being used and I think it was one point where she said that she was upset the apartment was being used or had been used. That was just a point that she made because she said that the drugs were found somewhere in the back and I found her to be credible in term -- in those terms but in terms of I find her to be credible in terms of the police officers coming there with Melissa and staying for an hour, which is -- which

contradicts, just on that alone, contradicts the five or ten minutes that Officer Mendes said that they were there. You're talking about accounting for additional 50 minutes, 50 minutes that can't be accounted for and Melissa Isaksem, she took the stand and said that she was coming back in. She had left the apartment to go home to get some shirts, I think it was a top tank, she testified to a tank top, and that a man was standing on the second floor and gave -- said that he was a police officer and asked her what she was doing. She told the police officer she was bringing a tank top. The police officer told her, are you about to buy drugs? I need you to knock on the door, that was her testimony, I need you to knock on the door. She testified she was scared, freaking out, or I will arrest you. So, the cop knocked on the door and put her in front of the door and the cops knocked on the door, based upon her testimony, and then once the door opened the cop pushed their way in

* * * *

Now, the State has the burden of proving by a preponderance of evidence that a warrantless search has been established, and we're talking about the plain view, plain view doctrine. I find, as a matter of fact, I find that the -- Melissa Isaksem, I find her testimony to be very credible that she was there. I find -- I find that she was there, she was a person that helped gain entry into that apartment, I find that, and if I find that, then I don't find that the evidence was dropped in the hallway. I don't find that. I don't find that. I don't find that in light of the evidence that goes to the contrary because the evidence that goes to the contrary calls into question that theory, that

testimony, it calls into question because no one is explaining why they're there so long.

No one's explaining why all three of -- why three people were handcuffed. No one is explaining, that story doesn't explain why they go into the father's house. That story that Mendes said doesn't explain why the father was necess -- why it was necessary to bring the father into this situation and go into the father's house. His father wasn't accused of anything, they didn't see anything in the father's house.

I find in this case the State hasn't met its burden. The State hasn't met its burden. Because of the -- because of the testimony of the other three witnesses that call the State's version into question, I cannot find that the State has met its burden by credible evidence, by preponderance of the evidence and, unfortunately, I find that this is an invalid search for the reasons stated on the record and that the evidence has to be suppressed. You have 20 days to appeal my decision.

MS. SCARRILLO: Thank you, Your Honor.

THE COURT: You're welcome.

MS. SCARRILLO: Judge, I believe based on the Court's ruling the State cannot proceed in this case and I would move to dismiss for lack of prosecution.

MS. CHAMBERS: Your Honor, the State needs an opportunity go downstairs and speak with its department if it's something it chooses to appeal or not, so --

THE COURT: Absolutely. I'll reserve on it because the State has a right to appeal. They have the right to -- they have the right to appeal it so I'll reserve on that.

MS. SCARRILLO: Judge, I would just ask for a copy of the Court's order.

* * * *

I, Diane Tillson, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings on CourtSmart, index number from 02:51:50 to 03:52:58 and 04:15:12 to 04:21:00, is prepared in full compliance with the Current Transcript Format for Judicial Proceedings and is a true and accurate noncompressed transcript of the proceedings as recorded.

/s/ Diane Tillson
Diane Tillson
King Transcription Services

AOC No. 411
August 22, 2016

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
ESSEX COUNTY
INDICTMENT NO. 14-07-1782-I
A.D. NO. _____

STATE OF NEW JERSEY,) TRANSCRIPT OF
vs.) MOTION TO
ADRIANO ROMAN,) SUPPRESS
Defendant.) HEARING

Place: Essex Cty. Courthouse
50 West Market Street
Newark, NJ 07102

Date: December 2, 2014

BEFORE:

HONORABLE BAHIR KAMIL, J.S.C.

TRANSCRIPT ORDERED BY

WILSON D. ANTOINE, ESQ. (Assistant
Corporation Counsel, City of Newark)

APPEARANCES:

SARAH E. CHAMBERS, ESQ. (Assistant
Prosecutor) Attorney for the State of New
Jersey

DANA M. SCARRILLO, ESQ. (Sole
Practitioner) Attorney for the Defendant

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Recording Operator: K. Goines

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* * * *

Q Okay. I'm going to show you what is premarked for identification as -- one minute.

THE COURT: S-1?

MS. CHAMBERS: Thank you.

BY MS. CHAMBERS:

Q State's exhibit S-1.

MS. CHAMBERS: And just for the defense Counsel, I have the list in front of me, that's why.

MS. SCARRILLO: I do, as well, Judge, thank you.

BY MS. CHAMBERS:

Q I'm showing you what's pre-marked for identification as State's exhibit S-1. Do you recognize this?

A Yes, those are the glassine envelopes of CDS.

* * * *

MS. CHAMBERS: Okay, State moves -- motions to move S-1 into evidence for purposes of this hearing.

MS. SCARRILLO: No objection, Judge. No objection.

THE COURT: Okay, in evidence, S-1.

* * * *

Q Officer Mendes, I'm going to show you what's pre-marked for identification as State's exhibit 2.

A Yes, ma'am.

Q I'm showing you State's exhibit 2. What is this?

A Those are 37 purple topped vials of CDS cocaine and two large bags containing approximately 40 grams of crack cocaine.

* * * *

Q Okay. Do these -- could you please describe what's actually inside the bag?

A Basically, 37 vials of -- purple topped vials of -- contain CDS crack cocaine. It's just crack cocaine and the other two are just crack cocaine but they're not packaged to resale yet.

Q Okay, and are these -- are the bags of uncut crack cocaine in the vials in the same or substantially same condition as when you saw them on May 2nd, 2014?

A Same condition.

MS. CHAMBERS: Your Honor, State motions

to move S-2 into evidence for purposes of this hearing only.

MS. SCARRILLO: No objection, Judge.

THE COURT: In evidence.

MS. CHAMBERS: Okay.

THE COURT: S-2.

* * * *

Q And when you startled them Mr. Roman threw what appeared to be CDS heroin, which is marked S-1?

A Yes, ma'am.

I, Diane Tillson, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings on CourtSmart, index number from 02:57:14 to 03:49:23, is prepared in full compliance with the Current Transcript Format for Judicial Proceedings and is a true and accurate noncompressed transcript of the proceedings as recorded.

/s/ Diane Tillson
Diane Tillson
King Transcription Services

AOC No. 411
August 22, 2016