

No. ___

IN THE

Supreme Court of the United States



THE STATE OF NEW YORK,

Petitioner,

v.

JAHMARLEY JONES,

Respondent.

*On Petition for a Writ of Certiorari to the
Supreme Court of the State of New York
Appellate Division, Second Department*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether statements made by individuals during routine police investigations – prior to the commission of a specific crime, the identification of a suspect in connection with that crime, or the filing of charges – can be deemed testimonial under *Crawford v. Washington*, 541 U.S. 36 (2004)?

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OPINIONS BELOW

The order of the New York State Supreme Court, Appellate Division, Second Department, is reported at *People v. Jones*, 166 A.D.3d 803 (N.Y. App. Div. 2018), *appeal denied*, 33 N.Y.3d 950 (2019).

JURISDICTION

Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment provides in part that:

In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.

STATEMENT OF THE CASE.

The SNOW Gang (acronym for “Swagga Niggas Operate With”) originated in Rochdale Village, off of 130th Avenue and Bedell Street in Queens County, New York. Members engaged in criminal activities such as murders, shootings, robberies, and possession of firearms and narcotics. They held meetings in Rochdale Village and Montbellier Park, also located in Queens County.

Around March and April of 2014, the SNOW Gang’s main rival was the “Wood City” gang. Nicholas Morris (“Flacca” or “Nick Flacca”) was a member of the “Wood City” Gang, as was Leighton Friday (“Psycho”).

Lieutenant Robert Bracero was a sixteen-year veteran of the NYPD, who had extensive experience with gangs. In 2012, he was promoted to the rank of sergeant in the newly-created Strategic Enforcement Team (“SET”). “SET” was formed to combat “subsets or crews that are more geographically driven,” and which did not have the “traditional internal workings

of a regular gang.” Bracero’s “SET” team was assigned to the 113th Precinct in Queens. Also assigned to the team was Detective Adam Georg.

The information that Bracero and Georg gathered about the SNOW Gang came from numerous sources, including field observations; monitoring of social media sources like Facebook; gang conferences; jailhouse telephone calls; “conversations with individuals in the neighborhood”; and debriefings of gang members. The debriefings were not conducted under circumstances suggesting the same level of formality as testimony or a sworn statement. Rather, Bracero testified that the debriefings were “fact-finding interviews and discussions,” which he used to garner general information about the SNOW Gang and other gangs. During the debriefings, Bracero would maintain a “casual” atmosphere (he would offer the interviewee something to eat, drink and cigarettes, for example) and would “maintain a level of empathy, extreme level of cordialness with these particular individuals.” Via these investigatory measures, Bracero was able to learn details about the origin of the gang; leadership, rank and structure; the names of the various members; and about the specific crimes they committed (18a-32a, 75a-77a, 97a-98a).

Crucially, the proactive measures taken by Bracero, Georg, and the other members of the New York City Police Department assigned to the SET team to investigate the SNOW Gang took place before the crimes committed in this case; the arrest of Jones and his co-defendants; and the filing of charges against them.

Jones and his co-defendants (Trevor Lucas, Dionne Milling, Justin Campbell, and Dane'e Cato) were all members of the SNOW Gang, as was Kahlil Bowlin, also known as “Red.” On March 30, 2014, Bowlin was shot and killed. As a result, Jones and his co-defendants conspired to murder “Wood City” gang members Morris and Friday, who they held responsible

for Bowlin's death. To this end, they held discussions over Facebook which focused on locating rival gang members, as well as obtaining guns and a car to carry out the retaliatory killings.

Jones had expressed a desire to kill Morris before the murder of Bowlin. And, during Facebook conversations which took place both before and after Bowlin's death, Jones actively negotiated the purchase of two firearms – one of which was a .22 caliber – and discussed stealing a vehicle with other members of the SNOW Gang. Jones also expressed a desire to retaliate for the killing of Bowlin.

The New York City Police Department was aware that Bowlin's murder might lead the SNOW Gang to retaliate, so they monitored their Facebook postings. Their surveillance revealed that the SNOW Gang planned to gather at their usual meeting place – Montbellier Park in Jamaica, Queens – and the police converged on that location. When they arrived, they spotted many gang members, including Jones. Jones fled the park, but was apprehended. The police recovered a loaded, .22 caliber firearm from SNOW gang member Sean Chung. Three other gang members were apprehended after fleeing from a stolen car.

For these acts, Jones and his co-defendants were charged with Conspiracy in the First and Second Degrees and related charges.

At trial, much of the evidence against Jones and his co-defendants came from their Facebook postings, in which they discussed their plans for revenge. Bracero and Georg interpreted the postings, which contained gang terminology.

The trial record indicates that any debriefings of gang members occurred before Jones and his co-defendants were identified as suspects. Bracero testified that any debriefings he conducted usually took place at the 113th Precinct in Queens; that he was

transferred to the 19th precinct in Manhattan in early March, 2014, prior to the murder of Bowlin; and that he was not involved with the investigation conducted in this case (63a, 64a, 65a, 82a). Plainly, these undisputed facts indicate that Bracero did not conduct any debriefings with respect to the SNOW Gang following the murder of Bowlin, since Bracero testified that all of the debriefings he conducted usually took place at the 113th Precinct, and he was no longer assigned to that command, much less the borough of Queens, on the day of Bowlin's murder. Indeed, Bracero specifically testified that "this particular conspiracy had not yet occurred" (60a) at the time he was working in Queens. Moreover, since Bracero was not involved in the investigation, he could not have performed any role in gathering evidence with an eye towards prosecuting Jones.

The same can be said for Georg, who testified that his career as a gang investigator began in October 2012, and that, during the period of time leading up to March 2014 (the month in which Bowlin was killed), he performed various duties, which included debriefings of gang members (102a, 103a, 107a, 118a, 119a). The record contains no indication that any debriefings significant to this case, or to Georg's review of the Facebook records, took place after Jones and his co-defendants were identified and/or charged.

Jones was convicted of Conspiracy in the Second Degree (two counts), False Personation, and Unlawful Assembly. He was sentenced to concurrent, indeterminate terms of from 8 1/3 to 25 years' imprisonment for the conspiracy convictions, as well as concurrent, 90-day terms for False Personation and Unlawful Assembly.¹

¹ Milling was acquitted of all charges. Cato, Campbell and Lucas were each convicted of second-degree conspiracy, and Campbell was additionally convicted of Criminal Possession of Stolen Property in the Fourth Degree, Unauthorized Use of a

In a decision dated November 14, 2018, the state appellate court reversed Jones' conviction and found that the testimony of the gang experts violated the Confrontation Clause. The court stated, "Here, contrary to the People's contention, information derived from the debriefing of arrested S.N.O.W. Gang members constitutes testimonial statements within the meaning of *Crawford*." The Court then found that "the substance of such statements was impermissibly conveyed to the jury by Georg and/or Bracero in the guise of expert testimony." *People v. Jones*, 166 A.D.3d 803 (2d Dept. 2018) (*citing United States v. Mejia*, 545 F.3d 179, 198 [2d Cir. 2008]).

REASONS FOR GRANTING THE WRIT

The state court created a rule that imperils all gang and terrorism prosecutions and is entirely at odds with this Court's *Crawford* jurisprudence. Specifically, the state court held, without any explanation, that "information derived from the debriefing of arrested [g]ang members constitutes testimonial statements within the meaning of *Crawford*," essentially precluding critical gang expert testimony routinely used in all state and federal courts to provide essential background information on gang structure, hierarchy, and operations. This contravenes *Crawford* and its progeny, in which this Court made it abundantly clear that testimonial statements are statements made for the "primary purpose" of providing evidence against an accused in a criminal proceeding. Statements gathered during routine police investigations, prior to the commission of a crime and/or the identification of one or more perpetrators, however, are not made with the "primary purpose" of obtaining "evidence for use against [a] petitioner

Vehicle, and Unlawful Assembly. Lucas' conviction was reversed by the state appellate court on the ground that the evidence was not legally sufficient to sustain his conviction. Cato and Campbell's cases are awaiting decision on appeal.

neither in custody nor under suspicion at th[e] time.” *See Williams v. Illinois*, 567 U.S. 50, 84 (2012). Indeed, here, the statements gathered had the “primary purpose” of crime prevention, and investigating the inner workings of a gang, rather than collecting evidence for later use in court to prosecute one or more gang members for a specific crime.

This Court’s precedent demonstrates the clearly defined dichotomy between testimonial and non-testimonial statements. For example, the statements considered in *Crawford* were testimonial because they were made “while in police custody,” and by a person “herself a potential suspect in the case,” who was told by the police “that whether she would be released ‘depend[ed] on how the investigation continues.’” She then “implicated her husband in [a] stabbing and at least arguably undermined his self-defense claim.” *Crawford*, 541 U.S. at 65.

In so holding, this Court in *Crawford* explained that “the principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of *ex parte* examinations as evidence against the accused.” *Crawford*, 541 U.S. at 50. One “notorious” example of the latter, as *Crawford* pointed out, was the evidence presented at the treason trial of Sir Walter Raleigh. “Lord Cobham, Raleigh’s alleged accomplice, had implicated him in an examination before the Privy Council and in a letter. At Raleigh’s trial, these were read to the jury. Raleigh argued that Cobham had lied to save himself Suspecting that Cobham would recant, Raleigh demanded that the judges call him to appear, arguing that ‘[t]he Proof of the Common Law is by witness and jury: let Cobham be here, let him speak it. Call my accuser before my face’” *Id.* at 44.

Much like the statements in *Crawford*, Lord Cobham’s statements pointed to an individual (Raleigh) and implicated him in the commission of a

specified offense (treason). The primary – indeed, the only – purpose of such statements was to provide evidence of guilt, much like a witness would do at trial. Hence, the need to subject the maker of the statements to cross-examination was paramount.

By contrast, in *Davis v. Washington*, 547 U.S. 813 (2006), this Court rejected a claim that statements made during a 911 call, describing an ongoing emergency, qualified as testimonial. In doing so, this Court articulated a further explanation of the differences between testimonial and nontestimonial statements:

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution

Davis, 547 U.S. at 822. Thus, when this Court in *Crawford* stated that “interrogations by law enforcement officers fall squarely within [the] class’ of testimonial hearsay,” this statement referred to “interrogations solely directed at” – in other words, with the “primary purpose” of – “establishing the facts of a past crime, in order to identify (or provide evidence to convict) the perpetrator.” *Davis*, 547 U.S. at 826. The statements in *Davis* did not fit within this construct because, among other reasons, “No ‘witness’ goes into court to proclaim an emergency and seek help.” *Id.* at 828.

Consistently, in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), this Court held that “affidavits reporting the results of forensic analysis which showed that material seized by the police and connected to the defendant was cocaine” were testimonial. In reaching this holding, this Court noted that “under Massachusetts law the sole purpose of the affidavits was to provide ‘prima facie evidence of the composition, quality, and the net weight’ of the analyzed substance.” *Id.* at 311 (italics in original). In *Bullcoming v. New Mexico*, 564 U.S. 647 (2011), this Court deemed laboratory reports testimonial, and reiterated that a “document created *solely* for an ‘evidentiary purpose’ . . . made in aid of a police investigation, ranks as testimonial.” *Id.* (italics added). In other words, the affidavits and reports in *Melendez-Diaz* and *Bullcoming*, much like the statements in *Crawford*, and unlike the statements in *Davis*, were made for the “primary purpose” of providing evidence against a known suspect, in connection with a crime that had already been committed

Davis demonstrated that even direct accusations made in connection with a known crime – despite their surface resemblance to trial testimony – are not *per se* testimonial. This concept was further clarified in *Michigan v. Bryant*, 562 U.S. 344 (2011). In *Bryant*, the statements at issue were made to officers responding to a shooting. The victim told them that an individual named “Rick” had shot him at his home. Despite the incriminating nature of this statement, this Court held that the statement was not testimonial. This Court emphasized that “the most important instances in which the [Confrontation] Clause restricts the introduction of out-of-court statements are those in which state actors are involved in a formal, out-of-court interrogation of a witness to obtain evidence for trial.” *Bryant*, 562 U.S. at 358. Further, this Court stressed that “the relevant inquiry is not the subjective or actual purpose of the individuals involved in a particular encounter, but rather the purpose that reasonable participants would have had, as ascertained

from the individuals' statements and actions and the circumstances in which the encounter occurred." *Bryant*, 562 U.S. at 360. Judged by these criteria, this Court determined that the statements in *Bryant* were non-testimonial because they were elicited to address an ongoing emergency, and made by a mortally wounded individual.

Then, in *Williams v. Illinois*, 567 U.S. 50 (2012), this Court reached a critical juncture in its *Crawford* jurisprudence and drew another dividing line between testimonial and non-testimonial statements. Specifically, this Court found that, even if a report outlining the results of DNA testing had been admitted for its truth, there was no violation of the Confrontation Clause:

The abuses that the Court has identified as prompting the adoption of the Confrontation Clause shared the following two characteristics: (a) they involved out-of-court statements having the primary purpose of accusing a targeted individual of engaging in criminal conduct and (b) they involved formalized statements such as affidavits, depositions, prior testimony, or confessions.

Here, the primary purpose of the Cellmark report, viewed objectively, was not to accuse petitioner or to create evidence for use at trial. When the ISP lab sent the sample to Cellmark, its primary purpose was to catch a dangerous rapist who was still at large, not to obtain evidence for use against petitioner, *who was neither in custody nor under suspicion at that time*. Similarly, no one at Cellmark could have possibly known that the profile that it produced would turn out to inculpate petitioner—or

for that matter, anyone else whose DNA profile was in a law enforcement database. Under these circumstances, there was no “prospect of fabrication” and no incentive to produce anything other than a scientifically sound and reliable profile.

Williams, 567 U.S. at 82, 84–85 (italics added).

Williams thus set forth what was already apparent from every prior case decided by this Court, starting with *Crawford*: a statement cannot be testimonial unless it has the purpose of supplying evidence against a specific person for a specific crime. Since *Williams* was not yet identified at the time of the DNA testing, therefore, the testing which led to his identification was not testimonial.

In this Court’s latest decision regarding testimonial hearsay, this Court again reinforced that not all statements, even if accusatory, qualify as testimonial. In *Ohio v. Clark*, ___ U.S. ___, 135 S. Ct. 2173 (2015), a child was questioned by a preschool teacher regarding injuries on the child’s body. The questioning elicited that the injuries were caused by the child’s stepfather. This Court ruled that there was “no indication that the primary purpose of the conversation was to gather evidence for Clark’s prosecution,” and that it was “clear that the first objective was to protect” the victim. Further, this Court underscored that “[a]t no point did the teachers inform [the victim] that his answers would be used to arrest or punish his abuser,” and that the victim “never hinted that he intended his statements to be used by the police or prosecutors.” In addition, this Court noted that “the circumstances in this case were unlike the interrogation in *Hammon* [companion case to *Davis*], where the police knew the identity of the assailant and questioned the victim after shielding her from potential harm.” *Clark*, ___ U.S. ___, 135 S. Ct. at 2180–81. This Court further explained that “the primary

purpose test is a necessary, but not always sufficient, condition for the exclusion of out-of-court statements under the Confrontation Clause.” *Id.* at 2180-81.

The common thread in all the cases cited above is clear: the Confrontation Clause applies to incriminatory statements which are gathered for the purpose of supplying evidence against a known suspect, in connection with a specific crime, and statements which are formalized, such as affidavits, depositions, prior testimony, or confessions. And, in addition, these cases make it plain that even statements which implicate one or more individuals in a crime may *not* be testimonial.

Here, none of these considerations are present. The shooting had not occurred at the time Bracero and Georg conducted the debriefings. Simply put, there was no case, no suspect and, therefore, no statement designed to provide evidence against an individual in connection with the death of Bowlin. Nor is there any indication that any statement gathered during the debriefings was “inherently inculpatory.” *Williams*, 567 U.S. at 58. Further, even if Georg gathered evidence through debriefings which implicated Jones in the plot to murder Morris and Friday, no such statements were ever conveyed to the jury. Nor could Bracero have conveyed any such statements, as he was not even involved in the investigation which led to the charges in this case.

No case decided by this Court has extended *Crawford* to statements such as the ones which led to reversal in this case. Indeed, *Crawford* found statements made in formation of, or during the course of, a conspiracy, to be non-testimonial. *Crawford*, 541 U.S. at 56. It would seem, therefore, that a statement made *before there was ever a conspiracy* – such as the statements made in this case during the debriefings – would, *a fortiori*, also qualify as non-testimonial.

Nor can *Crawford* be logically extended to encompass Bracero and Georg's conversations with SNOW Gang members. Unlike the questioning in *Crawford* and Sir Raleigh's case, Bracero testified that debriefings are not normally used to gather evidence about a specific crime.² He also testified that during these debriefings, he would "try to find out who these people were on a more casual level to be able to speak to them." He further testified that, in conducting debriefings, he would "maintain a level of empathy, extreme level of cordialness with these particular individuals," and that "[s]ome just spoke because they didn't want to be stuck with a stinky perpetrator that was in the holding cell with them." In this regard, agreeing to speak with Bracero provided the interviewee with "an opportunity for them to perhaps have a bite, have a cigarette and to just talk to a person" (75a-77a, 97a-98a).

Viewed in light of the record, the "primary purpose" of the statements was not to create a substitute for in-court testimony, and Bracero and Georg's "primary purpose" was to learn about the SNOW Gang, not to collect information against Jones in connection with the conspiracy to kill Morris and Friday. Indeed, doing so would have been impossible given that there was no conspiracy at the time Bracero conducted the debriefings. And, in addition, there is no indication that the individuals debriefed were told that their statements would be used to "arrest or punish," or that these individuals "hinted that [t]he[y] intended

² While Bracero also agreed that it was "fair to say" that during the debriefings, he was "also looking to get information to be used against that particular arrestee in that case" (97a, 98a), there is no indication in the record, and no basis to conclude, that Jones or his co-defendants were any of the individuals debriefed by Bracero, and the record contains no indication that Bracero interviewed anyone with the "primary purpose" of seeking evidence against Jones and his co-defendants. In fact, Bracero specifically testified that he did not debrief Jones or his co-defendants (57a, 60a).

[their] statements to be used [as evidence] by the police or prosecutors." *Clark*, ___ U.S. ___, 135 S.Ct. at 2180-81. Rather, according to Bracero's description, the individuals he debriefed spoke with him because it allowed them to leave the unpleasant atmosphere of a holding cell and enter a more relaxing environment, where they would "have a bite, have a cigarette and . . . just talk to a person."

This Court has never extended *Crawford* to the scenario presented by this case. In every past case manifesting testimonial hearsay, one or both of the following factors were inevitably present: a specific crime, and a specific individual facing charges, at the time the contested statements were made. Here, by contrast, there was no crime(s), charge(s), or individual(s) charged, when the debriefings were conducted. Hence, viewed objectively, the statements made during the debriefings fit within no definition of "testimonial" propounded by this Court.

Instead of employing the dispositive, primary purpose test set forth by this Court in *Davis* and its progeny, the state court cited to *United States v. Mejia*, 545 F3d 179, 198 (2d Cir. 2008), and held, "Contrary to the People's contention, information derived from the debriefing of arrested S.N.O.W. Gang members constitutes testimonial statements within the meaning of *Crawford*." *Mejia*, however, was decided eleven years ago, in 2008. Since then, the law surrounding testimonial hearsay has undergone a sea change, and the "primary purpose" test has developed significantly. *See, e.g., Clark*, ___ U.S. ___, 135 S.Ct. at 2173; *Williams*, 567 U.S. at 50; *Bullcoming*, 564 U.S. at 647; *Bryant*, 562 U.S. at 344. Indeed, *Mejia* does not reference the "primary purpose" test at all. Thus, its vitality as precedent is questionable, particularly in light of this Court's decision in *Davis, et al.*

The failure of the Second Circuit decision in *Mejia* to mention the "primary purpose" test is also significant because other state and federal courts since

Mejia have concluded – consistent with the “primary purpose” test discussed by this Court in *Davis* – that statements made during interviews which take place prior to a particular investigation and prosecution targeting one or more specific individuals do not amount to testimonial hearsay. *See, e.g., United States v. Lockhart*, 844 F.3d 501 (5th Cir. 2016) (“The interrogations and conferences Officer Ontiveros attended were part of his education as a gang expert, and he properly based his testimony on these experiences. Therefore, Officer Ontiveros did not serve as a conduit for inadmissible testimonial hearsay.”); *Saldana v. Peery*, 2017 WL 633898, at *39 (E.D. Cal. 2017) (oral statements of gang members relied upon by gang expert “could not be considered testimonial in nature, because they bore no resemblance to formalized statements such as affidavits, depositions, prior testimony, or confessions Thus, the statements relied upon by the gang expert did not violate the Confrontation Clause.”); *United States v. Barnes*, No. 213CR423JCMGWF, 2016 WL 1317724, at *3 (D. Nev. Apr. 1, 2016) (rejecting argument “that Detective Petrulli’s reliance on interviews with pimps and prostitutes as the basis for his expertise constitutes the transmission of inadmissible hearsay in violation of the Confrontation Clause under *Crawford v. Washington*, 541 U.S. 36 (2004)), *aff’d*, 738 F. App’x 413 (9th Cir. 2018); *People v. Meraz*, 6 Cal. App. 5th 1162, 1175 (Ct. App. 2016) (testimony about gang “operations, primary activities, and pattern of criminal activities” was not testimonial, even though expert “received the ‘majority of [his] intelligence’ by ‘speak[ing] with gang members of all levels and ages, both in and out of custody’”; “[d]ay in and day out such information would be useful to the police as part of their general community policing responsibilities quite separate from any use in some unspecified criminal prosecution,” and to “conclude otherwise would eviscerate the role of gang experts in gang-related prosecutions”); *State v. Prado*, 185 Wash. App. 1017 (2015) (rejecting argument that “testimony on matters that could have come only from informants or custodial

interrogations from absent witnesses, including Detective Salinas's remark that gang members gain respect by injuring or shooting rival gang members" violated the Confrontation Clause); *People v. Valadez*, 220 Cal. App. 4th 16, 36 (Ct. App. 2013) ("nothing in the circumstances of Officer's Krish's interactions with gang members and other officers objectively indicates the primary purpose of Officer Krish's questioning was to target appellants or any other individuals or crimes for investigation or to establish past facts for a later criminal prosecution").

By contrast, some courts have apparently found the opposite: that statements made during investigative interviews, conducted prior to the occurrence of a specific crime or the identification of a suspect, are testimonial, or at least potentially so. *See, e.g., United States v. Rios*, 830 F.3d 403, 419 (6th Cir. 2016) ("The sole testimony cited by the defendants that may have [violated the Confrontation Clause] was Detective Haglund's relaying of the 'beating-out process' based upon interviewing Latin Kings about it. He was asked whether he had interviewed someone who went through the process and then explained: 'He was taken to a different location from where they were at originally and was beaten by several Latin Kings throughout the face, the body, and suffered injuries.' . . . This implied directly that a specific individual told Detective Haglund about a specific event, and that Detective Haglund's account of what occurred was based upon this individual's statement. This testimony violated the Confrontation Clause, but the violation was harmless because Mario Herrera testified about the severity of the same process."); *United States v. Garcia*, 793 F.3d 1194, 1214 (10th Cir. 2015) (gang expert "indicated that the source of his information was investigative interviews," which led to statements that were testimonial); *United States v. Gomez*, 725 F.3d 1121, 1130 (9th Cir. 2013) (addressing Confrontation Clause challenge to testimony of DEA drug trafficking expert: "The wording of the second question is potentially problematic: 'And in those

interviews [by Agent Banos with individuals who have smuggled drugs for payment], is the payment relatively small in comparison to the value of the narcotics being smuggled?" . . . The question could be understood to query the content of Agent Banos' previous interviews, which would violate the Confrontation Clause."); *United States v. Maher*, 454 F.3d 13, 21 (1st Cir. 2006) (statement made by defendant in custody naming another individual as the source of drugs deemed testimonial, even though this individual was not a target at the time he was named).

Perhaps reflecting added confusion over the exact nature of such statements, other courts have simply refused to reach this issue. *See United States v. Jones*, 447 F. App'x 319, 324 (3d Cir. 2011) ("In resolving Jones's Confrontation Clause challenge, we decline to reach whether the arrestees' statements were testimonial or whether *Crawford* is implicated by McNamara's remarks in the first place, given that McNamara only referred to the interviews to situate his expert opinion."); *State v. Guarino*, 238 Ariz. 437, 444, 362 P.3d 484, 491 (2015) (finding gang expert testimony admissible without addressing the underlying question of whether the sources relied upon, including statements from gang members, were testimonial). This indicates that courts from across the United States are divided – or at the very least lack sufficient guidance – over whether statements, gathered prior to a particular crime, or the targeting of a particular suspect, are testimonial, thus requiring this Court's intervention to resolve the issue.

The *Mejia* court apparently emphasized a single factor – whether the gang expert gathered information during the course of "custodial interrogations" – in determining whether the interviews in that case produced testimonial hearsay. *See Mejia*, 545 F.3d at 199 ("Alicea's reliance on hearsay is beyond doubt; a more difficult question is the extent to which that hearsay took the form of custodial statements and was thus testimonial."). But since *Mejia*, this Court has

made it clear that “not all those questioned by the police are witnesses and not all interrogations by law enforcement officers are subject to the Confrontation Clause.” *Bryant*, 562 U.S. at 355. And, even more recently, this Court has reiterated that courts should consider “the informality of the situation and the interrogation’ . . . in evaluating whether a statement is testimonial.” *Clark*, ___ U.S. ___, 135 S.Ct. at 2180 (2015), (quoting *Bryant*, 562 U.S. at 377).

“While ‘formal station-house interrogation,’ like the questioning in *Crawford*, is more likely to provoke testimonial statements, [and] while less formal questioning is less likely to reflect a primary purpose aimed at obtaining testimonial evidence against the accused . . . the question is whether, in light of all the circumstances, viewed objectively, the ‘primary purpose’ of the conversation was to ‘creat[e] an out-of-court substitute for trial testimony.’” *Clark*, ___ U.S. ___, 135 S.Ct. 2173, 2180 (2015) (quoting *Bryant*, 562 U.S. at 366, 377). The state court, however, gave no indication that it considered the circumstances surrounding the debriefings – or did so in conjunction with this Court’s decisions in *Clark* and *Bryant* – before deciding that the statements they produced were testimonial.

The need for review is pressing for another reason. *Williams* was a plurality opinion: four Justices of this Court agreed that a specific case and/or a targeted individual are necessary for a statement to be deemed testimonial, and another four Justices reached the opposite conclusion, with one Justice concurring in the judgement, yet rejecting the notion that a targeting test is essential to determining whether a statement is testimonial or not. Compare *Williams*, 567 U.S. at 82 (opinion by Justice Alito, and joined by Justices Roberts, Kennedy and Breyer) (“The abuses that the Court has identified as prompting the adoption of the Confrontation Clause . . . involved out-of-court statements having the primary purpose of accusing a targeted individual of engaging in criminal conduct”),

and Williams, 567 U.S. at 97 (Breyer, J. concurring) (“As the plurality notes, in every post-*Crawford* case in which the Court has found a Confrontation Clause violation, the statement at issue had the primary purpose of accusing a targeted individual The declarant was essentially an adverse witness making an accusatory, testimonial statement—implicating the core concerns of the Lord Cobham-type affidavits. But here the DNA report sought, not to accuse petitioner, but instead to generate objectively a profile of a then-unknown suspect's DNA from the semen he left in committing the crime.”), *with Williams*, 567 U.S. at 114 (Thomas, J. concurring in the judgement) (“The shortcomings of the original primary purpose test pale in comparison, however, to those plaguing the reformulated version that the plurality suggests today. The new primary purpose test asks whether an out-of-court statement has ‘the primary purpose of accusing a targeted individual of engaging in criminal conduct.’ That test lacks any grounding in constitutional text, in history, or in logic.”), *and Williams*, 567 U.S. at 135 (Kagan, J. dissenting, and joined by Justices Scalia, Ginsburg and Sotomayor) (“As its first stab, the plurality states that the Cellmark report was ‘not prepared for the primary purpose of accusing a targeted individual.’ Where that test comes from is anyone's guess. Justice THOMAS rightly shows that it derives neither from the text nor from the history of the Confrontation Clause.”).

The plurality opinion in *Williams* has led to confusion among various courts from around the United States, and has caused them to reach divergent conclusions regarding whether a writing or statement made before a suspect or target is identified qualifies as testimonial. *See, e.g. Hacheney v. Obenland*, 732 F. App'x 541, 543 (9th Cir. 2018) (“Hacheney was not a target of investigation when the toxicology report was prepared. The state court therefore did not unreasonably apply clearly established law by denying Hacheney's Confrontation Clause claim”); *People v.*

John, 27 N.Y.3d 294, 310 (2016) (DNA profiles generated “when the suspect was unknown and the defendant was later identified on a ‘cold hit’” are not testimonial); *Rosario v. State*, 175 So. 3d 843, 858 (Fla. Dist. Ct. App. 2015) (autopsy report deemed testimonial); *State v. Navarette*, 2013-NMSC-003, ¶ 18, 294 P.3d 435, 441 (2013) (“it does not matter that the autopsy report does not target a specific person or that the autopsy report does not produce inherently inculpatory evidence The observations, findings, and opinions within the report are statements that were made when the pathologist understood that the statements might be used in a criminal prosecution.”).

As is plain, review of the issue here will not only resolve whether investigatory interviews – conducted before a suspect or suspects is identified, or a crime is committed – produce testimonial hearsay, but will also address the unresolved issue left open by *Williams*: whether *any* hearsay statement generated prior to the identification of a suspect, or the filing of formal charges, should be considered testimonial under this Court’s *Crawford* jurisprudence. This issue has continued to lead to fractured conclusions among state and federal courts, thus providing this Court with ample cause to address the issue.

Reviewing the instant case will allow this Court to address additional issues that resonate on a nationwide level. Intelligence gathering is a critical component of all law enforcement, whether on a city, state, federal, or international level. *See generally* Letteney, Peter J., *Determining Classified Evidence’s “Primary Purpose”: The Confrontation Clause and Classified Information After Ohio v. Clark*, 66 Duke Law Journal 1, 16 (2016) (human intelligence (HUMINT) “may be the only way of getting access to certain information held by an intelligence target, and therefore can be of enormous value both for its intelligence value, and for its prosecutorial value.”) (*citing* Jeffrey T. Richelson, *The U.S. Intelligence Community*, p. 319 [7th ed. 2016]). It is perhaps one of

the most important functions performed by police and other investigatory agencies, as it allows them to proactively address potential criminality, as well as terroristic threats, before they ever occur. *See* Letteney, 66 Duke Law Journal at 16 (studies “in 1994 found that HUMINT made a critical contribution to 204 of 376 specific intelligence issues.”) (*citing* Richelson, p. 319). Indeed, intelligence gathering saves lives, and this case is proof: without it, both Morris and Friday would, no doubt, have been killed by defendant and his SNOW Gang cohorts. Only the collective knowledge of the SNOW Gang gathered by Bracero and Georg, and the swift actions of the latter and other dedicated NYPD officers, prevented a conspiracy case from becoming a multiple murder case. And, apart from the two specific targets, the danger for additional bloodshed cannot be ignored, as any civilians caught in the crossfire of these two, warring gangs could have been shot and slain as well. Plainly, intelligence gathering allows law enforcement to do what is necessary to either prevent criminal behavior entirely, or hinder its ability to wreak further terror.

The entire proactive function of law enforcement – determining whether behavior is criminal, observing patterns and activity, investigating individuals and enterprises – must be accounted for before determining that statements are “testimonial.” Here, however, the state court conflated the proactive function of law enforcement with its reactive function, that is, responding to crimes once they have already occurred and gathering evidence with an eye towards arresting and prosecuting a specific perpetrator. This error led the state court to commit the further error of concluding that the proactive steps taken to learn about the SNOW Gang, prior to the commission of the crime in this case, were tantamount to an interrogation of a witness for the purpose of incriminating a person suspected of a particular crime. Given the widespread use of intelligence gathering and proactive, preventative measures taken to interdict criminal and terroristic activity, and the prevalent use of statements

gathered during such activity, it is imperative that this Court provide guidance as to how and when such statements may be used at trial.

It is also important to note that the very nature of proactive policing – such as the policing done in this case – can have more than one outcome. Obviously, investigations into one or more individuals may lead to the discovery of criminal or terroristic behavior. Or, obviously, they may not, that is, the police may uncover no evidence of criminal behavior at all. Viewed in this objective light, proactive policing – undertaken to assess whether criminality is even afoot – simply cannot have a primary purpose of creating a substitute for trial testimony, because the sole purpose of such policing is to determine whether criminality exists, not to prove it beyond a reasonable doubt before a trier of fact with a statement or writing. This distinction was overlooked by the state court in this case, and apparently, courts from across the United States have overlooked it as well. At the very least, there exists a grave and reasonable concern that this critical distinction will continue to be ignored unless this Court confronts and addresses it.

The state court's ruling also creates confusion when it comes to other functions performed by the police which do not involve investigations of a criminal nature. *See, e.g., Cady v. Dombrowski*, 413 U.S. 433, 441 (1973) ("Local police officers, unlike federal officers, frequently investigate" incidents "in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."). In the performance of "community caretaking functions" – which are undertaken countless times across the United States by law enforcement officers – the police may stumble across information which leads to evidence of criminality. *See, e.g., United States v. Hadley*, 431 F.3d 484, 502 (6th Cir. 2005) (police

arrived at home in response to 911 call, and their purpose was to “ascertain the nature of the assault or domestic disturbance reported by the 911 dispatcher,” which the court analogized to a “community caretaking” function; in the course of doing so, an occupant of the home “volunteered the statements that ‘he has a gun’ and ‘he’s going to kill me’ as she ran out of her home upon the officers’ arrival, and before they could even begin to question her about the evening’s events”). Yet at the time the information is discovered, the police are not looking for any suspect, or even any crime. This begs the obvious question: are statements taken at this pre-crime, pre-suspect, pre-investigatory, “community caretaking” phase testimonial? The state court decision here answers that question in the affirmative; *Williams* signals disagreement over whether a targeted individual is a necessary condition for deeming a statement testimonial, even though this approach is consistent with *Crawford* and its progeny; and various state and federal court decisions suggest that this issue could engender disagreement. Hence, whether statements become testimonial when they are acquired by the police in the course of performing “community caretaking” functions is another area of the law which would be clarified should this Court decide to review the instant case.

Further review is also necessary to clarify the proper boundaries of *Crawford* when it comes to expert testimony and gang prosecutions given the prevalence of gang violence and the challenges that prosecutors face in addressing the epidemic. There are approximately 33,000 violent gangs in the United States. See <https://www.fbi.gov/investigate/violent-crime/gangs>. One study concluded that, “Gangs are responsible for an average of 48 percent of violent crime in most jurisdictions and up to 90 percent in several others” See NAT’L GANG INTELLIGENCE CTR., 2011 NATIONAL GANG THREAT ASSESSMENT: EMERGING TRENDS 9 (2011), <https://www.fbi.gov/stats-services/publications/2011-national-gang-threat-assessment-emerging-trends>.

national-gang-threat-assessment. And, as the instant case and others demonstrate, it is beyond cavil that gang investigations and prosecutions, to one extent or another, depend on the ability of law enforcement to learn the vernacular used by gang members to communicate with one another, and to communicate this knowledge to a jury.

But by effectively declaring that all such interviews are testimonial, no matter their timing or the circumstances under which they occur, the state court has made reliance upon a gang expert at trial incredibly difficult, if not impossible. Indeed, such reliance will ultimately lead the defense to decry any such testimony as little more than testimonial hearsay in the guise of an expert opinion, even if, as in this case, it is clear that the expert opinions were not based upon hearsay alone. And, the state court's decision will affect any expert testimony which has a connection, no matter how great or small, to a conversation, including testimony which is interpretive in nature, or nonhearsay, background testimony.

In sum, for all of the forgoing reasons, this Court should grant the instant petition.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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June 24, 2019

APPENDIX

State of New York
Court of Appeals

BEFORE: HON. MICHAEL J. GARCIA
Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK

Appellant,

-against-

JAHMARLEY JONES,

Respondent

ORDER DENYING LEAVE

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law § 460.20 from an order in the above-captioned case;¹

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated: March 27, 2019
at Albany, New York

Associate Judge

¹ Description of Order: Order of the Supreme Court, Appellate Division, Second Department, entered November 14, 2018, reversing a judgment of Supreme Court, Queens County, rendered February 18, 2016.

166 A.D.3d 803

Supreme Court, Appellate Division,

Second Department, New York.

The PEOPLE, etc., respondent,

v.

Jahmarley JONES, appellant.

2016-02147(Ind. No. 1659/14)

Argued—February 15, 2018 November 14, 2018

Synopsis

Background: Defendant was convicted, following jury trial, in the Supreme Court, Queens County, Robert C. Kohm, J., of conspiracy in the second degree, false personation, and unlawful assembly. Defendant appealed.

Holdings: The Supreme Court, Appellate Division, held that: detective conveyed to jury, for the truth of the matter asserted, the substance of testimonial statements, in the guise of expert testimony; detective acted as summation witness; and order for new trial was appropriate.

Reversed; new trial ordered.

West Headnotes (Expand West Headnotes

Attorneys and Law Firms

Randall D. Unger, Bayside, NY, for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano Johnnette Traill, Joseph N. Feredenzi, Bronx, and Christopher J. Blira—Koessler of counsel), for respondent.

REINALDO E. RIVERA, J.P., CHERYL E. CHAMBERS, SHERI S. ROMAN, ANGELA G. IANNACCI, JJ.

DECISION & ORDER

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Robert C. Kohm, J.), rendered February 18, 2016, convicting him of conspiracy in the second degree (two counts), false personation, and unlawful assembly, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is reversed, on the law and in the exercise of discretion, and a new trial is ordered.

The defendant and four others, all alleged members of the S.N.O.W. Gang, were tried together in connection with an indictment charging them, *inter alia*, with conspiracy to murder two members of a rival gang. At the joint trial, no alleged coconspirators testified for the prosecution. Instead, the People, among other things, presented testimony from police officers involved in the investigation and introduced into evidence thousands of social media posts of the defendants and numerous charged and uncharged coconspirators. The jury acquitted the defendant of the top two counts of conspiracy in the first degree, but found him guilty of two counts of conspiracy in the second degree as lesser included offenses. The jury also convicted the defendant of false personation and unlawful assembly.

During the trial, the Supreme Court declared Detective Adam Georg an expert “in the hierarchy, practices, [and] languages of the S.N.O.W. Gang and other

gangs.” Similarly, the court declared Lieutenant Robert Bracero an expert “in the history, hierarchy, practices and language of the S.N.O.W. Gang and rival gangs.” Georg testified that his knowledge of the S.N.O.W. Gang was derived, among other things, from approximately 70 to 80 debriefings of S.N.O.W. Gang members, many of whom had been arrested and were in custody at the precinct or in jail. Similarly, Bracero testified that he debriefed approximately 50 S.N.O.W. Gang members after their arrests.

The defendant contends that Georg's and Bracero's testimony violated *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 by permitting the introduction into evidence of out-of-court testimonial statements made by absent witnesses who were never subjected to cross-examination by the defendant (see *United States v. Mejia*, 545 F.3d 179, 198 [2d Cir.]). As a threshold matter, we note that Crawford does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted (see *Crawford v. Washington*, 541 U.S. at 60 n 9, 124 S.Ct. 1354; *United States v. Lombardozzi*, 491 F.3d 61, 72 [2d Cir.]). Thus, “it is permissible for an expert witness to form an opinion by applying [his or] her expertise to otherwise inadmissible evidence because, in that limited instance, the evidence is not being presented for the truth of the matter asserted” *United States v. Lombardozzi*, 491 F.3d at 72.

Here, contrary to the People's contention, information derived from the debriefing of arrested S.N.O.W. Gang members constitutes testimonial statements within the meaning of Crawford (see *United States v. Mejia*, 545 F.3d at 198). The more difficult question presented is whether the substance of such statements was impermissibly conveyed to the jury by Georg and/or Bracero in the guise of expert testimony (see *id.* at 199). We find that it was. For instance, when Georg, over defense counsel's objection, was asked about the

basis for his decision to arrest the defendant and others who had congregated in Montbellier Park on April 1, 2014, on a charge of unlawful assembly, Georg specifically mentioned debriefings he had conducted with unnamed members of the S.N.O.W. Gang. While the Supreme Court promptly sustained an objection precluding Georg from conveying to the jury what the unnamed gang members had told him, the fact remains that the jury was made to understand that the basis for Georg's belief that the defendant was "preparing to engage ... in tumultuous and violent conduct" Penal Law § 240.10 was information obtained from Georg's prior questioning of arrested members of the S.N.O.W. Gang. Nor is there any indication that Georg merely relied on this hearsay information for the purpose of forming an independent opinion based on his own expertise (see *United States v. Mejia*, 545 F.3d at 199; *United States v. Lombardozzi*, 491 F.3d at 73; *United States v. Dukagjini*, 326 F.3d 45, 59 [2d Cir.]). Bracero testified, *inter alia*, about the S.N.O.W. Gang's purported standard operating procedure of having high-level members travel in vehicles with subordinates carrying weapons for the purpose of gathering intelligence on the residences, schools, and work places of rival gang members. Bracero also testified that the S.N.O.W. Gang has been targeted for investigation because of "[t]heir history of violence" and the "potential [for] retaliation" following the death of one of their members at the hands of a rival gang. Similarly, Georg testified regarding the S.N.O.W. Gang's reputation for retaliation following the killing of one of its members. To the extent that testimonial hearsay was the source material for such testimony, there is no indication that Georg or Bracero merely relied on such hearsay for the purpose of forming an independent opinion based on their own expertise (see *United States v. Mejia*, 545 F.3d at 199; *United States v. Lombardozzi*, 491 F.3d at 73; *United States v. Dukagjini*, 326 F.3d at 59). To the contrary, it appears that Georg and Bracero were impermissibly allowed to convey the substance of such hearsay to the jury for its truth.

Separate and apart from the *Crawford* errors, Georg's testimony also ran afoul of the proscription against police experts acting as summation witnesses, straying from their proper function of aiding the jury in its fact-finding, and instead "‘instructing the jury on the existence of the facts needed to satisfy the elements of the charged offense’" *People v. Inoa*, 25 N.Y.3d 466, 475, 13 N.Y.S.3d 329, 34 N.E.3d 839, quoting *United States v. Mejia*, 545 F.3d at 191). During the trial, Georg read Facebook posts verbatim to the jury, offered commentary about the time of each post in relation to key events in the case, and connected evidence of the parties exchanging their phone numbers with records confirming that a call was subsequently placed. The defendant's counsel correctly objected to such testimony, citing *Mejia* and *Inoa*, on the ground that Georg was no longer acting as an expert witness but was usurping the jury's function by interpreting, summarizing, and marshaling the evidence. Unlike the *Crawford* violation, this type of error is nonconstitutional in nature (see *People v. Inoa*, 25 N.Y.3d at 472, 13 N.Y.S.3d 329, 34 N.E.3d 839).

As a result of the *Crawford* violation and the *Inoa* error, a new trial must be ordered because the evidence of the defendant's guilt, without reference to the errors, was far from overwhelming (see *People v. Crimmins*, 36 N.Y.2d 230, 241, 367 N.Y.S.2d 213, 326 N.E.2d 787).

As there must be a new trial, we further note that the Supreme Court's ruling under *People v. Sandoval*, 34 N.Y.2d 371, 357 N.Y.S.2d 849, 314 N.E.2d 413 was inconsistent with the rule that the People may not use a youthful offender adjudication to impeach a defendant since an adjudication is not a conviction of a crime (see *People v. Gray*, 84 N.Y.2d 709, 712, 622 N.Y.S.2d 223, 646 N.E.2d 444; *People v. Cook*, 37 N.Y.2d 591, 595, 376 N.Y.S.2d 110, 338 N.E.2d 619; *People v. Ramdhan*, 243 A.D.2d 657, 663 N.Y.S.2d 260). Upon retrial, any inquiry should be limited to the

illegal or immoral acts underlying such adjudications for the purpose of impeachment (*see People v. Gray*, 84 N.Y.2d at 712, 622 N.Y.S.2d 223, 646 N.E.2d 444; *People v. Rivera*, 152 A.D.3d 625, 626, 58 N.Y.S.3d 542; *People v. Black*, 77 A.D.3d 966, 967, 911 N.Y.S.2d 78; *People v. Harripersaud*, 4 A.D.3d 375, 771 N.Y.S.2d 184).

The defendant's remaining contentions are without merit.

RIVERA, J.P., CHAMBERS, ROMAN and IANNACCI, JJ., concur.

Proceedings

know any of this is actually factual or truthful? We don't cross examine the person who wrote this. We don't know if they made it up whole cloth or based on any investigation or research or anything so the jury would be getting information that no one in this room really knows whether it's true or not so I join in my cocounsel's arguments as well.

THE COURT: Decision reserved. Eight?

MR. REGAN; Page eight and nine together, this is three pages a Facebook message which was sent from Trigger Oc to an individual named Jet Galin, G-A-L-I-N, G -R-E-E-N.

THE COURT; Who is Trigger Oc?

MR. REGAN: Lynnard Biggs, the same individual with the tattoos, he is the leader of the S.N.O.W. Gang.

THE COURT: What's his name?

MR. REGAN; Lynnard Biggs L-Y-N-N-A-R-D B-I-G-G-S, the same individual with the tattoos on his hands. This is a message that pretty much traces the history of the Young Bosses. I'm sorry. This was sent from Galin Green to Trigger Oc, it traces the history of the Young Bosses. It names Trigger Oc as a founding member as number three of the YB co-founders. It indicates certain terms that are still used by Young Bosses and members of the S.N.O.W. Gang including

terms like big suits, on page nine if you go most of the way down on the column on the left it talks about the term Stacy Adams being a strap, that will come out to mean that Stacy or Stacy Adams refers to a strap which refers to a gun and eventually that Stacy refers to gun.

In addition there is other information involving other terms used by members of the gang, bossin', being a boss, B.O.E., Bosses Over Everything, other language used by certain members of certain gangs which will help the jury understand and establish that the witnesses in this case who are interpreting the Facebook postings are doing so based on their research into the gang and having it confirmed by postings such as this.

MR. MALTZ: I would object, your Honor, because it's impossible for Mr. Lucas to be able to cross examine the maker of these statements. Trigger is not going to be a witness here and it would be impossible to cross examine. Davis versus Alaska denied right to confrontation among other cases I don't have in front of me, he is denied the right to confrontation, your Honor.

MS. POVMAN: I join that application under Crawford versus Washington, Jet Galin Green is allegedly the maker of the statement. It's clearly an out-of-court statement made by a person who is not a witness in this case, totally deprives Mr. Jones of his right of confrontation and deprives him of the right to a fair trial under the Sixth Amendment and the New York State Constitution.

MR. SANTOS: I join that application.

MR. STRACHAN: I join that application for Mr. Cato.

MR. MUCCINI: Mr. Campbell joins that application as well.

THE COURT: Reserved. Ten?

MR. REGAN: Judge, the photograph on item ten is a photograph posted by Bo B-A-N-N-I-S-T-E-R, posted on or about February 2 of 2013. Bo Bannister is a member of the S.N.O.W. Gang. It is a photograph of him pointing what appears to be a gun made by hand at someone flashing the Wood City Gang sign. It goes to the usage of this kind of statement by hand with regard to what it means, Judge. I'm not - I know Mr. Bannister is not on trial here, but this gang sign has a specific meaning, and it is an illustration of a gang sign that is used by others in this conspiracy in their own personal Facebook records. So my intent here is to have the witness be able to illustrate to the jury what this gang sign means by having an actual example of it before them. This is what's referred to as Wood City K, Wood City Killa, guns to Wood City Gang signs which indicates the rivalry with the Wood City Gang and goes directly to the issues which are the subject of this trial, and that's the motivation of these members of the S.N.O.W. Gang in their retaliation against Wood City and general rivalry with Wood City, so I think it's relevant to allow the jury to see statements like these which are made and are repeated by other members of the gang including those charged in the conspiracy.

MS. POVMAN: Judge, again I renew my objection under Crawford versus Washington. Bo Bannister allegedly is posting a photograph. There is language on that page that's an out-of-court statement made by a person who is not available for cross-examination. It will deprive my client of his right of confrontation and

deprive him of a fair trial. Judge, I would suggest to the DA if they are concerned with the hand signal, they can X out everything except the hand and show the officer the signal that they are discussing, but to have in this a statement by Bo Bannister: These niggas claim Wood City we 900 K, with someone pointing a gun or pretending to point a gun has no relevance here. If the purpose is to show the hands signals, then cut up or edit these photographs and just show the hand signals.

MR. SANTOS: I would join in that application as well. In addition to that, again, the indictment, the conspiracy here according to the indictment starts March 30 and ends April 1. We don't know when the photograph was taken, we don't know what year or date it was, so we don't know what context it was taken in. I join in my co-counsel's application but also in addition to that I make that objection.

MR. STRACHAN: On behalf of Mr. Cato I join that application. Again there is no date on this, Bo Bannister is not one of the defendants here. I don't see how this ties in certainly with the case on trial here, and I think it would be highly prejudicial, and the fact that there is no date, and it's unadulterated hearsay, the statements in there, I would ask you to preclude them from introducing them.

MR. MALTZ: Your Honor, I also join the application made by co-counsel, denying right to confrontation Crawford and Davis versus Alaska. He is not a defendant here on trial, inability to cross examine him regarding his intent to put the postings on Facebook, it's highly prejudicial to my client's right to fair trial.

MR. MUCCINI: Mr. Campbell joins in the application of all co-counsel.

THE COURT: Reserved. Eleven?

MR. REGAN: Eleven is similar to a photograph earlier showing individuals known, one is Dionne Milling, one is David Hightower and one is Devon Depeazer again putting Young Boss or YB hand signs in regards to the camera, and these photos were taken around the same time or uploaded June 11, 2011, and it goes to the defendant Milling especially his membership in this gang.

MR. SANTOS: Remote from 2011, same objection. It has no probative value, Judge. It's four young men making gestures towards a camera, that's it, and they are going to try to make it more sinister than what it actually is so I ask you to keep it up.

MR. MALTZ: On behalf of Mr. Lucas, I object. His picture is not on this page, and it's highly prejudicial to him. Mr. Milling, if his picture is on this page, I would not have the opportunity to cross examine him, and it's highly prejudicial.

MS. POVMAN: I would join in the arguments by co-counsel and object as hearsay under Crawford.

MR. STRACHAN: I join the application as to Mr. Cato.

MR. MUCCINI: Justin Campbell joins in co-counsel's application. He is not in this picture. It's highly prejudicial.

MR. STRACHAN: Mr. Cato is not in the photo.

THE COURT: The photo is in, and I will give a limited charge as to Mr. Milling.

MR. REGAN: The next photograph on page twelve was posted by Trigger Oc, Lynnard Biggs – I don't think there is a date on it when it was actually posted. It's something I could get and add to the exhibit. I think it was just inadvertently left off. Judge, this is a posting on the Internet of a collage of photographs superimposed on it YBZ, Bossin' or straight tossin' YBosses Up. The significance of this photo, Judge, it ties these Young Bosses, the gang Young Bosses, Young Bosses up is a statement made by members of the gang in greeting and conversing with each other, and the purpose of this exhibit and this photograph is to show the usage of social media about these gangs, by these individuals.

THE COURT: Many of the other pictures shows the usage of social media.

MR. REGAN: Okay. I think this was specifically made for the purpose of posting it on Facebook an image like this, almost like an internet meme put together to specifically post on social media not, just photographs of themselves. This is something put up publicly to almost advertise the Young Bosses Gang, and I think it's relevant for that reason to show their usage and what they use social media for.

L.A.-,

THE COURT: Out. 13?

MR. REGAN: Judge, item 13 was posted on Trigger Oc's Facebook page. This was on February 19 of 2013. It's a photograph of four individuals. The individual on the left in the red sweatshirt will be identified I believe

as Dionne Milling. The individual on the right is Trigger Oc, Lynnard Biggs. Those are the two individuals who are relevant for the matter of this case. The title, all my niggas mobbin Wood City K. You see Mr. Milling on the left. He is flashing a Mobbed Out Bosses hand sign with his two fingers together and the first finger and little finger out stretched down. Other individuals in the photograph, the individual in the middle with the hand up is flashing a Wood City sign and the individual behind him is pointing what appears to be a finger gun at that Wood City signal, and the title of the photo also supports that in which he says Wood City K or Wood City Killer. That will be explained by Sergeant Bracero and it's relevant to show not only Dionne Milling's membership in this gang but the animosity that existed even going back to 13 between the S.N.O.W. Gang, Mobbed Out Bosses and the Wood City Gang to which Leighton Friday and Nicholas Morris were members of.

MR. SANTOS: Same objection, Judge. You cannot tell who is my client. I'm not sure who is going to be identify him. The individual on the left is my client. It's not from my client's website or web page so we don't know if that's my client.

MS. POVMAN: I object as hearsay denied the right to confrontation. The person who posted this or wrote it is not available to be questioned.

MR. STRACHAN: For Mr. Cato, I join the application, and he is not in the photo.

MR. MALTZ: I join on behalf of Mr. Lucas.

MR. MUCCINI: I join in the application of co-counsel on behalf of Mr. Campbell.

THE COURT: Is this detective going to testify that it is Milling on the left?

MR. REGAN: Yes, he is.

THE COURT: If that foundation is laid, it's in. 14?

MR. REGAN: Judge, this is a series of four photographs in People's 14 are a series of photographs that are posted by an individual name— his Facebook name is Say So Smooth, S-M-O-O-T-H, the real name is Willie Yelder, Y-E-L-D-E-R. He's a high ranking member of the S.N.O.W. Gang. These photographs are being offered for a specific purpose to show the way the gang, the S.N.O.W. Gang operates. It's being offered to show the practices of the S.N.O.W. Gang. In these photographs what's going on is individuals like Yelder and other individuals who are members of the S.N.O.W. Gang go out and take photographs in rival gang territory. There will be testimony that Woodhull Avenue and 195 Street is in the heart of Wood City territory and the point of this is to post is publicly and show that members of the rival gang that they were able to infiltrate their geographic area. It goes to the rivalry between S.N.O.W. Gang and Wood City. It was posted on or about December 15 of 2012, and these locations will be identified by the witness as locations that are in the middle of Wood City Gang territory and are posted by members of S.N.O.W. Gang in order to show those rivals that they can operate with impunity in their rival locations.

MS. POVMAN: I object again on the basis of Crawford, but further, Judge, as far as the DA's offer of proof, none of the locations depicted in these photographs have anything to do with this case. None of the locations or persons depicted in those photographs

have anything to do with any of the locations or persons involved in this case.

MR. SANTOS: I join that application.

MR. STRACHAN: I join that application.

MR. NALTZ: I also join that application.

MR. MUCCINI: I join as well for Mr. Campbell in the application of co-counsel.

THE COURT: I will reserve decision on this.

MR. REGAN: The next photograph on 15 is a similar photograph as the one posted earlier. The individual in the center of the photograph is Dionne Milling, he is miming a trigger pull towards the camera. Other individuals in the photograph are flashing M.O.B., Mobbed Out Bosses signs;

THE COURT: Say that again.

MR. REGAN: The individual in the center of the photograph is Dionne Milling.

THE COURT: Is that the yellow arrow or the red arrow?

MR. REGAN: It is the yellow arrow. The red arrow goes to the hand sign being made by the person in the back, again a Wood City hand sign with someone pointing a finger gun at it, again Wood City killer hand

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sign. The caption is mobbin' at the bottom the individual with the green arrow is Devon Depeazer known as Crakz also flashing Mobbed Out Bosses hand sign. The hand signs are significant in that it's Mobbed Out Bosses and anti Wood City hand signs being flashed to the camera with Mr. Fabdon front and center of the photograph.

MR. MALTZ: Objection as to Mr. Lucas. Also I

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that occur inside of locations, those are things banded off to 2 the Narcotics Division and they handle the other larger scale. We do the smaller scale.

Q. So these assignments in the 113, Patrol Sergeant and then assigned to the 113 SNEU as the Sergeant, were you exposed to gang or gang activity?

A. Yes.

Both, as a Patrol Sergeant, very related. So when I initially got there, I was involved in a pick up of a gang shooting that occurred between a Blood and a Crip member at a school at which point the one gang member shot at me as well to which I returned fire. Eventually caught the individual. And that was while assigned to patrol in a uniformed capacity in a marked police car wearing my uniform. Then immediately following that, shortly thereafter when I went to SNEU, we dealt with many gang individuals.

Q. Those gangs were located inside the command?

A. Located within the 113, correct.

Q. Did there come a time where you were transferred from SNEU to another unit?

A. Yes.

In the fall of 2012 the New York City Police Department created a new unit that was going to,

being formed. They strategically selected eight locations or eight precincts within the police department that had a large crew problem.

Q. Can you explain what a crew is?

A. Yes.

Well, traditionally gangs or crews, NYPD was combating gang activity on a larger scale. The traditional gangs most people know, Bloods and Crips, MS 13 or Latin Kings. But we keep, the Department in its wisdom figured out a lot of violence going on was actually happening with these subsets or crews that are more geographically driven where they don't have the traditional rank structure and the traditional internal workings of a regular gang. And they found them just to be, you know, usually young men and/or women who were aligned primarily by geographical locations. And if you lived on a particular block, that might become your block. Your block then, you know, you guys come up with some kind of name and you guys become some kind of crew. So a lot of the robberies and a lot of the violence that was occurring at that time was based upon these

Q. What period of time was this?

A. What period of time did I become S.E.T. Sergeant?

Q. Yes.

A. That was in November of 2012.

Q. And when you became – what does the S.E.T. term stand for? What does that mean? A. S.E.T. stands for Strategic Enforcement Team. That was the name that was, came up from Commissioner Ray Kelly when he formed the team, What it necessarily means we're going to, for targeted individuals who have had a history of violence, specific crews that have had an ongoing violence within a particular precinct and we're combating them to attempt to bring down the violence and make it safer in those local precincts that were selected.

Q. What precinct was your S.E.T. team assigned to?

A. The 113 Precinct.

Q. So the same precinct you had worked?

A. The same precinct, correct.

Q. Was there a specific target for your S.E.T. team?

A. Yes. The S.N.O.W. Gang.

Q. How many members were in your team?

A. The team consisted of two sergeants and ten police officers.

Q. So you were one of the sergeants?

A. I was one of the sergeants, correct.

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Q. You said there were several S.E.T. teams citywide, correct?

A. That is correct.

Q. How many?

A. Eight.

Q. Were there any others in Queens?

A. No other in Queens.

Q. When you were given this assignment, did you receive a specific mission or objective?

A.. To stop the violence that was going on for the last calendar year.

Q. What steps did you take --

MR. REGAN; Withdrawn.

Q. What were your duties and responsibilities in that assignment?

What did you do on a day-to-day basis?

A. Well, as I mentioned, the whole S.E.T. model had just been born. We, our instructions were somewhat loose based.

MR. MALTZ: Objection. I object to his instructions, given information from another source what to do.

THE COURT: Sustained.

MR. REGAN: This is background but I'll move on.

THE COURT: All right. I'll allow it. Go ahead.

Q. What's your mission?

MR. REGAN: Withdrawn.

Q. What was your day-to-day, what do you do on a day-to-day basis?

A. On a day-to-day basis our job was to travel the precinct looking for and/or observing any of the members of the gangs that we were aware of at that time through gathering the individuals or locating them, finding out whom they're affiliated with and who they hang out with, identifying them by their names or their nicknames. We also during that time used the social media avenue to track them as well to find out names that they called themselves or what their other associates would call themselves. We also were able to identify allegiances in regards to whom, to whom they were friendly with and to whom they were unfriendly with. Also were able to identify for other investigations the nature of certain violence that was occurring, getting more of the back story to assist the police department and the District Attorney's office in getting an understanding in terms of the mind set of what's going on and why.

Q. So members of your team, I just want to ask you, did you have a detective, you had police officers work with you, correct?

A. Yes.

Q. Was one of them a person named Adam Georg?

A. Yes.

Q. When did he work for you?

A. He worked at inception of the S.E.T. Team. He was also a member of my SNEU team prior to that. The entire SNEU unit was absorbed and were given a new mission. Then we became a S.E.T. team so he was a member of my team at this particular time. And he lasted on my team for about nine months before he graduated and went to the Gang Unit.

Q. So he works in the Gang Unit now?

A. He currently works in a Gang Unit, correct, yes.

Q. Did you ever receive any formal classroom training on gangs and gang investigations?

A. Classroom, no. We attended many presentations and conferences in relationship to gangs. But there was no, no, there was no specific schooling that could be done for what we were doing.

Q. Was any available?

A. None was available, no. This was a brand new model that was enacted. A pilot program, so to speak. And we were, if there were to be one now, most likely be proctored by myself and my team.

MR. STRACHAN: Objection.

MR. MALTZ: Objection.

MS. POVMAN: Objection.

MR. MUCCINI: Objection.

MR. SANTOS: Objection.

THE COURT: Sustained as to what probably would be.

Q. These gang conferences you attended, what kind of information did you take from them?

A. During the conferences you get to have an understanding of the level of violence that they were, many of these gangs --

MR. MALTZ: Objection. He's testifying from what other people told him.

MR. REGAN: It's qualifications as an expert.

THE COURT: Rephrase the question.

Q. What kind of information did you take from these gang conferences? What did you learn there?

A. I learned the violence associated with many of the gangs, the rank structures that they used. I also learned to, the smaller crews, how they were now acting. I also learned the 10 different phrases that are associated with different gangs. And getting a conceptual understanding of something as simple as what's called being a 10 90, double-jacketing which is a term used whereas in the traditional --

MR. SANTOS: Objection.

THE COURT: Overruled.

A. (Cont'g) In the traditional model of gangs as law enforcement understood everybody was either a Blood or a Crip and you only had one thing; you were loyal to that particular, that particular organization. But now these, on these crew levels they had an understanding whereas if you lived on a block and you were a Crip and your neighbor was a Blood, you guys can also be a part of a local crew that's, that can consist of several different gangs within this one crew and you could be affiliated to both.

Q. From the time you were assigned to the S.E.T. team what kind of activities did you undertake to learn about the S.N.O.W. Gang when you were assigned to that unit?

A. Some of the activities we would do, as I mentioned earlier, the observations. We would do covert operations where we would observe them from a distance, viewing them with the members that they were with, noticing their handshakes and their hand

signs. We would take the time to realize, you know, which people were in charge of that particular group of individuals that were together. We also, as I mentioned, followed them on the social media, following their Facebook as well. We also interviewed them upon completion of their arrests. We would debrief the individuals and we would gather intelligence that way where we would find out, we become aware of their ranking structure, names for them, crimes they may have committed, the type of crimes that they are associated with, and the rank structure of those people.

Q. Were many of them willing to talk to you?

A. Yes.

Q. Approximately how many members of those gangs have you interviewed?

A. Possibly about 50 members.

Q. How many specific interviews have you conducted on members of the S.N.O.W. Gang?

A. Hundreds.

Q. You said you monitor social media, correct?

A. Yes.

Q. How did you do that especially, specifically on Face book?

A. Well, once we knew who they were by sight from seeing them on the street, we then, some of them, some of the individuals used their government name, their born name as what they called themselves on Facebook. So we would follow those specific names when looking through those pictures. We would also find out some of the, when we knew some of their nicknames of the other individuals, find out those, it's either nicknames that they had also as their Facebook names, so we were then able to make that positive identification that is in fact that same individual. We would then look through pictures as well as observe their conversations to each other, their statuses that they would put. And then if there was any kind of probable cause for any kind of evidence in regards to potential crimes that they did commit or were intending to commit, we would then request a search warrant for their, for their Facebook account as well as their in-box in their private messages. Because many times the public postings would then, they would start the beginning part of describing a crime to which then they would say, well, take, they say, take it to my in-box. Then they go through a private or direct message in their in-boxes explaining the rest of the

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Q. Are you familiar with a group called the Young Bosses?

A. Yes, I am.

Q. Did you become familiar with them in your assignment with the S.E.T. team?

A. Yes.

Q. How about Loyalty Over Everything or L.O.E.?

A. Yes.

Q. How about Mobbed Out Bosses?

A. Yes.

Q. Did you come to learn specialized language that individuals in these gangs or sets used to communicate with each other?

A. Yes. They had a very unique language that we had to become extremely fluent in especially if they wanted to be able to ascertain and understand the, their Facebook postings as well as their search warrants that we got at later times as well extremely helpful during the debriefings of the individuals. We could understand, you know, better communicate with them on a peer level, if you will. So that we could, by speaking the same lingo as them, there would be no misunderstandings when information was exchanged

or names were given or they were giving descriptions of the actions of themselves or others.

Q. Did you become familiar with gangs or groups that were rivals of the S.N.O.W. Gang and those other gangs that you mentioned?

A. Yes.

Q. And who, what kind of gangs were they? What were their names?

A. Several of the gangs who were rivals, Wood City, YGs, 8--.

Q. What does YGs stand for?

A. Young Guns. They were the direct rivals of the YB5. A rivalry that gave birth on Bikers Island in 2007 or 8.

Q. What other gangs, you said Wood City and YG?

A. Wood City, YG, 821 and 40 Projects. They both originate out of 40 Projects in Jamaica. F Gang. Those are their primary rivals.

Q. And you stated earlier that you had to become familiar with their language in order to better conduct your investigation, correct?

A. Correct.

Q. Did you ever have occasion to determine if you were correctly interpreting the language used by members of the gang?

MS. POVMAN: Objection.

MR. STRACHAN: Objection.

MR. SANTOS: Objection.

MR. MUCCINI: Objection.

MR. MALTZ: Objection.

THE COURT: Overruled.

A. Yes.

Q. How did you become aware that you were, whatever, if you were correct? How did you become aware that you were correct?

A. Through the debriefings, through the conversation with the individuals themselves. As I stated earlier, you know, by getting the base of the knowledge about, you know, how they speak and the words they use, we were able to use them within a conversation and use them contextually and getting a complete understanding either, you know, saying straight just yes or ah-huh, they understood exactly what we were saying. Sometimes if there was something--

MS. POVMAN: Objection to what they understood.

THE COURT: Without going to intent you may continue.

A. Sometimes if I wasn't completely positive on a thing, I just couldn't grasp it, I would just ask what does that mean? To which they would be fine, you know, offering up what it does mean.

MR. STRACHAN: Objection.

MS. POVMAN: Objection.

MR. SANTOS: Objection.

MR. MUCCINI: Objection.

MR. MALTZ: Objection.

THE COURT: Overruled.

A. (Cont'g) I would also do this on the other side with the rival gang members. Violence was both ways. So when we would go after any or arrest any person who we know or another person was arrested by our precinct or other precincts we would go and interview and debrief the rival gang and we would ask them, you know, same questions and use the context of the conversation to get an understanding.

Q. How long between the time you were assigned to the S.E.T. team and time you were promoted were you conducting these kind of activities?

A. Every day.

MR. REGAN: Judge, at this point I'm going to offer Lieutenant Bracero as an expert in the history, hierarchy, practices and language of the S.N.O.W. Gang and related gangs, Young Bosses, Mobbed Out Bosses and Loyalty Over Everything.

THE COURT: History, hierarchy. ...?

MR. REGAN: Practices and language of those gangs and rival gangs that he talked about.

THE COURT: Any objection?

MR. STRACHAN: Objection.

MS. POVMAN: Objection.

MR. SANTOS: Objection.

MR. MUCCINI: Objection.

MR. MALTZ: Objection.

THE COURT: Okay. Mr. Maltz?

MR. MALTZ: May I ask couple of questions?

THE COURT: Sure.

Q. Good afternoon.

A. Good afternoon, sir.

Q. You indicated that you were working with this group of individuals for a number of years, correct?

A. I'm sorry?

Q. You've been working with people in your investigation of these groups for a number of years, two years, you said? One year? Two years?

A. The S.N.O.W. Gang, I was investigating the S.N.O.W. Gang for, yeah, approximately two years.

Q. And you said that you testified that during that period of time you would speak to other people who they claimed to you that they're members of the S.N.O.W. Gang, right?

A. Correct.

Q. Did you ever utilize that to infiltrate the organization? Become agents of your team?

A. I'm sorry? I can't...

Q. Did you ever become agents of your team?

THE COURT; This has nothing to do with this. This is beyond the scope of your questioning him as an expert.

Q. Did you ever have paid informants?

MR. REGAN: Objection.

THE COURT: Again, beyond the scope. That's a cross examination. That's not voir dire.

MR. MALTZ: Okay. I have nothing further.

THE COURT: Anyone else?

MS. POVMAN: Yes.

VOIR DIRE

BY MS. POVMAN:

Q. Good afternoon, Lieutenant.

A. Good afternoon.

Q. I have to apologize. I have candy in my mouth. Lieutenant, you told us that in November of 2012 you were assigned to the S.E.T. or SET Team?

A. Yes, ma'am.

Q. Okay. And if I understand your testimony correctly, that S.E.T. team was assigned to investigate gangs in Queens County?

A. Crews primarily within the confines of the Precinct.

Q. Okay. And you told us that you never went to school for that, right?

There is no school to go for that, right?

A. Correct.

Q. So that your expertise is based on daily surveillance of persons in the 113 Precinct?

4 A. Not solely, no.

Q. Okay. But partially it's based on your surveillance, 6 right, of individuals in the 113 Precinct?

A. That is a part of it.

Q. And you told us also that you used social media?

A. Yes.

Q. So it would be fair to say that you read Facebook accounts?

A. Yes.

Q. You received the same sort of, you would put S.N.O.W. Gang in the computer and see what came up?

A. No.

Q. Okay. But so it was only Facebook accounts that you read? You never read any other articles about the S.N.O.W. Gang?

A. No.

Q. Then you told us that you, in addition to your surveillances, that you would interview S.N.O.W. Gang members after their arrests?

A. Yes.

Q. And you said that you have done approximately 50 arrests of S.N.O.W. Gang members?

A. Fifty individuals.

Q. Fifty individuals. And when you made these interviews after their arrests, do you prepare reports in connection with those interviews?

A. No. Unless there is something that is material to a specific, a specific case.

Q. Well, Officer, you were developing an expertise in the S.N.O.W. Gang, right?

A. Yes.

Q. And you told us on direct examination that to develop this you would interview S.N.O.W. Gang members after arrests?

A. Yes, very similar to --

Q. Excuse me?

THE COURT: Let him finish.

A. It's similar to if you are looking to learn another language, you may go to a foreign country and submerge yourself in the culture and language with them to better learn it.

Q. But what my question is you're telling this jury that your immersing in the S.N.O.W. Gang language is based on memory?

A. As any language is based on memory.

Q. So are you telling us that you never prepared any documents in connection with any of your debriefings?

A. Oh, yes. Yes, I have.

MR. REGAN: Objection, Judge.

This is beyond the scope of voir dire.

MS. POVMAN: Judge, it's the basis of his expertise.

THE COURT: Move on.

MS. POVMAN: Excuse me?

THE COURT: Move on.

Q. You told us that you, so did you prepare documents in connection with your debriefings?

A. Sometimes.

Q. Sometimes. And how would you determine which, what was important and what wasn't important?

A. Items that were material or provided evidence towards a case a document would be prepared upon. Information in terms of the wording, there is no report for that.

Q. There is no, you never prepared any reports in connection with that?

A. I wasn't making a dictionary, no.

Q. Okay. And you told us also that you, your focus was on the S.N.O.W. Gang during this, since November 2012, but you also investigated other gangs as well?

A. The investigation was on the S.N.O.W. Gang. We monitored the other gangs then as well as conducted enforcement on the other gangs as well based upon if they had a string of violence that would potentially, you know, be against any S.N.O.W. Gang members.

Q. I get that. I understand that part.

A. Good.

Q. Did you read their Facebook pages also?

A. Yes.

Q. Okay. Now, Lieutenant, would it be fair to say that you've never been accepted as an expert in any Supreme Court case?

A. That would be accurate.

Q. So that this is the first time you're being tendered as an expert witness?

A. This is the first time a S.N.O.W. Gang has been on trial.

Q. Oh, really? And this is based on your expertise?

A. Yes.

Q. So it's your testimony as an expert, proposed expert, that there have not been any S.N.O.W. Gang trials in Queens County?

A. In terms of the Conspiracy 1 charge that's brought forward today, this is the first time this model has been used, yes.

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Q. So this is the first time this type of case has been used?

A. Has been tried in Queens.

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tag Mob.

Hash tag is the number sign for people who don't know what that is. It's the number sign that's put in front of a word or a statement to explain what they're trying to say or the emotion that they're putting out there or what they're claiming. So they would put the hash tag W C K which is Wood City Killer. Hash tag 900K. 900 was the number that the Wood City guys took, associated with or they borrowed from the Chicago rappers who used the 300. And that would be their clique or their gang. There is some famous rappers from Chicago. They throw out the 300. These guys in Wood City, they would be 900. They would say, 900 a K at the end. They would also indicate W with their hands as well. Going back to words -- pardon me. They would also describe something or someone as a dub. Or a plate. A dub means like they're not cool.

MR. MALTZ: Judge, I object. This is beyond the question asked by the prosecutor.

THE COURT: Sustained.

Q. What does dub mean?

A. Dub is something that is no good or not cool.

Q. How about a plate?

A. A plate is someone who, a plate is indicative of food. And the food means, let's say someone who is an enemy of theirs, if they ever saw this particular person, the

rest of the wolves of their team, the team members that are within the gang, they are to be consumed or eaten so by eating them would be saying to assault them or shoot them or rob them. That's a guy who is a plate. So he's, you know, he's a loser. He's our enemy. He's a plate. Or he could be an OP. So OP, opposition. Initially this goes with the training. We always thought, we see things indicating OP, that OP was a cop. Seems to make sense. Came to find out through those debriefings the OP is actually the opposition. So my enemy is an OP. Could be a cop. But an OP most often --

MR. MALTZ: Judge, objection.

A. – is the opposition.

MR. MALTZ: He's making assumptions.

THE COURT: Overruled.

Q. Did they have a name for the police?

A. Yeah. Pigs. Boys. All those ones that everyone else 16 has heard.

Q. So they're called boys?

A. Yeah, the boys. The pigs.

Q. Were you familiar with any photographic taunting that would go on?

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A. Yeah.

In terms of the photographic wise, they would be done several different manners. One of them would be with their hand gestures. So, as I indicated before when I showed the Mob or the

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Q. The purple arrow?

A. Is David Hightower. Haze.

Q. What is Dane'e Cato doing with his hands?

A. Dane'e Cato is making a trigger pull with his hands.

Q. And what date was that posted?

A. This was on May 14, 2013.

Q. I'm going to ask you, are you familiar with the term grip?

A. Yes.

Q. What does the word grip mean?

A. A grip is a gun.

Q. How did you determine that is what that means to these individuals?

A. Through their, through speaking to them, through their Facebook posts where they post the word grip included with both picture and just word form.

MR. REGAN: Judge, can I have a brief side bar?

THE COURT: Sure.

(Whereupon, at this time, the following side bar conference was held:)

MR. REGAN: Judge, I was going to come up here, and I know that the picture of the firearms flashed for a second before I blacked out the screen, I believe that it's admissible at this point. They are not conceding that grip means gun. I need to prove that. They're not conceding

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what that means?

A Yes. A stacey is a gun.

Q Your termination of that word, what is that based on?

A It's based on my knowledge derived from the interviews or debriefings of members of the S.N.O.W. Gang as well as through conversation with individuals in the neighborhood, including S.N.O.W. Gang members as well as through social media --

MR. MALTZ: Objection.

MR. SANTOS: Objection.

THE COURT: Overruled.

A – as well as social media postings and other private or public social media. As well as a guide book or a -- papers with regards to the YB gang, where a list of definitions of terms as well as greetings, challenges and responses that are –

MR. MALTZ: Objection to this line of testimony, your Honor. It's hearsay and --

THE COURT: Overruled.

A. In those – in all of those instances, they refer to Stacey as a firearm.

Q. You also told us what the word grip refers to. Do you recall that?

A. Yes, I do.

* * *

Lt. Bracero - People - Direct

Q Just a few more questions. Where were you assigned on March 30th of 2014?

A To the 19th Precinct.

Q You were no longer with the S.E.T. team; is that correct?

A That is correct.

Q Did you learn that day about an incident that occurred involving the S.N.O.W. Gang?

A Yes, I did.

MS. POVMAN: Objection. Hearsay.

11 MR. SANTOS: Objection.

MR. STRACHAN: Objection.

THE COURT: Overruled as to whether on not he learned.

Q Did you learn about an incident that occurred that

A Yes, I did.

Q Who did that incident involve?

MS. POVMAN: Objection.

MR. STRACHAN: Objection.

MS. POVMAN: Calls for hearsay.

THE COURT: Sustained.

Q As an expert, in your expert opinion into the history, hierarchy --

MR. REGAN: One moment, please, your Honor.
(Whereupon, there is a brief pause in the proceedings.)

Q You were qualified last week as an expert in the practices of S.N.O.W. Gang, do you recall that?

A Yes.

Q If you had still been assigned to the S.E.T. team, hypothetically --

MR. MALTZ: Objection.

MR. STRACHAN: Objection., your Honor.

THE COURT: Overruled. It's a hypothetical.

Q If hypothetically a member of the S.N.O.W. Gang had been shot and killed, what kind of enforcement activities would you undertake after that?

MS. POVMAN: Objection.

MR. STRACHAN: Objection. Improper foundation.

THE COURT: Overruled.

A Enforcement activity.

Q Or investigation activity.

A In terms of the investigation activity, we would have in regards to social media, we would have immediately started monitoring the social media accounts.

MS. POVMAN: I'm going to object to the whole line to what he would have done had he been assigned to investigate a case. This is pure speculation.

THE COURT: Overruled.

A We would have monitored the social media accounts of not only the members of the S.N.O.W. Gang, as well as members of their most recent rival gangs, specifically in regards to the locations of where the incident may or may not have occurred. We would have requisitioned Face book.

MR. MALTZ: Objection to what we would have done. What he would have done. He's referring to what other people would have done.

THE COURT: It's a hypothetical. It's based on a hypothetical, the response. Overruled.

A The S.E.T. team then reaches out to Facebook and gets the records for all activity in regards to that to be held, to be saved so that further deleting could not occur from the accounts in question. We would have gone out into the streets and attempted to locate those specific individuals that are known S.N.O.W. Gang members and gone to the area of their primary hangouts as well as their residents.

Q Let me ask you, you said you would conduct this if a member of S.N.O.W. Gang was shot and killed, you would conduct this kind of investigation into the S.N.O.W. Gang itself?

A Correct.

Q What would the purpose of that be? Why would do you that?

MS. POVMAN: Objection.

MR. MALTZ: Objection.

MR. SANTOS: Objection.

MR. STRACHAN: Objection.

THE COURT: Rephrase your question.

Q You're saying you would investigate the same gang involving the member who was killed, correct?

A Correct.

Q Why would that be a focus of your investigation as a gang expert?

A For potential retaliation.

MR. MALTZ: Objection, your Honor.

MR. STRACHAN: Objection.

THE COURT: Overruled.

Q You testified in regards to your knowledge of the practices of S.N.O.W. Gang.

A Yes.

Q With regard to the methods S.N.O.W. Gang utilizes when carrying out certain acts or crimes, specifically,

do they have a standard operating procedure when it comes to transporting firearms or using firearms?

A Yes.

Q What is that?

A Well, there are several different methods. The

* * *

Lt. Bracero - People - Direct

(Whereupon, the sworn jurors exit the courtroom.)

THE COURT: All right. Lieutenant, you may step do'vn. Please remain outside until we are ready to resume.

THE WITNESS: Thank you.

(Witness exits the courtroom.)

THE COURT: Okay. As to photo number 1.

MR. REGAN: Judge, I'm going to put the photo up on the screen so we can all see it. Okay. With regard to photo number 1, Judge, this is a photograph of Leighton Friday on the right there. You can see him making a Young Boss hand signal with his right hand and pointing his fingers as a gun towards the Young Boss signal with his left hand. Person who is with him, to his right, is making a Young Gunner's or Y.G. 's hand signal with both of his hands. This was posted on December 24th of 2013. This is relevant to show the

animosity between Leighton Friday and the S.N.O.W. Gang and Young Bosses. It's relevant to show or it would be argued, obviously, that it goes to the nature of the rivalry and therefore the motive for the defendants after their friend and co-gang member was killed, would suspect that Leighton Friday either had something to do with it or would be interested in shooting and killing Leighton Friday regardless of whether or not he had anything to do with it because of the animosity between the two of them. He's a well-known enemy of the S.N.O.W. Gang, Young Bosses, L.O.E., M.O.B. and this gives the jury an insight into the fact that he was not shy about putting that out there on Facebook publicly.

MS. POVMAN: Judge, after hearing the offer of proof, I renew my objection. This is hearsay, depriving the right to confrontation. How does a posting by anony-party, a non co-defendant on December 14th of 2013, become relevant to testimony about the trial that concerns itself with March 30th?

MR. REGAN: Judge, I don't want to interrupt further Counsel, I just want to say with regard to Crawford, Crawford involves testimonial statements made out-of-court, which are testimonial in nature, postings on Facebook, a photograph of someone making signs with their hands are not testimonial in nature.

MS. POVMAN: It's still hearsay, an out-of-court statement by a party that is not here to be cross-examined. It is pure hearsay.

MR. STRACHAN: I would join in that. I would join in Miss Povman's objections on behalf of Mr. Cato.

MR. MALTZ: I also don't like the fact that on

Lt. Bracero-People-Cross (Maltz)

CROSS EXAMINATION

BY MR. MALTZ:

Q All right. Lieutenant, my name is Judah Maltz for Mr. Trevor Lucas. I'm going to ask you a few questions. When we left here on Thursday afternoon, the Judge told you not to talk to the District Attorney --

MR. REGAN: Objection. He didn't. Objection.

Q During that period of time when you left the courtroom --

THE COURT: Sustained and stricken.

Q Did you ever speak to Mr. Regan or Miss Theodorou about your testimony after you left the courtroom on Thursday?

A Thursday, no.

Q What about during the weekend, any phone calls, communications with the members of the team?

A This weekend, no.

Q Okay. Now, you've been involved in this case— well your investigation of this organization you claim to be S.N.O.W. Gang, now you said the year 2012, correct?

A Yes.

Q And you worked on it on a S.E.T. team for a period of time up until the period of March 2014 when you left to go to the 19th Precinct, correct?

A Yes.

Q Now, during that period of time you were involved in investigations, right?

A Yes.

Q And part of your investigation included talking to people. You indicated that you spoke to about 100 people, 6 members of this organization, right?

A No.

Q 50 people?

A Yes.

Q All right. These people you said were criminals, people who got arrested, charged with crimes?

A Charged with crimes.

Q And when they came – did they come to the office to speak to you voluntarily or was there some inducement for them to talk to you?

A No inducement. There are several members who didn't want to speak at all.

Q Okay. They had pending charges against them, correct?

A Correct.

Q Did you offer any of these people who had these charges against them any rewards for their cooperation?

A Yes.

Q Okay. Did that include like reducing a main charge or top charge to a lower charge?

Lt. Bracero - People - Cross (Maltz)

A Yes.

Q Okay. Did it include maybe offering them from a significant period of time in jail to a lesser period of time in jail?

A I don't have the authorization to make that happen. I had indicated to some people that we would speak to the District Attorney's office in regards to potentially reducing sentences.

Q During this conference you had with these individuals was the District Attorney present during these interviews?

A No.

Q Were there any other officers present?

A Yes.

Q Would Officer Georg be present during that period of time?

A Yes. Until his departure from the gang unit, yes:

Q Pardon me?

A Until he left the 113 Precinct and then became assigned to the Gang Unit, we would have been doing debriefing together.

Q Okay. So were any of these people who came to your office you spoke to charged with conspiracy first degree?

A None of them are the defendant present here.

Q I'm not talking about the defendants. I'm not talking about the gentlemen in the courtroom. I'm talking about the 50 people you spoke to in the past, were any of them charged with a class A felony, A-1 felony --

MR. REGAN: Objection to the form.

Q - with potential life imprisonment?

THE COURT: Sustained to the form.

Q Anyone charged with murder?

A Yes.

Q Okay. They cooperated with you, correct?

A Those individuals, no.

Q Those people were charged with very serious crimes.

A I'm a little confused. I'm sorry.

Q You said that people did cooperate with you and did you tell them you would look to the DA's office to -- for them to get a lighter sentence, right?

A That was one of the tactics used in the debriefings, yes.

Q Did you put that in writing?

A No. Once again, I go back to -- I don't have the authority to do such items, only thing I could ever do was to present them to the District Attorney's office.

Q You did encourage them to cooperate, didn't you? You told them that it was to their best interest if they gave information to you, is that true?

MR. REGAN: Objection.

A That is always true. It is always in the guest's best interest to cooperate.

MR. REGAN: Objection.

Q Any of these interviews you had with these individuals, were they videotaped or audio taped?

A No.

Q So you had information about these individuals, they had charges pending against them, and you gave them inducement that if they cooperated with you that the charges against them would be lighted, correct?

A When the individuals who were brought in, who were debriefed, they were typically in on lesser charges than the charges presently. Speaking of individuals who might be in for a misdemeanor, if they had a serious felony that was pending against them, their cooperation would not be useful due to the fact that it would be hard to sell this particular individual to the District Attorney's office as well as to a jury.

Q So you're telling us that you don't used --

MR. SANTOS: Objection, Judge. Move to strike.

MR. REGAN: It was responsive to the question.

THE COURT: Sustained as to the word jury.

Q You're telling us that you only asked people to cooperate with you that were charged with misdemeanors and not felonies?

A Depending upon which particular case we were looking for assistance for. The time that I was in the -- working. for the S.E.T. team, the particular charges that are here in question today, this particular conspiracy had not yet occurred, so this particular case was not in question during that time because those crimes had not been committed.

Q Well, were any of these individuals who you asked them to cooperate, were they charged with robberies, assaults?

A Some were.

Q Okay. Some robberies, some felonies, some assault charges are felonies as well?

A Some, yes.

Q Okay. When these individuals spoke were they represented by Counsel during the interviews?

A If they request Counsel, the interview would then be stopped and Counsel would be requested for them.

Q I'm asking you at the time they were at the precinct and you met up with them, were they with attorneys present at the time?

A No. The time for meeting for their attorneys was not at that particular time until they request it.

Q At that time they weren't even arraigned on the charges against them, right?

A That's correct. They would have been still in the confines of the precinct.

Q Now, the information they gave to you you believed to be reliable?

A Some, yes. Some completely false.

Q Did you make – the people who you found to be reliable, did you make them as your agents?

MR. REGAN: Objection.

MR. MALTZ: This is cross-examination, your Honor.

THE COURT: Rephrase.

Q Did any of them become confidential informants for you?

A Oh, yes.

Q Did – at any time were they paid to give you information as a result of being confidential informants?

A No.

Q At any time did you ask them to infiltrate the organization so they could give you information as they were working off their case?

A They were – if I remember it was inside, they were inside.

Q: Were any of these individuals wired?

A No.

Q So you're telling us that some people were in the organization and they were agents, correct?

A I'm having difficulties when you use the word agents. I'm not understanding your word agents.

Q Well, were they signed up? Did they get a particular number as informants? When they are assigned as an agents they become registered, right?

A Yes.

Q Did any of them become registered?

A Yes.

Q All right. Did any of them testify at a trial or a proceeding?

A I don't know.

Q All right. These individuals you told us gave information?

A Yes.

Q They gave you information regarding signs, hand signs and so forth, the meaning of words and so forth?

A Yes.

Q All right. And this is during the period of 2012, 2013?

A Yes. '12, '13, '14, correct.

Q These people still remain in the organization?

A I don't know.

Q Now, there came a time you left – by the way, from the inception of this case, we are talking about this indictment came down sometime in September of 2014, are you aware of that?

A Yes.

Q All right. By that time you were no longer involved with the 13th Precinct, right?

A That's correct.

Q By that time you were in the 19th Precinct?

A Yes.

Q You left early part March of 2014, correct?

A Yes.

Q So you are not involved with this investigation, would that be safe to say?

A That would be safe to say, yes.

Q So the involvement that Officer Georg, he was primarily involved and not you in this case?

A Yes.

Q So these accounts that were obtained later on through subpoena, right, you don't know the nature of these – of the Facebook accounts, correct?

MR. REGAN: Objection to the form.

THE COURT: Sustained.

Q You know there were a number of Facebook accounts that were subpoenaed by the District Attorney's office, right?

MR. REGAN: Objection. It's not a subpoena.

THE COURT: Sustained.

Q Did you look at any of the Facebook accounts regarding this case?

A Yes

Q And you looked at all 12, 13 or 14 that were put into evidence?

A All of them, no.

Q Okay. But before the, indictment came down you were not aware of these Facebook accounts; is that correct?

A That is incorrect.

Q Well, you were not involved with the investigation in this, right?

A That is correct, yes.

Q You were no longer part of the 113 Precinct. You are now part of the 19th Precinct. You had other duties in the 19th Precinct, right?

A Yes.

Q Correct?

A Yeah, that's correct. Yes. But the Face book accounts are still the same Facebook accounts that I earned my

expertise on from 2012 to 2014 regarding this organization.

Q Okay. But as far as what allegedly happened during the period Of March 2014, you were not involved in that investigation, correct?

A That is correct, yes.

Q And you .only became involved in this particular case sometime down the road, sometime April, May June, July, 4 2014?

A Yes. I had – all the officers in question, 6 members of the S.E.T. team as well as Officer Georg, as well as members of the District Attorney's office, they all would still contact me and liaison with me regarding goings-on with regard to the S.N.O.W. Gang due to my level of knowledge with the organization.

Q Okay. Now, part of your experience you say part of this organization communicate in different forms, correct?

A Yes.

Q A lot of it is hand signals, right?

A One of them is hand signals, yes.

Q Now, moving a hand or moving one's finger from one side to another, that's not a crime, correct?

A No, not at all.

Q A lot of people do that, they moving their fingers from one side to the other, invert their hand, that's not a crime, right?

A Not a crime at all.

Q There are a lot of rock stars, pop groups like Fitty Cent and Beyonce, they do that all the time, right? They move their hands like this, they give hand signals, correct?

A I'm going to say no, not the individuals you mentioned. No.

Q Well, when a pop artist does that, does that mean that's a member of a gang?

A I don't know what pop artist. My expertise is with 7 S.N.O.W. Gang.

Q Couple of weeks ago when the Mets were at the World Series and. there were fans doing this and that and if they were – would that signify to you that they were gang members if somebody was doing that?

MR. SANTOS: Objection, Judge. Relevance.

A No, sir.

14 THE COURT: Sustained.

Q People communicate at times with their hands, right? Does that mean that they're members of a gang,¹⁷ organization?

A No, they do not.

Q Now, this group you claim to be a gang, right, do they have any distinctive clothing, like the Bloods or the Crips?

A No, that's actually one of the items that made the stepping into the S.N.O.W. Gang that much more difficulty for us as a S.E.T. team. We really had to learn who they were based upon getting embedded with these particular individuals. There were no particular clothing that they wore, as you mentioned earlier, with regards to exclusively for the Bloods or the Crips, where they all wear certain things or 'aandana on one side. These individuals, they didn't have that indicator. So that made it extremely difficult for us.

Additionally, while we were starting the investigation, we had to go through first and secondary methods of identifying the individuals. We had to go through and really do our due diligence to create this – to find out which ones were in fact true members and which were people that were just fake jacking, you know, these things, maybe throw at them an S-N or laughing my S.N.O.W. ass off. That might be one of their public posts. We had to actually find out if that person was a real S.N.O.W. Gang member or if they were just fake jacking it or lived on the block or just knew a person from that area, you know. The S.E.T. team as well as the members of the gangs that jumped on board with what we were doing, we had to find out because there was no sole indicator, there was no

clothing thing, no hat, where as members of the Wood City, sometimes they would be kind enough to make it easy on us. Some of the outfits they wore, they would stitch a W on their clothes, which was an indicator to us that they were Wood City. So it was actually extremely difficult because of that issue you just mentioned.

Q I didn't mean to interrupt to ask.

THE COURT: Please stand behind the microphone.

Q So two Black men walking down the street and saying wood hall, would you suspect them of being gang members because they happen to be walking down the street wearing dark clothing or light clothing?

A No.

Q If they were communicating with each other with hand signals, would you think that they were gang members because of that?

A No.

Q What if it were five people walking down the street wearing clothing, would that mean that they're gang members?

MR. SANTOS: Objection.

THE COURT: Sustained.

MR. MALTZ: May I ask why, your Honor?

THE COURT: Sustained. Move on.

Q So do we agree then it's not so much the manner of dress, right, that would trigger your attention, right, the dress?

A The dress would not be indicative.

Q The hand signals not sufficient, right, not enough?

A Based on solely that, no.

Q Okay. Conversation maybe between people that would trigger something you're saying?

A If the corresponding hand signals, that I may or may not have seen, that would be a tipping point and that would pique interest in terms of who that person was, if I didn't know who that individual was already. I walk down the area of Rochdale Village during my time employment in the 113 Precinct, if I go down Rochdale Village, Guy R. Brewer, Farmers Boulevard, Springfield, I – from being there from my period of time, I knew who many of the individuals were beforehand. I knew their Government names, I knew where they lived, their mother's names and their call signs, their signals. So if they did those things, coupled that with a hand signal, couple that with their manner of speech, couple that with whomever they may be speaking to, that would be the indicators that we would use.

Q I want to get to there is a distinction, right, between having words, conversation with people and action, would you agree?

A Certainly.

MR. REGAN: Objection.

THE COURT: Overruled.

Q Did you answer the question or you didn't?

MS. THEODOROU: He did.

Q There would be a distinction between having a conversation with people, showing outrage, emotion and action, would you agree?

A Yes.

Q Okay. Now, one last question. While this case was going on you did have opportunity to speak to the prosecutors in this case, right?

A While the case was going on, yes.

Q Would you say you spent countless hours with them, many hours with them discussing this case?

A Yes.

Q Reviewing the records with them?

A Reviewing?

Q Records, Facebook records with them?

A Yes.

Q And you – they told you what kind of questions they were going to be asking you, right, what evidence they intend to put into evidence, correct?

A Yes.

Q So you went over that with them, would you say hours with them, days with them because you testified today?

A Over the course of the last several months I spent many hours going over the information, much of the information that was produced for the indictment was cultivated by myself and members of my S.E.T. team. So they had to verify, they also had to reach out to me and ascertain why -a piece of evidence that I would have introduced, why I at the time found Chat particular thing to be material to the case.

Q Let me ask you another question before I leave the post. Tattos, also. Would that be just because somebody has a tattoo across one's body does that mean that they are a gang member?

A Depends what that tattoo is.

Q What about just markings on the body, is that a sign to you?

A If the markings are indicative of a gang that would1 lead me to believe that they are members of a potential gang, yes.

Q Other than making signs or making references to a particular group, just having a marking on one's own body, that doesn't make somebody a gang member, right?

A Describe the marking you are attempting me to identify.

Q Well, markings. I don't have tattoos on my body, but a man having a tattoo on one's face or one's arms would that be a sign to you, a signal to you that somebody is --

THE COURT: All right. Mr. Maltz, the question, phrase it specifically, not a general type question that can't be answered.

MR. MALTZ: Well, you didn't interrupt the officer when he testified. I will make it clear.

MR. REGAN: Objection.

THE COURT: Sustained and stricken. Stand behind the microphone, please.

Q The fact that a person may have •a visible tattoo, walking down the street, with several Black men in the

street, communicating by hands, does that mean the person is a gang member?

MR. SANTOS: Objection.

THE COURT: Sustained as to the form of the

MR. MALTZ: All right. I have nothing further. Thank you.

THE COURT: Miss Potman.

MS. POVMAN: Just a few questions. Really a few.

CROSS EXAMINATION

BY

MS. POTMAN:

Q Lieutenant, you told us that you joined the S.E.T Unit about November of 2012; is that correct?

A Yes.

Q And do you know what date you went to the 19th Precinct?

A I believe it was March 28th of '14.

Q Now, you told us that in investigating these crews or gangs that they were aligned by geographic locations?

A That would be the most often common denominator.

Q When you say aligned by geographic locations, if you lived on a particular block it's likely that you would belong to a particular gang?

A No, not belong to. They would --if and when you decided to join a gang, if you made that particular terrible decision, you would most likely join the gang that primarily operated on that particular block.

Q Okay. Now, you told us on Thursday that your expertise is based on viewing Facebook records; is that correct?

A That is one of the methods, yes.

Q And another method is your interviews, your post-arrest interviews of 50 alleged members of the S.N.O.W. Gang?

A Yes.

Q Now, these post-arrest interviews would take place at the precinct?

A Yes.

Q And they would take place prior to the arraignment of the individual on the charges for which they were arrested?

A Yes.

Q So that you were able to interrogate them without having an attorney present?

A No. We never did the actual interrogation.

Q Well, what is the difference between a debriefing and interrogation?

A Oh, I'm glad you asked. Well, actually an interrogation is, if I have Mr. Regan to be a suspect in regards to a particular crime, I will question him or, as you mentioned, interrogate him, attempting to gain fruits of a crime for which he has currently committed or I suspect him having committed on that particular day.

The debriefings, as we would conduct them in 1.1 regards to this investigation, they were more fact-finding, to find out in terms of who individuals were and to identify other members of – that operate within the a particular gang. At no time were any Rico charges being brought against these particular individuals, so the actual – being a member to a particular gang was not circumstantial against themselves. So our jobs during the debriefings, it was more of a fact finding issue. Personally what I would do is, I would attempt to try to spend time with an individual to get to know them on a more personal level, who's just straight out of their minds and just a bad guy versus who is in a gang perhaps because they live in a particular area and kind of has a heart or God forbid there was some true violence that did occur you

know this particular gang or other gangs did commit, I would try to find out who these people were on a more casual level to be able to speak to them, find out what the avenues might be for them to potentially get out of this gang and go forward. I would speak to these guys.

Q You would try to befriend them?

A I would maintain a level of empathy, extreme level of cordialness with these particular individuals. That's the main difference.

Q Being a member of a gang is not a crime in New York State?

A No. No, it's not.

Q So the people that you spoke to in the precinct were people that were charged with crimes?

A Yes.

Q And they spoke to you in the hope of getting a lesser sentence?

A Some of them. Some just spoke because they didn't want to be stuck with a stinky perpetrator that was in the holding cell with them. So that's an opportunity for them to perhaps have a bite, have a cigarette and to just talk to a person.

Q And you cannot make a promise as to what a sentence would be on a particular case, right?

A I do not have that authority.

Q So that all you could do, on each of these occasions, was promise these people that you would talk to

* * *

Lt. Bracero - People - Cross (Mr. Santos)

Q I understand you want to answer. Do you want to answer my question?

Do you remember how many – my question to you, do you remember – this is the question. How many 16 year olds did you speak to to get your expertise?

A I do not know the answer.

Q How many 17 year olds did you speak to to get your expertise?

A We can continue saying ages. I don't know the exact number per age.

Q So are you going to let me continue?

A If you like to.

Q Okay. I appreciate it. Thank you?

79a

A You're welcome.

Q How many 18 year olds did you speak to to get your expertise?

A I do not know the answer.

Q How many 19 year olds did you get to speak to to get your expertise?

A I do not know the answer.

Q Now, would it be fair to say that the vast majority of these 15 to 19 year olds who you did speak to, but you don't remember how many there were, were black, correct?

A That would be correct, yes.

Q And they live in our – in our – in my client's neighborhood, correct?

A I work in the 113th Precinct. That's where the residents are predominantly black, yes.

Q I'm not asking if they're black or not. I'm not asking that question. You are being asked predominantly black. I'm asking if these individuals who you debriefed that you used to get your expertise live in my client's neighborhood, correct?

A Yes.

Q And now the way that you debriefed them is that -- I know you said-- withdrawn. Would it be fair to say that some of the tools that you use to debrief, not interrogate, these 15 to 19 year olds, debrief these individuals is fear?

A No.

Q No.

So you don't roll up on these 15 to 19 year olds with your fellow officers on the Street corner and throw them against the wall?

A No.

Q. You don't do that?

A I do not, no.

Q And you don't bring them back to the precinct, right, to interrogate them or-- excuse me -- debrief them?

A I do not, no.

Lt. Bracero -People - Cross (Mr. Strachan)

the S.N.O.W. Sang?

A Yes.

Q And you had mentioned--you testified in the Grand Jury in this case, correct?

A I think so. I'm not positive.

Q Okay.

A I think so.

Q Okay. Do you remember? I mean, do you remember?

A It's been going on for this long, I don't remember. I think so.

Q Do you remember how many times you testified in the Grand Jury?

A This particular case?

Q Yes.

A I don't.

Q Okay. Now, do you remember these fact-finding meetings? You said on direct that you did hundreds, is that correct?

A Yes.

Q Now, I'm just a bit confused. When you say "hundreds", I'm not sure exactly what that means. Do you know exactly how many debriefing meetings you have done regarding the S.N.O.W Gang?

A Exactly, no.

Q Okay. So you don't know if a hundred is a hundred or two hundred or if it's 999? You can't tell us exactly how many meetings you have conducted?

A I can't tell you the exact number, no.

Q Okay. You can't. And this is a pilot program?

A Yes.

Q And when you are doing these debriefings, you are usually at the 113th Precinct, correct?

A Yes.

Q And you walk in there, would you do the debriefing at the Detective Squad Unit or the Detective Squad Interview Room? Where would you do it?

A Sometimes – sometimes – most often we would do it in other. rooms, in the field intelligence office or our own S.E.T. office.

Q And when you are doing these debriefings, say in the S.E.T. office, how big it that room?

A 15 by 20 feet.

Q It's not that big?

A No.

Q Okay. And would you have a desk in there?

A Yes.

Q With a couple of chairs?

A Several desks; several chairs.

Q When you are debriefing someone, is it just you and the person you are trying to get some facts from or do you have a whole group of officers in there?

A Usually, it would be between two and three officers, as well as the individual that we're speaking to.

Q Okay. So it's the person you are speaking to, you're in a room, and there's about three officers there, correct?

A Yes.

Q That would be the typical set-up for debriefing?

A Yes.

Q And the purpose of it, of course, is to get some information?

A Yes.

Q About the S.N.O.W. Gang?

A Among other things, yes.

Q What other things –well, let me rephrase that. When you are talking to them, are you writing down any notes?

A Sometimes, but very infrequently.

Q Are the other officers writing down any notes?

A Not typically.

Q You say you are writing down notes sometimes?

A Yes.

Q Now, when you are speaking to them, do you have a tape recorder there?

A No.

Q Okay. Do you have a video camera there?

A No.

Q You can't tell us exactly the number of these debriefing meetings you have actually done regarding this?

A A specific number, no.

Q And if I ask you, well, Lieutenant, on this date, what was the fifth question you asked this person that you were debriefing, you wouldn't be able to answer that?

A No, there's no recording of that. Debriefings are not a recorded technique.

Q Well, the question is, if I asked you Sergeant – Lieutenant, on this date that you were debriefing somebody, what was the fifth question you asked then, you wouldn't be able to answer that?

A That's correct.

Q Okay. If I asked you, what was the tenth question you were asking, you wouldn't be able to answer that?

A That's correct.

Q If I asked you on that particular date that you were

debriefing this person, what was the total amount of questions you asked this person, you wouldn't be able to answer that?

A No. It would be an open dialogue.

Q But you wouldn't be able to answer that question?

A I would not be able to answer that, correct.

Q And this is a pilot program?

A Debriefings are something they've been doing as part of the pilot program. Debriefings are something that's done.

Q It's something that you have done in this pilot program?

A Yes.

Q And, of course, during your direct examination -- I mean direct examination for the prosecutor -- you testified that you gained an understanding of the S.N.O.W. Gang members and terminology, is that correct?

A Yes.

Q And, of course, the fact that there's no tape or video for the jury here, we have no way to corroborate whether or not you actually do have an understanding

of the S.N.O.W. Gang members. There's no video or tape of you conversing with a S.N.O.W. Gang member indicating that you actually do understand, is that correct?

A I don't believe so.

Q And there's nothing there to show that this alleged S.N.O.W. Gang member actually understands you, is that correct?

A Correct.

Q If I asked you – by the way, I mean, you said hundreds of these – hundreds of these debriefing meetings, and I say to you, Lieutenant Bracero, on the 98th debriefing meeting you had with an alleged S.N.O.W. Gang member, what was the – what was the tone in which you were speaking to this person, you wouldn't really be able to answer that question, am I right?

A I would say probably consistent with the other hundreds, and they're all the same.

Q And your saying your tone is the same?

A My tone is the same, yes.

Q And, of course, there's no tape or video to independently corroborate what you would say what your tone is, correct?

A It's the same. Correct.

Q We don't know whether or not it got heated and you were yelling at someone? We don't know that?

A That would be accurate.

Q We don't know whether or not you are calm like you are here now?

A Yes. We don't know that. Did you provide any food to the people that you were debriefing?

MR. REGAN: Judge, I'm going to object.

THE COURT: Read that back.

(Whereupon, the pending question was read back by the Court Reporter.)

THE COURT: Sustained.

Q The fact that there's no audio or videotape of any of these debriefings, we don't know how long these debriefing meetings actually took place?

A Correct.

Q Okay. We don't know that the information that you claim you got through these debriefings happened at the end of the meeting, the middle of the meeting, or at the beginning of the meeting, correct?

A Correct.

Q We don't know what promises or threats you may have made, correct, because we don't have the audio or video of these meetings?

A It was asked of me.

Q Excuse me? I didn't hear you.

A It was asked of me. There was none.

Q But we don't have video or audio to corroborate it?

A Correct.

Q Lieutenant, do you have a cell phone?

A Yes.

Q Okay. Isn't technology wonderful nowadays?

MR. REGAN: Objection.

THE COURT: Sustained.

Q You are aware that you can record someone using a cell phone, correct?

A Correct.

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Q You are aware that you can take a photo of someone, correct?

A Correct.

Q You can take a video of someone using a cell phone, correct?

A Correct.

Q By the way, in these debriefing meeting rooms, was there a video camera in the room?

A No.

Q Okay. By the way, where is the equipment room in relation to where you were debriefing these people?

A There is no equipment room.

Q There's no place where you can get a video camera or something like that?

A The Detective Squad has a room for all felony assaults which they record all debriefing interviews.

Q And did you ever do these debriefings in the Detective Squad Room?

A Sometimes.

Q Okay. And there was a video camera there?

A They were not in for assault, for felony assaults.

Q But there was a video camera?

A I'm trying to remember whether we used the video room. There's more than one room in the Detective Squad. I'd say one or two took place in the video room but not with it being videoed or recorded.

Q Okay. And it wouldn't take much to talk to your brother officer and say, can I borrow your recorder, I want to record this?

MR. REGAN: Objection.

THE COURT: Sustained.

Q By the way, these people that you are speaking with, these people during the debriefing meetings, as it's been mentioned earlier, a lot of them were young black males, correct?

A Correct.

Q And before starting the debriefing, did you get any information on whether they were on drugs when you were debriefing them?

A No.

Q Did you get any information on whether they were drunk when you were debriefing them?

A I can only state my observations, the same way I would in any kind of law enforcement capacity based on my prior knowledge and experience whether a person was intoxicated or under the influence of a narcotic or alcohol, and none of them at the time appeared to be any of these.

Q You didn't do a breathalyzer test before you debriefed them?

A No, I did not.

Q Did you look into their – did you do any--when you were debriefing these young black men, did you ask any of them about their educational background as far as like, as they on the regular track or maybe they're in Special Education?

A Some of them I would ask, yes.

Q Okay. And did you find out whether or not they had any mental impairments?

A None of the individuals I spoke to had any mental impairments.

Q You asked some of them if they were in Special Education but you didn't ask all of them, correct?

A Not Special Education. You asked about normal track for graduation. I would ask them questions along those capacities, as well as highest grade that they had attained and what they're doing with themselves educationally, et cetera.

Q But you didn't ask them if they were in Special Education?

A No. Seems to violate their civil rights.

Q I'm just asking you, did you ask them if they were in a Special Education class when they were in school?

A That was not one of my line of questions, no.

Q Did you ask them if they were taking any medications?

A No.

Q And since you didn't ask them if they were taking any medications, you didn't ask them if they were taking any psychotropic medication for mental illness?

MR. REGAN: Objection.

THE COURT: Sustained

MR. STRACHAN: May I have a moment:

THE COURT: Yes

(Short pause.)

MR. STRACHAN: Thank you, Judge.

Q Lieutenant, can you tell me the date, the actual date, that you did your first debriefing regarding the S.N.O.W. Gang?

A No.

Q Can you tell me on that first debriefing exactly how long it took as far as time?

A No. The first interview that we did, I recall --I remember doing regarding the S.N.O.W. Gang actually did involve a group of juveniles as was asked earlier, 15 year olds, and those were victims of a robbery.

Q I didn't ask about all that. I'm asking --

A I'm going to give you the time.

MR. REGAN: Objection. He's answering the question.

MR. STRACHAN: He's not answering my question.

Q I'm asking you, when was the first time you did a S.N.O.W. Gang but then I'm also asking you, how long did it take place? I just asked as far as time, how long did the interview take place?

A The point being it wasn't a debriefing, it was an interview of a civilian.

Q How long did it take place --

A Two hours.

Q – is the question?

A Two hours.

Q Two hours. And how many people were actually in the room?

A There were three civilians, myself and two other officers.

Q Now, you testified in the Grand Jury regarding this case, correct?

A I think so but I'm not positive whether I did or not.

MR. STRACHAN: Can we stipulate that he did testify in the Grand Jury?

(Short pause.)

Q Oh, you didn't testify in the Grand Jury?

A Okay. Then – I didn't think so.

Q I'm just asking you.

A Yeah.

Q Do you know when the date exactly that Dane'e Cato was a member of the S.N.O.W. Gang?

A No.

Q Okay. Do you know when someone joins the S.N.O.W. Gang, do you know how much time is spent being a low level S.N.O.W. Gang member and how you get promoted to a high ranking County District Attorney's Office that would make it easier to understand some things about the S.N.O.W. Gang?

A Yes.

Q Did you turn that over as well?

A Yes.

Q Thank you.

MR. MUCCINI: I have nothing further.

Q Thank you, Lieutenant.

A Thank you, sir.

THE COURT: Mr. Regan, anything?

MR. REGAN: Yes.

REDIRECT EXAMINATION
BY MR. REGAN:

Q Good morning, Lieutenant.

A Good morning.

Q Lieutenant, much has been made by several of the attorneys on cross-examination about the methods used to debrief S.N.O.W. Gang members after arrests. Do you remember that?

A Yes.

Q You stated there's a difference between a debriefing and an interrogation, is that correct?

A Yes.

Q Please explain to the jury so it's clear. What is the difference between an interrogation of an arrestee and a debriefing of an arrestee?

A Yes. In regards to an interrogation, interrogation is utilized where you are trying to garner information relevant to the particular charges that you have been charged with. Case in point, if they were caught in possession of a firearm, if afterwards when you're brought back to the precinct you would be given your Miranda rights, your right to an attorney, your right to

speak to the N.Y.P.D., et cetera, whereas you indicate whether you understand these rights or not, and then you are asked if you indicate yes, you do wish to speak, you would then be asked questions directly related to the charges against you at that particular time. Those you see in movies, anything you say can be used against you in a court of law, that is in regards to an interrogation.

The debriefings, on the other hand, that we conducted, most of the times that we brought these individuals in, the questions – let me rephrase that -- any time we conduct a debriefing, there was already probable cause for an arrest and any of the information that we garner from them and any questions that we asked of the individuals were not material to those particular charges that were brought against them that particular day. That's why we use it as more of a fact-finding mission, as well as to get information against potentially other members of their gang, as well as rival gangs, any like past crimes they may have information on.

Q So it's fair to say you are also looking to get information to be used against that particular arrestee in that case, correct?

A That's correct.

Q Talking about interrogation; in the Police Department, whose job is it typically to interrogate a suspect about their current charge?

MR. MALTZ: Objection.

MS. POVMAN: Objection.

MR. SANTOS: Objection.

MR. STRACHAN: Objection.

MR. MUCCINI: Objection.

THE COURT: Overruled.

A It's the detective, Someone from the Detective Bureau, whose job it is.

Q And is that a person in your S.E.T. team?

A No, we do not have any detective investigators in the S.E.T. team at the time.

Q So you have a different goal than an interrogator, correct?

A That's correct.

Q And, again, what's your goal in speaking to a person under arrest?

MR. MUCCINI: Objection.

MR. MALTZ: Objection.

THE COURT: Overruled.

A I'm sorry; Could you rephrase?

Q You said your target was the S.N.O.W. Gang?

A Yes, that's correct.

Q That wasn't the only S.E.T. (sic) though, right?

A The only crew?

Q The only crew.

A That was not the only crew in Queens.

Q Why was the S.N.O.W. Gang a target as. opposed to all the other gangs?

MR. MALTZ: Objection.

MS. POVMAN: Objection.

MR. SANTOS: Objection.

MR. STRACHAN: Objection.

MR. MUCCINI: Objection.

THE COURT: Overruled.

A Their history of violence.

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MR. MALTZ: Objection, your Honor. I have an application.

MS. POVMAN: Move to strike.

MR. MALTZ: Application for mistrial based upon that improper comment.

MR. REGAN: Judge, Mr. Maltz asked directly --

THE COURT: Overruled.

Q With regards to social media, were you just

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A S.N.E.U.

Q S.N.E.U.

And when you were assigned to S.N.E.U, who was your supervisor?

A Sergeant Bracero.

Q Has he since been promoted?

A Yes.

Q What is he now?

A Now, he is Lieutenant Bracero.

Q When you were working under Sergeant Bracero, again the same question, did you have any exposure to gangs or gang activity?

A Yes.

Q What gangs were you exposed to?

A Again, the same gangs that I had mentioned and also narcotics gangs that were involved in street level sales of crack, heroin, all those street narcotics.

Q You stated you were then assigned to the S.E.T. team, correct?

A Yes.

Q When was that?

A That was in October of 2012.

Q Is that when the team was formed?

A Yes.

Q And who was your supervisor when you were assigned to the S.E.T. team?

A Again, that was Sergeant Bracero.

Q And what were your duties or responsibilities when you were assigned to the S.E.T. team?

A We were assigned to monitoring the S.N.O.W. Gang in the 113.

Q What did you do on a day-to-day basis when you were assigned to the S.E.T. team in 2012?

A We conducted surveillance of known S.N.O.W. Gang members.

MR MALTZ: Objection to what "we" did.

Q What did you do?

A I conducted surveillance of S.N.O.W. Gang members, enforcement in neighborhoods where S.N.O.W. Gang activity was reported. I conducted debriefings, monitored social media and Rikers telephone calls in order to gain intelligence on the group.

MS. POVMAN; I'm sorry? The witness's voice is dropping.

THE COURT: Please speak loudly. Move your chair up and speak loudly.

Q You can put that binder down. That might help you.

A (Complies.)

Q You stated you monitored telephone calls. What kind of telephone calls?

A From Rikers Island Correctional Facility

.

Q You also stated you were conducting enforcement in certain neighborhoods?

A Yes.

Q What neighborhoods were they?

A It was within the confines of the 113th Precinct area near Rochale Village and Springfield Gardens.

Q You stated that you observed or monitored social media?

A Yes.

Q Explain, to the jury how you did that.

A Using Facebook we would – I would monitor known S.N.O.W. Gang members' social media accounts, as well as rival gangs in order to keep track of possible bragging about previous crimes or disputes that were going on between rival gangs and gang members.

Q You were assigned to the S.E.T. team until when?

A Until March of 2013.

Q So from the time of 2012 when you were assigned to March of 2013, were you doing this same activity, reviewing social media?

A Yes.

Q How often would you do that during that time?

A Daily.

Q So did you – you stated you finished working there in 2013, in March of 2013. Where were you assigned after that?

A Queens Gang Squad.

Q And tell the jury, did you – when you were reassigned, what was your focus in your new position?

A My initial assignment in the Gang Squad was in the Rockaways, the 101st Precinct in Queens.

Q And then did that change?

A Yes.

Q When?

A In May in May of 2013.

Q What was your assignment after May of 2013?

A I was assigned to the – the monitoring covering the 113 Precinct, specifically acting as a liaison for matters involving the S.N.O.W. Gang.

Q Is there a reason why you were moved?

MR MALTZ: Objection.

MS. POVMAN: Objection.

THE COURT: Rephrase.

Q Did you learn the reason why you were moved?

MR WALTZ: Objection.

MR. SANTOS: Objection.

MS. POVMAN: Objection.

MR. MUCCINI: Objection.

MR. STRACHAN: Objection

THE COURT: Overruled.

A I was moved following a homicide which occurred in the 113 that --

MR MALTZ: Objection.

THE COURT: Overruled.

A --that had ties to the S.N.O.W. Gang.

MR. SANTOS: Objection. Move to strike.

THE COURT: Overruled.

MR MALTZ: Objection.

Q When you returned in --excuse me --when your focus shifted in May of 2013 while still with the Gang Squad, what did you do on a daily basis from that point forward?

A Very similar to the things that I described earlier. We focused on street level enforcement in neighborhoods where S.N.O.W. Gang members were known or believed to associate, conducted debriefings of resident S.N.O.W. Gang members and other gang members, interviewed confidential informants and victims of crimes that were believed to be committed by the S.N.O.W. Gang members, continued to monitor social media and Rikers' telephone calls.

Q Again, in that capacity when you were at the Gang Squad and from May of 2013 up until the present, how often would you review S.N.O.W. Gang social media?

A Every day on a daily basis.

Q How is it that you were able to observe the postings by members of the S.N.O.W. Gang on Face book?

A I as a member of the S.E.T. team continued to use a surreptitious Facebook account wherein it was linked to S.N.O.W. Gang members and others.

Q So you would friend members of the S.N.O.W. Gang?

A Yes.

Q And was that fictitious account or surreptitious account – did you actually make postings on that?

A I'm sorry, can you repeat that?

Q Did you actually make postings on that account?

A At times.

Q And how often would you use that account to observe. S.N.O.W. Gang members and their activities on social media?.

A On a daily basis.

Q Did you conduct or – excuse me --withdrawn. You stated that you conducted observations in a previous time when you were assigned to the S.E.T. team. Did you continue to do that in the Gang Squad?

A Yes, that's correct.

Q What areas did you do that?

A Again, in Rochdale Village; Springfield Gardens and Laurelton as well.

Q Going back to the Facebook surreptitious account, would you friend people from the S.N.O.W. Gang on Face book?

A Yes.

Q So you would send a friend request?

A Correct.

Q Were they free to accept or reject that?

A Yes.

Q Did you assist in obtaining any search warrants either for physical locations or for social media accounts?

A Yes.

Q Both?

A Yes, both.

Q Speaking specifically about the social media accounts, did you review the results of those warrants prior to 2014 regarding members of the S.N.O.W. Gang?

A Yes.

Q Specifically whose accounts did you review prior to 2014?

A Dionne Milling and Lynnard Biggs.

Q Have you ever conferred with other officers in the Police Department who were assigned to investigate the S.N.O.W.Gang?

A Yes.

Q What officers did you confer with?

MS. POVMAN: I can't hear, Judge.

THE COURT: I'm sorry?

MS. POVMAN: There's something going on in the hall. I can't hear.

THE COURT: There's something going on with what?

MS. POVMAN: There's noise in the hallway. Gary is checking.

(Short pause.)

THE COURT: All right. Please continue.

Q I believe I asked you about the officers you conferred with in regards to the S.N.O.W. Gang. What officers in particular did you speak with?

A Detective DeFiore, Sergeant Bracero, various members of the different precincts detective squads.

Q And Detective DeFiore – excuse me – was it Officer DeFiore or Detective?

A It's detective now; it was officer.

Q And was he investigating the S.N.O.W. Gang as well?

A Yes.

Q And did he also, to your knowledge, obtain Facebook accounts of S.N.O.W. Gang members?

A Yes.

Q Did you have occasion to either review those or discuss those with him?

A Yes.

Q What kind of information was shared with you from these other detectives or sergeants in regards to the information they had on gang members?

MR. STRACHAN: Objection.

MR. MUCCINI: Objection.

MS. POVMAN: Objection.

MR MALTZ: Objection.

MR. SANTOS: Objection.

THE COURT: Overruled as to the kind.

A They would --

MR MALTZ: Objection.

THE COURT: Overruled.

A They would share information regarding gang language, any gang structure that they learned of, meeting locations, things of that nature.

Q Did you ever receive any classroom training or formal training in relation to gangs?

A Yes.

Q Can you describe that for the members of the jury?

A In the Police Academy as a recruit we all go to training where we are in the classroom training in

identifying common gang signs and colors and things like that.

Later when I was transferred to the Gang Unit – let me back up.

When I was assigned to the S.E.T. team, we went to further trainings on surveillance techniques and again further ways to identify gang members. When transferred to the Gang Squad I was in a month-long training. Among other things we were trained in identification and the prosecution of gang members.

As a member of the Gang Squad now I semi-regularly go to conferences and other training where you learn the trends of gang membership and identification, how they're changing and better ways of identifying gang members.

Q Did you have occasion based on your assignment over the last three years to investigate any rival gangs to the S.N.O.W. Gang?

A Yes.

Q What gangs were they?

A The Wood City and 40 Projects or 821 Gang.

Q What investigative techniques did you utilize in order to learn about those gangs?

A Those gangs, again, street level enforcement in the neighborhoods where they're known to congregate, interviewing of victims that may have been victims of crimes in those neighborhoods, reviewing social media,

listening to jail calls, speaking to confidential informants, things of that nature.

Q Did you get warrants for several of the rival gang members' social media accounts?

A Yes.

Q Did you review the contents of those?

A Yes.

Q Have you ever been declared an expert with regards to the S.N.O.W. Gang?

A Yes.

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sentence.

MR. REGAN: I have read the case law. I understand.

THE COURT: You are all familiar with the case.

MR. SANTOS: That's why we read it.

MR MALTZ: Join.

MS. POVMAN: Join.

MR. MUCCINI: Join.

MR. STRACHAN: Join.

(Whereupon, the following took place in open court:)
(Continued direct examination by Mr. Regan.)

Q. Detective, you were asked by Mr. Maltz, the first attorney who came up, about your history of assignments in the Police Department. Do you remember that?

A Yes.

Q And you were asked, you know – well, withdrawn. It was stated to you and you were asked, did you go directly from the Police Academy to the Gang Intelligence Unit. Do you remember that?

A Yes.

Q Does any police officer go directly from the Police Academy to a specialized unit like that?

MR. SANTOS: Objection.

THE COURT: Overruled.

A No, they don't.

Q. Where are police officers assigned after the Academy?

MR. SANTOS: Objection.

THE COURT: Overruled.

A To patrol.

Q Did that happen to you?

A Yes.

Q Mr. Muccini was asking you about how many C.I.s you spoke to with respect to the S.N.O.W. Gang. Do you remember that?

A Yes.

Q And you answered the questions. He was talking about confidential informants or debriefings.

What's the difference between a C.I. that you are speaking to and a debriefing that you conduct?

A Um, a C.I., which stands for confidential informant, is an individual that is officially registered in the Police Department or District Attorney's Office who is providing information either for in regards to an open case that they may have or it could be for monetary – you know, for paid consideration or just out of their own, you know,, civic duty. But those people are

registered with the department and have an agreement to work with us.

Q How about debriefings?

A Debriefings would be speaking – it can be speaking to an individual when they're arrested or not, whether they're a victim.

So say a S.N.O.W. Gang member or a rival gang member were to get arrested, we would respond as members of the Gang Unit and ask them questions about themselves; their role, they're gang membership, et cetera, et cetera.

Q About how many C.I.s did you work with or speak with regards to the S.N.O.W. Gang?

A As I said, it would be less than five. I don't know the exact number but –

Q How about how many debriefings did you conduct in the course of your investigation into the S.N.O.W. Gang?

A Over 50 at least.

Q How many separate – withdrawn.

How many of those debriefings involved actual members of the S.N.O.W. Gang?

A. That's what I was referring to, over 50.

Q Over 50 members?

A Yes.

Q How many specific debriefings did you do?

A (No response.)

Q Generally?

A Again, it would be hard with a number but --
I don't know, maybe 70 or 80.

Q I want to direct your attention to the period leading up to March of 2014. Where were you assigned during that time?

4 A At the Queens Gang Squad.

Q What was your focus or your primary responsibility around that time?

A I was assigned as liaison in regards to the S.E.T. team, that means in regards to the S.N.O.W. Gang.

Q A liaison to who?

A S.E.T. team in regards to the S.N.O.W. Gang.

Q What was your job when you were acting as a liaison between the S.E.T. team and the Gang Squad? What did you do?

A I would – again, I would conduct street level enforcement in areas where the S.N.O.W. Gang is known to congregate. All the things I stated earlier. Debriefing any prisoners that are identified as S.N.O.W. Gang members or other rival gangs. I would, again, monitor social media, listen to jail calls. And in addition to that we would share information back and forth between myself and the S.E.T. team and the precinct detective squads.

Q You stated that you did enforcement and- did other activities with regard to the S.N.O.W. team and their rivals?

A Yes.

Q. Who was the S.N.O.W. Gang primary's rival until early 2014?

Q Did you work the next day March 31st?

A No.

Q When was your first day at work after the murder of Khalil Bowlin?

A April 1st.

Q April 1st, 2014?

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A Yes.

Q Do you remember what day of the week it was?

A It was a Tuesday.

Q What time did you start work that day?

A Approximately 3:30 p.m.

Q Did you review any social media between the time you learned about Red's death --withdrawn. You stated that you reviewed social media after you learned of Red's death. Did you continue to do so up until that Tuesday when you went back to work?

A Yes.

Q Where were you working at that time on April 1st, 2014?

A I'm sorry? Physically?

Q Physically.

A We were located in the 105th Precinct satellite where the Gang Office is located.

Q Where is that, in Queens?

A That's in Rosedale.

Q At the time you were assigned to the Queens Gang Squad; correct?

A Yes.

Q About what time did you get to work that day?

A I believe approximately 3 p.m., 3:30 p.m.

Q What did you do when you got to work?

A We --

MS. POVMAN: Objection to "we".

MR. SANTOS: Objection.

MR MALTZ: Objection.

MR. MUCCINI: Objection.

MR. STRACHAN: Objection.

THE COURT: Sustained as to "we".

Q What did you do when you got to work? What did you do?

A I discussed with other officers what had been going on with regards to gang violence and discussed, you

know, what our plan should be for the day as far as enforcement-wise.

Q Okay. And did you anticipate anything as a result of Red's death?

MS. POVMAN: Objection.

MR. SANTOS: Objection.

MR. MUCCINI: Objection.

MR. MALTZ: Objection.

MR. STRACHAN: Objection.

THE COURT: Sustained.

Q In your – having been qualified as an expert given what you have previously seen with regard to the S.N.O.W. Gang, did you anticipate anything occurring after Red had been killed?

MR. MALTZ: Objection.

MS. POVMAN: Objection.

MR. MUCCINI: Objection.

MR. SANTOS: Objection.

MR. STRACHAN: Objection.

THE COURT: Overruled.

A Yes, due to the – you know, my knowledge of the S.N.O.W. Gang and their reputation as retaliation.

MR MALTZ: Objection.

MS. POVMAN: Objection.

MR. SANTOS: Objection.

MR. MUCCINI: Objection.

MR. STRACHAN: Objection.

THE COURT: Overruled.

A Their reputation is retaliation in incidents such as this. Combined with what I had seen on the social media and the gang affiliations that were involved, I had anticipated there to be some sort of retaliatory violence in retaliation for Khalid Bowlin being killed, as well as Terrence Julmice being shot.

MR. SANTOS: Objection.

MR MALTZ: Objection.

MS. POVMAN: Objection.

MR. STRACHAN: Objection.

MR. MUCCINI: Objection.

THE COURT: Overruled.

Hold on.

Ladies and gentlemen, it is 20 to 1 now. We're going to break for lunch. I'm going to ask you to come back at 2:30. During the luncheon recess you are not to discuss the case among yourselves, nor with anyone else. You are not to form or express an opinion as to the defendant's guilt or non-guilt. You are not to view or listen to any media coverage of the case. In the event that it is reported, you are not to discuss this case with – on social media. If approached by any reporters, you are not to respond to any questions they may have. Have a very good lunch. We'll see you at 2:30. Please take the jury out.

THE COURT OFFICER: Jurors, please rise and follow me please.

(Whereupon, the jurors exited the courtroom, and the following occurred:)

THE COURT: All right, Detective, you may step down. You are directed to return at 2:30. You are not to discuss your testimony with anyone.

THE WITNESS: Yes.

MR. REGAN: Judge, I do need to discuss his testimony because in light of your rulings of all of these exhibits, - he's still on direct examination and in light of your ruling he needs to authenticate the exhibits.

THE COURT: Only pertaining to exhibits that will be coming in that I made rulings on. Same bail conditions.

MR. REGAN: Thank you.

(Lunch recess.)

(Whereupon the trial is now being recorded by Senior Court Reporter Jennifer Rosenblatt.)

* * *

THE CLERK: Indictment 1659 of 2014, case on trial. Air parties are present. Jurors are not present.

THE COURT: Please have Detective Georg take the stand. Please bring in the jury.

THE COURT OFFICER: Ready for the jury?

THE COURT: Yes.

(Whereupon, the jury entered the courtroom)

THE CLERK: Do both sides stipulate the jurors are present and properly seated?

MR. REGAN: Yes.

MR. MALTZ: Yes.

MR. SANTOS: Yes.

MS. POVMAN: Yes.

MR. STRACHAN: Yes.

MR. MUCCINI: Yes.

THE CLERK: The witness is reminded he is still under oath.

THE COURT: Welcome back, ladies and gentlemen of the jury. You may continue, Mr. Regan.

CONTINED DIRECT EXAMINATION

BY MR. REGAN:

Q Good afternoon, Detective.

A Good afternoon.

Q Detective, when we left off I was asking you about your day on April 1st of 2014. Do you recall that?

A Yes.

Q What time did you get to work that day?

A Approximately 3:30 p.m.

Q And where did you report to work physically? What physical location?

MR. MALTZ: We went over this on direct.

MR. REGAN: It's after lunch. I am trying to get back to where I was.

THE COURT: One question. Let's go.

Q Okay, you were at the Queens Gang Squad?

A Yes.

Q Who were you working with that day?.

A Officer Chris Kearney and Sergeant Habermehl.

Q Were you working in plain clothes or uniform?

A Plain clothes.

Q What was your – withdrawn

Did you have a plan for the day?

A Yes.

Q What was the plan?

A In light of the recent gang violence --

MR. MALTZ: Objection.

THE COURT: Overruled.

A In light of the recent gang violence we had discussed earlier, our plan was to target our enforcement in the S.N.O.W. gang neighborhood in an attempt to dispel any possible retaliation attempt.

Q Did you have a specific area where you went to do that?

A One of those areas was Bello Park.

Q One of those areas was in Montbellier Park?

A Yes.

Q Where is that located?

A It's located in Springfield Gardens on the corner of Springfield Boulevard and 139 Avenue.

Q And could you describe the park?

A It's a New York City park. It's basically three sections, There's a playground section, a basketball

court with bleachers and then a soccer field. It's surrounded by a chain link fence.

Q And what roads, if any, go right past it?

A On the eastern border is Springfield Boulevard. To the south is 139 Avenue: The western border is Sloan Avenue and the northern border is East Gate Plaza.

Q Were you familiar with that location prior to April 1, 2014?

A Yes.

Q How so?

A Montbellier Park, also known as Bello, is what is known to us as a meeting hang out location of S.N.O.W. Gang members.

MR. MALTZ: Objection.

THE COURT: Overruled.

Q Did you observe S.N.O.N. Gang members at that park before?

A Yes.

Q On about how many occasions?

A Ohm, at least two.

Q And had you heard about S.N.O.W. gang individuals in that area on other occasions?

A Yes.

MR. MALTZ: Objection.

THE COURT: Overruled.

MR. MUCCINI: Objection.

THE COURT: Overruled.

Q Did there come a time when you left the Gang Squad to do enforcement as you were saying?

A Yes.

Q About what time did you leave?

A Uhm, approximately, approximately 6:00 p.m.

Q And what kind of vehicle were you in?

A Unmarked vehicle. I believe it was a Toyota.

Q Who was in the car?

A Myself. I was the front passenger. Officer Kearney was the driver and Sergeant Habermehl was in the --

Q Who was driving?

Chris Kearney.

Q You had Sergeant Habermehl?

A Yes.

Q Where did you go?

A Ohm, we left the Gang Squad office and proceeded to the first location which was the vicinity of Montbellier Park traveling down Front, straight down to the North Conduit. We made a right into Springfield Boulevard and traveled north.

Q When you were traveling on Springfield Boulevard, about what time is this?

A Can I refresh my memory?

THE COURT; Let us know what you're using.

Q Is there something that will refresh your recollection?

THE COURT: Say what you're using.

A An arrest report.

MR. SANTOS: Can he state which arrest report? What number DOS?

THE WITNESS: This is the arrest report listed as defendant Stephan Robert, arrest number 14620256.

Q Does it refresh your recollection as to when you were driving on Springfield?

A Yes.

Q What time were you driving up Springfield?

A Approximately 6:30 p.m.

Q And this was April 1st?

A Yes.

Q Could you describe the lighting conditions at or about 6:30 on April 1?

A It was clear conditions. Daylight. Sun was up.

Q Did you observe anything, did you see anything when you were driving by Beilo Park on April 1st at about 6:30 from the Springfield side?

A Yes.

Q What did you see?

A As I was traveling on Springfield Boulevard, I observed a group of males, some of them I recognized

as being S.N.O.W. Gangs members gathered on the east side of the park by the basketball courts.

Q How many people was it in total?

A Approximately ten to 15.

Q Could you see – withdrawn.

You said they were gathered. Describe how they gathered.

A Initially just in a group. I observed initially two people gesturing with hand signs that are consistent with gang membership.

Q Did you recognize by name anyone that you could see from that vantage point?

A Yes, Sean Chung and Aquellio Parker.

Q Sean Chung, does he go by any other name?

A Yes. JP Smoov.

Q You talked about Aquellio Parker before; correct?

A Yes.

Q What nickname does Aquellio Parker go?

A Que or Que Smoov.

Q Are either of those men or both of them S.N.O.W. Gang members?

A Yes.

Q You said you saw hand signs. Could you describe what you saw?

A I saw hand signs consistent with the Mobbed Out Bosses gesture. They were making the letter M with --

Q Could you show the jury what you saw?

A (Indicating)

Q Indicating with the left hand his middle and the ring finger together. Then the little finger and index finger out to the sides; is that correct?

A Yes.

Q How many people did you see doing that?

A Two.

Q Were those the same people you named or other people?

A Other people.

Q After you observed this group of people, what did you do?

A I continued to observe them from my vehicle. As I was, as I continued to observe them, I saw the group form a tight circle in the location I described earlier.

Q Again, how many people was it?

A Again, approximately ten to 15.

Q You said they were in a circle. About how far away were they from one another?

A They were in a tight huddle almost similar to almost like a football huddle.

Q Did you see them doing anything?

A They appeared to be, to be passing something around or looking at a common object between all of them.

Q Could you see what they were looking at or passing?

A No.

Q Could you see tell if it was large or small?

A. I could not see what it was.

Q After you observed this, excuse me – withdrawn.

When you observed that, where were you physically?

A At that point I was on Springfield Boulevard.

Q Heading in the same direction?

A Heading south.

Q So initially when you saw them, you were heading north?

A Yes.

Q At some point you reversed direction?

A Correct.

Q Heading south is when you saw the group huddled?

A Yes, that's correct.

Q What did you see after you saw the group huddle passing around or looking at an object?

A I proceeded to Sloan Street and parked at a vantage point where I could continue to observe the group far enough away so I would not be – they would not see us observing the group.

Q Sloan Street was on what side of the park?

A The west side.

Q Springfield was on the east. Sloan is on the west?

A Yes. That's correct.

Q When you were on Sloan Street, where did you situate the car so you could observe? Describe where you were for the jury.

A Um, we were parked facing southbound on Sloan Street. So it would be facing southbound parked toward the, north end of the park closer to East Gate Plaza.

Q I want to back up a little bit. When you're first going northbound on Springfield and you first see the group, approximately how far were you from the group?

A When I first saw past –

Q Yes.

A Um, just the width of Springfield Boulevard. So maybe, I am not sure. Maybe 20 feet. Twenty, 30 feet.

Q When you saw them the second time when they huddled in the group, how far were you away from then?

A A bit closer being I was on the side of the street that was closest to the park. So to paint – I would have been a little bit less than --

Q When you were parked on Sloan Street, approximately how far were you away from the group?

A Uhm, maybe 300 feet.

Q You said you were sitting in the front of the car; correct?

A Yes.

Q Did you have anything with you that aided you in observing these individuals?

A Yes, I had binoculars.

Q Was there anything between you and this group that inhibited your ability to view them?

A The only thing would have been the chain link fence between where we were parked and where they were gathered.

Q How long did you observe them for?

A Approximately 30 minutes or so.

Q During that time, did you have any cell phone with you?

A Yes.

Q Did you do anything with that cell phone while you were sitting there?

A While observing the gathering at the park, I checked the Facebook account that we discussed earlier to monitor any social media that might be occurring.

Q Did you observe any postings that were relevant to what you saw?

A I observed a post from a Facebook account belonging to Mr. Cato and the post simply said Bello linkz dot dot dot.

Q You said Mr. Cato. What was name of the Facebook account that posted that?

A DA Real Ko Bang.

Q Now, this account where you were friends with in your – that was an account, a surreptitious account on Facebook?

A Yes.

Q Did anybody or any individuals like that post?

A Yes.

Q What does it mean to like a post?

A You have an option on Facebook where you can like

something. It means you're acknowledging that you like it. And I observed Mr. Justin Campbell liked that post.

Q Was it under the name Justin Campbell or a different Facebook name?

A Under Jay Biggar.

Q Did you observe anybody else like that Facebook post?

A Yes.

Q Who?

A I believe Aquellio Parker.

Q Is that Que Smoov you talked about before?

A Yes.

Q Justin Campbell is the individual you identified in Court earlier today; is that correct?

A That's correct.

Q Dane'e Cato also is the person you identified in court earlier; is that correct?

A Yes. That's correct.

Q You observed Aquellio Parker inside of the park on April 1st when you were on Springfield Boulevard; correct?

A Yes.

Q While were you sitting on Sloan Street observing this group, what were they doing?

A They just continued to be gathered in that area in the park.

Q And you said you were there for how long?

A About 30 minutes.

Q And so that would bring you to about 7:00 o'clock; correct?

A Yes

Q What was the lighting conditions like out at seven It was still sunny. The sun was up. It was light, lit.

Q Did you call any other police units while you were waiting there and observing these individuals?

A Yes, I did, I notified members of my team to respond.

Q Who was in your team on that day?

A It was the officers that I named prior to that. I was with also Officer Steven Lalchan, Steven L-A-L-C-H-A-N, Officer Desmoreau, D-E-S-M-O-R-E-A-U, Officer -- Detective Rod Pereira, Officer Daniel Sjoberq.

Q Did you call any other officers from any other police units?

A Yes. I notified members from the 113 S.E.T. Team as well.

Q Which officers did you speak to from the S.E.T. Team?

A Officer Matt Lewis and Detective Thomas Reo. Did they all -- how did you contact them?

A By telephone.

Q Did you ask them to do anything?

A Uhm, yes. I asked them to respond to the area of Bello Park.

Q Why did you ask them to respond?

MS. POVMAN: Objection.

MR. MALTZ: Objection.

MR. MUCCINI: Objection.

MR. SANTOS: Objection.

MR. STRACHAN: Objection.

THE COURT: Rephrase.

Q Tell us what you did.

A I asked them to respond.

Q You called them and asked them to respond?

A Yes.

Q Did you have a plan when you observed this group of people gathered in the park?

A Yes.

Q What was your plan?

A Our plan was to effect arrests for unlawful assembly.

Q What made you think there was unlawful assembly?

MR. MALTZ: Objection.

MR. MUCCINI: Objection.

MR. SANTOS: Objection.

MS. POVMAN: Objection.

MR. STRACHAN: Objection.

THE COURT: Sustained.

MR. REGAN: Can we come to sidebar?

THE COURT: Come up.

(Whereupon, the following takes place at sidebar conference)

MR. REGAN: Judge, I am going to ask that I be allowed to elicit what Detective Georg was doing. I believe that at the time in light of the defense's opening, specifically Mr. Strachan's opening for defendant Cato, he said, I am going to prove to you that this case is about an arrest; that I am going to prove that wasn't right, that took place on April 1st. I am going to prove to you on April 1st Police Officer Georg was riding in the car and saw a bunch of young black men in a park. I am going to prove to you that he thought criminal activity was afoot; that I am going to prove that once he saw these young black men in the park and I am going to prove it's not a crime to be in the park. It's not a crime for black men to be in the park, but after he saw these black men he called brother officers and those brothers officer and him went to the park and arrested every black male in that park. That's the case. I am going to prove how that was illegal. I am going to prove to you they had no basis to arrest those men, those boys in the park.

Judge, in light of that opening, I think it's relevant, all of the information that the detective had when he went to effect the arrest. He indicated that he had information and reason to believe based on Facebook postings that he talked about, including a Facebook posting by Aquellio Parker who was in the park and posting by Dane'e Cato and recognizing just, excuse me, Sean Chung and Aquellio Parker. Remember it was those postings after Red was dead. I don't think this came out at the hearing where, you know, that the posting indicates that they were very upset about, by Red's death and they were talking about give back back or retaliation. I think that goes to whether or not he believed at the time it was unlawful assembly simply that is why he moved in. It's being offered to explain the actions of the police in this case. The jury shouldn't be left to think they went to the park and just there was, there was a bunch of black males congregating in the park. That's what the defense wants them to believe based on his opening. That's not the case.

MS. POVMAN: Opening statements are not evidence. The DA elicited already from the officer that he observed them in the park. He believes it was he went in to arrest for unlawful assembly.

MR. REGAN: The objection was sustained to that.

MS. POVMAN: After. That's a legal question. He can't testify to. The Court already ruled there was no probable cause for that arrest.

MR. REGAN: As to Sean Chung. They never litigated as to anyone else.

MR. STRACHAN: Now we are playing games.

MR. REGAN: I don't want to throw people under the bus. I am --

THE COURT: Overruled.
(open court)

THE COURT: Can we have the question read back?
(Whereupon, requested portion was read back by the reporter)

A Many factors went into that determination, the recent violence again S.N.O.W. Gang members followed by the posts explaining likely retaliation.

MR. MALTZ: Objection.

MR. STRACHAN: Objection.

MR. MALTZ: Beyond the question.

THE COURT: Overruled.

A After reading the post which led myself to believe that there was likely retaliation coming from S.N.O.W. gang in conjunction with debriefing that I've done with S.N.O.W. Gang members informing me that.

MR. MALTZ: Objection. Hearsay.

THE COURT: Sustained as to what he was informed.

THE WITNESS: Can I continue?

Q Okay, you stated it was social media, your experience with S.N.O.W. Gang members and any other factors?

A My knowledge that S.N.O.W. Gang meetings are known to take place and that the purpose of these meetings are to plan future crimes.

MS. POVMAN: Objection.

MR. MALTZ: Objection.

MR. STRACHAN: Objection. Move to strike.

THE COURT: Sustained. Stricken.

Q What about the location itself?

A The location of the park Bello is significant to S.N.O.W. Gang. It's S.N.O.W. Gang turf.

MR. STRACHAN: Objection. Foundation.

MR. MALTZ: Objection.

THE COURT: Overruled.

Q You stated your plan was to move and make arrests for unlawful assembly?

A Yes.

Q You contacted other units; correct?

A Yes.

Q How long did it take for them to arrive?

A Approximately ten minutes.

Q Okay, did there come a time when you met up with those other units?

A Yes.

Q Where did you do that?

A On Sloan Street closer to East Gate Plaza.

Q Was there a plan developed in how this arrest or these arrests were going to be carried out?

A Yes.

Q What was the plan?

A Uhn, the plan was for the responding unit to block off exits to the park and for Lalchan and Desmoreau to approach in their vehicle. As they got close, Officer Desmoreau approached on foot. We call it a walk on to the park.

Q Okay, so while Lalchan and Desmoreau were together --

A Yes.

Q -- how were you going to be traveling?

A I was with Officer Kearney and Sergeant Habermehi.

Q What was your job in this walk on or this arrest?

A I was going to assist in apprehending the individuals for the unlawful assembly.

A How many exits were there to Bello Park in that area that these individuals were in?

A Three are three.

Q And where are they?

A One on either side, on the east side and the west side of. the park, and one to the south side of the park.

Q The exit on the east side of the park, what street does that go to?

A That's Springfield Boulevard.

Q The exit on the west side?

A Sloan Street.

Q And the exit on the south side?

A 139 Avenue.

Q Where were Desmoreau and Lalohan going to arrive?

A Drive southbound on Sloan Street from where we were meeting and approach towards the western entrance exit to the park.

Q That's the entrance on Sloan Street?

A Correct.

Q Was there any unit assigned to the Springfield hide?

A That was --I don't recall specifically which unit was going to the Springfield side.

Q And was a unit assigned to go over to that location, to that entrance?

A Yes.

Q How about the exit to the south?

A Yes.

Q What happened after the plan was discussed among the officers?

A As the other units began to move towards the exit, Officer Lalchan and Desmoreau began to proceed in their car towards the west side of the park.

Q Where were you when this was happening?

A I was positioned on Sloan Street again to the north end of Sloan Street side, East Gate Plaza.

Q What happened after they went down Sloan Street?

A Um, as we began to get closer to the park, the first thing that I saw was Aquellio Parker running north on Sloan Street towards where I was parked.

Q You're parked on Sloan Street facing south?

A Correct.

Q You see Parker running north?

A Yes.

Q He was running toward you?

A Running toward us, yes.

Q What happened when you saw him running towards you?

A As I saw him running towards me, we proceeded, Officer Kearney was the operator of the car. He started to proceed south in the direction of Mr. Parker in an attempt to apprehend him.

Q Okay, before that, before you saw Parker run, were there any radio communications that you heard?

A Uhm, no.

Q When you saw Parker, what did you do? Did you get out of the car?

A We drove about halfway down Sloan Street and myself and Sergeant Habermehl exited the vehicle, our vehicle, and began to chase Mr. Parker on foot.

Q He was running towards you?

A Yes.

Q What happened when you started to chase him?

A When he saw us get out of the car he changed direction and began to run south towards 139 Avenue.

Q What happened when he started to run southbound towards 139?

A As he ran southbound, the officer, Detective Reo from the 113 was able to tackle him and we placed him under custody.

Q You observed Officer Reo take him to the ground?

A Yes.

Q Who handcuffed him?

A I did.

Q Where was that?

A That was in front of a residence on Sloan Street.

Q While this was happening, were you able to also observe the park?

A Yes.

Q Did you see any other individuals leaving the park at that time?

A Everyone was running at that point and at one point I saw Mr. Jahmaley Jones and Exodus Barnes run from the south exit of the park and run westbound on 139 Avenue.

Q Where were 'you when you saw that?

A I was about halfway the length on down Sloan between East Gate and 139 Avenue. About midway through the block.

Q Jahmarley Jones you identified in Court previously; correct?

A Yes.

Q After you observed Jones and you say Barnes?"

A Yes.

Q On 139 Avenue, what did you do?

A I proceeded to get in the vehicle that belonged to the 113 along with Detective Reo and Lewis and proceeded to canvass or look for individuals I saw running.

Q Reo and Lewis are members of the 113?

A Yes.

Q Are those officers that you had called to come to the scene when you observed the meetings?

A Yes.

Q You said you got iii a car. Whose car was it?

A Uhm, the car belonged to the 113.

Q You had just handcuffed Aquellio Parker?

A Yes.

Q What happened to Mr. Parker? Did you go with him or leave him?

A I believe he went into the vehicle that Officer Kearney was operating.

Q You got in a different vehicle?

A Yes.

Q All of these vehicles we are talking about are all marked or unmarked cars?

A All unmarked cars.

Q And all the officers we are talking about are in plain clothes or uniform?

A Everyone was in, was in plain clothes.

Q After you get into the car with the 113 officers, Officer Reo and Officer Lewis, where did you go?

A Proceeded west on 139 Avenue and onto 140 Avenue in the vicinity of – I don't remember the cross street, West gate Street.

Q What is over there? What kind of buildings are over

A It's mostly a mixture of commercial and residence. There was a commercial strip of bodegas and taller two or three story residential units.

Q And did you see anything when you got over in the vicinity on 140 Avenue?

A I saw the two individuals that I saw exiting the park, I saw them standing in front of bodega.

Q Who were they?

A Exondus Barnes and Jahmarley Jones.

Q What happened when you saw though two individuals standing in front of the bodega?

A As we pulled up, they saw us. They quickly entered into the store.

Q What did you do?

A Myself and Officer Reo exited our vehicle and proceeded into the store and placed them into custody.

Q What about M. Jones, what was he wearing?

A He had a gray sweat shirt with a darker colored vest.

Q Did you know his name at the time?

A I did not.

Q Did you know his name when he was placed under arrest, were you present when he gave his name to any of the officers there?

A Yes.

Q What did he say his name was?

A Stephen Roberts.

Q After Mr. Jones ' and Mr. Barnes were placed in custody, what happened?

A We proceeded back to the park and we all met back up in Bello Park and kind of got everything together before we proceeded back to the 113 Precinct for process.

Q When you got back to the park, did you see any other individuals who were there then in custody that had not been in custody when you left to go down 140 Avenue?

A Yes.

Q Who else did you see at the park at that time?

A Justin Campbell.

Q Did you see Sean Chung?

A Yes, I did.

Q Where was he?

A He was in the park. In the park in cuffs.

Q How about an individual named Michael Adel Hareem?

A Yes.

Q How about Aquellio Parker?

A Yes.

Q How about someone named Daren Ducrepin?

A Yes.

Q How about an individual named Lad Jappa?

A Yes.

Q Would it be fair to say the only individual you actually observed being taken into custody were and Barnes; correct?

A Yes. That's correct.

Q Had you seen any of the other individuals, did you recognize them as being part pf that ten to 15 person group that you observed in the park initially?

A Yes.

Q What was that based on?

A Based on my observations from Springfield Boulevard and my further observations from Sloan Street, I was able to see their clothing and things of that nature.

Q After you got back to the park, what happened?

A Uhm, we got to the park, we kind of informed, we got back to the others, discussed about what happened and we began to transport the prisoners back to the 113 Precinct.

Q How far is the 113 Precinct from Bello Park?

A Probably maybe a half mile, three quarters Of a mile.

Q Is that where all of the individuals we talked about how who were in custody were brought?

A Yes.

Q What happened when everyone got back to the precinct?

A Uhm, when everyone got back to the precinct, we began the basic arrest process. Everyone was in front of the desk. We inform everyone that--let me rephrase. We ask everyone their name and date of birth and pedigree information and inform everybody it is crime to give false information to the police at

160a

GEORG - PEOPLE- DIRECT

Q Moving forward to page 92, 2956.

A Cato states; 18 links wya.

Chung states; we not gone plan this out fb tho
that's how them wave Gang niggas got knocked.

Q What is fb?

A Face book.

Q And the Wave Gang, are you familiar with that?

A Yes.

Q What did that involve?

A Wave Gang was a gang in Brooklyn that was charged

MS. POVMAN: Objection.

MR. MALTZ: Objection.

MR. SANTOS: Objection.

MR. STRACHAN: Objection.

MR. MUCCINI: Objection.

THE COURT: Sustained.

MR. STRACHAN: Move to strike.

THE COURT: Stricken.

Q Was it publicly reported what happened to the Wave

A Yes.

MR. SANTOS: Objection.

MS. POVMAN: Objection.

MR. STRACHAN: Objection.

MR. MUCCINI: Objection.

MR. MALTZ: Objection.

THE COURT: Sidebar.

(Whereupon, the following takes place at sidebar conference)

THE COURT: Can I have the question read back?

(Question was read back by the Reporter)

MR. STRACHAN: It's totally irrelevant. This has nothing to do with the Wave gang. It has nothing to do with this matter. This is a claim from the Prosecution, this is a S.N.O.W. Gang matter and they're saying they retaliated to the Wood City Gang. They're bringing up issues about a Brooklyn gang and it's absolutely irrelevant whether it's publicly known or not. It has nothing to do with this case.

MR. REGAN: JP Sean Chung is saying we shouldn't plan this out on Facebook because that's how the Wave gang got caught. What he knows or should know at that point about the Wave Gang is relevant because he is saying the Wave gang got caught by posting on Facebook. We shouldn't post it on Facebook. It goes to their intent on what they knew they were doing was illegal and was going to actually be possibly a crime or homicide. He said let's not plan this on Facebook. This is how the Wave Gang got knocked.

MS. POVMAN: This sort of interpretation is exactly the type of expert fact testimony that is precluded under U.S. v Mejia and the Court of Appeals case Inoa. And the D.A. is asking this witness to interpret hearsay and apply that hearsay to the facts of this case. That is exactly what the cases prohibit.

MR. REGAN: I asked what the Wave gang is.

THE COURT: That's different than what you are saying.

MS. POVMAN: He is saying how does the statement of the Wave Gang apply to this case.

MR. REGAN: No.

THE COURT: He is asking the question:

MS. POVNAN: In essence --

THE COURT: The question is what was the Wave gang incident.

MS. POVMAN: That's hearsay. This has nothing to do with -- he is testifying to what he read in the newspaper.

MR. REGAN: Obviously Sean Chung, I am not saying Sean Chung was in the Wave Chung --I am sorry, he knows what happened to the Wave Gang.

MS. POVMAN: How do you know that?

MR. REGAN: He is posting what happened to the Wave gang.

THE COURT: Overruled.

(open court)

Q Was the Wave Gang investigation publicly reported?

MS. POVMAN: Objection.

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would be, in fact, March 31st Eastern time.

Scrome Da Boss says, what's ur number bro?

Q What number does E Brazy Swann reply with?

A E Brazy Swann says, 13473552770.

Q So returning to People's 52, Justin Campbell's Facebook call number 3108, is that the same number that is the called number on that record?

A Yes.

MR REGAN: I would like the witness to be handed People's 50 in evidence, Fabdon Felix's Facebook record.

MS. POVMAN: Judge, I have an objection. I would like a sidebar.

THE COURT: Sure.

(Whereupon, a discussion was held by and between all counsel and the Court at the sidebar, out of the hearing of the jury, and on the record as follows:)

MS. POVMAN: Judge, I'm going to object to this line of questioning under United States vs. Mejia 545 Federal 3d 179, which was also followed in People vs. Inoa, I-N-O-A, which I thought I had the site but I can provide it later.

Judge, what he is doing now, this witness was qualified as an expert in the S.N.O.W. Gang hierarchy, S.N.O.W code language. He's now converting this witness from an expert witness into a fact witness. And he is actually proposing to the jury his summation.

What he's doing now is he's no longer interpreting the code language of the S.N.O.W. Gang, he is now interpreting the evidence and he's summarizing the evidence by being asked to compare Exhibit 48 in evidence with Exhibit 38 in evidence. That's the D.A. 's job on summation; It's not this expert witness's job to interpret the evidence. He's usurping the jury's function and this has been criticized and overruled in the Second Circuit, as well as the Court of Appeals in New York.

MR. STRACHAN: Mr. Cato joins in that objection.

MR. MALTZ: Mr. Lucas joins in that objection.

MR. MUCCINI: Mr. Campbell joins in that objection.

MR. SANTOS: Mr. Milling joins in that objection.

MR REGAN: I'm not asking him to interpret anything. I'm asking him to read documents that are already in evidence and not offer any interpretation.

MS. POVMAN: But he's not qualified to do that;

MR REGAN: He's not qualified to read documents in evidence? Okay.

MS. POVMAN No, you can't have every witness read everything --

THE COURT: Overruled.

(Whereupon, the following took place in open

* * *

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A Yes.

Q And you had parked right by the park and had binoculars. what kind of binoculars did you have?

A I don't recall what kind.

Q You were about 30 feet away you said from the park, right?

A No. At that point when I was by the park I was on Sloan Street with the binoculars I was closer to 300 feet away.

Q Three hundred feet away and you see this group of people you saw doing something with their hands; you saw no firearms in their hands, right?

A I did not observe a firearm.

Q And you didn't see any criminal activity going on, is that correct?

A I observed what I believed to be an unlawful assembly. I did not observe a firearm.

Q You didn't see any crime take place, correct?

MR. REGAN: Objection. Calls for a legal conclusion.

THE COURT: Sustained.

Q I'd like to take you back to the hearing by the way, when you were observing these 12 people or 15 people, you looked at their faces, correct?

A Yes,

Q Mr. Trevor Lucas was not there, right? And you called for what, other vehicles to show up at the scene?

A Yes.

Q And then at that time some of the officers in your vehicle, including yourself in your car, ran into the park, right?

A That's incorrect referring to myself.

Q Did you leave your vehicle and walk into the park?

A More accurately, I proceeded in the car south on Sloan. I exited the car and chased Aquellio Parker. I later entered another vehicle and canvassed for the two other individuals that were apprehended outside the park.

Q Okay. Before you go on, you stopped them for what reason? Because they happened to be in the park?

MR. REGAN: Objection.

THE COURT: Sustained.

Q You consider their presence in a public area, a New York City public park, Bello Park by the basketball court at 7 o'clock in the morning - - 7 p.m. I mean you thought it was illegal to be there at 7 o'clock at night?

A In light of everything I had explained earlier, I believed that to be an unlawful assembly meeting for the purpose of planning a future crime. Okay.

MR. MALTZ: Objection.

MR. SANTOS: Objection.

* * *

Det Georg - People - Cross (Mr. Strachan)

Okay, Pages 11 to 15, there's nothing written by Mr. Cato?

A That's correct.

Q 16 to 20, there's nothing written by Mr. Cato?

A correct.

Q 21 to 25, there's nothing written by Mr. Cato?

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A Correct.

Q 26 to 30, there's nothing written by Mr. Cato?

A Correct.

Q 31 to 35, there's nothing written by Mr. Cato?

A Correct.

Q 36 to 40, there's nothing written by Mr. Cato?

A Correct.

Q Oh, by the way – sorry – Detective, what does jackin' mean?

A It has multiple meanings.

Q It has multiple meanings?

A Yeah.

Q Okay. What are some of the multiple meanings?

A Jackin' something is to claim something.

Q Claim something?

A Correct.

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Q Okay. So if I jack something, I'm claiming it?.

A Correct.

Q And the negative? If I say, I'm not jackin' something, I'm not claiming it?

A I would have to see it used in a sentence for the proper meaning.

Q So you're saying jackin' means claiming something or representing something?

A For instance, to jack L.O.E. means you're claiming to be a member of L.O.E.,

Q So if I'm not jackin' L.O.E., I'm not claiming to be a member of L.O.E.? Is that how you define that?

A If someone said, I'm not jackin' L.O.E.?

Q Yes.

A It could be saying they're not claiming L.O.E.

Q I'm not down with it? I'm not part of L.O.E.? Could you read it that way?

A Again, I would have to see the actual --it's a slang term. I would have to see it in the sentence to see the proper meaning.

Q So you use some common sense textually as far as defining what a term means?

A It's just a word that has a broad meaning.

Q Okay. So it could mean many things?

A Yes.

Q If someone said, I'm not– I'm not – I'm not jackin' that, could that mean I'm not down with that?

A Again, I would have to see how it was used.

Q Could it mean that in your expert opinion based on the S.N.O.W. Gang language? I'm not jackin' that.

A It could mean – it could mean I'm not down with that or I disagree with you or I don't want

Q Or I'm not down with that?

A It could have several meanings.

THE COURT: You're asking the same question and he's giving you the same answers.

Q Page 41 to 45, there's nothing written by Mr. Cato, correct?

A That's correct.

Q 46, there's nothing by Cato?

A Correct.

Q Okay. 47 and 48, is there a – that's a discussion about a key?

A It's a discussion about making a copy of a car key at Home Depot.

Q Okay. A copy of car keys. Okay. But there's nothing in 47 and 48 about, let's kill – let's kill somebody – there's nothing in there, is that correct, in those two pages?

A That's Correct.

MR. STRACHAN: Can I get Dane'e Cato's presentation? I forget the number. Is it 51? I'll give you the number. It's 51.

Dt. Georg- People - Cross/Strachan

Q Detective Georg, what are the multiple meanings of the term jacking?

A Uhm, well, as I stated, it would depend how it is used in a sentence. To jack is generally to claim something. Either to claim membership in a gang, to make some sort of statement about something, like they're jacking. I don't know, they're jack that they saw that. Uhm, it can mean to associate with someone you know. Don't jack with me if you're going to act that way or I am not jacking with you.

Q Then how many different meanings to the term jacking are there?

A Uhm, as I stated, those are the ones that I stated that I can think of at this time.

Q So that's representing or associate. Are those similar? Are those – you think those are different?

A Again, it would depend how it's used in a sentence. If you were using, I am jacking S.N.O;W. Gang, I am a member of S.N.O.W. Gang. You are saying, you know, don't jack my shit, you might say don't associate with me. We are not friends.

Q Are there any other S.N.O.W. terms that have multiple meanings?

A There is none I can think of off the top of my head. couldn't say, no, at this time.

Q And when a word has multiple meanings, a particular interpretation can be wrong; is that correct?

* * *

DT.Georg - People - Cross/Strachan

Q No. I am just saying, based on your expertise as an expert in the S.N.O.W. Gang language, you have indicated that some S.N.O.W terms have multiple meanings. I am just saying that you may have difficulty determining whether or not what someone writes is actually what they seriously think or maybe not?

A I didn't feel like I had any difficulty in interpreting. That's all I can really testify to.

Q Based on the person who is offering the Facebook entry, you don't know if that person is someone who is a jokester or someone who is serious in anything they write they mean; is that correct?

A Can you rephrase it?

Q You couldn't be – since you don't know the person who wrote the Facebook entry, you don't know if that person is someone who is writing seriously or maybe he is just a jokester?

A Again, I would have to take everything into account with information that I have to make the best judgment I can.

Q The information you have is primarily just reading

Facebook entries?

A Uhm, again, as I stated earlier in my testimony, it would be from all of the investigative techniques I described between debriefing, between doing work on the street, reviewing police reports, that would help paint the picture of activities of the gang at large. We will say, take that in conjunction with the text.

Q Primarily you're reviewing thousands of Facebook entries; isn't that correct?

A Yes.

Q And you said the debriefing, these are debriefings that haven't been taped or videotaped; is that correct?

A That's correct.

Q You're reading statements from police reports, reports from people who aren't in court today; is that correct?

A I suppose that would be true, yes.

Q You didn't serve a subpoena on anyone to testify in this case; correct?

A No.

MR. REGAN: Objection.

THE COURT: Sustained. Stricken.

MR. STRACHAN: May I have one moment?

THE COURT: Yes.

Q Detective, I am going to show you what has been marked as Defendant's Exhibit C for identification.

THE COURT: I don't have C. I don't have B. What is B? Nothing gets marked without me knowing.

MR. STRACHAN: Excuse me, Judge. B, it's a photograph.

Q Let me show you Defendant's Exhibit B.

THE COURT: May I see B? Thank you.

Det. Georg - People - Redirect

Q You were asked – excuse me. Withdrawn. Unlawful assembly is that a crime?

A Yes.

Q It's in the Penal Law?

A Yes, it is.

Q So what you observed in the park, did you believe to be a crime?

A Yes.

MR. MALTZ: Objection.

THE COURT: Overruled.

A Yes, I did.

Q That's when you called for assistance from your fellow officers, correct?

A Yes, that's correct.

Q Why did you believe what you saw was unlawful assembly?

MR. MALTZ: Objection.

MS. POVMAN: Objection.

MR. SANTOS: Objection.

MR. STRACHAN: Objection.

MR. MUCCINI: Objection.

THE COURT: Sustained.

Q What information did you have that led you to believe that It was unlawful assembly?

MR. MALTZ: Objection.

MS. POVMAN: Objection.

MR. SANTOS: Objection.

MR. STRACHAN: Objection.

MR. MUCCINI: Objection.

THE COURT: Overruled.

A As I stated earlier in my testimony, my knowledge of the gang, my knowledge of that being a meeting location of the gang. The social media posts we had discussed. My observation of previous meetings of the gang. My observations of videos posted on-line of meetings and –I shouldn't say meetings, fights in that park involving members of the S.N.O.W. Gang, and the

overall circumstances which we discussed in regards to the shooting of Mr. Thomas and Mr. Bowlin.

Q You were also asked about whether you observed photos in. your review of Facebook records, correct?

A Yes.

Q Mr. Maltz asked you if you saw any photographs with multiple members of the gang in it, over 30 members, do you remember that?

A Yes.

Q In your review of the 100 thousand or more pages of the Facebook records, did you see photographs containing large groups of members of the S.N.O.W. Gang?

MR. SANTOS: Objection.

* * *

Det. Georg - People - Redirect

Q Put that to the side. You testified during cross you couldn't think off the top of your head of any words that the S.N.O.W. Gang uses that have multiple meanings; correct?

A Yes.

Q How about the word drop?

A Yes, that would be one.

Q Okay, and what are the possible meanings of the word drop?

A Um, one meaning can mean a subordinate gang member. This person my drop. They're below me in the gang. Another meaning would be say to have the drop on someone, like have an advantage, have some information on, I have the drop on them.

Q In order to determine which is the correct interpretation, you would have to look at the context of the statement; correct?

MR. MALTZ: Objection. Leading.

THE COURT: Overruled.

MR. STRACHAN: Objection.

THE COURT: Overruled.

A Yes, that is correct.

Q Mr. Strachan spent sometime going through several pages of the Facebook records with you. I don't believe he went over the entry we just went over.

MR. STRACHAN: Objection to that comment.

Proceedings

just that the exhibit itself is not available for your inspection and consideration.

The evidence also includes the stipulations entered into by the parties. A stipulation is information the parties agree to present to the jury as evidence without calling a witness to testify.

In evaluating evidence, you may consider any fact that is proven and any inference which may be drawn from such facts. To draw an inference means to infer, find, conclude that a fact exists or does not exist based upon proof of some other fact or facts. An inference must only be drawn from a proven fact or facts and then only if the inference flows naturally, reasonably and logically from the proven fact or facts, not if it is speculative.

Therefore, in deciding whether to draw an inference, you must look at and consider all of the facts in light of reason, common sense and experience. If two or more inferences can be drawn from a given set of facts, one of lack of guilt and the other of guilt, I charge you that you must, under the circumstances, draw the inference of lack of guilt. Ladies and gentlemen, during the course of the trial, there has been extensive testimony regarding the S.N.O.W. Gang, other rival gangs, including the Wood City Gang, and the alleged membership of these five defendants within the S.N.O.W. Gang.

I instruct you now that gang membership, in and of itself, whether it be within the S.N.O.W. Gang or any other gang, is not evidence of any wrongdoing, and should not be considered by you as evidence of the guilt of any one or more of the defendants for any of the crimes contained in the indictment, including Conspiracy in the First and Second Degrees. To the extent you find it credible, in whole or in part, evidence relating to gangs and these defendants should be

considered by you in the same manner that you will consider any other evidence offered at this trial.

Some of the evidence at trial, including Facebook postings that you viewed on the monitor in the courtroom, concern conversations and incidents that occurred prior to the dates of the alleged conspiracy. That is March 30 to April 1 of 2014. The Court allowed this material into evidence to provide you, the members of the jury, with a background of the history, the culture, the hierarchy, prior dealings with rival gangs, and the coded language of the S.N.O.W. Gang. Of course, you're free to accept or reject this particular testimony, to the extent that you find it credible or not, including as it may bear upon the issue of motive for the commission of any of the crimes contained in the indictment by any of the defendants.

However, any evidence of previous wrongdoing by any one or more of the defendants on trial prior to the formation and the actual ongoing events of the alleged conspiracy shall not be considered by you with regard to the guilt or lack of guilt of any of the defendants for any of the crimes that will be submitted for your consideration. To find these defendants guilty of any of the crimes they have been charged with, the People are required to prove to your satisfaction, beyond a reasonable doubt, each of the elements of a particular crime, as I shall instruct you later in my charge on the law.

There are five defendants before you and we are thus conducting five trials in one. It is your obligation to evaluate the evidence as it applies or fails to apply to each defendant separately. As you will note, all of the defendants have not been charged with the same crimes. Each instruction on the law must be considered by you as referring to each defendant separately. You must return a separate verdict for each defendant and those verdicts may be, but need not be, the same. It is your sworn duty to give separate consideration to the case of each individual defendant.

We now turn to the fundamental principles of our law that apply in all criminal trials; the presumption of innocence, the burden of proof and the requirement of proof beyond a reasonable doubt.