

APPENDIX

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APPENDIX A

Supreme Court of the State of New York
Appellate Division: Second Judicial DepartmentD58399
G/afa AD3d

Argued - December 7, 2018

WILLIAM F. MASTRO, J.P.
JEFFREY A. COHEN
JOSEPH J. MALTESE
HECTOR D. LASALLE, JJ.

2015-00834

DECISION & ORDER

The People, etc., respondent,
v William Alexander, appellant.

(Ind. No. 10999/12)

Janet E. Sabel, New York, NY (Anita Aboagye-Agyeman and Will Page of counsel),
for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove, Jean M. Joyce,
and Sullivan & Cromwell LLP [Michele C. Materni], of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County
(Vincent Del Giudice, J.), rendered December 23, 2014, convicting him of robbery in the first degree
and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing
sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the Supreme Court providently exercised its
discretion in excluding a photograph from evidence, as the defendant failed to lay a sufficient
foundation for its admission (see *People v Price*, 29 NY3d 472, 479-480; cf. *People v Wells*, 161
AD3d 1200; *People v Marra*, 96 AD3d 1623, 1626, *affd* 21 NY3d 979). In any event, even if
erroneous, the failure to admit the photograph was harmless, as the proof of the defendant's guilt was
overwhelming and there is no significant probability that the jury would have acquitted the defendant
had the photograph been admitted (see *People v Crimmins*, 36 NY2d 230).

March 6, 2019

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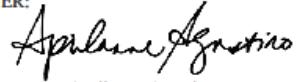
PEOPLE v ALEXANDER, WILLIAM

2a

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

MASTRO, J.P., COHEN, MALTESE and LASALLE, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

March 6, 2019

PEOPLE v ALEXANDER, WILLIAM

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APPENDIX B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CRIMINAL TERM : PART 27
- - - - - X
THE PEOPLE OF THE STATE OF NEW YORK : INDICTMENT NO. 10999-2012
- against - :
WILLIAM ALEXANDER :
DEFENDANT : HEARINGS
- - - - - X
320 JAY STREET
BROOKLYN, NEW YORK 11201
MARCH 18, 2014

BEFORE: HONORABLE RUTH SHILLINGFORD, JUSTICE

APPEARANCES:

CHARLES J. HYNES, ESQ.
District Attorney, Kings County
BY: STEPHANIE ROSENFELD, ESQ.
Assistant District Attorney

THE LEGAL AID SOCIETY
Attorney for Defendant
BY: STEVEN KLIMAN, ESQ.
BY: CLINTON HUGHES, ESQ.

GEORGE DAVID DAVILA
SENIOR COURT REPORTER

DIRECT - P.O. JORDAN - ROSENFELD

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1 Q. Once you saw the defendant riding on his bike, what
2 happened next?

3 A. We actually made a U-turn. He passed me and we
4 actually made a U-turn. So we were actually driving the
5 opposite way of traffic. We put our lights and sirens. I put
6 my window down, told him to stop and he continued to ride his
7 bike.

8 Q. And what happened after?

9 THE COURT: One moment, please.

10 MS. ROSENFELD: I apologize.

11 THE COURT: You indicated that you told him to
12 stop?

13 THE WITNESS: Yes.

14 THE COURT: Continue.

15 Q. After you told him to stop what happened?

16 A. He continued to ride his bike. He actually attempted
17 to go on the curb.

18 Q. What happened when he attempted to go on the curb?

19 A. He actually fell. So I jumped out of the vehicle. I
20 grabbed him but before I grabbed him, he pulled out a weapon
21 and threw it to his side, to his right.

22 Q. Did you see what type of weapon it was?

23 A. It was a nine millimeter pistol.

24 Q. Now, after you saw him throw the pistol to the side
25 and then you saw him on the ground, what did you do?

DIRECT - P.O. JORDAN - ROSENFELD

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1 A. Well, he got up on his own and threw the gun to the
2 side. I just grabbed him and we cuffed him.

3 Q. Just backtracking a little bit, was that gun that was
4 thrown to the side ever recovered?

5 A. Yes.

6 Q. Who recovered it?

7 A. My partner, Officer Thomas.

8 Q. What type of gun was it?

9 A. It was a nine millimeter.

10 Q. Was it loaded?

11 A. Yes.

12 Q. Now, after you stopped the defendant did you ever have
13 a chance to meet with the victim?

14 A. Yes.

15 Q. Do you remember the victim's name?

16 A. Yudelka Veras.

17 THE COURT: Veros?

18 THE WITNESS: Veras with an "S".

19 Q. How did you come to meet the victim?

20 A. She actually came to the scene and identified the
21 perpetrator.

22 Q. How did she come to the scene?

23 A. She was actually in a friend's car, I think. She was
24 in another car. She wasn't in a police car.

25 Q. When she came to the scene, did you have a chance to

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM: PART: 25
3 -----X
4 PEOPLE OF THE STATE OF NEW YORK, :
5 : Indictment
6 : against : No. 10999/i2
7 WILLIAM ALEXANDER, :
8 : Defendant.
9 : -----X
10 : 320 Jay Street
11 : Brooklyn, New York
12 : December 1, 2014
13 : B E F O R E:
14 : HONORABLE VINCENT DELGIUDICE,
15 : Justice of Supreme Court
16 : A P P E A R A N C E S:
17 : KENNETH P. THOMPSON, ESQ.
18 : DISTRICT ATTORNEY KINGS COUNTY
19 : BY: STEPHANIE ROSENFIELD, ESQ.
20 : DAVID RASKIN, ESQ.
21 : Assistant District Attorneys
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24 : 175 Remsen Street
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BY: BHARATI NARUMACHI, ESQ.
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Attorneys for the Defendant
MERCEDES FERNANDEZ,
Official Spanish Interpreter
23 :
24 : PHYLLIS PRICE
SCOTT ISAACS
OFFICIAL COURT REPORTERS
25 :

Direct - PO Thomas

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1 A Him right there, with the white shirt.

2 THE COURT: Indicating the defendant.

3 MS. ROSENFELD: Thank you, your Honor.

4 Q Now you said you saw the defendant riding a bike down
5 Fulton Street.6 Is that going towards Chestnut Street, or away from
7 Chestnut Street?

8 A Away from Chestnut Street.

9 Q Now, after you saw the defendant riding the bike,
10 what happened next?

11 A He rode past us, at the point.

12 When he got to my vehicle, he made eye contact with
13 me and my partner, and I made eye contact with him.

14 Q And after you made eye contact with him?

15 A I put the turret lights on the vehicle. I turned the
16 vehicle around. I drove behind the defendant, and hit the
17 siren.

18 Q Did you ever lose sight of the defendant?

19 A No.

20 Q Was your view of the defendant ever obstructed by
21 anything?

22 A No.

23 Q Now, you are following the defendant. What happens?

24 A When I got close to behind him, I hit I siren. And
25 he jumped off the bike, and threw the gun to the ground.

PP

. Direct - PO Thomas

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1 Q Had you instructed the defendant to stop?

2 A Yes.

3 Q How did you do that?

4 A Police, stop, don't move.

5 Q And did the defendant stop?

6 A Yes.

7 Q Then what happened?

8 A He put his hands up. My partner had him at gunpoint,
9 while I went over to the side of him to put the handcuffs on
10 him.

11 Q Now, you said you saw the defendant throw something.

12 . What did you see him throw?

13 A A black handgun.

14 Q And where did he throw the gun to?

15 A On the sidewalk.

16 Q Now, did you ever hit the defendant with your police
17 vehicle while he was on the bicycle?

18 A Never.

19 MS. ROSENFIELD: I'd like to have this marked as
20 People's number Two for identification.

21 (People's 2, marked for identification.)

22 Photo of bike

23 Q Officer, do you recognize what's been handed to you
24 as People's number Two for identification?

25 A Yes.

PP

Direct - PO Thomas - Voir Dire

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1 Q What do you recognize it to be?

2 A The black bicycle he was riding that day.

3 Q Is that photo a fair and accurate representation of
4 what the defendant's bike looked like on December 29th 2012?

5 A Yes.

6 MS. ROSENFIELD: I would like to have this moved
7 into evidence as People's number Two in evidence.

8 THE COURT: Voir dire or exception, Counsel?

9 MS. NARUMACHI: If I may voir dire?

10 THE COURT: Go right ahead.

11 VOIR DIRE EXAMINATION

12 BY MS. NARUMACHI:

13 Q Who took that photograph?

14 A The arresting officer.

15 Q And who is the arresting officer in this case?

16 A Officer Jordan.

17 Q Do you know when that photo was taken?

18 A The day of.

19 Q And how do you know that?

20 A She told me.

21 Q She told you that she took that photo?

22 A Yes.

23 Q You weren't present when that photo was taken?

24 A No.

25 Q You did not process any of the voucher paperwork --

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1 Direct - PO Thomas

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1 THE COURT: Sustained. What does that have to
2 do, it is an exhibit.

3 Voir dire on the photograph.

4 MS. NARUMACHI: I apologize, Judge.

5 (Whereupon, counsel confers with co-counsel.)

6 MS. NARUMACHI: Judge, I would argue it goes to
7 authenticating the bike.

8 THE COURT: You have an objection to it?

9 MS. NARUMACHI: I do have an objection.

10 THE COURT: Your objection is overruled.

11 That is the bike you saw?

12 THE WITNESS: Yes.

13 THE COURT: It is in evidence.

14 (People's 2 marked in evidence.)

15 Photo of bike

16 MS. ROSENFELD: If I may publish it to the jury
17 now?

18 THE COURT: Go ahead.

19 (Whereupon, exhibit published to the jury.)

20 Q Officer, again, you recognize this bike?

21 A Yes.

22 Q Where do you recognize it from?

23 A The defendant was riding on December 29th.

24 Q Thank you very much.

25 After the defendant had stopped, and after he threw

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3 THE COURT: Okay, Miss Rosenfeld.

4 MS. ROSENFIELD: Thank you.

5 Q Officer, looking at People's number Three for
6 identification.

7 Who recovered the actual money off of the defendant?

8 A I did.

9 Q And once you recovered that money off of the
10 defendant, what did you do with it?

11 A I handed it to Officer Jordan.

12 Q Did you see what Officer Jordan did with it?

13 A No.

14 Q Did you see how this photocopy was made?

15 A No.

16 Q Officer, now when you recovered the money off of the
17 defendant, did you take a look at it?

18 A Yes.

19 Q And how much money do you recall there to be?

20 A \$40.

21 Q And what were the denominations?

22 A \$20 and two 10s.

23 Q And is this photocopy a fair and accurate

24 representation

25 defendant on December 29th 2012?

10.1007/s00332-010-9000-0

Direct - PO Thomas - Voir Dire

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1 A Yes.

2 MS. ROSENFELD: At this time, I would ask it be
3 received into evidence as People's number Three.

4 THE COURT: Voir dire?

5 MS. NARUMACHI: Yes.

6 VOIR DIRE EXAMINATION

7 BY MS. NARUMACHI:

8 Q You testified you recovered an amount of money from
9 Mr. Alexander?

10 A Yes.

11 Q Was it 20 and two \$10 bills?

12 A Yes.

13 Q Do you know the serial numbers on those dollars,
14 those items?

15 A No.

16 Q And you didn't see the money, what happened with the
17 money after you gave it to Officer Jordan?

18 A No.

19 Q And you didn't see the photocopying of those bills
20 that are in front of you?

21 A Can you repeat the question?

22 Q You didn't see a photocopy made of that money, did
23 you?

24 A No.

25 MS. NARUMACHI: I would object, Judge.

PP

Direct - PO Thomas - Voir Dire

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1 THE COURT: Let me ask you a question.
2 You gave Jordan 40 bucks, right?
3 THE WITNESS: Yes.
4 THE COURT: 20 and two 10s?
5 THE WITNESS: Yes.
6 THE COURT: She comes back to you, and she has a
7 picture of a \$20 bill, and two 10s, the photostat?
8 THE WITNESS: On the day no, she didn't.
9 THE COURT: Did Jordan photostat the \$20 bill,
10 and two 10s that you took from the defendant's pocket?
11 THE WITNESS: Yes.
12 THE COURT: Is that the photostat?
13 THE WITNESS: Yes.
14 THE COURT: It is in evidence.
15 MS. NARUMACHI: I would object.
16 THE COURT: Fine. You have grounds for appeal.
17 Goes to weight not admissibility.
18 (People's 3 marked in evidence.)
19 Photo of currency
20 MS. ROSENFELD: At this time, I would like
21 People's number Three to be taken out of the packaging so
22 I could publish it to the jury.
23 THE COURT: Show her on the overhead.
24 THE COURT: I think everybody saw a \$20 bill,
25 and two 10's.

PP

Direct - PO Thomas

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1 Okay, let's move on.
2 THE COURT: Officer, at the time you searched
3 the defendant and recovered the \$40, did you recover any
4 other money from the defendant?
5 A No.
6 Q After you finished searching the defendant, what did
7 you do next?
8 A I placed him in the vehicle. And recovered the gun.
9 Q And where did you find the gun?
10 A On the sidewalk.
11 Q And did you pick the gun up?
12 A Yes.
13 Q Did you use anything to pick the gun up with?
14 A Gloves.
15 Q And what type of gun was it?
16 A A black .9-millimeter.
17 Q Was it loaded?
18 A Yes.
19 Q What did you do with the gun after you picked it up?
20 A I put it in a paper bag, and put it in the back seat.
21 Q Why did you do that?
22 A So I wouldn't get my fingerprints on it. And for
23 security.
24 Q And what did you do with the gun after you put it in
25 the back seat of your vehicle?

PP

Direct - PO Thomas

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1 A We went back to the precinct to call ESU, the
2 detective and a police officer, to make sure it was rendered
3 safe.

4 Q And after it was rendered safe by ESU, what was done
5 with the gun?

6 A They handed it to Officer Jordan.

7 Q What happened next?

8 A Officer Jordan took a photograph of it.

9 Q And after the gun was photographed, what happened
10 next?

11 A After that, I went home.

12 Q Before you went home, was the gun ever given to ECT?

13 A Yes.

14 Q What is ECT?

15 A Evidence collection.

16 Q And after the gun was processed by ECT, do you know
17 what Officer Jordan did with the gun?

18 A No.

19 Q Was the gun ever vouchered?

20 A Yes.

21 Q Do you know what voucher number was given to the gun?

22 A Yes.

23 Q What was the voucher number of the gun?

24 A 3000161995.

25 Q And, Officer, did you bring the gun with you here

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Direct - PO Thomas

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1 today?

2 A Yes.

3 MS. ROSENFIELD: I would like to have that marked
4 as People's number Four for identification.

5 THE COURT: Okay.

6 (People's 3, marked for identification.)

7 Handgun

8 Q Sir, the gun that you brought with you today, you
9 recognize it?

10 A Yes.

11 Q And what do you recognize it to be?

12 A A black .9-millimeter handgun.

13 Q And is that the gun that you recovered off the ground
14 on December 29th 2012?

15 A Yes.

16 THE COURT: I think we are going to take a
17 luncheon recess right now.18 Ladies and gentlemen, I ask you to come back at 2:15,
19 okay.

20 Please keep an open mind.

21 Don't form, or express any opinions, or conclusions
22 with respect to the evidence in the case until I submit it
23 to you for your deliberations.24 Don't discuss this case amongst yourselves, or with
25 anyone else.

PP

P.O. Remel Thomas - Cross - Narumanchi

1 gun far away from Mr. Alexander?

2 A No.

3 Q Isn't it true that the gun was not recovered next to
4 him?

5 A The gun was recovered approximately four feet from
6 him.

7 Q Now, as the arresting officer in this case, Officer
8 Jordan is the person who completed the police reports in this
9 case?

10 A Yes.

11 Q And, for example, she completed the arrest report?

12 A Yes.

13 Q She completed the complaint report?

14 A Yes.

15 Q And she also took the gun to the ECT Unit?

16 A Yes.

17 MS. NARUMANCHI: Now, I would like to hand up to
18 Officer Thomas what has been marked as Defense Exhibit A
19 for identification only.

20 Q Now, Officer Thomas, directing your attention to that
21 photo, do you recognize this photo?

22 A I recognize the person in the photo, but he's wearing
23 different clothes.

24 Q Was this photo taken on December 29th of 2012?

25 A Yes.

P.O. Remel Thomas - Cross - Narumanchi

1 Q Was it taken at the 75th Precinct?
2 A Yes.
3 Q And what do you recognize this photo to be?
4 A A photo of the defendant dressed in different clothes.
5 Q Is it an arrest photograph?
6 A Yes.
7 Q And when arrest photographs are taken, they are taken
8 at the police precinct after arrests; right?
9 A Yes.
10 Q And typically, the arresting officer is present during
11 that photograph being taken?
12 A Not always.
13 Q Not always. But typically there?
14 A Yes.
15 Q And does it fairly and accurately represent how
16 Mr. Alexander appeared on December 29th of 2012?
17 A Mr. Alexander was wearing multiple clothes that he
18 could have exchanged.
19 Q Other than the colors of the clothing, does it fairly
20 and accurately represent how Mr. Alexander appeared on
21 December 29th of 2012?
22 A It's Mr. Alexander but in different clothes.
23 Q I understand that. Does it fairly -- outside of the
24 colors of the clothing, does it fairly and accurately represent
25 how he appeared on December 29th of 2012?

P.O. Remel Thomas - Cross - Narumanchi

1 A Yes.

2 MS. NARUMANCHI: At this time, Judge, I would
3 like to move this into evidence.

4 THE COURT: Voir dire?

5 MS. ROSENFELD: First the People would like to
6 note their objection. Yes, a quick voir dire.

7 THE COURT: Usually it's the other way around, I
8 would think.

9 VOIR DIRE EXAMINATION

10 BY MS. ROSENFELD:

11 Q Officer, what was the defendant wearing at the time
12 that you saw him on the street?

13 THE COURT: Sustained.

14 Q Officer, do you recall what the defendant was wearing
15 when you first saw him?

16 A Yes.

17 Q What was he wearing?

18 THE COURT: Sustained. It's going to the
19 admissibility of the photograph, not what the defendant was
20 wearing. He already said that he changed his clothes.

21 Q So, Officer, this photo, is it representing what the
22 defendant was wearing at the time you first saw him on the
23 street?

24 A No.

25 Q So it does not fairly and accurately represent what he

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Side bar

1 looked like at the time you first saw him?

2 A No.

3 MS. ROSENFIELD: The People note their objection.

4 THE COURT: Side bar.

5 (The following occurs at side bar out of the
6 presence of the jury.)

7 THE COURT: Okay. I would just like an offer of
8 proof as to what the relevance of the photograph is.

9 MS. NARUMANCHI: Judge, it's relevant to the
10 theory of the defense that we have already said in our
11 opening it's mistaken identification, and Mr. Alexander was
12 not the individual who robbed Ms. Veras, that his clothing
13 was substantially different than the description of the
14 perpetrator, and that's why it's relevant to this case.
15 It's very key to the defense case.

16 THE COURT: Both witnesses, this officer and
17 Villafane, indicated this is a picture of the defendant
18 who's on trial but he's changed his clothes. So they
19 already indicated that's the facial features, that's the
20 man, but the outer garments that he has on, to wit, just
21 the jacket and the scarf are different because he still has
22 the jeans on.

23 MR. HUGHES: I'm sorry to interrupt --

24 THE COURT: Only the attorney that's -- I'll give
25 you as much time as you want to, but I don't see how it's

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Side bar

1 relevant if both witnesses indicated this wasn't the
2 clothing he was wearing.

3 MS. NARUMANCHI: Well, Judge, but it was a
4 photo --

5 THE COURT: Are you going to bring in testimony
6 to establish this was the clothes he was wearing at the
7 time of the offense?

8 MS. NARUMANCHI: Well, I mean they are going to
9 deny that that was the clothing that he was wearing at the
10 time of the offense.

11 THE COURT: So far three witnesses have
12 testified --

13 MS. NARUMANCHI: I understand.

14 THE COURT: -- that he had a yellow hoodie and a
15 blue vest with jeans. This shows the person dressed in a I
16 guess a bubble jacket with a scarf at the precinct.

17 MS. NARUMANCHI: It's a gray hoodie. This was a
18 photo taken of him at the precinct while he was under the
19 control of the officers. And I could continue to question
20 on that, but --

21 THE COURT: What's the relevance?

22 MS. NARUMANCHI: It's relevant to the
23 identification, Judge. We're arguing it's not him, that
24 he's not the perpetrator, and that they are wrong. They
25 arrested an African American man wearing similar clothing.

si

Side bar

1 think that that is actually relevant to the question on
2 those colors and whether or not he could have actually
3 changed his clothing in the precinct. He was escorted
4 directly from the site to the precinct. He was in their
5 custody the entire time, so I think it does go to our
6 defense.

7 But additionally, in terms of the police officers
8 and questioning on that, it also goes to a motive to lie
9 about a variety of different issues in this case.

10 THE COURT: Okay. Your application is denied.
11 It's not coming into evidence. I believe you haven't
12 sufficiently established how it's probative. Maybe if your
13 client wants to take the stand, he could testify as to how
14 he looked and if these were his clothes. But so far three
15 witnesses, three separate witnesses all indicated at the
16 scene of the arrest the clothing he had worn, and two of
17 them looked at this piece of evidence and said that's him,
18 but his clothing has been changed.

19 Okay. So I find this to be not reliable and is
20 not to your point. If there is some kind of sponsoring
21 testimony that this was the clothing that he was wearing
22 and they arrested the wrong guy, and these three witnesses
23 were under some mass delusion, I'll let it come in.

24 (Back in open court.)

25 CROSS EXAMINATION - CONTINUED

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P.O. Remel Thomas - Cross - Narumanchi

1 BY MS. NARUMANCHI:

2 Q Now, Officer Thomas, we were discussing the fact that
3 Officer Jordan is the arresting officer in this case.

4 Now, you were with Officer Jordan when Mr. Alexander
5 was arrested; correct?

6 A Yes.

7 Q And you along with Officer Jordan escorted him to the
8 precinct?

9 A Yes.

10 Q And at the precinct he was processed for an arrest?

11 A Yes.

12 Q And we had just discussed as part of that processing,
13 photos were taken; correct?

14 A Yes.

15 Q Now, typically -- he didn't have any visitors at the
16 precinct; did he?

17 A No.

18 Q And did you voucher any of the clothing that he was
19 wearing that day?

20 A No.

21 Q And I had just shown you a photograph for
22 identification. You said that the colors of the clothing were
23 different; correct?

24 A Yes.

25 Q You maintain a memo book as part of your duties as a

P.O. Remel Thomas - Cross - Narumanchi

1 police officer?

2 A Yes.

3 Q And the photo that I showed you was taken that day, on
4 December 29th of 2012?

5 A Yes.

6 Q And it was taken at your precinct, the 75th
7 Precinct?

8 A Yes.

9 Q Now, part of writing notes in your memo book is you
10 note things that happened while you are on duty; right?

11 A Yes.

12 Q And that day you noted down a description of a
13 perpetrator in the robbery?

14 A Yes.

15 Q And you noted in your memo book that he was wearing a
16 yellow hoodie?

17 A Yes.

18 Q And a blue vest?

19 A Yes.

20 Q Now, you didn't note that he was wearing different
21 clothing at the precinct?

22 A No.

23 Q You didn't note that the colors of the ski vest were
24 different than the description that you received?

25 A No.

P.O. Remel Thomas - Cross - Narumanchi

1 THE COURT: Next witness.

2 MR. RASKIN: Your Honor, the People are calling
3 Police Officer Kevin Hutchinson.

4 COURT OFFICER: Witness entering.

5 THE COURT: Very well.

6 COURT OFFICER: Remain standing. Face the clerk.

7 THE CLERK: Please raise your right hand.

8 KEVIN HUTCHINSON, was called as a witness by and
9 on behalf of the People, having been first duly sworn by
10 the Clerk of the Court, testified as follows:

11 THE CLERK: Be seated. Please state your name
12 and spell it for the record.

13 THE WITNESS: Officer Kevin Hutchinson,
14 K-E-V-I-N, H-U-T-C-H-I-N-S-O-N.

15 THE CLERK: Shield number?

16 THE WITNESS: Shield 18979.

17 THE CLERK: And command?

18 THE WITNESS: Brooklyn North Evidence Collection
19 Team.

20 THE CLERK: Thank you.

21 THE COURT: Thank you. How are you doing?

22 THE WITNESS: How are you doing, sir?

23 THE COURT: Welcome to my courtroom. I ask you
24 to do three things, speak right into the microphone, look
25 the jury in the eye when you answer, and if you hear the

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P.O. Remel Thomas - Cross - Narumanchi

1 word "objection", say no.

2 THE WITNESS: You got it.

3 THE COURT: Thank you.

4 DIRECT EXAMINATION

5 BY MR. RASKIN:

6 Q By whom are you employed?

7 A New York City Police Department.

8 Q In what capacity?

9 A Police Officer.

10 Q How many years have you been a police officer?

11 A Twelve years now.

12 Q How many years have you been assigned to ECT?

13 A Six years.

14 Q Just describe to the jury what ECT stands for.

15 A It stands for Evidence Collection Team.

16 Q As an officer assigned to the Evidence Collection
17 Team, what are your duties and responsibilities?

18 A Basically we go to crime scenes and try to collect any
19 evidence that's left at the scene.

20 Q What kind of cases do you become involved in in that
21 capacity?

22 A Become involved in burglaries, robberies, shootings
23 that are non-fatal, and gun cases.

24 Q And what do you do specifically when you become
25 involved in those type of cases?

si

P.O. Kevin Hutchinson - Direct - Raskin

1 A Well, we go through the scene and we try to process
2 whatever is at the scene.

3 Q I'm going to direct your attention to December 29,
4 2012. Did you become involved in an investigation into an
5 incident that occurred on Chestnut Street in Brooklyn?

6 A Yes.

7 Q How did you become involved in that?

8 A We had a call saying that there was a robbery with a
9 gun that was recovered at the location.

10 Q What exactly did you do with respect to that
11 investigation?

12 A Well, I responded to the 75th Precinct where the gun
13 was brought back to, and I processed the firearm there.

14 Q Just describe to the jury what you did in the
15 processing of that firearm?

16 A Well, I swabbed the firearm for DNA. Basically, we
17 have like a long Q-tip, we put distilled water on the tip of
18 the cotton swab, and we swab the area of the firearm that was
19 touched the most.

20 Q Why would you swab a firearm?

21 A Just to see who was handling the firearm.

22 Q You mentioned DNA. Were there any other reasons why
23 you would swab a firearm?

24 A Any other reason?

25 Q Yes.

P.O. Kevin Hutchinson - Direct - Raskin

1 A Like I say, just to find out who touched the firearm.

2 Q Did you also swab to get a fingerprint?

3 MR. HUGHES: Objection, Your Honor, to the
4 leading.

5 THE COURT: Overruled. I could allow a little
6 bit of latitude.

7 A We dust the firearm for fingerprints.

8 Q In this case, where exactly did you respond to?

9 A The 75th Precinct.

10 Q And once you arrived at the 75th Precinct, what were
11 you given?

12 A I was given a black Kel-Tec .9-millimeter pistol.

13 Q What did you do once you received that gun?

14 A I began processing, I began swabbing the different
15 parts of the firearm for DNA.

16 Q Just describe to the jury how you processed that
17 particular gun?

18 A There are certain parts of the firearm that are
19 touched the most times, like the trigger, trigger guard, the
20 handle of the firearm, and also the slide grip on top of the
21 firearm, so I take a separate swab for each item and I swab
22 those particular items, try to recover DNA from them.

23 Q Officer, what did you do with those swabs once you
24 finished swabbing that firearm?

25 A I vouchered it.

P.O. Kevin Hutchinson - Direct - Raskin

1 Q What voucher number did you voucher those swabs?

2 A Voucher number 3000162090.

3 Q What did you do with the property after it was
4 vouchered under voucher number 3000162090?

5 A I sent it to the OCME for DNA analysis. OCME stands
6 for Office of the Chief Medical Examiner.

7 Q For what purposes were the swabs sent there?

8 A For DNA analysis.

9 Q From your observations of the gun with your own eyes,
10 would you be able to tell if there was any DNA on the gun?

11 A No, sir.

12 Q Did you do anything else with the gun at that point?

13 A After that I dusted the firearm for fingerprints.

14 Q How did you dust that gun for fingerprints?

15 A I use a feather duster and dipped it in some white
16 powder and I applied the powder over the entire firearm.

17 Q Were you able to lift any fingerprints from that gun?

18 A No, sir.

19 Q What are some reasons why fingerprints from a person
20 who just touched the gun may not be on that gun?

21 A Well, sometimes the firearm could be wiped clean, and
22 also some firearms are made where they will not rust so water
23 can't penetrate. So fingerprints are mostly water so a
24 fingerprint won't adhere to the firearm. It could also be
25 because of the weather. Sunlight and heat will evaporate any

P.O. Kevin Hutchinson - Direct - Raskin

1 secretions left on a firearm. Cold weather would prevent a
2 person from perspiring too often, so you won't be able to
3 fingerprint a firearm because of that. And also if it is
4 raining, items left out in the rain, it could wash away the
5 prints also.

6 MR. RASKIN: Thank you, Officer. No further
7 questions, Your Honor.

8 MR. HUGHES: Thank you, Your Honor. Your Honor,
9 is it all right if I cross from the defense table?

10 THE COURT: Go right ahead.

11 CROSS EXAMINATION

12 BY MR. HUGHES:

13 Q Good afternoon, Officer Hutchinson.

14 A How are you doing, sir?

15 Q I'm well, thank you.

16 Now, you were just talking about fingerprinting the
17 gun and some reasons why you might not be able to get
18 fingerprints.

19 Now, prior to dusting the gun for fingerprints, you
20 had applied a moistened Q-tip, basically, to three parts of the
21 gun; right?

22 A Correct.

23 Q That was to the trigger and the trigger guard?

24 A Correct.

25 Q And that was to the back strap and the grips?

P.O. Kevin Hutchinson - Cross - Hughes

1 A Right, the handles of the firearm.
2 Q And the slide?
3 A Correct.
4 Q And that might be a reason, applying a moistened Q-tip
5 might be a reason to rub off some --
6 A For those parts of the firearm, correct.
7 Q And you've been trained to swab those three areas;
8 right?
9 A Yes, sir.
10 Q And you are trained that those areas are potentially
11 good areas for collecting skin cells that have been rubbed off;
12 right?
13 A Correct.
14 Q And then those skin cells could be analyzed at the
15 lab?
16 A Yes.
17 Q And on the trigger, trigger guard, you could get skin
18 cells potentially from someone whose got their index finger on
19 that area of the gun; right?
20 A Yes.
21 Q Either when they are firing it or when they are just
22 holding it?
23 A Just holding it.
24 Q Now, part of your job in processing a firearm is to
25 question about elimination samples; correct?

si

P.O. Kevin Hutchinson - Cross - Hughes

1 A Correct.

2 Q And that sample would be a Q-tip as well put in the
3 cheek of someone who may have touched the evidence; right?

4 A Correct.

5 Q And in order to determine who needs to give an
6 elimination sample, you need to find out who may have touched
7 the gun; right?

8 A Correct.

9 Q And you are also trained that DNA can actually
10 transfer from one item to another; right?

11 A Correct.

12 Q For example, from a glove of a gun, if someone touches
13 their face before touching the gun with their gloved hand;
14 right?

15 A Yes, sir.

16 Q And DNA can be transferred by someone who was touching
17 the outside of their gloves as they were putting them on, if
18 they were -- or in another way before they touched the item?

19 MR. RASKIN: Objection, Your Honor.

20 THE COURT: Sustained.

21 Q So one of the things that you do when you are trying
22 to find out who to request elimination samples from is to find
23 out any NYPD officers who actually recovered the evidence at
24 the crime scene wherever the gun was recovered; right?

25 A Correct.

Side bar

1 recovery of the gun?

2 MS. ROSENFIELD: I don't recall off the top of my
3 head. I would have to go out and get my grand jury
4 minutes.

5 THE COURT: Let me see it.

6 These minutes were turned over to you, the grand
7 jury minutes?

8 MR. HUGHES: Yes.

9 THE COURT: What's in there about her?

10 MR. HUGHES: I think my recollection is she
11 recovered the gun.

12 MS. NARUMANCHI: That was my recollection, too.

13 THE COURT: So she testified in the grand jury
14 that she was the recovering officer.

15 MR. HUGHES: Correct.

16 THE COURT: This guy here testified that he was
17 the recovering officer.

18 MR. HUGHES: Yes, you mean Thomas.

19 MS. NARUMANCHI: Yes.

20 MR. HUGHES: Correct.

21 THE COURT: Well, it was a full statement she
22 allegedly gave this ETC guy.

23 MR. HUGHES: Is that he recovered the gun on the
24 sidewalk at the corner of Fulton and Pennsylvania.

25 THE COURT: I'll let it in. Let's go.

si

Side bar

1 MR. HUGHES: Full statement? I'll give the full
2 statement or that she recovered the gun?

3 THE COURT: Give the statement she gave him, but
4 I'm giving a curative instruction for the purpose of the
5 submission.

6 MR. HUGHES: Okay.

7 (Back in open court.)

8 CROSS EXAMINATION - CONTINUED

9 BY MR. HUGHES:

10 Q So to repeat, Officer Hutchinson, Police Officer
11 Lisette Jordan told you that she had recovered the gun on the
12 sidewalk at the corner of Fulton and Pennsylvania?

13 A Correct.

14 THE COURT: Ladies and gentlemen, that's
15 basically a hearsay statement, what one person said to
16 another person outside of court. And the only reason I'll
17 let it in is not for the truth of what was said but to
18 explain what the officer did once hearing that information.

19 Q And you testified earlier you conferred with Police
20 Officer Jordan, and I believe you also conferred with Sergeant
21 Ephraim Hernandez on this case?

22 A That was my sergeant.

23 Q And so based on that, you requested DNA elimination
24 samples; right?

25 A I asked Officer Jordan for an elimination sample.

P.O. Kevin Hutchinson - Cross - Hughes

1 Q And did you receive an elimination sample from Officer
2 Jordan?

3 A No, I did not.

4 Q Are officers allowed to decline providing an
5 elimination sample?

6 A They have declined, yes.

7 Q Is that what Police Officer Jordan did in this case?

8 A Yes.

9 Q And you did not request elimination DNA samples from
10 any other officer in this case; right?

11 A No, I did not.

12 MR. HUGHES: May I have a moment, Your Honor?

13 THE COURT: Sure.

14 MR. HUGHES: Nothing further, Your Honor. Thank
15 you, Officer Hutchinson.

16 THE COURT: Okay. Any redirect?

17 MR. RASKIN: Yes, Your Honor.

18 THE COURT: Go right ahead.

19 REDIRECT EXAMINATION

20 BY MR. RASKIN:

21 Q Officer Hutchinson, you mentioned skin cells. Is that
22 something that's tested with a DNA swab that's sent to the
23 OCME?

24 A Yes.

25 Q And would the same effects in terms of whether the

P.O. Kevin Hutchinson - Redirect - Raskin

1 ability or inability to shed affect the ability to get skin
2 cell samples from a gun as it would with fingerprints?

3 MR. HUGHES: Objection to the opinion testimony.

4 THE COURT: Overruled.

5 A Yes.

6 MR. RASKIN: No further questions, Your Honor.

7 THE COURT: Recross?

8 MR. HUGHES: None. Thank you.

9 Thank you.

10 (Witness excused.)

11 THE COURT: Ladies and gentlemen, unfortunately
12 we are going to have to call it an early day today.
13 The next scheduled witness through no fault of anyone is
14 unable to be here. But I was assured that they would be
15 here bright and early tomorrow. I would anticipate that
16 this case may be in your hands tomorrow or the latest by
17 Wednesday. So we are moving.

18 So keep an open mind, don't form or express any
19 opinions or conclusions with respect to the evidence until
20 this case is submitted to you for your deliberations.
21 Don't discuss this case amongst yourselves or with anyone
22 else. Don't view or visit any place or premise involved in
23 the case. Don't read, listen or view any media reports
24 about the case. Don't surf the internet regarding this
25 case. Accept nothing of value for information about the

si

Proceedings

1 trial. If anyone intends to talk about the case, don't do
2 it.

3 Have a great night. And let's root for those
4 Jets to get a good draft pick this year. And we will see
5 everybody back here tomorrow at 10:00.

6 COURT OFFICER: Jurors.

7 (Whereupon, the jury exits the courtroom.)

8 THE COURT: Okay. I had requested the district
9 attorney at the side bar to notify this Officer Jordan to
10 be here available tomorrow, but the officer should be
11 advised that if she's going to claim the Fifth Amendment,
12 I'm going to allow no questioning regarding any pending
13 cases that she has before her.

14 That being said, does the defense plan on calling
15 her?

16 MS. NARUMANCHI: Judge, we are actually still
17 discussing the issue and would like to consult with my
18 supervisors back at the office.

19 THE COURT: I understand that, but this case has
20 been pending for a considerable period of time, and you are
21 aware of the allegations that are pending against this
22 officer. And as a litigator, one would always plan that
23 your adversary is going to call that witness or try to make
24 their case without them. As experienced attorneys, you
25 would have planned it ahead of time. In realizing the

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1 rules of evidence, that if you consciously know a person is
2 going to claim the Fifth Amendment, you can't ask the
3 question. So I would not allow you -- I don't think any
4 Judge would allow you to call a witness to impeach your own
5 witness. I just don't think that's done. So you knew that
6 ahead of time.

7 So this woman got a pending case. She's being
8 prosecuted. I can order her in here, but if you are not
9 going to use it, why bother? Why just go through all of
10 that grief, put her through the grief? Her attorney is
11 going to get notified. Everybody is going to be running
12 around like chicken without heads. And 99 percent of the
13 time you are not even going to call her any way.

14 MR. HUGHES: Can we discuss this issue with
15 Mr. Alexander?

16 THE COURT: Sure.

17 MR. HUGHES: Thank you, very much. And we
18 appreciate the Court's intervention in helping --

19 THE COURT: I understand. Calling the witness or
20 not is solely within the power of the attorney.

21 (Pause in the proceedings.)

22 THE COURT: Did you have enough time to consult
23 with your client?

24 MS. NARUMANCHI: Judge, we did speak with our
25 client, and we would like Officer Jordan to be made

Proceedings

1 available. We will be putting her on as a witness on our
2 direct case.

3 MS. ROSENFIELD: Your Honor, two pieces of note
4 with respect. First we have some phone numbers that
5 defense could call about getting that officer made present
6 tomorrow, if they want to follow up with that. We will put
7 a notification in through the system as well just so she
8 knows she's being called as a defense witness. We have a
9 number we can give them.

10 THE COURT: I asked Mr. Raskin to advise that she
11 was coming in as a defense witness.

12 MS. ROSENFIELD: Yes, I'm just saying we have a
13 phone number they can contact as well to notify her to come
14 in. We will put it through our system as well, but there's
15 no guarantee that through the system she will get a
16 notification in time, so I have numbers they can call for
17 that.

18 However, I also wanted to follow-up with respect
19 to what her testimony is going to be, in how limited it
20 should be, because I actually just went through the
21 testimony from the hearing where Officer Jordan testified
22 and testified that in fact Officer Thomas was the one who
23 recovered the gun. That's what she responded when I asked
24 her the direct question. And when defense attorney,
25 Mr. Kleiman, at the time, and Clinton Hughes was also

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Proceedings

1 present for that, went back to on redirect, "so you
2 testified that Officer Thomas is the one who recovered the
3 gun?" Her answer was, again, yes.

4 THE COURT: I was unaware of that. It's very
5 difficult to be in a position to make a decision when I am
6 not fully apprized of all of the facts and nuances of the
7 case. I was not the Judge at the hearing. I was faced
8 with a situation where this officer testified that he
9 recovered the gun. I was supplied the grand jury minutes
10 wherein the grand jury minutes the female officer said she
11 recovered the gun. I think it was we or was it we or she?
12 I think it was we.

13 MS. ROSENFIELD: I'll double check so that I don't
14 speak improperly on the record.

15 The question was, "did you recover the black
16 object that you had seen him throw to the floor?"

17 Answer: Yes.

18 THE COURT: Fine. That's what I was showed
19 during the conference, side bar conference. So based upon
20 that, not wanting to have the jury misled by what I
21 perceived to be incorrect testimony of this officer, I
22 allowed in the statement of Officer Jordan to in effect
23 impeaching this officer even though they are told it's not
24 entered for the truth of the matter stated. It's very
25 difficult to un-ring the bell. And jurors many times don't

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Proceedings

1 understand.

2 So that being the case, now I find that the
3 defense was aware that Officer Jordan when she testified
4 under oath at a hearing admitted that her testimony in the
5 grand jury was incorrect, and that her partner Thomas was
6 in fact the person who recovered the firearm as he
7 testified before me. So why, what are you going to --
8 first, I'm somewhat chagrined that the defense did not
9 bring this to my attention since the defense was present at
10 the hearing, I wasn't, and it was misleading the Court by
11 not advising me that this officer had stated at a prior
12 hearing that the officer who testified here, Thomas, did in
13 fact recover the gun. That's one.

14 I'm also a little bit chagrined by the
15 prosecution not bringing that to my attention because I
16 would not have allowed that prior statement to come into
17 evidence. I'm attempting to give a fair trial to both
18 sides and not have this jury misled, but I find them being
19 misled by the attorneys. Probably not, I don't know why,
20 but I'm just getting that opinion.

21 Now knowing the fact that this officer is not
22 supportive of your case, what is your offer of proof to
23 have her called?

24 MS. NARUMANCHI: Well, Judge, we are asking that
25 she be called so that we can put the mugshot photo into

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Proceedings

1 evidence.

2 THE COURT: I already ruled that the mugshot
3 evidence, mugshot photo, as it stands, irrelevant.

4 MR. HUGHES: Judge, you are looking at a photo
5 where a man is wearing a hoodie and a ski vest of a
6 different color.

7 THE COURT: That's not a ski vest that he had on
8 that day, that's a full length parker. Let me see that
9 photo again.

10 MS. NARUMANCHI: It's a ski vest. You could see
11 the gray sleeves through the ski vest.

12 THE COURT: Right you are. It's a full length
13 ski vest. That would open the door for the People on
14 rebuttal to bring in testimony as to every person that was
15 arrested in that precinct, that was housed in the bullpen,
16 the clothing that that person had. It's a trial within a
17 trial. You still haven't convinced me of any testimony
18 from anywhere that that was the clothing your client had on
19 at the time of the crime. It's clearly the clothing he had
20 on at the time that photograph was taken, but not what he
21 allegedly wore at the time of the incident. How is that
22 relevant? I mean there's been no proof that he didn't have
23 an opportunity to change clothes with someone else.

24 MR. HUGHES: It would be nice if the arresting
25 officer could weigh in on it; couldn't she? She was the

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Proceedings

1 one who had custody of the defendant.

2 THE COURT: I'm not speculating on what this
3 officer could or couldn't testify to. Because you're
4 aware, as I am, that once an arrest is made, the arresting
5 officer places the defendant after paperwork in the
6 bullpen, and there could be countless numbers of other
7 people. There's no testimony that he was placed in a
8 solitary cell in the PD squad. It's speculative. I don't
9 see it.

10 MR. HUGHES: It's speculative that he changed
11 clothes, Judge, and it's speculative that the officer was
12 not able to observe him.

13 THE COURT: I tend to disagree with you because
14 each witness indicated that that was the man that they saw
15 out on the street, all three of them, and the three
16 witnesses identified your client as the person that was on
17 the street in distinctive clothing, and two of them saw
18 that photograph, both identified physically your client and
19 both stated that wasn't the clothes he was wearing at the
20 time they saw him on the street. That's the only thing
21 that's not speculative right now.

22 MR. HUGHES: That theory is that they
23 misremembered that. And the physical evidence that they
24 misremembered that is a guy giving his arrest photo taken
25 with a hoodie and a ski vest after he's being apprehended

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1 and in the custody of the police that have different
2 colors. It's misidentification. That's our defense.

3 THE COURT: What do you have to say?

4 MS. ROSENFELD: The People just would go with
5 what the Court has already said, that you've had three
6 people take the stand and state that at the time of the
7 crime the defendant was wearing -- was a black man wearing
8 a blue vest and a bright yellow hoodie. Two of the
9 witnesses took the stand and identified the defendant in
10 court as the same person they saw wearing a yellow hoodie
11 and a blue vest. And also two witnesses who were shown
12 this photograph said, yes, that is absolutely the
13 defendant, that is not what he was wearing at the time that
14 the crime took place.

15 So I believe putting this photograph in front of
16 the jury is completely misleading. If they have already
17 put forth their theory that there was a second person
18 there -- in their opening that there was a second person
19 who committed this robbery that was also on a bike, and if
20 they want to prove that, that's fine, but to say this is
21 not the wrong -- since they have already said this is the
22 guy who committed the robbery but this isn't what he was
23 wearing at the time, that doesn't go to the fact there was
24 a second person there.

25 THE COURT: The defense isn't limited to what

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1 they stated on an opening. The People by statute must
2 establish all the elements of what they intend to prove in
3 the opening. The defense doesn't.

4 MS. ROSENFIELD: I recognize that, Your Honor, but
5 the defense keeps arguing that they have already opened on
6 this issue --

7 THE COURT: That's their problem.

8 MS. ROSENFIELD: -- of mistaken identity.

9 THE COURT: That's their problem on what they
10 opened on or didn't. That doesn't affect the rules of
11 evidence. I'm just going now on the rules of evidence,
12 that two people identified that that is a photograph of the
13 defendant but those weren't the clothes he was wearing.
14 How is that not the functional equivalent of a photograph
15 of the crime scene that's taken afterwards where movable
16 objects have changed, like cars, trees on leaves, but the
17 physical stature of the buildings are the same. Here the
18 physical face of the defendant is the same.

19 MS. ROSENFIELD: So both witnesses were shown the
20 photos, that this was not a fair and accurate
21 representation of what the defendant looked like at the
22 time that the robbery took place.

23 THE COURT: They said as to clothing but they did
24 say that was the defendant.

25 MS. ROSENFIELD: They did say that was the

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1 defendant. So if they want to redact the photos so it's
2 just of his face, then the People would have no objection
3 to it going into evidence. But as to the clothing, the
4 People would object.

5 THE COURT: If this arresting officer took the
6 stand tomorrow, how would you propose getting this past
7 these evidentiary issues?

8 MS. NARUMANCHI: Well, Judge, I would ask her if
9 it represented a fair and accurate description of what he
10 looked like at the time the photo was taken. I'm not going
11 to ask -- obviously she's going to contradict that that's
12 what he looked like at the scene, but I would ask if that's
13 what he looked like in the precinct, and I could limit my
14 questioning to that.

15 MR. HUGHES: Judge, we are asking -- we are
16 going -- I'm sorry to be a two-headed beast here, but we
17 are going to be arguing to the jury at the end of the day
18 that these people were misremembering that point, that
19 critical point. It was called in, yellow and blue, they
20 thought they got the guy, looking at the face, they got the
21 guy, they processed the guy, the guy is still wearing the
22 hoodie and the vest, they take the picture, and then, you
23 know, then they start going through a process of preparing
24 for trial --

25 THE COURT: Hold for a minute.

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Proceedings

1 || (Pause in the proceedings.)

2 MR. HUGHES: Judge, that's going to be our
3 theory, that they misremembered. They thought they got the
4 face. They weren't thinking about vests and hoodies and
5 everything else, they thought they got the guy. And then
6 when the litigation begins and witnesses are prompted and
7 complaints and DD5's and arrest reports are reviewed, and
8 lawyers talk to witnesses, and witnesses talk to lawyers,
9 at some point there is a misremembering.

13 MR. HUGHES: And that they were mistaken. That
14 is our argument, Your Honor.

19 MS. NARUMANCHI: I mean if that's their cross
20 examination, I think they are entitled to ask that
21 question.

22 THE COURT: Which one is speaking for the team?

23 MS. NARUMANCHI: We would like to operate as
24 siamese twins, Judge, but I will speak for the team.

25 MR. HUGHES: I must say I've never disagreed with

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Proceedings

1 anything Ms. Narumanchi said.

2 THE COURT: Good.

3 MR. HUGHES: Only desire to add a point or two.

4 MS. ROSENFIELD: Your Honor, the defense has
5 themselves just said that they would expect Officer Jordan
6 to take the stand and say that this was not the clothing
7 that he was wearing at the scene, and that would just
8 testify this was the picture --

9 MS. NARUMANCHI: At the time of arrest in the
10 precinct, that's the question I would be asking.

11 MS. ROSENFIELD: Again, that is irrelevant to what
12 he was wearing at the time of the robbery and when he was
13 stopped by the police officers. What he may or may not
14 have changed into at the time this photograph was taken is
15 irrelevant.

16 MR. HUGHES: Judge, to make a ruling against this
17 would defectively credit in advance all the testimony as to
18 the color of the hoodie and the ski vest. We ask that the
19 Court let that be in the domain of the jury. The
20 prosecution can argue whatever it wants or it can raise
21 issues as long as they are proper in the cross examination
22 of Officer Jordan, if you want to call it cross
23 examination, because I don't think she's going to be
24 hostile to the prosecution here, but that's our theory.

25 THE COURT: Is she being prosecuted for an

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Proceedings

1 || Assault 3?

2 MS. ROSEN Feld: Yes.

3 THE COURT: By your office?

4 MS. ROSENFELD: No, I believe it's Manhattan.

5 MS. NARUMANCHI: It's in Manhattan. The case is
6 on December 9th in Manhattan Criminal Court.

10 THE COURT: She's going to come in and testify
11 that that's a picture of the defendant, but that's not the
12 clothes he had on when she arrested him.

13 MS. NARUMANCHI: Yes.

25 Is the 75th Precinct a big changing room where

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Proceedings

1 they just allow all the defendants to switch each others'
2 clothes? Maybe they can bring a witness in to say that,
3 but I thought of it as a precinct where they took reports,
4 perform general law enforcement duties and process arrests.

5 THE COURT: Well, experienced defendants many
6 times attempt to alter their physical appearance after they
7 have been in custody, changing hairstyles, growing hair,
8 switching clothes in the precinct. I've had clients that
9 have done that when I was on the defense, and I had
10 defendants when I prosecuted did that when I was a
11 prosecutor, and I'm sure it happens all the time. Maybe I
12 just have more of a background than you do.

13 MR. HUGHES: I don't now what to say, Judge. I
14 think that the fact that there's a description in the type
15 of clothing, and then there's a picture where the precise
16 type of clothing again but with radically different colors
17 should give -- should be presented to the jury and let them
18 decide.

19 THE COURT: You're also going to be precluded
20 from phrasing any question regarding any injury that your
21 client is alleged to have suffered after he was transported
22 from the crime scene. And no comment about that in the
23 photo, no comment about that if it comes into evidence
24 during your summation.

25 MS. NARUMANCHI: No comment during summation.

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1 THE COURT: Right. Because it's not relevant. I
2 haven't decided on the photo, so I will reserve decision
3 until tomorrow. Both sides should prepare either way.

4 MR. HUGHES: Thank you, Your Honor.

5 THE COURT: Okay. 10:00.

6 (The trial was adjourned to December 2, 2014 at
7 10:00 a.m.)

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1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CRIMINAL TERM: PART: 25
3 -----X
4 PEOPLE OF THE STATE OF NEW YORK, :
5 : Indictment
6 : No. 10999/12
7 :against-
8 WILLIAM ALEXANDER, :
9 :
10 : Defendant.
11 -----X

12 320 Jay Street
13 Brooklyn, New York
14 December 2, 2014

15 B E F O R E:

16 HONORABLE VINCENT DELGIUDICE,
17 Justice of Supreme Court

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

19 KENNETH P. THOMPSON, ESQ.
20 DISTRICT ATTORNEY KINGS COUNTY
BY: STEPHANIE ROSENFIELD, ESQ.
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Assistant District Attorneys

21 LEGAL AID SOCIETY
175 Remsen Street
22 Brooklyn, New York 11201
BY: BHARATI NARUMACHI, ESQ.
CLINTON HUGHES, ESQ.
23 Attorneys for the Defendant

24 PHYLLIS PRICE
SCOTT ISAACS
25 OFFICIAL COURT REPORTERS

1 THE CLERK: This is Indictment 10999 of 2012,
2 William Alexander. The defense attorneys and People are
3 present. The jury and defendant is not present at this
4 time.

5 THE COURT: Counsels, sergeant informed me that
6 Defense requested that the defendant be given a change of
7 clothing for the purposes of trial?

8 I normally -- I am not a haberdasher, and it violates
9 security protocols. The proper procedure is to have it
10 brought through the Department of Corrections, all right.
11 But I will make an exception at this time.

12 MS. NARUMACHI: Thank you, your Honor.

13 MR. HUGHES: Thank you, your Honor.

14 THE COURT: But it is not going to happen again.

15 MS. NARUMACHI: It won't.

16 THE COURT: Are there any scheduling issues
17 regarding Police Officer Jordan, sewn and so forth?

18 MS. ROSENFIELD: No, your Honor. She showed up
19 this morning and I brought her over to the Defense.

20 THE COURT: So Defense, did you have an
21 opportunity to speak to Officer Jordan?

22 MS. NARUMACHI: Yes, Judge. And I do want to
23 address our communication with her. I would just like --
24 given the seriousness of this case and --

25 THE COURT: I am fully aware of your client's

1 right to be present. I am not making any substantive
2 argument. My simple question to you, did you have an
3 opportunity to speak to this officer?

4 Do you think that is necessary for your client to be
5 present for you to respond to that? If so, I will wait.

6 MS. NARUMACHI: No, Judge. We did have an
7 opportunity to speak with her.

8 THE COURT: Good, that's all I ask.

9 THE SERGEANT: Judge, I examined the pants they
10 are okay for him to put on.

11 THE COURT: Is he here?

12 THE SERGEANT: Yes, Judge.

13 THE COURT: All right, let him put the pants on.

14 (Pause in the proceeding.)

15 THE COURT: Defendant is now present in the
16 courtroom, the jury is still absent.

17 Ready to proceed?

18 MS. ROSENFIELD: Yes, your Honor.

19 THE COURT: Any issues we have to attend to
20 before I bring the jury in?

21 MS. NARUMACHI: Yes. I want to address the
22 issue of Police Officer Jordan. She has been made
23 available to us by the Assistant District Attorney. I did
24 speak with her this morning. And, I would like to have
25 her declared as a hostile witness.

1 THE COURT: This is all premature.

2 MS. NARUMACHI: I could make my argument for
3 that at a different point.

4 But based on the conference that we had, I believe
5 that she is lying. And I have a good faith basis to
6 believe she is lying, not only about what she put in
7 police reports, but also, she did admit she was in the
8 precinct when that photo was taken. She wasn't present at
9 the time, but she saw it right after it was taken. And I
10 based on that -- you know -- I believe she is lying. And I
11 would ask her to be declared a hostile witness.

12 THE COURT: Well, your sponsoring a witness who
13 you think is lying, is not a definition of hostility.

14 MS. NARUMACHI: She would be hostile to the
15 Defense because, she would testify in contradiction to the
16 police reports that she wrote.

17 And the conversation we have had about the photo and
18 what she said about the photo, that's why she is a hostile
19 witness.

20 THE COURT: That is not the definition of
21 hostility.

22 MS. NARUMACHI: I disagree, Judge.

23 THE COURT: Okay. Maybe my law school taught me
24 different, all right. Back in the day when I went to law
25 school, it is not because the witness is adverse to the

1 party calling them to be hostile. It is a witness who is
2 refusing to answer questions on direct. And that decision
3 is made after the witness is on the stand.

4 But when we get to your case I will have an offer of
5 proof, and you can explain to me why you want to call a
6 witness who you believe is lying.

7 MS. NARUMACHI: Judge, we would be, then, before
8 the People rest, we would be moving to put a missing
9 witness charge in as well. And we need to do that --

10 THE COURT: You already made that notification
11 yesterday. I still remember it clearly in my mind. And I
12 even commented that you had followed the prescription of
13 the Appellate Division, and you gave the People notice
14 before you rested, and then I will make a determination.
15 Because I remember, if you can make out the six elements
16 under Gonzalez, and it is progeny, then I will entertain
17 your application.

18 Anything else?

19 MS. NARUMACHI: That's all.

20 THE COURT: Bring in the jury.

21 Who is your witness?

22 MR. RASKIN: Detective Scaturro, Judge.

23 COURT OFFICER: Ready for the jury, your Honor?

24 THE COURT: Bring the jury in.

25 COURT OFFICER: Jury entering.

1 case on the various witnesses that testified regarding the
2 incident that occurred on December 29, 2012, including the
3 victim who testified to being robbed.

4 THE COURT: You are relying on the record?

5 MS. ROSENFELD: I will rely on the record.

6 THE COURT: Motion denied.

7 Defense plan on putting on a case?

8 MS. NARUMACHI: So, your Honor, the issue that
9 we had, sort of stated before the jury came in was that,
10 we are going to call the OCME Criminalist Hardy. But with
11 regard to the testimony of Officer Jordan.

12 THE COURT: Let's have your offer of proof as to
13 that testimony, if you don't mind.

14 MS. NARUMACHI: I have questioned her regarding
15 the mug shot photo in the precinct, which is our position,
16 this is a material issue for the Defense, and our client's
17 right to present a defense in this case about
18 identification that was made by the complaining witness,
19 and the eye witness.

20 THE COURT: As I pointed out, I want the record
21 to be clear, I pointed out to you yesterday that the
22 photograph of the defendant that was taken subsequent to
23 his incarceration and seizure by law enforcement, is not
24 relevant in the sense that you are asking the jury to
25 speculate. Because, when each of the two witnesses that

1 you showed that photograph to specifically said that was
2 the defendant whom they saw on the street, but those
3 weren't the clothes that he was wearing on the street.

4 So for you to submit that photograph that it was
5 taken sometime after his arrest by the police department,
6 him having different clothes on, causes the jury to
7 speculate.

8 MS. NARUMACHI: Well, Judge, if I may address
9 the issue of the photo? There is actually a case which I
10 will hand up to the Court, and give a courtesy copy to the
11 People, it is People v. Sanchez 2002, 293 AD2d 499. And
12 actually, this again goes to my client's constitutional
13 right to present a defense.

14 In this case defense counsel attempted to introduce a
15 photograph. And the Court held, the denial by the trial
16 court was improper because it was relevant to a material
17 issue of identification that was part of the Defense case.

18 So, we would actually disagree. We think the Court's
19 ruling contradicts the holding here in Sanchez.

20 Additionally, I have already raised constitutional
21 arguments on behalf of my client for his right to present
22 a defense, which is protected under the United States
23 Constitution, and the New York State Constitution as well.

24 I also brought additional case law as well to address
25 those points including, *Crime v. Kentucky*, 476 US 683. I

1 have those cases as well.

2 Additionally, Chambers v. Mississippi, 410 US 284.
3 And Washington v. Texas, 388 US 14. I have those cases as
4 well, courtesy copies for the Court and for the People
5 which I will also hand up as well.

6 Again, my colleague, Mr. Hughes, raised the issue of
7 fundamental fairness yesterday which, again, I will raise
8 as a key issue in this case, with his right to present a
9 defense.

10 Not to allow testimony on his appearance on
11 December 29th of 2012, violates his Federal Constitutional
12 Right to present a defense to due process, and rights
13 under the confrontation clause.

14 We should have a fair opportunity to defend our
15 client against the State's accusations. And that photo not
16 being admitted into evidence, your Honor, we believe has
17 significantly affected our ability of our client to
18 present a defense in this case.

19 THE COURT: People?

20 MS. ROSENFIELD: First of all, no one is telling
21 them they can't introduce the photo if they lay a proper
22 foundation. They just have not made a proper foundation
23 to get the photo into evidence. In the case they provided,
24 People v. Sanchez, this case is different. This is a case
25 where there were codefendants, and the Defense attempted

1 to introduce a photo of the codefendant to say that the
2 description more closely resembles the codefendant, as
3 opposed to the defendant. And there the Court had stopped
4 the Defense from even attempting to put the photograph
5 into evidence.

6 Where our case, Defense has been allowed twice to try
7 and put the photo into evidence, but unable to lay a
8 proper foundation.

9 MS. NARUMACHI: Judge, if I just may address the
10 issue. There were issues with laying the foundation
11 through Officer Thomas.

12 However, I believe the Court also said they didn't
13 think the photo was relevant, which is the point we are
14 saying Sanchez addresses, the issue of relevancy in this
15 case.

16 Now while the People are right in the fact that the
17 facts of this case in Sanchez are not somewhat the facts
18 in this case, the material issue which the Court is
19 actually looking at is, whether or not the Defense had the
20 opportunity to present their defense, and
21 misidentification was the defense in that case.

22 THE COURT: I know of no supreme court, United
23 States Supreme Court, or Court of Appeals, or Appellate
24 Division law that says that the fundamental rulings of
25 evidence are to be twisted into an unrecognizable shape,

1 to allow a defendant to present a defense. All defenses
2 that are presented must comply with the rules of evidence.

3 You failed to establish a sponsoring witness to
4 establish the introduction of the photograph. We tried it
5 with two separate witnesses.

6 So that is not preventing the Defense from putting on
7 a defense. That is the Defense being unable, through
8 rules of evidence, to have evidence introduced.

9 Now, I also feel that that photograph lacks
10 relevance, notwithstanding the learned bench that wrote
11 the Sanchez case. Sanchez case involved multiple
12 defendants. It was a Robbery in the Second Degree aided by
13 a person actually present. And also indicated that the
14 Defense, at that time, would want to establish that a
15 juvenile non codefendant at trial was the perpetrator, and
16 that the wrong person got identified. That's not the case
17 here.

18 The case here is that the defendant was identified on
19 the street by three people who testified at this trial;
20 the arresting officer's partner, the eye witness,
21 Mr. Villafane, and the complaining witness. And they all
22 testified as to the clothing that the defendant wore at
23 the time of the incident in the vicinity of Fulton Street
24 and Chestnut.

25 The photograph that was taken after the defendant was

1 in custody at a police station, without knowing the time,
2 just showing that the defendant had different clothes on,
3 does not go to the complainant's ability to recognize the
4 defendant's face. Nor does it go to the eye witness's
5 ability to recognize and identify the defendant. Nor does
6 it go to the ability of the police officer who was
7 involved in apprehending the defendant at the scene.

8 So based on the rules of evidence, you failed to lay
9 a proper foundation. And I find that the photograph isn't
10 relevant.

11 You can certainly again try to find some way to put
12 that photograph into evidence -- you know -- if you have a
13 proper foundation. But, I am standing by my ruling.

14 Now, other than Miss Hardy, does the Defense plan on
15 putting on any other evidence?

16 MS. NARUMACHI: Can I have just one moment to
17 confer?

18 MR. HUGHES: Thanks, your Honor.

19 THE COURT: No problem.

20 (Whereupon, counsel confers with co-counsel.)

21 MS. NARUMACHI: Judge, no, we will not be
22 calling Police Officer Jordan to testify in the Defense
23 case.

24 Now, she is here in one of the witness rooms. I did
25 not want to release her, obviously, until we have made the

1 record in front of the Court.

2 And then I have, when appropriate, I will make my
3 request for a missing witness charge.

4 THE COURT: That comes at the charge conference.

5 Also, does your witness wish to testify?

6 (Whereupon, counsel confers with client.)

7 MS. NARUMACHI: No. Mr. Alexander will not be
8 testifying in this case.

9 THE COURT: Mr. Alexander, you know you have an
10 absolute right to testify in your defense; do you
11 understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: And I want to make sure that you are
14 deciding not to testify because it is your own free will.
15 That no one has forced you, or coerced you not to testify.
16 And you decided by not testifying, you have the best
17 chance of a favorable outcome in this case.

18 Was I correct on that?

19 THE DEFENDANT: Yes.

20 THE COURT: Did you have an opportunity to
21 discuss this with your attorneys?

22 THE DEFENDANT: Yes.

23 THE COURT: And you all agree, it is in your
24 best interest not to testify?

25 THE DEFENDANT: Yes.

Direct - K. Hardy

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1 Miss Hardy, I ask you, if you still have that red
2 pen, I ask you to approach the exhibit F.

3 Miss Hardy, could you explain what the qualitative
4 scale, that's exhibit F, means for FST calculations?

5 A So, the number that the FST gives, and that we then
6 use in our reports. We say that so, if it indicates it was
7 367 times more probable.

8 So when that reported value basically -- once we have
9 that number, it then will follow to a scale here ranging from
10 one to greater than a thousand.

11 And then, depending on where that number falls in
12 this scale, we then report how much support is to which
13 probability, I guess it is.

14 So when we say it is 367 times more likely that the
15 mixture is three unknown, unrelated individuals, we need to
16 say, well, how much support?

17 Q What exactly does that mean?

18 A So, we give a quantitative value, as well as a
19 qualitative value in our reporting, to give you an idea of
20 what that number means.

21 Q Miss Hardy, can you please circle the qualitative
22 interpretations corresponding to the FST results of comparison
23 between William Alexander, and the trigger/trigger guard
24 mixture in this case?

25 A So, the reported value is 367, which falls between

PP

Direct - K. Hardy

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1 100 and 1,000. So as the report states, it is strong support
2 here.

3 Q Thank you, Miss Hardy.

4 MR. HUGHES: Your Honor, may I have a moment?

5 THE COURT: Yes.

6 (Whereupon, counsel confers with co-counsel.)

7 MR. HUGHES: Nothing further.

8 THE COURT: Before this witness's
9 cross-examination, let's recharge the batteries.

10 Keep an open mind, folks.

11 Freshen up in the jury room. And then we will come
12 back out in around five or 10 minutes.

13 Remember all the admonitions.

14 Keep an open mind.

15 (Whereupon, the juror exits the courtroom.)

16 THE COURT: Okay, Miss Hardy. You can stretch
17 your legs. We will have you back on the stand in a few
18 moments.

19 All right, Counsel, be back 20 after 12.

20 (Whereupon, a brief recess was taken.)

21 (Whereupon, Phyllis Price is relieved by Scott
22 Isaacs as the official court reporter.)

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PP

Kendra Hardy - Cross - Rosenfeld

1 is applied in the same way in each case regardless of result?
2 A Yes.

3 Q Can you explain exactly what was inputted into the
4 calculation in this case?

5 A In this case, the known profile of William Alexander
6 was inputted or put into the system. The mixture profile from
7 the swab of the trigger trigger guard was put into the system,
8 as well as that the mixture was at least a three person
9 mixture, that information was entered, the total amount of DNA
10 that was copied, which is 175 picograms, as well as the fact
11 that the mixture was non-deducible.

12 Q What were the results in this case?

13 A That the mixture is 367 times more likely to be made
14 up of three unknown, unrelated individuals versus William
15 Alexander and two unknown, unrelated individuals.

16 Q So such a result tends to favor the defendant;
17 correct?

18 A This result does, yes.

19 Q Isn't it true that approximately one-third of the time
20 the likelihood ratio results are actually less than one which
21 tends to indicate that the defendant is not part of a mixture
22 that you are analyzing?

23 MR. HUGHES: Objection, Your Honor. May we
24 approach?

25 THE COURT: Yes. Side bar.

Proceedings

1 behavior, attorneys have a right to speak to the witnesses,
2 credibility, weight of the evidence, identification, about
3 the defendant not testifying, police testimony, expert
4 testimony, what competent evidence is, and the specific
5 charges.

6 Any other specific requests to charge? Here's
7 your time. Here's your chance.

8 MS. NARUMANCHI: Yes, Judge. We are going to ask
9 that the missing witness charge be given regarding Police
10 Officer Jordan.

11 THE COURT: As I understand the missing witness
12 charge, the witness, if called to testify, would have been
13 an adverse in a particular position than the party that
14 should have called them. What is the adversity in the
15 People's case that this police officer --

16 MS. NARUMANCHI: Testimony favorable to them.
17 I'm sorry, hold on one moment, Judge. Let me just --

18 THE COURT: As I understand the missing witness
19 charge, the jury is permitted to take a presumption --

20 MS. NARUMANCHI: Yes, I apologize.

21 THE COURT: -- that the missing witness would
22 have been unfavorable to the People's case. Just show me,
23 tell me what position would be unfavorable.

24 MS. NARUMANCHI: Judge, the position that would
25 have been unfavorable goes to several different things.

Proceedings

1 The first being the color of the clothing.

2 THE COURT: How is it different?

3 MS. NARUMANCHI: She would have testified that
4 the clothing -- that the clothing that he was wearing at
5 the precinct did not match the description that was given
6 by the eyewitnesses and by the complaining witness.

7 THE COURT: From what? From what?

8 MS. NARUMANCHI: She's also testified in the
9 grand jury. She's testified --

10 THE COURT: Hold it. Bring that cop in, Jordan.
11 What's her name? Jordan. Catch that cop. I'll put her on
12 the stand, have an evidentiary hearing, find out what her
13 testimony would have been. And I'll determine whether or
14 not it would be adverse to the People. Right now it's not
15 adverse.

16 All right. What else? Let not waste time. Any
17 other requests to charge?

18 MS. NARUMANCHI: No. Just --

19 THE COURT: People, do you have any that I left
20 out?

21 MS. ROSENFELD: No, Your Honor.

22 THE COURT: I didn't think so. Okay.

23 COURT OFFICER: Ready for the witness?

24 THE COURT: Yes.

25 COURT OFFICER: Witness entering.

Proceedings

1 THE COURT: Thank you so much for waiting around
2 all morning, I appreciate it, Officer. If you would be so
3 inclined just to raise your right hand.

4 THE CLERK: Raise your right hand.

5 (The witness was sworn by the clerk of the
6 Court.)

7 THE CLERK: Please state your name for the
8 record.

9 THE WITNESS: Lisette Jordan.

10 THE CLERK: Thank you. You may be seated.

11 THE COURT: Good afternoon, Officer Jordan.

12 Thanks for coming by. I have a question for you.

13 I'm under the understanding that there is a case
14 pending involving you as a defendant in New York County; is
15 that correct?

16 THE WITNESS: Yes.

17 THE COURT: If you were called to the stand on
18 this case, would you have asserted your Fifth Amendment
19 privileges and not testify?

20 THE WITNESS: Yes.

21 THE COURT: You would have?

22 THE WITNESS: Yes.

23 THE COURT: Any questions by any side?

24 MS. NARUMANCHI: Yes, I do have some questions.

25 THE COURT: Okay.

Proceedings

1 MS. NARUMANCHI: Now, you were the arresting
2 officer in the case --
3 THE COURT: The questions go to her availability,
4 because if the witness would claim the Fifth Amendment she
5 would be unavailable for the prosecution to call to the
6 stand.
7 MS. NARUMANCHI: To testify regarding her open
8 case, not about the arrest of Mr. Alexander.
9 THE COURT: No, that's --
10 MS. NARUMANCHI: That would not make her --
11 THE COURT: All right. Officer, you can step
12 down. Just wait right outside.
13 (Whereupon, the witness left the stand.)
14 As I understand the law, if a witness would
15 testify and take the Fifth Amendment to answer questions,
16 she's unavailable. The witness is unavailable.
17 Now, you had indicated through your attempt
18 during your opening and the attempt to put the photograph
19 into evidence that you were going to make allegations that
20 this officer assaulted the defendant while in the precinct
21 which would trigger her claiming the Fifth Amendment on
22 cross examination. Because that's what you argued. So I
23 don't see how this person is available.
24 MR. HUGHES: Judge, I didn't -- in my opening --
25 you got the minutes before you, Your Honor -- in my opening

si

APPENDIX C

**State of New York
Court of Appeals**

BEFORE: HONORABLE PAUL G. FEINMAN
Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

WILLIAM ALEXANDER,	Respondent, -against-	ORDER DENYING LEAVE
		Appellant.

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;*

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated: June 27, 2019



Associate Judge

*Description of Order: Order of the Appellate Division, Second Department, dated March 6, 2019, affirming a judgment of Supreme Court, Kings County, rendered December 23, 2014.

APPENDIX D

Page 1 of 1



NEW YORK CITY POLICE DEPARTMENT

*Mugshot Pedigree*

NAME:

ALEXANDER WILLIAM

NYSID#:

06465502J

Arrest #:

K12717583

Arrest Date#:

12-29-2012

Top Charge:

PL 2650203: CRIM POSS WEAP-
3RD:DEFACE WEAP

Date of Birth:

[REDACTED] 1973

Age at Offense:

39

Social Security #:

[REDACTED]

PCT of Arrest:

075 PRECINCT

Source:

LIVE



PHYSICAL DESCRIPTION

Race: BLACK
 SEX: MALE
 Height: 509
 Weight: 150
 Hair Length: SHORT
 HAIR COLOR: OTHER
 Hair Type: CLOSE CUT
 Complexion: CLEAR
 Eye Color: BROWN



Scars, Marks Tattoos:

Desc:

Location:

Bodyside:

Alias 1:

Alias 2:

Alias 3:

Alias 4:

ORIGINAL

APPENDIX E

The Sixth Amendment to the United States Constitution provides, in relevant part: “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him; [and] to have compulsory process for obtaining witnesses in his favor[.]”

The Fourteenth Amendment provides, in relevant part, “nor shall any State deprive any person of . . . liberty, . . . without due process of law[.]”