

IN THE
Supreme Court of the United States

TYRONE WORTHAM,

Petitioner,

- versus -

THE STATE OF NEW YORK,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF NEW YORK**

RESPONDENT'S APPENDIX

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1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK: CRIMINAL TERM: PART 82
-----x

3 THE PEOPLE OF THE STATE OF NEW YORK

Indictment
No. 3148/11

4 -against-

CPCS 3 & CPW 2

Huntley Hearing

6 TYRONE WORTHAM and SHAWANA HARRISON,

7 Defendants.

8 -----x

9 February 14th, 2013

10 100 Centre Street
New York, NY 10013

11 **FILED**

12 B e f o r e :

JUN - 5 2014

13 HONORABLE CHARLES H. SOLOMON, SUP COURT, APP. DIV
14 FIRST DEPT.

Justice.

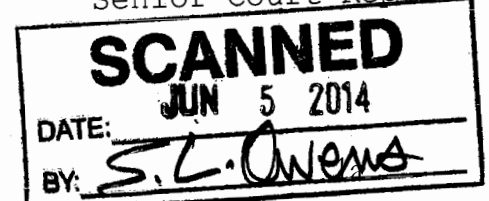
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16 Appearances:

17 BRIDGET G. BRENNAN, ESQ.
Office of Special Narcotics, New York County
18 BY: NOWLES HEINRICH, ESQ.
ELIZABETH SHEETZ, ESQ.
19 Assistant District Attorneys

20 LEGAL AID SOCIETY
Attorney for Defendant Wortham
21 BY: PHILIP RAUSCH, ESQ., of Counsel

22 ENRICO DeMARCO, ESQ.
Attorney for Defendant Harrison
23
24
25

Joanne Fleming
Senior Court Reporter



1 (In open court)

2 THE CLERK: This is calendar number six, 3148 of
3 '11, Tyrone Wortham and Shawana Harrison.

4 MR. RAUSCH: Philip Rausch from the Legal Aid
5 Society for Mr. Tyrone Wortham.

6 THE COURT: You represent Mr. Wortham?

7 MR. RAUSCH: I do, Judge.

8 THE COURT: Is that how you pronounce it?

9 MR. RAUSCH: I think it's Wortham.

10 THE COURT: W-O-R-T-H-M-A-N, is that the spelling?

11 THE DEFENDANT: No, Wortham, W-O-R-T-H-A-M.

12 THE COURT: T-H-A-M, okay.

13 And the co-defendant is Ms. Harrison. Who
14 represents her?

15 MR. DeMARCO: Enrico DeMarco representing Shawana
16 Harrison.

17 THE COURT: She's present.

18 MR. HEINRICH: For the People, Nowles Heinrich,
19 Office of Special Narcotics.

20 Good afternoon.

21 MS. SHEETZ: Elizabeth Sheetz for the People.

22 Good afternoon, your Honor.

23 THE COURT: Good afternoon.

24 This case came from part, is it Part 22?

25 MR. HEINRICH: Twenty-three, your Honor.

1 THE COURT: That's Judge Jackson now.

2 MR. HEINRICH: Yes, your Honor.

3 THE COURT: Okay. And the case was sent in first
4 for hearings this afternoon and then we will talk about
5 scheduling for everything else.

6 The defendants are both at liberty?

7 MR. RAUSCH: Correct, Judge.

8 THE COURT: It is a Huntley hearing, I'm told.

9 MR. HEINRICH: Yes, your Honor, as to whether or
10 not the pedigree information obtained from defendants was a
11 -- will fall under the pedigree exception for Miranda.

12 MR. RAUSCH: This is also a probable cause issue.

13 THE COURT: In the decision -- I usually like to
14 see the decision ordering the hearings.

15 Mr. DeMarco, same for your client?

16 MR. DeMARCO: No.

17 THE COURT: There's no hearings?

18 MR. DeMARCO: I don't believe so, Judge, as to my
19 client.

20 THE COURT: Okay.

21 A COURT OFFICER: (Handing.)

22 THE COURT: Let's see, this is when Judge Ward was
23 in that part. Decision is dated August 25th of '11. It
24 says: Although the People object to the defense request for
25 a hearing on the motion to suppress statements alleging that

1 the statements relate to pedigree information, because this
2 is a search warrant case, the defendant's statement
3 regarding his address could be inculpatory. Accordingly, a
4 hearing is granted on the issue of voluntariness and whether
5 the statements were the fruit of an unlawful arrest.

6 That's the hearing that we're going to have.

7 MR. HEINRICH: Yes, your Honor.

8 THE COURT: And with respect to Mr. DeMarco's
9 client, there is no hearing. It's just as to Mr. Rausch's
10 client. That's what I'm told by Mr. DeMarco.

11 MR. HEINRICH: My reading of Judge Ward's opinion
12 as to Ms. Harrison is -- excuse me -- a hearing on motions
13 to suppress statements is granted on the issues of
14 voluntariness and whether the statements were the fruit of
15 an unlawful arrest.

16 MR. DeMARCO: Okay.

17 THE COURT: It's the same witness?

18 MR. HEINRICH: Yes, your Honor.

19 THE COURT: Okay.

20 And the issue with respect to each is whether the
21 arrest was proper, lawful and whether the statements, I
22 guess, were voluntary. That's always the issue. And there
23 is a pedigree exception rule. I will hear argument on that.

24 So, as far as the hearing goes, there is one
25 witness, you said. The Rosario material has been given over

1 to defense counsel?

2 MR. HEINRICH: Yes, your Honor.

3 THE COURT: I take it all discussions about
4 disposition have been exhausted?

5 MR. RAUSCH: Correct, Judge.

6 MR. DeMARCO: Yes.

7 THE COURT: Fine.

8 The Rosario material?

9 MR. HEINRICH: I did hand over this morning to
10 both attorneys all the Rosario that applies to this Huntley
11 hearing. I have a copy, if your Honor would like to comport
12 an exhibit.

13 THE COURT: Court exhibit for the clerk.

14 MR. HEINRICH: Everything highlighted is what has
15 been handed over and what is applicable to this Huntley
16 hearing.

17 THE COURT: Okay.

18 Counsel, again, I just want to make sure what's on
19 that list you received and that we're ready to proceed.
20 This case was marked ready this morning. So I take it you
21 had some time.

22 MR. DeMARCO: I reviewed the materials that Mr.
23 Heinrich turned over. I would ask that -- just for that
24 list with highlights because it is a different list than I
25 have, because it doesn't have highlights, that I would be

1 able to review it.

2 THE COURT: Sure, that won't be a problem.

3 Anything else before the witness testifies either
4 counsel for the defense wants to discuss?

5 MR. RAUSCH: Sorry, Judge?

6 THE COURT: Before we call the witness, anything
7 you want to discuss?

8 MR. RAUSCH: No.

9 MR. DeMARCO: No, your Honor.

10 THE COURT: Mr. Heinrich?

11 MR. HEINRICH: Your Honor, there has been an offer
12 of five and a half years as to Mr. Wortham. Judge Jackson
13 asked the People to keep it open until today, which we have.
14 My understanding is he's not interested in that.

15 Should he be convicted after trial of criminal
16 possession of a weapon in the second degree, being a violent
17 predicate felon, he's facing between seven and fifteen
18 years. People anticipate recommending well in excess of ten
19 years should he be convicted on that charge.

20 THE COURT: Mr. Rausch, I take it -- I see he's
21 out on bail, obviously. I see there was a hearing here on
22 the bail issue.

23 The status as a prior felony offender with a
24 violent felony conviction, minimum sentence, as I'm sure you
25 explained to him, is a six-year determinate sentence with

1 post-release supervision.

2 MR. HEINRICH: Seven, I believe, your Honor.

3 THE COURT: That's on the narcotics count.

4 MR. HEINRICH: Six on the narcotics, seven on the
5 weapon.

6 THE COURT: Right. On the firearm count,
7 obviously it is a violent felony, the sentences are higher.
8 So, he does face a much longer sentence, but I see that from
9 the notes that the prior judge made, this has been
10 discussed.

11 If he's in any way interested, we should discuss
12 it. If he's not, there's nothing to discuss. He
13 understands what he faces. He understands what's offered
14 now. And if there's no further discussion, that's fine.

15 MR. RAUSCH: No further discussion, Judge.

16 THE COURT: How about Mr. DeMarco's client? She
17 is in a different position.

18 MR. HEINRICH: Yes, your Honor. She has no
19 criminal convictions on her record. In terms of possible
20 jail sentences, the most serious offense she is facing is
21 count three, possession of a weapon. Should she be
22 convicted on that count, my understanding through the
23 reading of the Penal Law, she's facing a minimum of one year
24 city jail.

25 At this time the People would recommend, on a plea

1 to a drug felony as well as a plea to both a misdemeanor
2 weapon possession as well as endangering the welfare of a
3 child, People will be fine with an offer of probation,
4 felony probation. Again, that will be taken off the
5 table --

6 THE COURT: Wait, that's Mr. DeMarco's client?

7 MR. HEINRICH: Yes, your Honor.

8 THE COURT: And that's something that she can do
9 without the co-defendant pleading guilty?

10 MR. HEINRICH: Yes, your Honor.

11 THE COURT: Mr. DeMarco, you discussed this with
12 her?

13 MR. DeMARCO: I've discussed this with her at
14 length. This has been the offer since the case has been
15 pending and she declines it.

16 THE COURT: That's fine.

17 MR. HEINRICH: This isn't an offer of a year.
18 This is an offer of probation.

19 THE COURT: He said it's been pending for a year.

20 MR. HEINRICH: I've never made this offer.

21 THE COURT: Let's take a time-out.

22 What I'm hearing is something different now. The
23 People's recommendation and offer, whatever you want to call
24 it, is now probation as to your client, Mr. DeMarco.

25 MR. DeMARCO: Yes.

1 THE COURT: Mr. Heinrich is saying that hasn't
2 been made before today. I don't know if it has or hasn't.
3 He said it hasn't.

4 MR. DeMARCO: I'm not sure now he says it. I
5 recall this offer's been around for some time.

6 THE COURT: Okay.

7 MR. DeMARCO: But I've conveyed it to my client.
8 She is aware of it now.

9 THE COURT: Fine. She doesn't have to plead
10 guilty, obviously. I just want her to understand that going
11 forward, if they withdraw this recommendation or offer,
12 whatever it is, she faces state prison time. She's being
13 offered a plea now that doesn't involve jail time. If
14 there's something you want to discuss with her, now is the
15 time.

16 MR. RAUSCH: Judge, can I go to the bathroom
17 before we start?

18 THE COURT: I guess so. You gotta go, you gotta
19 go.

20 Mr. DeMarco, I take it there is no further
21 discussion, or is there?

22 MR. DeMARCO: No.

23 THE COURT: I just want to make sure. Because it
24 is your client that has to make a decision. If she's
25 interested, fine. If she's not interested, that's fine too.

1 MR. RAUSCH: Judge, I know you don't like
2 surprises --

3 THE COURT: I do not like surprises.

4 MR. RAUSCH: I heard you say that on more than one
5 occasion.

6 THE COURT: Yes.

7 MR. RAUSCH: Going along with that, after this
8 hearing concludes, there is motion on my part for a
9 severance.

10 THE COURT: Fine. Again, I'm just doing the
11 hearing this afternoon.

12 MR. RAUSCH: Okay.

13 THE COURT: Everything else will be after the
14 hearing.

15 MR. RAUSCH: Exactly.

16 THE COURT: Mr. Heinrich, you want to take this
17 back or whoever gave this to me.

18 MR. HEINRICH: I believe it was Mr. Rausch.

19 THE COURT: Yes.

20 Let's call a witness, please.

21 MR. HEINRICH: Your Honor, at this time the People
22 call Detective Brian Wood to the stand.

23 THE COURT: Brian Wood.

24 MR. HEINRICH: Your Honor, do you mind if I use
25 the podium for the questions?

1 THE COURT: It's up to you. Wherever you feel
2 comfortable. It's up to you, as long as everyone can hear
3 you, including the reporter.

4 MR. HEINRICH: Of course.

5 A COURT OFFICER: Witness entering.

6 (Whereupon, the witness entered the courtroom.)

7 A COURT OFFICER: Remain standing, face the clerk.

8 B R I A N W O O D, called as a witness, by and on behalf of
9 the People at the Hearing, having been duly sworn or
10 affirmed, testified as follows:

11 THE CLERK: Thank you.

12 A COURT OFFICER: Just have a seat.

13 For the record, state your full name, spell your
14 last name, shield number and current command.

15 THE WITNESS: Detective Wood, W-O-O-D; Brooklyn
16 North Narcotics Division; shield 5728.

17 THE COURT: First name, detective?

18 THE WITNESS: I'm sorry, Brian, B-R-I-A-N.

19 THE COURT: You are currently assigned to Brooklyn
20 North Narcotics?

21 THE WITNESS: Correct.

22 THE COURT: Detective, please keep your voice up
23 when testifying, everyone has to hear the answers to the
24 questions. So please speak in a loud voice.

25 If you don't understand the question, don't answer

1 the question. Say you don't understand and we'll clear it
2 up for you.

3 If the question calls for a yes or no answer, just
4 give us a yes or no response.

5 And if a lawyer objects to a question, don't
6 answer the question, wait for me to rule. If I say
7 sustained, you don't have to answer. Overruled means you
8 must answer the question.

9 All that clear?

10 THE WITNESS: Yes, sir.

11 THE COURT: Yes, Mr. Heinrich.

12 MR. HEINRICH: Thank you, your Honor.

13 DIRECT EXAMINATION

14 BY MR. HEINRICH:

15 Q Good afternoon, detective.

16 A Good afternoon.

17 Q Detective, approximately how long have you been a
18 member of the New York City Police Department?

19 A Sixteen and a half years.

20 Q What is your current assignment at Brooklyn North
21 Narcotics?

22 A I'm the plant manager.

23 Q What does that mean?

24 A I'm basically the super of the building.

25 Q Directing your attention to May 2011, were you still

1 at Brooklyn North then?

2 A Yes.

3 Q What was your assignment in May of 2011?

4 A Execution of a search warrant.

5 Q More, generally speaking, not a specific date, what
6 was your assignment?

7 A On that day?

8 Q That period.

9 A I was an investigator in narcotics.

10 Q Were you assigned anywhere prior to being at Brooklyn
11 North Narcotics?

12 A Yes.

13 Q Will you tell us where?

14 A Hundred-Third Precinct in Queens.

15 Q How long were you assigned to that precinct?

16 A From 1997 to 2004.

17 Q Anywhere before that?

18 A Just the police academy.

19 Q Approximately how many narcotics-related arrests have
20 you participated in during your career?

21 A Thousands.

22 Q Approximately how many search warrant executions have
23 you participated in during your career?

24 A Hundreds.

25 Q Now, detective, directing your attention specifically

1 to May 26th, 2011, were you working that day?

2 A Yes.

3 Q Generally, do you recall what shift or tour you were
4 working?

5 A Yes.

6 Q Will you tell us?

7 A Twelve-twenty-seven by twenty-one hundred hours, which
8 is 12:27 p.m. by nine o'clock p.m.

9 Q Thank you.

10 Do you remember any --

11 THE COURT: 12:27 p.m.?

12 THE WITNESS: To nine o'clock p.m.

13 THE COURT: Nine at night?

14 THE WITNESS: Correct.

15 THE COURT: Go ahead.

16 Q Do you remember any or the officers or detectives you
17 were working with that day?

18 A I remember Police Officer Solmonsohn.

19 Q Is his current rank now detective?

20 A Yes, he is.

21 Q Approximately -- withdrawn.

22 What was your team's assignment that afternoon?

23 A To execute a search warrant.

24 Q Do you recall the location where the search warrant
25 was to be executed?

1 A Yes.

2 Q Will you tell us?

3 A Four-Three-Five Alabama Avenue, apartment 2A.

4 Q Approximately how many people were involved in the
5 execution of the search warrant that afternoon?

6 A I'd say approximately --

7 THE COURT: Detective, I take it -- we're in
8 Manhattan now -- Alabama Avenue is in Brooklyn?

9 THE WITNESS: Kings County, correct.

10 THE COURT: You're assigned in New York --
11 Brooklyn North Narcotics, so you were in Brooklyn that day?

12 THE WITNESS: Correct.

13 THE COURT: Go ahead.

14 Q What part of Kings County is that location in?

15 A Brooklyn, East New York.

16 Q And approximately how many people were executing the
17 search warrant on your team?

18 A I'd say approximately twelve.

19 Q Do you recall the general time when this search
20 warrant was executed?

21 A 6:30 p.m.

22 Q What was your role during the execution of the search
23 warrant?

24 A I was assigned cuff and toss and P van.

25 Q Cuff and toss, what does that mean?

1 A Cuff and toss is, during the execution of the search
2 warrant, when you enter the location, you could be possibly
3 cuffing people inside the location and tossing them for
4 weapons, patting them down for weapons. P van, we were
5 assigned to transport prisoners to and from the location and/or
6 the precinct to Central Booking.

7 Q Is it fair to say there came a time when you in fact
8 entered apartment 2A?

9 A Yes.

10 Q Other than members of your team, were any other
11 individuals inside that apartment?

12 A Yes.

13 Q Do you recall the names of any of these people?

14 A Yes.

15 Q Will you tell us?

16 A Tyrone Wortham.

17 Q Was anybody else present besides Tyrone Wortham?

18 A Two children.

19 Q Do you know approximately how old they were?

20 A They were young. Under ten-years old.

21 Q Do you see Mr. Wortham in the courtroom today?

22 A Yes.

23 Q Do you mind pointing him out and referencing an
24 article of clothing that he's wearing?

25 A A plaid shirt.

1 THE COURT: Mr. Rausch, indicating, for the
2 record, your client?

3 MR. RAUSCH: Yes.

4 THE COURT: Go ahead.

5 MR. HEINRICH: Thank you, your Honor.

6 Q Do you recall where you first saw Tyrone Wortham that
7 afternoon?

8 A Yes.

9 Q Where?

10 A Inside of a bedroom.

11 Q Do you know approximately how many bedrooms are in
12 that apartment?

13 A I believe there's four or five.

14 Q Did you have any type of conversation with Tyrone
15 Wortham that afternoon?

16 A Yes.

17 Q Will you tell us the substance of the conversation?

18 A To take basic pedigree information as to his name,
19 date of birth, address, height, weight.

20 Q What was the reason for doing that?

21 A It's for our records when we process the arrests and
22 then enter them in the On-line Booking System.

23 Q And do you recall what information he gave regarding
24 where he lived?

25 THE COURT: Detective, let me interrupt. Where

1 did this conversation take place?

2 THE WITNESS: Inside 2A, in the apartment.

3 THE COURT: Was he under arrest?

4 THE WITNESS: He was handcuffed at that time.

5 THE COURT: He was handcuffed by you or by
6 somebody else?

7 THE WITNESS: Correct.

8 THE COURT: By somebody else?

9 THE WITNESS: I don't recall who handcuffed him.

10 THE COURT: Go ahead.

11 MR. HEINRICH: Thank you.

12 Q Do you recall what Mr. Wortham's response was in terms
13 of where he lives?

14 A Yes.

15 Q Will you tell us?

16 A He stated that his baby's mother lets him stay there
17 and he sleeps on a bed in the living room, and he motioned
18 towards the bed that was inside the living room.

19 Q How was this information used by that team?

20 A Hm?

21 Q How was this pedigree information used by the NYPD?

22 A It's used to put into the On-line Booking System, you
23 know, their names, dates of birth, where they live, for
24 prosecution.

25 Q Is this type of information taken from every adult

1 found inside of a search warrant location?

2 A Yes.

3 Q What if they're not later arrested?

4 A They would still be entered into the On-line Booking
5 System as a voided arrest. Just to document that we did have
6 them in custody at one point.

7 Q So, it's safe to say, regardless of whether or not at
8 that moment Mr. Wortham was under arrest, you would have taken
9 that pedigree information?

10 A Yes.

11 Q And that is NYPD procedure?

12 A Yes.

13 Q When you were speaking to Mr. Wortham about his
14 pedigree information, was your gun drawn?

15 A No.

16 Q Was anybody's gun drawn?

17 A Not to my knowledge, no.

18 Q Were any threats being made against Mr. Wortham?

19 A No.

20 Q Do you know approximately how long you stayed inside
21 of apartment 2A?

22 A I would say approximately about a half hour.

23 Q Why didn't you stay there longer?

24 A I then proceeded to the Seventy-Fifth Precinct.

25 Q Approximately how far away is that?

1 A About a ten-minute car ride.

2 Q Did there come a time later that evening where you
3 were informed by any members of your team regarding what, if
4 anything, was found inside of apartment 2A?

5 A Yes.

6 Q Will you tell us what you remember hearing?

7 A I received a phone call telling me that they recovered
8 a firearm from the location.

9 Q Now, detective, directing your attention to
10 approximately 7:40 p.m. later that evening, did anything
11 relevant to this case happen around that time?

12 A Yes.

13 Q And where were you at seven-forty?

14 A I was at the Seventy-Fifth Precinct.

15 Q Will you briefly tell us what you recall happening
16 around that time?

17 A Like I said, prior to that, while receiving a phone
18 call about them recovering a firearm, I was also instructed
19 that a female would be coming to the precinct regarding the
20 children, her name was Shawana Harrison, and that if and when
21 she arrived, to place her under arrest.

22 Q Do you know why you were to place Shawana Harrison
23 under arrest?

24 A I was -- because I was told they recovered a firearm
25 from the location.

1 Q Did she have any type of connection to that location?

2 THE COURT: Let me ask you this question: You
3 said you were at the Seventh-Fifth Precinct?

4 THE WITNESS: Yes.

5 THE COURT: And you received information from
6 another officer?

7 THE WITNESS: Yes.

8 THE COURT: About this person who was coming to
9 the precinct, the female.

10 THE WITNESS: Yes.

11 THE COURT: What information did you receive in
12 that phone conversation?

13 THE WITNESS: That they were -- that they were --
14 that they recovered a firearm from inside the location and
15 that this person is to be placed under arrest because she
16 has ties to the location.

17 MR. DeMARCO: She has what?

18 THE COURT: She has ties to the location.

19 In other words, that is the information you
20 received from someone there at the scene?

21 THE WITNESS: Correct.

22 THE COURT: You were told that she would be coming
23 to the Seventy-Fifth Precinct, she has ties to this
24 apartment, this location?

25 THE WITNESS: I believe she was the tenant of

1 record.

2 THE COURT: Tenant of record.

3 So that is what you were told?

4 THE WITNESS: Correct.

5 THE COURT: And you placed her under arrest?

6 THE WITNESS: Yes.

7 THE COURT: Go ahead.

8 MR. HEINRICH: Thank you, your Honor.

9 Q So again, at 7:40 p.m., approximately -- withdrawn.

10 At 7:40 p.m., what do you recall happening?

11 A A female came inside the precinct requesting the
12 children. I then had her come inside the muster room, at which
13 time I placed her under arrest.

14 Q Did you later learn that person's name?

15 A Yes.

16 Q Will you tell us?

17 A Shawana Harrison.

18 Q And if you wouldn't mind looking around the courtroom
19 and let us know if you recognize Shawana Harrison anywhere in
20 the courtroom?

21 A Yes.

22 Q Would you mind pointing to her and referencing an
23 article of clothing that she's wearing?

24 A Sure.

25 Female wearing a black sweatshirt.

1 THE COURT: Indicating, Mr. DeMarco, for the
2 record, your client.

3 MR. DeMARCO: Yes.

4 THE COURT: Go ahead.

5 Q Did you speak to Shawana Harrison at that point?

6 A Yes.

7 Q Do you recall the substance of the conversation?

8 A Basic pedigree information.

9 Q Did she indicate where she lives?

10 A Yes.

11 Q Do you recall what she told you?

12 A Yes.

13 Q Will you tell us?

14 A Four-Three-Five Alabama Avenue, apartment 2A,
15 Brooklyn, New York.

16 Q Did that pedigree information include a date of birth?

17 A Yes.

18 Q And why were you asking her that information?

19 A Because she was placed under arrest and that's the
20 information that's required to be inputted in the On-line
21 Booking System.

22 Q When you were speaking to Shawana Harrison about her
23 pedigree information including address and date of birth, was
24 your gun drawn?

25 A No.

1 Q Were any threats being made against Shawana Harrison
2 by either you or other police officers?

3 A No.

4 Q And this pedigree information you mentioned asking
5 her, is this information that you ask every person that you
6 place under arrest?

7 A Yes.

8 MR. HEINRICH: Can I have one second, your Honor?

9 THE COURT: Sure.

10 (Counsel conferring with counsel.)

11 MR. HEINRICH: Your Honor, no further questions
12 for Detective Wood, thank you.

13 THE COURT: Counsel, the order of
14 cross-examination doesn't matter to me. Whatever it is, you
15 can decide amongst yourselves.

16 MR. DeMARCO: You can go first. You're first on
17 the indictment.

18 MR. RAUSCH: I will do it. Mr. DeMarco has stage
19 fright.

20 CROSS-EXAMINATION

21 BY MR. RAUSCH:

22 Q Detective Wood, my name is Philip Rausch. I represent
23 Mr. Wortham in this case.

24 A How you doing.

25 Q Did you have an opportunity to review any documents

1 before you testified?

2 A Yes.

3 Q Today?

4 A Yes.

5 Q Which ones?

6 A Grand jury testimony.

7 Q That's it?

8 A I believe so, yes.

9 Q Any reason why you did that?

10 A Refresh my memory in my testimony.

11 Q And did it do that?

12 A Yes.

13 Q You entered the location approximately what time on
14 that date?

15 A I'm sorry, and I also reviewed copies of the pedigree
16 information that I had taken from the two defendants.

17 Q And when did you do that, actually?

18 A Today.

19 Q When?

20 THE COURT: When today, you're asking?

21 A Before lunch.

22 Q When today?

23 A Before lunch.

24 Q Okay.

25 On the day we're talking about, when did you actually

1 enter the apartment?

2 A I believe it was 6:30 p.m.

3 Q And you found Mr. Wortham or Mr. Wortham was found by
4 yourself as the sole adult in that apartment, correct?

5 A He was the only adult inside the apartment at that
6 time.

7 Q Where was he --

8 THE COURT: Hold on.

9 Counsel, if you want to confer, that's fine, but I
10 cannot have testimony and questioning at the same time.

11 MR. DeMARCO: I'm sorry.

12 THE COURT: Mr. Rausch, you want to ask the
13 question again?

14 Q Where was he within the apartment itself?

15 A He was inside of a bedroom.

16 Q And there's several bedrooms, correct?

17 A Yes.

18 Q Where in terms of the apartment itself was that
19 bedroom?

20 A If you entered the apartment, you are immediately
21 inside the kitchen. When you walk straight, it would be the
22 first bedroom you would encounter in a hallway.

23 Q How did you enter the apartment?

24 A Through the front door.

25 Q Was it open?

1 A No.

2 Q How did you get in?

3 A We forced it open.

4 Q And you went in with other team members, correct?

5 A Yes.

6 Q What was Mr. Wortham doing when you first saw him?

7 A I don't recall. I just know he was inside the first
8 bedroom.

9 Q And he was in a room by himself or with the two
10 children, kids?

11 A I don't recall.

12 Q Okay.

13 And there came a point, I think you handcuffed
14 Mr. Wortham?

15 A I don't recall who handcuffed him, sir.

16 Q Well, tell me how --

17 You took control of him at some point, correct?

18 A At some point in the night, yes.

19 Q What did you do?

20 A At what point?

21 Q To take control of him.

22 A When he was handcuffed inside the precinct, I then
23 took him inside the location. I had --

24 THE COURT: You said the precinct or the
25 apartment?

1 THE WITNESS: Inside the apartment. I'm sorry,
2 inside the apartment.

3 THE COURT: Okay.

4 Q And before you handcuffed him --

5 A I didn't say I handcuffed him.

6 THE COURT: We have to have one at a time because
7 the reporter can only take down one person speaking at a
8 time. So, if he's answering a question, please wait until
9 the answer's given.

10 Detective, if he's asking a question, wait until
11 the question's finished before you answer the question.

12 Back up and go ahead.

13 Q Before he was handcuffed, what did you do with respect
14 to the apartment itself?

15 A Before he was handcuffed?

16 Before he was handcuffed, I was in the line of
17 personnel entering the apartment.

18 Q You, yourself, didn't search the apartment apparently.

19 A No, I did not.

20 Q Correct?

21 And how soon after you got into the apartment, if you
22 can estimate, did you take Mr. Wortham to the precinct?

23 A Probably within, I would say, probably about a half
24 hour.

25 Q And do you know how quickly he was handcuffed once you

1 entered?

2 A I would have to say pretty much instantly.

3 Q Instantly?

4 A Yeah, as soon as he was encountered by someone, he
5 would be handcuffed.

6 Q And while he was in the apartment there when you were
7 with him, you had a little conversation with him?

8 A Well, I took his pedigree information from him.

9 Q And no Miranda rights were read to him at that point
10 by yourself?

11 A No.

12 Q Or any other officers, as far as you recall, right?

13 A Not as I heard, no.

14 Q When you say you took his pedigree, you made a
15 statement about Ms. Harrison letting him --

16 THE COURT: I didn't hear the question. You were
17 looking that way.

18 MR. RAUSCH: Sorry.

19 Q I think your testimony is that Mr. Wortham stated that
20 Ms. Harrison let's him stay in the apartment and allows him to
21 sleep in the living room on the mattress in Ms. Harrison's
22 apartment?

23 A He said his baby's mama.

24 Q His baby's mama.

25 A Yes, he stated, let's me stay in the location,

1 correct.

2 Q His baby's mama, that is a specific term he used?

3 A Yes.

4 Q You didn't tell him that he was under arrest while he
5 was in the apartment, did you?

6 A I don't recall.

7 Q Do you know if any other police officers talked with
8 him while you were in the apartment with him?

9 A I don't know.

10 Q You didn't witness any of this, did you?

11 A I don't recall.

12 Q Let me ask you this: Why did you take him to the
13 precinct while he was --

14 MR. HEINRICH: Objection. He's outside the scope.

15 THE COURT: Objection sustained.

16 You stated that you stayed about a half hour in
17 the apartment?

18 THE WITNESS: I would say from the time that we
19 were transported back to the precinct, was probably,
20 roughly, around a half hour, how long it was before we
21 removed him from the apartment and placed him in a vehicle.

22 THE COURT: In other words, you go back to the
23 precinct, other members of the search warrant execution team
24 stayed there?

25 THE WITNESS: Correct.

1 THE COURT: And you stayed in the apartment
2 approximately how long?

3 THE WITNESS: I would say maybe twenty minutes.

4 THE COURT: About twenty minutes.

5 You didn't take or did you take this defendant
6 back to the precinct?

7 THE WITNESS: I don't recall offhand if I took
8 him. I took either him or the two children back to the
9 precinct.

10 THE COURT: Okay.

11 THE WITNESS: I believe we would not transport
12 them together back to the precinct.

13 THE COURT: But you're testifying to statements
14 that the defendant made inside the apartment before he was
15 removed from the apartment?

16 THE WITNESS: Correct.

17 THE COURT: Go ahead.

18 Q I believe that your testimony was that he was -- "he",
19 I mean Mr. Wortham, my client -- was in the precinct for a
20 certain period of time because he was formally --

21 MR. HEINRICH: Objection, your Honor.

22 THE COURT: Sustained. This is after the fact
23 already. We're talking about statements made in the
24 apartment.

25 MR. RAUSCH: I have nothing further.

1 THE COURT: Mr. DeMarco.

2 MR. DeMARCO: Yes.

3 CROSS-EXAMINATION BY

4 MR. DeMARCO:

5 Q Good afternoon, sir.

6 A Good afternoon.

7 Q You said you spoke to Wortham inside the apartment in
8 the bedroom that is closest to the kitchen?

9 A No.

10 Q Where is the bedroom that you saw Mr. Wortham in?

11 THE COURT: You're asking him if he spoke to him
12 in that bedroom?

13 MR. DeMARCO: Yes.

14 A No, I said I spoke to him inside the kitchen area.

15 Q Where did you see Mr. Wortham the first time when you
16 entered the apartment?

17 A Like I said previously, inside the bedroom by -- near
18 the kitchen.

19 Q Is that the first bedroom --

20 When you say as you're walking through the kitchen
21 from the front door, the doorway to the bedroom would be facing
22 the kitchen?

23 A I would say it will be the first bedroom you encounter
24 once you pass through the kitchen, would be that bedroom.

25 Q Would you be facing that bedroom if you were traveling

1 from the front door of this apartment to the kitchen?

2 A The bedroom would be in front of you basically, yes.

3 Q When you saw him in the bedroom, what was he doing?

4 A I don't recall.

5 Q Do you remember where he was in the bedroom? By the
6 window? By a bed? By something else?

7 A I don't recall. I don't believe it was that large of
8 a room.

9 Q Do you recall if he was standing? If he was sitting?
10 If he was sleeping? Something else?

11 A I don't recall.

12 Q And you, at some point, did you take him from the
13 bedroom to the kitchen area?

14 A I don't recall.

15 Q Then you spoke to him in the kitchen area, is that
16 correct?

17 A That's correct.

18 Q And he told you his baby's mother lets him stay there
19 on a mattress, is that right?

20 A In a bed.

21 Q I'm sorry?

22 A In a bed that was inside the living room.

23 Q He said to you that his baby's mother lets him stay on
24 a bed that was inside the living room?

25 A Correct.

1 Q And did he indicate what he meant by living room?

2 A When we were standing in the kitchen, you could see
3 the living room and there was a bed inside the living room, at
4 which time he motioned with his head towards the bed inside the
5 living room that's where he stays.

6 Q And when he said baby's mother, did he identify her by
7 name or you have no recollection of that?

8 A No, he did not.

9 Q Did he say that he was the father of the children in
10 the apartment?

11 A Not to my knowledge. Not at that point, no.

12 Q Did he say to you where the children -- where the
13 mother of the children was at that point?

14 A I don't recall.

15 Q Did he mention anything at all at that point about the
16 relationship, who he identified as the baby's mother to the
17 apartment? You have no recollection?

18 A I don't understand the question, repeat it.

19 Q In other words, did he tell you what relationship, if
20 any, this person who identified Mr. Wortham as the baby's
21 mother had to the apartment that you were in?

22 A He just made the statement that, when I was taking his
23 pedigree information, when I asked where he lives, he says: I
24 stay here. I asked: Here? He stated: His baby's mother lets
25 him stay in the living room and made a motion to the living

1 room.

2 Q You mentioned at some point you got a phone call from
3 someone, is that correct?

4 A Yes.

5 Q And who was that person?

6 A I don't recall who exactly it was.

7 Q I'm sorry?

8 THE COURT: He doesn't recall.

9 A I don't recall exactly who it was that made that call.

10 Q Do you have any recollection if it was a police
11 officer?

12 A It would have to be, yes.

13 Q Okay.

14 Do you have any recollection where that police officer
15 was when he made the phone call?

16 A I wouldn't have any idea where they were at that point
17 when the call was made.

18 Q You said you got a phone call regarding a firearm
19 being recovered in the apartment, and you also said you were
20 informed that a female was coming to the precinct and that she
21 had ties to the location and she should be placed under arrest.

22 Were these separate calls or was this one call?

23 A One in the same. One call.

24 Q And you have no recollection who made that
25 communication to you?

1 A No, I don't.

2 Q Okay.

3 Do you have any knowledge whether or not that person
4 was inside the apartment when he made that call?

5 A Like I said, I don't know where or who was there when
6 he called. I just remember receiving a phone call who was
7 coming and what I was to do.

8 Q What time did you get the phone call?

9 A I don't recall.

10 THE COURT: You testified earlier about 7:40 p.m.

11 THE WITNESS: It's seven-forty was the time of
12 arrest of Shawana Harrison.

13 THE COURT: That's when she came to the precinct?

14 THE WITNESS: Correct.

15 THE COURT: You said you went to execute the
16 search warrant around six-thirty?

17 THE WITNESS: Six-thirty.

18 THE COURT: So it was between six-thirty and
19 seven-forty obviously.

20 THE WITNESS: Correct.

21 THE COURT: When someone called you at the
22 precinct.

23 THE WITNESS: That would be correct, sir.

24 THE COURT: Go ahead.

25 Q Do you know how long before Ms. Harrison came to the

1 precinct that you saw her that you received this phone call
2 about placing her under arrest?

3 A Can you repeat the question? I don't understand.

4 Q Do you know how long before Ms. Harrison arrived at
5 the precinct that you received this phone call?

6 A No, I don't. I don't recall.

7 Q Was it a short time before?

8 MR. HEINRICH: Objection, your Honor.

9 THE COURT: Sustained.

10 In other words, you're at the precinct. You said
11 you left the apartment at about twenty minutes after the
12 search warrant was executed.

13 THE WITNESS: I left probably around,
14 approximately twenty, thirty minutes after, I would say.

15 THE COURT: Between ten to seven and seven
16 o'clock?

17 THE WITNESS: Correct.

18 THE COURT: And you go from the apartment to the
19 Seventy-Fifth Precinct?

20 THE WITNESS: Correct.

21 THE COURT: And while you're at the Seventy-Fifth
22 Precinct, you get a phone call --

23 THE WITNESS: Correct.

24 THE COURT: -- saying that Ms. Harrison is coming
25 to the Seventy-Fifth Precinct and this is about seven-forty?

1 THE WITNESS: Correct.

2 THE COURT: So the phone call was sometime between
3 seven and seven-forty.

4 THE WITNESS: I would say yes.

5 THE COURT: Do you recall whether it was like
6 right after you got to the precinct or was it right before
7 she arrived at the precinct? Any idea?

8 THE WITNESS: I don't recall when it was, no.

9 THE COURT: Go ahead.

10 Q In that communication, did they tell you any
11 information other than she has ties to the location?

12 A I don't recall the exact -- basically in sum and
13 substance, she has ties to the location, whether it be the
14 tenant of record... But she was to be placed under arrest.

15 Q Do you have a specific recollection of them telling
16 you that she was the tenant of record?

17 A No.

18 Q Do you have a specific recollection of them telling
19 you that she occupied the location?

20 A I just know that, like I said previously. It is --
21 that's the only thing I can recall at this time.

22 Q So do you have a specific recollection, as you sit
23 here today, that the person who made this call told you that
24 Shawana Harrison occupied the location where the search warrant
25 was executed?

1 A I'm not understanding your question. Can you repeat
2 that?

3 Q Did they say that the person you were about to arrest,
4 did they use the phrase the person lived there or occupied the
5 place?

6 THE COURT: Let me try to clear this up.

7 Detective, do you remember getting a phone call
8 about placing the person who was going to be arriving under
9 arrest, the female?

10 THE WITNESS: Yes.

11 THE COURT: Do you recall what was said, not the
12 exact words, obviously, but what was said, the substance of
13 it?

14 THE WITNESS: Sum and substance would be that the
15 person that's coming to the precinct was to be placed under
16 arrest because she's involved -- she was involved with the
17 gun inside the apartment. That would be the sum and
18 substance of the conversation.

19 THE COURT: Go ahead, please.

20 Q And it wasn't explained to you how it is --

21 You don't have any recollection here today of that
22 person on the phone explaining to you how it is she was
23 involved with the gun inside the place, correct?

24 A I don't recall, no.

25 Q And did you ever have a conversation with Ms. Harrison

1 about an open beer bottle summons in 2005?

2 A Yes.

3 Q Okay.

4 Why did you speak to her about that?

5 A When I placed her under arrest for the search warrant
6 location, I was also told -- I was informed that she had an
7 open warrant for her arrest from a previous summons.

8 Q Okay.

9 Do you have any record of that warrant as you sit here
10 today?

11 A No.

12 MR. DeMARCO: I have nothing further.

13 THE COURT: People, anything further?

14 MR. HEINRICH: Just two questions, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. HEINRICH:

17 Q Detective, first of all, regarding Shawana Harrison
18 and the day of the search warrant execution, before you met her
19 at the precinct, did you see her anywhere?

20 A Before I left, I observed her pull up in her car.

21 Q Where was this?

22 MR. DeMARCO: Objection, beyond the scope.

23 THE COURT: No, that is a proper question.

24 In other words, before you left that Alabama
25 Avenue apartment?

1 THE WITNESS: Before I left the street, correct.

2 THE COURT: You saw her pull up in a car?

3 THE WITNESS: I saw a white Mercedes pull up, yes.

4 Q Detective, during your experience and your training
5 regarding search warrant executions, are all adults within a
6 search warrant location handcuffed immediately?

7 A Inside the location?

8 Q Yes.

9 A Yes.

10 Q What is the reason for that?

11 A For our safety.

12 Q Will you expand what you mean by that?

13 A We secure everybody in a location not knowing exactly
14 what they have on them, or who else is in the location, or what
15 else might be there that could endanger our health.

16 Q Does it mean they're under arrest?

17 A No.

18 MR. RAUSCH: Objection to that.

19 THE COURT: He answered it already.

20 It doesn't mean they're under arrest. That's the
21 police department protocol in a search warrant case?

22 THE WITNESS: Yes.

23 THE COURT: Okay.

24 MR. HEINRICH: Your Honor, I have no further
25 questions. Thank you.

1 THE COURT: Mr. Rausch.

2 MR. RAUSCH: I have no questions, Judge.

3 THE COURT: Mr. DeMarco, anything further?

4 MR. DeMARCO: Yes.

5 RECROSS EXAMINATION

6 BY MR. DeMARCO:

7 Q You said that you saw Ms. Harrison pull up in a white
8 Mercedes before the execution of the search warrant?

9 A No.

10 Q When did you see her pull up in a white Mercedes?

11 A Prior to me leaving the location after the execution
12 of the search warrant.

13 Q And this was on a public street, correct?

14 A Correct.

15 Q This is on Alabama Avenue?

16 A Yes.

17 Q You saw her driving the car?

18 A I saw her exiting it.

19 Q Okay.

20 You didn't see where she went when she left the car?

21 A Towards the -- towards Four-Thirty-Five Alabama.

22 Q Okay. What drew your attention to her?

23 You had never met her before, correct?

24 A Right.

25 Q What drew your attention to her?

1 A I'm sorry?

2 Q What drew your attention to her if you had never met
3 her before?

4 A I never -- I did meet her before.

5 Q When did you meet her before?

6 A Previously.

7 Q You had arrested her previously?

8 A Yes, correct.

9 Q Was that at the same apartment?

10 A Correct.

11 Q When was that?

12 A I don't know the exact date. It was a prior search
13 warrant at the location.

14 MR. DeMARCO: I have nothing further.

15 THE COURT: Anything further?

16 MR. HEINRICH: No, your Honor. People rest.

17 THE COURT: Mr. Rausch, anything?

18 MR. RAUSCH: No, Judge.

19 THE COURT: Thank you, detective.

20 THE WITNESS: Thank you. Enjoy.

21 (Whereupon, the witness exited the courtroom.)

22 THE COURT: Mr. Heinrich, do you have any further
23 witnesses?

24 MR. HEINRICH: No, I do not, your Honor. People
25 would rest.

1 THE COURT: Mr. Rausch, did you have any
2 witnesses?

3 MR. RAUSCH: No, Judge.

4 THE COURT: Mr. DeMarco, did you have any
5 witnesses?

6 MR. DeMARCO: No.

7 THE COURT: Let me hear argument from defense
8 counsel. Mr. Rausch?

9 MR. RAUSCH: Judge, I had thought this hearing
10 would be about two statements that were separately noticed.

11 THE COURT: You are looking at the voluntary
12 disclosure form?

13 MR. RAUSCH: Yes, I am.

14 THE COURT: What statements were noticed as to
15 your client?

16 MR. RAUSCH: One that was testified such as
17 co-defendant Harrison let Wortham stay in apartment 2A and
18 allows him to sleep in the living room on a mattress which I
19 heard Detective Wood say that.

20 THE COURT: Okay.

21 MR. RAUSCH: There was another statement in
22 response to --

23 THE COURT: You're being too fast, and louder.

24 MR. RAUSCH: -- defendant Wortham gave his
25 telephone number as (718) 385-0148. There is no testimony

1 as to that statement itself in this hearing.

2 MR. HEINRICH: Correct, your Honor. The People
3 will not be seeking to introduce that statement.

4 THE COURT: I'm only going to rule on the
5 testimony --

6 MR. RAUSCH: Right.

7 THE COURT: -- that was given at the hearing. If
8 there was a statement elicited, I will rule on it. If it's
9 something not elicited, I guess I can't rule.

10 MR. RAUSCH: You can't.

11 THE COURT: Right.

12 Let me hear the legal argument about the statement
13 testified to.

14 MR. RAUSCH: Apparently, Judge, the police
15 officers went there that day to execute a search warrant
16 which gives them the opportunity to search the premises for
17 guns, drugs or anything like that. This particular case,
18 prior to any arrest, apparently, Judge, in their own terms,
19 they got pedigree information from my client.

20 The statement of which you heard was that
21 co-defendant lets my client stay in the apartment, 2A, and
22 allowed him to the sleep in a living room on a --

23 THE COURT: Let me -- when I'm speaking, please.

24 I heard this six or seven times already. Let me
25 talk about the subject of what the hearing is.

1 MR. RAUSCH: Okay.

2 THE COURT: He's handcuffed. He's in the
3 apartment. This detective talks to him to get pedigree
4 information.

5 MR. RAUSCH: Yes.

6 THE COURT: And the defendant says to him, in
7 substance, that his baby mama, baby mama, lets him stay
8 there, lets him sleep there, sleeps on a bed in the living
9 room, and he's in the kitchen area when he says this to the
10 detective who testified, and he's, like, nodding towards
11 that area which is visible from the kitchen area where the
12 bed is in the living room.

13 That's the subject of the hearing. That's the
14 statement that's established. The question is: Was it
15 proper and lawful for the detective to question him like
16 that, to get that information. So talk to me about the
17 legal issues.

18 MR. RAUSCH: Judge, we know there is a pedigree
19 exception to Miranda. But we also know there is an
20 exception to the pedigree exception, and that's on the
21 People v. Rodney and cases under that. People versus Ralph
22 Rodney. I have a couple of other cases.

23 THE COURT: Okay. Tell me what your argument is.

24 MR. RAUSCH: The argument simply is when they
25 asked him the pedigree information, they were there in a

1 situation where it's very likely that giving pedigree
2 information such as I live here or I'm allowed to stay here
3 and that I'm allowed to sleep in the living room on a
4 mattress --

5 THE COURT: Bed, mattress, doesn't matter, does
6 it?

7 MR. RAUSCH: No, it does not matter as far as this
8 argument.

9 That while it's facially property, Judge, it's
10 likely to elicit incriminating admissions because of the --

11 THE COURT: Suppose Mr. Heinrich says: Wait a
12 second, there is a police department rule, policy for the
13 safety of the officers involved, that when they go into
14 premises, they handcuff everybody who's inside the premises
15 subject of the search warrant execution and they get
16 pedigree information from them, you're saying that it's
17 improper to do that?

18 MR. RAUSCH: Judge, it may be a police department
19 rule but it still has to pass muster.

20 THE COURT: You're saying it's improper?

21 MR. RAUSCH: That's correct, despite it being
22 police department protocol.

23 THE COURT: Is there any authority you have for
24 that? Because the pedigree exception is something else.
25 Obviously if someone is under arrest, the police can ask

1 name, date of birth, address, all that information, and the
2 courts have ruled on that. That's easy. This is somewhat
3 of a different situation.

4 MR. RAUSCH: That's right.

5 While I'm saying People v. Rodney, I have a case
6 State of New York versus Flowers. I have a packet for you,
7 Judge.

8 THE COURT: Okay. The cases that support your
9 position?

10 MR. RAUSCH: Sure.

11 THE COURT: Fine, I'll look at them.

12 Is that your argument, though?

13 MR. RAUSCH: Yes, Judge.

14 THE COURT: Okay.

15 As far as the statement goes that was noticed,
16 there was only one statement we're talking about.

17 MR. RAUSCH: That's right.

18 THE COURT: Mr. DeMarco, you want to be heard?

19 MR. DeMARCO: I will, just very briefly.

20 I mean, the only objection -- the objection had
21 been raised, I will argue that they had an insufficient
22 basis to arrest Ms. Harrison at the precinct, and any
23 statement she made, even if pedigree information, should be
24 suppressed.

25 The officer said he received a phone call

1 indicating that she had ties to the location and that he
2 changed his testimony. He said somehow she was involved
3 with the firearm.

4 I would submit to the Court that he did not have
5 sufficient information. He didn't know what the basis of
6 knowledge was of the person relaying the information. And
7 it didn't connect Ms. Harrison to any criminality at that
8 point.

9 Justifying this arrest and then the questioning of
10 her pedigree information and the statement should be
11 suppressed under that ground.

12 THE COURT: It is irrelevant that he knows her and
13 he saw her pull up outside in the car and he knows her from
14 a prior incident, she has a connection of some sort with the
15 apartment?

16 MR. DeMARCO: It's relevant, but he didn't testify
17 necessarily that -- it doesn't follow necessarily that she
18 lives at that apartment. He testified that Mr. Wortham
19 never identified who the babies' mother was.

20 So, it's relevant to the extent it has some value,
21 but the fact of the matter is, there's no real connection
22 that he was able to make that she resided at the apartment.

23 THE COURT: Okay.

24 Mr. Heinrich.

25 MR. HEINRICH: Yes, your Honor.

1 First, as to Mr. DeMarco's argument regarding
2 Shawana Harrison's arrest, I would argue that there was more
3 than sufficient basis to believe that she had a connection
4 to this apartment where officer -- excuse me -- Detective
5 Wood was aware at least one firearm was found during the
6 execution of the search warrant.

7 We heard that Detective Wood has previously
8 arrested Shawana Harrison at that location. We heard that
9 he, in fact, saw her arrive at the location before he left
10 for the precinct that evening. And we also heard that
11 during the arrest processing, she later confirmed that she,
12 in fact, lived there. All of this supports more than
13 probable cause, as well as a phone call he received from a
14 member of his team that she had either lived there or had
15 very strong connection to the apartment where the firearm
16 were found.

17 For those reasons, there were probable cause to
18 place her under arrest.

19 And I don't believe Mr. DeMarco's argument that
20 these pedigree questions do not fall under the pedigree
21 exception to Miranda.

22 As to Mr. Wortham -- and, of course, she also had
23 an open summons warrant which gave him further cause to
24 place -- to give Detective Wood further cause to place her
25 under arrest.

1 As to Mr. Rausch's argument regarding this not
2 being pedigree information, specifically Mr. Wortham's
3 statements regarding where he lives, I guess I am a little
4 confused. I'm not sure if he's saying that NYPD's never
5 allowed to ask anybody where they live in a search warrant
6 execution and that portion of the on-line should be forever
7 blank.

8 THE COURT: What if someone -- let me give you
9 this hypothetical: What if someone is inside an apartment
10 when executing a search warrant and they're handcuffed as
11 everyone else and it turns out that they are not arrested,
12 that there's insufficient connection as to them and whatever
13 contraband is found, and the information is still taken from
14 them without them being formally arrested.

15 MR. HEINRICH: Yes, your Honor. I think Detective
16 Wood made clear that all of that information has to be
17 taken. Then it is a wait to see what is recovered -- to
18 wait and see what is recovered inside the search warrant
19 location.

20 You obviously want to have all the possible
21 defendants removed from the location before searching
22 begins. Regardless of when it is taken, it is still
23 pedigree information.

24 As to what I believe Mr. Rausch's argument is that
25 if any information has an inculpatory value, therefore, it

1 could not be pedigree information. That is not true. This
2 is somewhat of a different situation than Mr. DeMarco's
3 client. Mr. DeMarco's client is under arrest. And when
4 someone's under arrest, the law is very clear about pedigree
5 information. But, Mr. Rausch's client's not under arrest,
6 at least according to the detective's testimony, that he's
7 in the apartment, he's handcuffed, and, as a matter of
8 police department protocol, pedigree information is taken
9 from him.

10 THE COURT: This is a different situation from
11 someone under arrest.

12 MR. HEINRICH: Yes, your Honor, he was being
13 retained.

14 THE COURT: Right.

15 MR. HEINRICH: I would argue there is a reasonable
16 suspicion for him to be retained at that point. Of course,
17 he being arrested and found inside the location where a
18 judge found probable cause for the execution of a narcotics
19 search warrant.

20 Again, I would argue that regardless of whether
21 the pedigree was taken while he was simply detained or
22 placed under arrest, it's still within the pedigree
23 exception to Miranda. It is for administrative purpose.
24 That is what Rodney says. Not just for an arrest purpose
25 but for an administrative purpose. And it is clear that

1 Detective Wood was asking these questions for administrative
2 purpose. Again, as to whether or not they had any type of
3 inculpatory value, First Department made clear in People
4 versus Velazquez, V-E-L-A-Z-Q-U-E-Z, that it's not.

5 THE COURT: Velazquez?

6 MR. HEINRICH: Yes, your Honor, that pedigree
7 information and questions being interrogatory in nature --

8 THE COURT: I don't think anyone's arguing with
9 the general rule here. Someone's under arrest.

10 MR. HEINRICH: My understanding is Mr. Rausch is.
11 He seems to be saying --

12 THE COURT: Hold it. I'm listening to the lawyers
13 and what I'm hearing, there is a different hearsay.
14 Someone's under arrest, they're questioned by the police
15 about name, date of birth, address. The courts have held
16 there's no problem with that. That's proper. You don't
17 need Miranda warnings for that. This is Mr. Rausch's client
18 who is not under arrest. I think that's pretty clear.

19 MR. HEINRICH: He was being retained.

20 THE COURT: Detained.

21 He's in the apartment. Everyone in the apartment
22 is handcuffed and pedigree information is taken from them
23 whether they're arrested or not. So it's somewhat different
24 than the general argument about pedigree.

25 Mr. Rausch is saying no matter what the police

1 department rule says, that this still is something that is
2 improper in what the detective learned should be suppressed.

3 Do you have any cases on point, anything about
4 that? Either side? Mr. Rausch or Mr. Heinrich?

5 MR. HEINRICH: I believe Rodney speaks for this
6 itself.

7 THE COURT: Okay.

8 MR. HEINRICH: When the court -- in Pennsylvania
9 versus Mimms, the question remains whether the defendant's
10 detention was related to administrative purposes. Of
11 course, it's commonly referred to as a pedigree exception.
12 That is somewhat of a misnomer. It is questions that are
13 asked for administrative purposes.

14 THE COURT: For someone that's not under arrest.
15 You're saying it doesn't matter?

16 MR. HEINRICH: Yes, your Honor.

17 THE COURT: Yes.

18 MR. HEINRICH: It's still administrative.

19 And Detective Wood made it clear, regardless of
20 whether a person is later not arrested is NYPD policy to
21 immediately begin taken pedigree information from every
22 adult found inside of a search warrant location.

23 THE COURT: That's his testimony. I don't think
24 Mr. Rausch is disputing that. That's the NYPD policy. He's
25 saying that the policy doesn't mean that what's obtained

1 from a person should be admissible at a trial. That's his
2 argument.

3 MR. HEINRICH: Yes, your Honor.

4 THE COURT: So, counsel, there are no further
5 witnesses at the hearing. This case is not going to go to
6 jury selection today. I would like you to come back
7 tomorrow -- I have a case at ten. Why don't we come at
8 ten-thirty tomorrow, and if there's any further cases or
9 arguments you wish to make, you can make them tomorrow.

10 Mr. Rausch, you said there is going to be a
11 severance motion?

12 MR. RAUSCH: Yes.

13 THE COURT: Is that written?

14 MR. RAUSCH: I haven't written it yet.

15 THE COURT: You better write it soon.

16 So, we will be here at ten-thirty and the
17 severance motion has to be written.

18 And I take it it's on the basis of statements?

19 MR. RAUSCH: On the basis of co-counsel's defense
20 which is going to be antagonistic.

21 THE COURT: You better get working on that. This
22 case has been pending two years.

23 MR. RAUSCH: I was just informed of that two days
24 ago.

25 THE COURT: I am not ruling on anything. I'm just

1 letting you know this case is going to trial after I rule on
2 the hearings. Whether I suppress it or don't suppress it,
3 there's going to be a trial here. And I think whomever
4 decides this motion is going to have a problem with the
5 motion being filed when it's filed. If you do that.
6 Because this is something that certainly should have been
7 filed months -- maybe even more than months ago. However,
8 we'll talk about all these things tomorrow.

9 MR. HEINRICH: Just one quick question, your
10 Honor, if I may?

11 If Mr. Rausch is able to give us a written
12 submission tomorrow morning, would your Honor allow the
13 People to have a break, perhaps wait until after lunch, so
14 we can make oral motions why the motion should be denied?

15 THE COURT: Sure. Again, if a motion is made, I
16 just don't know why after all this time the motion is made
17 not on the eve of trial, the day of trial. There's a lot of
18 issues here. But, however, we will talk about all these
19 issues tomorrow, ten-thirty, and I will give you my decision
20 on the hearing issues and then we'll talk about the trial
21 itself.

22 The defendants come to this courtroom, Part 82, at
23 ten-thirty. Ten-thirty tomorrow.

24 A COURT OFFICER: (Handing.)

25 MR. HEINRICH: So, your Honor, would you mind just

1 considering defendants Parkerized?

2 THE COURT: I don't know if it's been done before.
3 Let me talk to them again. Both defendants should
4 understand that the case is being adjourned just one day,
5 till tomorrow, at ten-thirty. And there will be a ruling at
6 the hearing and the case is going to proceed. You have to
7 come back tomorrow. If you don't come back to court, I'm
8 required under the law to tell you certain things, they're
9 called Parker warnings after the case People v. Parker.

10 The case will go on without you being here. If I
11 make the decision you decided voluntarily not to come back
12 to court, whatever bail you posted certainly will be lost,
13 warrants will be issued for your arrest. Most importantly,
14 your case will proceed. There'll be a ruling on the
15 hearing, there'll be jury selection, there will be testimony
16 at trial, just like you're sitting there but it will be
17 without you, if you make a decision not to come back to
18 court. Do you both understand that?

19 THE DEFENDANT: Yes.

20 THE DEFENDANT: I understand.

21 THE COURT: That's two yesses.

22 Tomorrow morning at ten-thirty.

23 MR. HEINRICH: Thank you.

24 (Whereupon, the case was adjourned to Friday,
25 February 15th, 2013.)

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK: CRIMINAL TERM: PART 82
-----x

3 THE PEOPLE OF THE STATE OF NEW YORK

Indictment
No. 3148/11

4 -against-

CPCS 3 & CPW 2

Huntley Hearing

6 TYRONE WORTHAM and SHAWANA HARRISON,

7 Defendants.

8 -----x

9 February 15th, 2013

10 100 Centre Street
11 New York, NY 10013

12 B e f o r e :

13 HONORABLE CHARLES H. SOLOMON,

14 Justice.

15
16 Appearances:

17 BRIDGET G. BRENNAN, ESQ.
Office of Special Narcotics, New York County
18 BY: NOWLES HEINRICH, ESQ.
ELIZABETH SHEETZ, ESQ.
19 Assistant District Attorneys

20 LEGAL AID SOCIETY
Attorney for Defendant Wortham
21 BY: PHILIP RAUSCH, ESQ., of Counsel

22 ENRICO DeMARCO, ESQ.
Attorney for Defendant Harrison
23

24 Joanne Fleming
25 Senior Court Reporter

1 (In open court)

2 THE CLERK: Calendar number three, Tyrone Wortham,
3 Shawana Harrison.

4 THE COURT: Counsel, good morning.

5 Counsel, we have appearances from yesterday.

6 This is the hearing continued and all parties are
7 present. The defendants are present.

8 When we're ready, let me ask, counsel, both sides,
9 anything further on the hearing issues?

10 Defense?

11 MR. DeMARCO: No.

12 MR. RAUSCH: No, Judge.

13 THE COURT: Prosecution?

14 MR. HEINRICH: Your Honor, I did have a chance to
15 look over the two or three cases provided by Mr. Rausch.
16 One is People v. Rodney which --

17 THE COURT: That's the leading case.

18 MR. HEINRICH: It's the leading case.

19 THE COURT: Eighty-five New York 2d -- wait, when
20 I'm speaking --

21 MR. HEINRICH: Sorry.

22 THE COURT: Please.

23 That's the case we discussed yesterday, the Court
24 of Appeals, 85 NY, leading case in this area.

25 MR. HEINRICH: Yes.

1 THE COURT: Just give me one second.

2 Yes, I'm sorry.

3 MR. HEINRICH: I'm sorry, your Honor?

4 THE COURT: Mr. Heinrich, you were saying you had
5 a chance to look at the cases?

6 MR. HEINRICH: Yes, your Honor. One of the cases
7 of course is People versus Rodney. I think we discussed
8 that enough yesterday.

9 I will just note, the other two are not at all
10 relevant and/or binding on this Court. One is a Nassau
11 County District Court opinion and the other one is a Fourth
12 Department case, both are factual --

13 THE COURT: Which is the Fourth Department case?

14 MR. HEINRICH: Fourth Department case, your Honor,
15 is People versus Flowers.

16 THE COURT: Flowers. I am aware of Flowers. Just
17 for the record, that's 59 AD 3d 1141, 2009.

18 MR. HEINRICH: Yes, your Honor.

19 THE COURT: That's the citation.

20 MR. HEINRICH: It does involve a search warrant.
21 Other than that, there is no factual distinction -- excuse
22 me -- no factual analogy. At issue in Flowers was repeated
23 questions from a police officer demanding from the defendant
24 who owned a money -- excuse me -- who owned the money found
25 in a drawer. That is far different than the question in

1 this case regarding pedigree information.

2 Who owned narcotics money found in the drawer was
3 clearly asked to obtain inculpatory information. Much
4 different than the present case where it was very simple
5 pedigree information which, as the detective testified to,
6 is necessary for administrative reasons in all search
7 warrant executions and all arrests made by the NYPD.

8 The second case provided by defense counsel was
9 People v. Singh, that is 12 Misc. 3d 952. This is a Nassau
10 County District Court case. The questions examined in that
11 case, it was a DWI case, and hours after the arrest, there
12 were questions regarding how much alcohol had been consumed
13 by the defendant.

14 Once again, in contrast to the present case, those
15 questions were clearly meant to obtain inculpatory
16 information, that it's administrative reasoning and rational
17 behind those questions, far different from the pedigree
18 questions asked by Detective Wood.

19 For those reasons, the People respectfully submit
20 that these cases should not be considered by you, by your
21 Honor, in determining the issue regarding the Huntley
22 hearing.

23 Thank you.

24 THE COURT: Thank you.

25 Counsel, let me give you first my findings of fact

1 and conclusion of law.

2 This was a hearing that was conducted before me
3 yesterday, and the one witness who testified at the hearing,
4 Detective Brian Wood from Brooklyn North Narcotics, I find
5 to be a credible witness, and my understanding of fact and
6 conclusion of law are based upon his testimony.

7 Detective Wood testified that he's been on the
8 police force for over sixteen years and has been involved in
9 thousands of narcotic arrests over his career and has been
10 involved in the execution of hundreds of search warrants.

11 On the date in question in this case, the
12 detective was part of a team of officers executing a search
13 warrant at Four-Thirty-Five Alabama Avenue in Kings County,
14 apartment 2A. The police entered the apartment on the date
15 in question at approximately 6:30 p.m.

16 And this detective testified, his role, as he
17 described it, was to cuff and toss and also the P van which
18 is commonly referred to as the prisoner van. The cuff and
19 toss, as he put it as part of his assignment, was to check
20 all adult occupants of the apartment for weapons and to
21 handcuff them while the search was being conducted by other
22 members of the search warrant execution team.

23 Upon entry into the apartment, the only adult
24 inside was the defendant Wortham, if I'm pronouncing that
25 correctly, Mr. Rausch?

1 MR. RAUSCH: Yes.

2 THE COURT: He was inside in one of the bedrooms
3 in the apartment and there were also two young children
4 inside the apartment. Detective Wood said that they were
5 both under ten years of age.

6 The defendant was immediately handcuffed as soon
7 as the police entered the apartment. Detective Wood spoke
8 to the defendant and asked him his name and other pedigree
9 information. This conversation took place in the kitchen
10 area of the apartment.

11 And Detective Wood testified that, under police
12 department regulations, pedigree information is to be taken
13 from every adult inside the premises that are being searched
14 pursuant to a search warrant, whether they were arrested or
15 not, for NYPD records and also to put it on the NYPD's
16 on-line booking system.

17 In response to Detective Wood's questions,
18 defendant said that his babies' mama lets him stay in the
19 apartment and that he sleeps on a bed or mattress in the
20 living room, and as he was telling this to Detective Wood,
21 he nodded his head towards the area which was visible from
22 the kitchen area.

23 Detective Wood stayed in the apartment
24 approximately one half hour, until approximately 7:00 p.m.,
25 and then drove to the Seventy-Fifth Precinct.

1 As he was leaving the building, Detective Wood saw
2 the defendant Harrison, whom he knew from a prior arrest, he
3 observed her pull up near the building in a white Mercedes
4 and saw her getting out of the car and walking toward
5 Four-Thirty-Five Alabama Avenue.

6 At approximately 7:40 p.m., while the detective
7 was at the Seventy-Fifth Precinct, he received a phone call
8 from one of the officers involved in the execution of the
9 search warrant and was told that a firearm had been
10 recovered inside the apartment and that the female who was
11 on her way to the precinct should be placed under arrest
12 because she had some connection to the apartment, or, as
13 Detective Wood testified, he heard the officer say the
14 tenant of record of the apartment.

15 When the defendant Harrison arrived at the
16 Seventy-Fifth Precinct requesting the two children who had
17 been brought to the precinct from the apartment, Detective
18 Wood placed her under arrest.

19 In addition to the information he received in the
20 phone call from another police officer, Detective Wood also
21 knew that the defendant had an arrest warrant on an open
22 summons case.

23 When the defendant Harrison arrived at the
24 precinct, Detective Wood placed her under arrest and took
25 pedigree information from her. The defendant Harrison said

1 she lived at Four-Thirty-Five Alabama Avenue, apartment 2A,
2 and also gave her date of birth. This information was
3 required for the New York Police Department's on-line
4 booking system.

5 Turning first to my legal conclusions with respect
6 to Ms. Harrison, the general rule is, of course, that during
7 arrest proceedings, the police are legally permitted to ask
8 a defendant pedigree questions without advising that person
9 of her Miranda rights. Leading case has been referred to
10 yesterday and again today, People v. Rodney, the Court of
11 Appeals, from 1995.

12 Here, the defendant was properly arrested based
13 upon probable cause because of the phone call the detective
14 had received from officers at the apartment where the search
15 warrant was being executed, that the defendant Harrison was
16 connected to the apartment and that she also should be
17 arrested. And Detective Wood was legally permitted to rely
18 on that information.

19 In addition to that, there is a separate basis for
20 the arrest. There was a warrant outstanding concerning the
21 summons complaint that Detective Wood knew about. So he was
22 authorized to arrest the defendant Harrison on that as well.

23 Therefore, with respect to any answers given to
24 the questions concerning pedigree by the defendant Harrison,
25 those answers will be admissible at trial and the

1 defendant's rights were in no way violated by the
2 questioning.

3 As to the co-defendant, Mr. Wortham, the motion to
4 suppress the statement that he made inside the apartment on
5 Alabama Avenue in response to Detective Wood's questions as
6 to his name and where he lived is similarly denied.

7 The NYPD rule is that when a search warrant is
8 being executed, every adult inside the apartment must be
9 handcuffed and pedigree taken. This is for safety purposes.
10 While the NYPD rule itself doesn't make the conduct lawfully
11 proper, in this case, I find that Detective Wood properly
12 handcuffed the defendant and asked him where he lived.

13 Under the general rule, even if a defendant is
14 arrested inside the apartment and handcuffed, he can be
15 asked pedigree questions. And that's certainly permissible.
16 This defendant was not under arrest. In fact, there was no
17 evidence, according to Detective Wood's testimony, that
18 anything had been recovered at the time the defendant spoke
19 to the detective.

20 So clearly the questions in this case were not
21 designed to elicit an incriminating response from the
22 defendant. And no ulterior motive can be attributed to
23 Detective Wood since he wasn't even aware at the time he
24 spoke to the defendant whether there was any contraband in
25 the apartment.

1 I am aware of the case that was referred to this
2 morning, Flowers, which I think is from the Fourth
3 Department 2009. Certainly different facts and is not
4 binding on this case.

5 Because of the police department's -- withdrawn.
6 Because Detective Wood's conduct in speaking to the
7 defendant Wortham inside the apartment was, in all respects,
8 proper and the defendant's rights were in no way violated by
9 the questions asked by the entry of the police into the
10 apartment, the motion to suppress the pedigree statements
11 that he made is denied.

12 Counsel, you have an exception, both of you, to my
13 ruling.

14 Alright, this case is going to go to trial now,
15 and I understand -- I know, Mr. DeMarco, you can't be here
16 this afternoon, so we're talking about adjourning the case
17 till Tuesday.

18 MR. DeMARCO: That's fine.

19 THE COURT: Monday is a legal holiday.

20 MR. DeMARCO: Thank you, your Honor.

21 THE COURT: Okay.

22 MR. DeMARCO: In light of the Court's admitting
23 Mr. Wortham's statements, I will also file a motion to sever
24 now.

25 THE COURT: I will certainly refer that to the

1 trial judge.

2 What is the basis of the severance motion?

3 MR. DeMARCO: Okay, so the basis of the severance
4 motion is based on a Bruton issue. The statement in this
5 case, as the Court referred to in its decision, where
6 Wortham makes a statement that Ms. -- the babies' mother
7 allows him to stay in the apartment and to sleep on a bed
8 inside the living room, I'm going to submit to the Court
9 that that's testimonial in nature and that my client would
10 be denied her right to confront a witness in this case if
11 Mr. Wortham chose in a joint trial not to take the stand and
12 testify as it is his right not to do so.

13 THE COURT: Why is that?

14 MR. DeMARCO: I'm sorry?

15 THE COURT: Why is that? I don't understand the
16 reasoning. How do we know this is the baby mama?

17 MR. DeMARCO: Well, because of the charges in the
18 case and the evidence that's going to be presented in the
19 case. There is an unlawfully endangering count. There are
20 two counts in this case. The district attorney will present
21 evidence in fact those two children in the apartment were
22 Ms. Harrison's children and Mr. Wortham's children. There
23 will be evidence presented in the district attorney case in
24 support of those endangering welfare counts, that in fact
25 these children belonged to these two defendants.

1 So, the reasonable inference that when he was
2 referring to his babies' mother is that it's going to be
3 that he's referring to Shawana Harrison. That is a
4 reasonable inference to draw from the evidence.

5 THE COURT: How does that implicate her?

6 MR. DeMARCO: It implicates her to the extent that
7 by him making a statement saying to the detective she allows
8 me to stay in the apartment and sleep on a bed, it
9 implicates her in that he is suggesting, or there's evidence
10 tending to show, that she exercised control over the
11 apartment or authority over the apartment, demonstrating one
12 of the elements of the crime which is the element of
13 possession. And that's why it would be prejudicial.

14 Now, I should say as an aside, and I included it
15 in my motions, Mr. Wortham was in the hallway when I was
16 interviewing my client, and he was away from me, denied that
17 he ever made this statement to Detective Wood and he said it
18 was a fabrication. I overheard him. He was away from me.

19 As an example to show the Court the prejudice that
20 my client would suffer, if he did not take the stand and I
21 wasn't able to question him, I would never be able to elicit
22 the evidence or testimony that he ever made such a
23 statement, that it was a fabrication. I can take a
24 different tactic and argue in fact he's the one that has the
25 primary control over the apartment and challenge him on that

1 basis. If he were to take the stand.

2 Again, I'm not able to confront him because he may
3 exercise his right not to testify, and, in my opinion, since
4 the statement is testimonial in nature and does offer or
5 tend to have some showing that Ms. Harrison exercised
6 control over the apartment, that it becomes testimonial in
7 nature and it prejudices her rights to confront witnesses.

8 So, on, you know, U.S. versus -- Bruton versus
9 U.S., I ask the Court to sever Ms. Harrison separately or
10 empanel a separate jury.

11 THE COURT: Okay.

12 Mr. Rausch, anything you want to say?

13 MR. RAUSCH: Not about that, but I have my own
14 motion that you asked me to prepare.

15 THE COURT: I wanted you to prepare?

16 MR. RAUSCH: Or that I needed to prepare, I should
17 say.

18 THE COURT: You're filing that for a severance as
19 well?

20 MR. RAUSCH: Correct.

21 THE COURT: The same grounds?

22 MR. RAUSCH: Different grounds, antagonistic
23 defense, Judge, reconcilable defenses lead to prejudice.

24 You want me to file that with you or the trial
25 judge?

1 THE COURT: Well, you can serve a copy if you
2 haven't done so on your adversary, both of you.

3 MR. RAUSCH: I have.

4 THE COURT: And we will have the clerk of the
5 Court take an original copy.

6 A COURT OFFICER: (Handing.)

7 THE COURT: And, obviously, the People are a party
8 to this case so they'll have to respond. What I will do
9 is --

10 We have a part for this case?

11 THE CLERK: Not yet.

12 THE COURT: Let's have a second call, we have to
13 see where this case is going to go to. I have a calendar on
14 Tuesday. If the case goes to trial on Tuesday, it can't be
15 tried here. Let's have a second call.

16 And, Mr. Heinrich, you've a copy of both motions?

17 MR. HEINRICH: Only Mr. Rausch's.

18 THE COURT: Mr. DeMarco will give a copy to you.

19 MR. DeMARCO: (Handing.)

20 MR. HEINRICH: I am a little confused because I
21 spoke to Mr. DeMarco about this exact issue and we agreed
22 that his motion to sever was without merit because his
23 client is not disputing that she lives there. She
24 testified --

25 THE COURT: See, I don't know if I will be the

1 trial judge. It's probably unlikely since I have my
2 calendar on Tuesday. This is an issue that I think is going
3 to have to be decided by somebody else, because the case was
4 sent here for hearings to be conducted, which they were.

5 If you want to order the minutes of the reporter,
6 you should do that if you haven't done so already.

7 My decision was given today. These motions,
8 plural, will be referred to the trial judge, whomever that
9 is, and the People, we will give you an opportunity to
10 respond either in writing or orally or both and it will be
11 decided. But I don't think it's going to be me doing the
12 deciding.

13 So, let's have a second call and we'll see what
14 the case management coordinator wants me to do with the
15 cases by sending it to which judge.

16 (Whereupon, the case was recessed for a second
17 call.)

18 THE COURT: This is the hearing continued.

19 All parties are present. The defendants are
20 present.

21 Alright, counsel, let me ask you a few questions.

22 Mr. Heinrich, on the motions that were just filed
23 today by defense counsel, do you want an opportunity to
24 respond to them in writing?

25 MR. HEINRICH: No, your Honor. I think they're

1 both, to a pretty fairly extent, without merit. So I think
2 oral argument will be sufficient.

3 THE COURT: Again, it's not going to be me
4 deciding this.

5 MR. HEINRICH: I understand.

6 THE COURT: My intention is, because I will not be
7 the trial judge, to send this case on Tuesday to Judge
8 Jackson. This case came from that part. It is her calendar
9 day on Tuesday. Let her decide this case. If a severance,
10 for example, is granted and the People want to proceed
11 against one of the defendants --

12 MR. HEINRICH: Your Honor, the People anticipate
13 at this point either way starting trial to both defendants
14 on Tuesday.

15 THE COURT: Right. In other words, the severance
16 issue --

17 MR. HEINRICH: Even with the severance issue.

18 THE COURT: -- not decided. But again --

19 MR. HEINRICH: We have two Assistant D.A.s.

20 THE COURT: That has to be decided.

21 What do you mean? Ms. Sheetz is going to
22 prosecute one defendant?

23 MR. HEINRICH: We would like to do that that way
24 if our supervisors okay it, yes.

25 THE COURT: And you'll -- the other defendant if

1 it is a severance?

2 MR. HEINRICH: If not, we will most likely start
3 with Mr. Wortham on Tuesday.

4 THE COURT: Okay.

5 This case will go back to Judge Jackson for
6 Tuesday. The People, if you wish to file something on the
7 severance issue, you can.

8 MR. HEINRICH: Thank you, your Honor.

9 THE COURT: You got their motion today. I didn't
10 even consider the merits of the motion because it will not
11 be me doing the deciding.

12 MR. HEINRICH: Thank you.

13 THE COURT: Counsel, I will call Judge Jackson and
14 explain what happened and the People indicate they want to
15 go forward no matter what the ruling is on the severance.
16 But the issue will be going back to Judge Jackson for
17 Tuesday. Tuesday is the nineteenth. I'd like everyone to
18 be there first thing in the morning, please.

19 And we'll tell Judge Jackson the purpose of the
20 adjournment. The hearings have been decided but the case
21 can't go forward until there is a decision on the severance
22 issue.

23 Anything further from the lawyers?

24 MR. HEINRICH: Your Honor, that includes the
25 defendants showing up on time, right?

1 THE COURT: Yes.

2 Mr. Rausch, Mr. DeMarco, I know you know Judge
3 Jackson takes the bench at nine-thirty. So I don't know if
4 you have other cases on Tuesday.

5 MR. DeMARCO: No.

6 THE COURT: Mr. DeMarco, Mr. Rausch?

7 MR. RAUSCH: I don't even know, quite frankly.

8 THE COURT: Again, this will be your first stop.

9 MR. DeMARCO: Yes.

10 THE COURT: In Judge Jackson's courtroom at
11 nine-thirty in the morning.

12 Both defendants again will get a slip to come
13 back, not to this courtroom, Part 23 I believe it is.

14 THE SERGEANT: Part 23, room 1111.

15 THE COURT: It's on the eleventh floor, and this
16 will be for decision on the severance issues, issues plural,
17 and for trial, either jointly or separately, okay? February
18 19th.

19 I don't have to give Parker warnings again. They
20 were given.

21 MR. HEINRICH: Thank you.

22 THE COURT: The defendants have to appear. If
23 they don't appear, the case will go forward either together
24 without them being there or separately without them being
25 here. Same as I said yesterday afternoon, okay?

1 February 19th, Part 23.

2 MR. DeMARCO: Judge, I would just make a request
3 for the minutes on behalf of Ms. Harrison.

4 THE COURT: Yes.

5 MR. DeMARCO: The testimony on the Court's
6 decision.

7 THE COURT: Absolutely. You want to order the
8 minutes from the reporter?

9 MR. DeMARCO: Yeah.

10 THE COURT: You can speak to her right now.

11 MR. DeMARCO: Okay.

12 THE COURT: And you can order them, both lawyers,
13 and the prosecution as well.

14 MR. HEINRICH: Thank you.

15 THE COURT: Okay?

16 February 19th, Part 23.

17 MR. DeMARCO: Thank you.

18 (Whereupon, the case was adjourned to Tuesday,
19 February 19th, 2013.)

20 - - - - -

21 CERTIFIED TO BE A TRUE AND ACCURATE
22 TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC
23 MINUTES TAKEN OF THIS PROCEEDING.

24 
25 JOANNE FLEMING
Senior Court Reporter