

EXHIBIT A

New York State Unified Court System

Web Criminal

Case Details - Appearances

CASE INFORMATION

Court: **New York Supreme Court - Criminal Term**
 Case #: **03622-2015**
 Defendant: **Brown, Noel L**

Date/ Time	Judge/ Part	Calendar Section	Arraignment/ Hearing Type	Court Reporter	Outcome/ Release Status
02/28/2018	Biben, E TAPA-93	TRIALS AM	No Type		
02/13/2018	Biben, E TAPA-93	TRIALS AM	No Type	Geraldi, Vincent	Adjourned Remanded
01/18/2018	Biben, E TAPA-93	TRIALS AM	No Type	Magnicciari,	Adjourned Remanded
11/30/2017	Jackson, M 62	TRIALS AM	No Type	Chan, E	Adjourned Remanded
10/31/2017	Jackson, M 62	TRIALS AM	No Type	Sasso,	Adjourned, Warrant Vacated Remanded
08/15/2016	Jackson, M 62	TRIALS AM	No Type	Hudson,	Bail Forfeited Previous Warrant Ordered
07/14/2016	Jackson, M 62	TRIALS AM	No Type	Kitt, C	Warrant Ordered
05/12/2016	Jackson, M 62	TRIALS AM	No Type	Dominick,	Adjourned Bail Continued
04/01/2016	Jackson, M 62	TRIALS AM	No Type	Chan,	Adjourned Bail Continued
02/04/2016	Jackson, M 62	TRIALS AM	No Type	Dauria,	Adjourned Bail Continued
12/03/2015	Jackson, M 62	TRIALS AM	No Type	Kitt, Kramsky, Lisa	Adjourned Bail Continued
10/08/2015	Jackson, M 62	ARRAIGNMENTS	Regular	Sasso,	Pled Not Guilty Bail Continued
09/11/2015		MISCELLANEOUS GRAND JURY	No Type		True Bill Bond \$20,000 (Bond)

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART TAP A/93

TAP A/93 MAR - 1 2018

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

-against-

3622/15
Indictment 3655/15

NOTICE OF MOTION

NOEL BROWN,

Defendant.

-----X

SIR / MADAM:

PLEASE TAKE NOTICE that upon the annexed papers, and all the prior papers and proceedings herein, the undersigned will move this Court, at Part TAP A/93 thereof, to be held at the Courthouse at 100 Centre Street, New York, NY 10013, on the day of , 2018, or as soon thereafter as counsel can be heard for an Order granting the following motions, originally filed and served by the defendant, himself, and now adopted by the undersigned, which are annexed hereto:

- (1) For dismissal of the indictment on Speedy Trial grounds pursuant to CPL §§ 30.30(1)(a) and 30.20 (Exhibit A);
- (2) For additional discovery pursuant to CPL § 240.40, specifically, a copy of the original indictment displaying the signature of the grand jury foreman and copies of any and all summonses issued to the defendant, including but not limited to summonses for traffic infractions and driving with a suspended license, at or before the time of his arrest on September 6, 2015 (Exhibit B);

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(3) For dismissal of the indictment pursuant to CPL §§ 210.20, 210.35(4) and 190.50(5) because the defendant was deprived of his opportunity to testify before the grand jury (Exhibit C), and

(4) For dismissal on the indictment pursuant to CPL §§ 210.20(1)(a) and (h), and §§ 210.25(1) and (2) in that the defendant is not named in the body of the indictment (Exhibit D).

AND for such other and further relief as the Court deems just and proper.

Dated: New York, NY
 February 28, 2018

ROBERT L. WEINSTEIN
Attorney for Defendant
233 Broadway, Suite 2348
New York, NY 10279
(212) 966-5333

To: Hon. Cyrus Vance
District Attorney
New York County

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART TAP A/93

-----X

THE PEOPLE OF THE STATE OF NEW YORK,

Indictment 3655/15

-against-

AFFIRMATION

NOEL BROWN,

Defendant.

-----X

I, ROBERT L. WEINSTEIN, and attorney duly admitted to practice before the Courts of the State of New York, do hereby affirm under penalty of perjury that the following, except those matters stated to be upon information and belief, is true:

1. I am the attorney for the defendant NOEL BROWN and I was appointed to represent him on February 13, 2018.
2. I make this affirmation in support of the annexed motions previously filed and served by the defendant, pro se, during the period when he was represented by prior counsel Seth Gross, Esq. and Afsi Khot, Esq. of the Legal Aid Society.
3. The defendant is charged in Indictment 3655/15 with Criminal Possession of a Weapon in the Second and Third Degrees and Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree.
4. I am incorporating by reference the motions previously filed by the defendant and the affidavits in support of such motions, annexed as Exhibits A-D.

5. Specifically, in regard to the Speedy Trial Dismissal motion, it is submitted that substantially more than six months, and actually some 30 months, have elapsed since the defendant's arraignment in Criminal Court on the instant charges, and, upon information and belief, the People have not answered ready for trial within the statutory period. I have annexed a copy of the history of the appearances on the case since the case was presented to the grand jury (Exhibit E). It is submitted that the additional period between the defendant's arraignment in Criminal Court on September 7, 2015 and his arraignment in Supreme Court on October 8, 2015, is chargeable to the people.

Dated: February 28, 2018
New York, NY

ROBERT L. WEINSTEIN

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 62

THE PEOPLE OF THE STATE OF NEW YORK
RESPONDENT

-AGAINST-

NOEL BROWN

DEFENDANT

NOTICE OF MOTION TO
DISMISS INDICTMENT
FOR DENIAL OF
RIGHT TO SPEEDY
TRIAL PURSUANT TO
CPL §210.20 & §30.20/§30.30

03622-2015

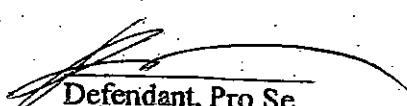
Indictment No:

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Noel Brown,
duly affirmed the 15th day of January, 2018, and upon the indictment and all
the proceedings had herein, the undersigned will move this court at a term, part 62
thereof, to be held at the courthouse located at 100 Centre ST, County of
New York, on the 18 day of January, 2018, at 9:30 O'clock in the
forenoon of that day or as soon thereafter as counsel can be heard for an order dismissing
the indictment herein and releasing the defendant from the custody of the New York City
Dept. of Correction, pursuant to sections 210.20, 30.20, and 30.30 of the Criminal
Procedure Law of the State of New York, upon the ground that the defendant has been
denied his right to a speedy trial as guaranteed by the Sixth Amendment of the United
States Constitution, the New York Constitution, and for such other and further relief as
this court may deem just and proper.

Dated Jan 15, 2018

Respectfully submitted,


Defendant, Pro Se
Manhattan Detention Complex
125 White Street
New York, New York 10013

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART: 62

THE PEOPLE OF THE STATE OF NEW YORK
RESPONDENT

- AGAINST -

NOEL BROWN

DEFENDANT

AFFIDAVIT IN SUPPORT OF
MOTION TO DISMISS
INDICTMENT FOR DENIAL OF
RIGHT TO SPEEDY TRIAL
PURSUANT TO CPL §30.20, 30.30

INDICTMENT NO. 03622-2015

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Noel Brown, being duly sworn, deposes and says:

1. I am the defendant in the above-entitled matter and am personally familiar with the facts and circumstances herein.
2. On the 7th day of September, 2015 a complaint was filed in the Criminal court of the County of New York, charging the said defendant with the offense(s) of Possession of Weapon.
3. Arraignment of the defendant on the above-mentioned complaint took place in this court on the 9th day of September, 2015, and the defendant was held for the action of the grand jury. Subsequently, defendant was indicted for the aforementioned charges and was arraigned upon said indictment in the Supreme Court, New York County, on the 9th day of September, 2015, to this date no plea of guilty has been entered by said defendant nor has trial been commenced as to said charges. It has been 27 months and 12 days since this action has been commenced and the defendant has not yet been brought to trial upon the said indictment.
4. This delay, for which the said defendant is not responsible, has resulted in a denial of the said defendant's right to speedy trial, as guaranteed by sections 30.30 and 30.30 (1)(a) of the Criminal Procedure law and the Sixth Amendment of the

United States Constitution as made applicable to the states by the due process clause of the Fourteenth Amendment.

MEMORANDUM OF LAW

Once an accusatory instrument is filed against a defendant, the criminal action and the statutory time limitations involved in the action is in effect.

POSSIBLE CASES WHICH MAY BE USED IN THE MEMORANDUM OF
LAW:

People v. Masellis, 532 NYS 2d 465

People v. Smith, 439 NYS 2d 749

People v. Brothers, 429 NYS 2d 558

People v. Bryant, 544 NYS 2d 661

People v. Greene, 521 NYS 2d 507

People v. Sturgis, 381 NYS 2d 860

People v. Traficante, 532 NYS 2d 582

People v. Pappas, 512 NYS 2d 493

In the memorandum of law, you must elaborate on your issues. Cite case laws whenever possible, as it pertains to the point stressed in your issues.

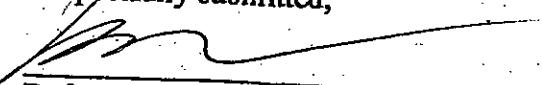
After the entire argument is completed, you continue in the following manner with the WHEREFORE CLAUSE.

Wherefore, the defendant respectfully prays that an order be issued dismissing the indictment pursuant to sections 210.20, 30.20 and 30.30 of Criminal Procedure Law, or in the alternative, releasing the defendant from custody in accordance with the provisions of section 30.30 of same, and for such other and further relief as this court may deem just and proper.

Dated: JAN 15, 2018

New York, New York

Respectfully submitted,


Defendant, Pro Se
Manhattan Detention Complex
125 White Street
New York, New York 10013

Sworn to before me this

20 day of December, 2017

N. De La Rosa

Notary Public/Commissioner of Deeds

N. De La Rosa
Commissioner Of Deeds
City Of New York, No:1-10066
New York County.
EXP 10/18

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

NOEL BROWN

Defendant

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, Noel Brown

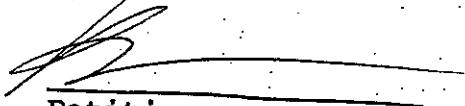
being duly sworn deposes and says:

That I have on this 15th day of January, 20188 placed and submitted within the Manhattan Detention Complex's mail depository the original and copies of the same moving papers to be duly mailed via United States Postal Service to the concerned parties as listed below.

Court Clerk
New York State Supreme Court, Court Part:
County of New York
100 Centre Street
New York, NY 10013

Cyrus R. Vance, Jr.
District Attorney of
New York County
1 Hogan Place
New York, N.Y. 10013

Respectfully submitted,


Petitioner
B&C #: 3/01700576
Manhattan Detention Complex
125 White Street
New York, N.Y. 10013

Sworn to before me on this
20 day of December 2017

N. De La Rosa
Commissioner Deeds

N. De La Rosa
Commissioner Of Deeds
City Of New York, No.1-10035
New York County

EXP/10/18

EXHIBIT D

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Gische, J.P., Moulton, Scarpulla, Shulman, Pitt, JJ.

15646 THE PEOPLE OF THE STATE OF NEW YORK, Ind. No. 3622/15
Respondent, Case No. 2019-5060

-against-

NOEL BROWN,
Defendant-Appellant.

Robert S. Dean, Center for Appellate Litigation, New York (John L. Palmer of counsel), for appellant.

Alvin L. Bragg, Jr., District Attorney, New York (Andrew E. Seewald of counsel), for respondent.

Judgment, Supreme Court, New York County (Melissa C. Jackson, J. at self-representation request; Ann E. Scherzer, J. at speedy trial motion; Robert M. Stolz, J. at suppression hearing, jury trial and sentencing), rendered April 22, 2019, convicting defendant of two counts of criminal possession of a weapon in the second degree, and sentencing him to concurrent prison terms of seven years, unanimously affirmed.

The suppression court properly denied defendant's motion to suppress a revolver and other items recovered in the course of an inventory search of a motorcycle that he had been operating with a suspended license. The testimony of the officer who conducted the search established that the search of the motorcycle was conducted pursuant to an established procedure that limited the officer's discretion and ensured that the search was reasonable (*see People v Padilla*, 21 NY3d 268, 272-273 [2013], cert denied 571 US 889 [2013]; *People v Walker*, 20 NY3d 122 [2012]). The officers were not

required to ask defendant's passenger whether she could take the motorcycle (*see id.* at 125). The officer's testimony sufficiently described the established procedures for an inventory search as of the time of the search. Defendant did not preserve his claims that the Patrol Guide excerpt admitted at the hearing was not in effect at the time of his arrest and search, or that there was no meaningful inventory list, and we decline to review them in the interest of justice.

Defendant was not deprived of his right of self-representation. He failed to make a clear and unequivocal request to represent himself (*see People v LaValle*, 3 NY3d 88, 106 [2004]; *People v Richards*, 118 AD3d 599, 600 [1st Dept 2014], *lv denied* 24 NY3d 1088 [2014]). Although he began by saying he wanted to proceed pro se, he went on to indicate that he wanted to represent himself for some purposes and be represented by counsel for other purposes. Given defendant's equivocation the court properly denied the application (*see People v Diaz*, 294 AD2d 225 [1st Dept 2002], *lv denied* 98 NY2d 767 [2002]).

The court properly denied defendant's speedy trial motion. The motion court correctly excluded the 49-day period from November 30, 2017 to January 18, 2018, which is the only period remaining at issue on appeal. Defendant had been produced in court on October 30, 2017, after a warrant had been issued more than two years earlier. "The People must be given a reasonable time to call their witnesses and arrange for the recommencement of the case after a defendant is involuntarily returned" (*People v Muhanimac*, 181 AD2d 464, 465-466 [1st Dept 1992], *lv denied* 79 NY2d 1052 [1992]). Moreover, the record establishes that when defendant was returned on the warrant on October 30, 2017, defense counsel agreed that the November 30 date would only be a control date, rather than a date for hearing and trial.

The court providently exercised its discretion in discharging a sworn juror as "grossly unqualified" (CPL 270.35[1]) before the completion of jury selection. The juror made clear that during the trial he could not avoid working late into the night at his profession, and he would be extremely sleep deprived and unable to concentrate (see *People v Wells*, 15 NY3d 927, 928 [2011], cert denied 565 US 828 [2011]; *see also People v Knight*, 84 AD3d 670, 671 [1st Dept 2011], lv denied 17 NY3d 860 [2011]). Defendant did not preserve his claim that before the completion of jury selection the court could only discharge a sworn juror on the grounds set forth in CPL 270.15(3), and we decline to review it in the interest of justice. As an alternative holding, we reject it on the merits (see *People v Owens*, 292 AD2d 218 [1st Dept 2002]). In any event, the juror's situation also constituted an incapacity under CPL 270.15 (see *Wells*, 15 NY3d at 928).

Defendant's pro se claim of ineffective assistance of counsel is unreviewable on direct appeal because it involves matters not reflected in, or fully explained by, the record (see *People v Rivera*, 71 NY2d 705, 709 [1988]; *People v Love*, 57 NY2d 998 [1982]). Although defendant previously filed a CPL 440.10 motion on ineffective assistance grounds, he did not raise any of his present arguments in support of that motion. Accordingly, the merits of the present ineffectiveness claims may not be addressed on appeal. In the alternative, to the extent the existing record permits review, we find that defendant received effective assistance under the state and federal

standards (see *People v Benevento*, 91 NY2d 708, 713-714 [1998]; *Strickland v Washington*, 466 US 668 [1984]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 5, 2022



Susanna Molina Rojas
Clerk of the Court

EXHIBIT E

State of New York
Court of Appeals

BEFORE: HON. JENNY RIVERA, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,
-against-

**ORDER
DENYING
LEAVE**

NOEL BROWN,

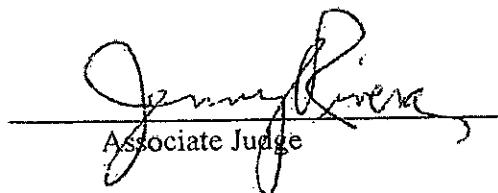
Appellant.

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: July 5, 2022



Jenny Rivera
Associate Judge

*Description of Order: Order of the Appellate Division, First Department, entered April 5, 2022, affirming a judgment of the Supreme Court, New York County, rendered April 22, 2019.

F

Exhibit F.

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STATE OF NEW YORK COURT OF APPEALS

STATE OF NEW YORK,

NEW YORK STATE
COURT OF APPEALS

Respondent

: Before: HON. Jenny Rivera,

v.

: REQUEST FOR RECONSIDERATION

NOEL BROWN,

: of ORDER DENYING LEAVE

Appellant

Appellant having applied for leave to appeal to this Court pursuant to a de novo conviction of appellant, The question presented is so important that plenary review is warranted. The Appellate Court, has so far departed from the accepted and usual course of judicial proceeding by the sanction of such a departure by the lower court's de novo trial, as to call for an exercise of this court's supervisory power. WHEREBY, petitioner request for this court to reconsider its July 5th 2022, order denying leave to appeal.

Thank You.

07/20/2022

Respectfully Submitted,



G

Exhibit G.

State of New York
Court of Appeals

BEFORE: HON. JENNY RIVERA, ASSOCIATE JUDGE

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

NOEL BROWN,

Appellant.

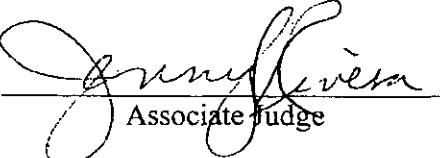
**ORDER DENYING
RECONSIDERATION
WITH LEAVE
TO RENEW**

Appellant having moved for reconsideration in the above-captioned case of an application for leave to appeal denied by order dated July 5, 2022;

UPON the papers filed and due deliberation, it is

ORDERED that the reconsideration is denied, with leave to renew within 30 days after the Court renders a decision in People v. Pablo Pastrana and People v. Ramon Cabrera.

Dated: October 26, 2022


Associate Judge

H

Exhibit H.

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK: CRIMINAL TERM: PART 63
3 THE PEOPLE OF THE STATE OF NEW YORK

4 Indictment No.

5 -against - 03622/2015

6 NOEL BROWN, JURY TRIAL

7 Defendant.

8 111 Centre Street
9 New York, New York 10013
July 16, 2018

10 B E F O R E:

11 THE HONORABLE GILBERT C. HONG,

12 J U S T I C E AND JURY

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

14 For the People:

15 CYRUS R. VANCE, JR.,
16 DISTRICT ATTORNEY - NEW YORK COUNTY
One Hogan Place
17 New York, New York 10013
BY: REBECCA DUNNAN, ESQ. and TAYLOR HOLLAND, ESQ.,
18 Assistant District Attorneys

19 For the Defendant:

20 JAMES J. McGEVNA, ESQ.,
22 Cortland Street, 16th Floor
21 New York, N.Y. 10007

23 CELENA EDWARDS and ROBIN ASHBY
24 Senior Court Reporters

25

C. Edwards

1 THE CLERK: Case on trial continued. All parties are
2 present. The defendant is also present.

3 THE COURT: Appearances, please.

4 MS. DUNNAN: Good morning. Rebecca Dunnан for the
5 People.

6 MR. HOLLAND: Mr. Holland Taylor, T-A-Y-L-O-R.

7 MR. INGENITO: Andre Ingengo, I-N-G-E-N-G-O, student
8 intern for the People.

9 THE COURT: Good morning.

10 MR. McGEVNA: For Mr. Brown, James McGevna,
11 M-C-G-E-V-N-A, 22 Cortland Street, New York, New York.

12 THE COURT: Good morning.

13 Good morning, Mr. Brown.

14 So did you have a chance to finally, to make a
15 decision on the Garrett material?

16 MR. McGEVNA: Yes.

17 THE COURT: Are you going to use it?

18 MR. McGEVNA: No.

19 THE COURT: Terrific.

20 People are ready with your witnesses?

21 MS. DUNNAN: Yes, Judge, I just wanted to briefly talk
22 about scheduling and just one other thing.

23 So it looks like we should be able to get through the
24 two witnesses this morning.

25 I should be back from my MRI by 3. And I have a

C. Edwards

1 witness lined up for the afternoon to take us to the 4:30.
2 And just one other thing that came up during jury
3 selection.

4 It's my position that Mr. McGevna should not be
5 permitted to argue during opening or throughout the trial
6 that the stop of the defendant himself was improper.

7 I think you gave very good instructions to the jury
8 when you were talking about that particular issue, with
9 regards to how that has particularly, or even litigated by
10 Judge Stolz during the hearing.

11 But I think that for Mr. McGevna to get up and say
12 that the police were improper in stopping the defendant or
13 in this case done racial profiling, inappropriate and
14 inaccurate, given the previous rulings that was made by
15 Judge Stoltz.

16 THE COURT: Mr. McGevna.

17 MR. McGEVNA: Judge, I don't think I am bound by
18 Justice Stolz' decision. I think I could argue from the
19 facts of the case a reasonable, a reasonable interpretation
20 of what happened.

21 THE COURT: Okay. Well, in terms of what is
22 permissible or not permissible, the Court has already found
23 that the stock was permissible.

24 If you want to argue the motive as to the police
25 officer, that's a even different issue. You're free to do

C. Edwards

1 that, but if you start to argue that the defendant, the
2 police violated the law by stopping your client, or any
3 such thing, then I will correct you immediately on the
4 record and say, that this has been litigated before another
5 Judge and the stop was found to be legal.

6 MR. McGEVNA: I am sorry, perhaps I wasn't clear
7 enough. I have no intention of re-litigating the motion to
8 suppress, but I think that I am entitled to from the facts
9 of the case, urge the jury to have reasonable, have a
10 reasonable interpretation of what happened and why.

11 THE COURT: I do think it's fine to discuss if you
12 want to make the argument why the police set up a
13 checkpoint there and why they stopped your client.

14 But I just don't want them to bear any inference that
15 it was illegal or improper. Okay.

16 MR. McGEVNA: Fine, Judge. Thank you, I understand.
17 My client has an application.

18 THE COURT: Mr. Brown.

19 THE DEFENDANT: Good morning, your honor. How are you
20 doing. I would like to make an application for
21 reassignment of counsel. I have the motion prepared. It
22 is handwritten, but it is --

23 THE COURT: Why don't you tell me what the reason is.

24 MR. McGEVNA: Your Honor, the reason for my request
25 is, is my belief that, one second, your Honor.

C. Edwards

1 I would like my counsel to be reassigned because I
2 believe my counsel is not sufficient within the case.

3 THE COURT: What do you mean, not sufficient?

4 MR. McGEVNA: As your Honor just discussed in regards
5 to the argument on the suppression hearing, between that
6 and now, my attorney has seemed to have an issue with
7 witnesses that should be called to the case, that I feel is
8 pertinent to the case. Everything is written in the motion
9 if you take a look at it, sir.

10 THE COURT: I will take a quick look.

11 MR. McGEVNA: Thank you.

12 THE COURT: Do you wish to be heard at all? You don't
13 have to, if you don't want to.

14 MR. McGEVNA: Very briefly.

15 THE COURT: Go ahead.

16 MR. McGEVNA: I did visit Mr. Brown as well as he
17 knows on Riker's Island. So, he says that I can never
18 visit him at his place of confinement. I did go out there.
19 I spent a better part of the day there. We did talk.

20 I consented to the removal of the 13th juror because
21 the Court had received the communication from the, the
22 court officers, confirmed in my conversation with them,
23 that the juror, in question, had refused to take the oath.

24 That was what the officers saw. It seemed to me under
25 those circumstances, since the juror was all over the

C. Edwards

1 place, that he was a danger to both sides, and I couldn't
2 depend on someone who refused to take an oath that he
3 should have been willing to take.

4 And I think that both sides consented to that, and I
5 think the Court felt that, that was an appropriate thing.

6 As for the witnesses, I know that Mr. Brown has asked
7 to be co-counsel in the case. I have given this case a lot
8 of thought. I concluded that there really is a defense in
9 this case, but there is only one.

10 I am not going to call witnesses irrelevant to that
11 defense. He wants me to call a Legal Aid lawyer who was
12 present at the, the testing of the weapon. She's not an
13 expert. She doesn't dispute the outcome.

14 It's just silly to call somebody as a defense witness
15 who has nothing to do to help. Other officers who were
16 more or less irrelevant to what was going on and an officer
17 Dillan and Officer Dillan was apparently making, making
18 other arrests by, according to his log book, and was not in
19 the position to see anything that went on in this case.

20 I can't, in good conscious, put a man like that on the
21 witness stand and have the jury think that the defense is
22 so meaningless. So without merit, that its forced to put
23 on this witness stand, witnesses who have no relevant
24 information. And, in fact, would probably be inclined to
25 damage the defendant.

C. Edwards

1 So, while I understand that Mr. Brown wants everybody,
2 everybody involved in this case from the most minimum
3 involvement to Ms -- the Legal Aid lawyer. I see no reason
4 for it. I just, I am sorry, Mr. Brown has represented
5 himself in the past, I understand that. And he feels he
6 could represent himself here.

7 THE DEFENDANT: Okay. I would like a chance to rebut
8 as soon as he's finished.

9 MR. McGEVNA: And I think that, you know, I am in a
10 better position to judge the merits of the case and judge
11 the strength of the case.

12 I did tell, and I am going to repeat that, he could
13 dispute that, I did tell Mr. Brown perhaps not as
14 strenuously as prior counsel, Rob Weinstein, who I believe,
15 you know, a veteran counsel, he has perhaps more
16 strenuously insisted to Mr. Brown that the better course of
17 action would be to take the plea that was offered in Tap A
18 to concurrent time. He said that strenuously and got
19 fired.

20 I was perhaps a little less strenuous, but that has
21 been advice given to him, and he knows that.

22 He insist on his innocence, as his right. And I am
23 prepared to defend him at trial. But I can't put in his
24 ~~defense when I don't believe his defense has any sense or~~
25 merit.

C. Edwards

1 THE COURT: Okay. Thank you, Mr. McGevna.

2 THE DEFENDANT: Your Honor, there is no way for this
3 attorney to ascertain what witness is prudent to the case,
4 knowing that the officers I would like him to call, are the
5 same officers from the scene of the crime.

6 They are the only ones that could rebut the statement
7 of fellow officers. And it doesn't seem fit to me that
8 this attorney should visit me one time at Riker's Island,
9 and we never discussed what witnesses are pertinent or --
10 he hasn't even a full capacity of what the case really is
11 all about, your Honor.

12 THE COURT: So, Mr. Brown, I read your motion.

13 Let me say a couple of things.

14 Mr. McGevna, could have a seat.

15 You write here, it's elementary that the right of an
16 effective counsel to indigent defendant as guaranteed by
17 the Six Amendment of the United States Constitution.
18 100 percent agreed, you're absolutely right.

19 You have a right to effective counsel. But you don't
20 have a right to the choice of counsel, unless you pay for
21 it yourself. You were provided an attorney by the State.

22 Now, as I understand that Mr. McGevna is your third,
23 if not fourth attorney on this case.

24 THE DEFENDANT: Not by choice.

25 THE COURT: In your first motion.

C. Edwards

1 No, I believe that you asked for new attorneys on the
2 other dates. So you also complain in your motion that this
3 case is 40 months long. That is because you had so many
4 attorneys on this case. That is one of the reasons for the
5 delay.

6 Now, as to what you're asking for, you asked for
7 someone who is competent, caring, effective and energetic.
8 I see that right here in your thing. I happen to know Mr.
9 McGevna for over 20 years.

10 He is all of those things.

11 He is one of the most honorable people I know as far
12 as the attorneys are concerned. And he is telling you what
13 is an effective defense.

14 Now, one of the reasons that he's making his argument
15 as to why he should not call these witnesses, because it's
16 distracting to the jury. It doesn't have anything to do
17 with your defense. And it may hurt them.

18 And perfect example of that is your own motion.

19 Your own motion here says he failed to visit me at my
20 place of confinement. I know that's not true. You just
21 admitted that's not true. So how am I supposed to respect
22 anything else in here if I already know letter A is not
23 true.

24 THE DEFENDANT: Your Honor, if I may, with all due
25 respect.

C. Edwards

1 THE COURT: Did you write this, Mr. Brown?

2 THE WITNESS: Yes.

3 THE COURT: So you know that's not true and yet you
4 wrote this.

5 THE DEFENDANT: With all due respect, your Honor, I
6 had just as many judges as I had lawyers. So it's clear
7 that you're not fully aware of the case. You haven't heard
8 the People's argument.

9 I also like to submit a second motion in this case
10 here, your Honor, if I may, please.

11 THE COURT: As to this motion, Mr. Brown, first of
12 all, your reason for reassignment, first of all, are not
13 true.

14 With regard to the juror who was excused, first of
15 all, it wasn't juror 13, because we don't have a juror 13.
16 There is only 12 jurors and alternates.

17 This is juror number nine. I mean, your motion is --
18 I would like to be generous and say mistakes.

19 But I know they are not mistakes, because you know he
20 wasn't there. As the problem with that juror nine had
21 nothing to do with his sexual orientation. It had to do
22 with the fact that he refused to swear an oath.

23 If you refuse to swear an oath, you can't sit on a
24 jury. It makes perfect sense that Mr. McGevna sees another
25 alternative juror who would be in a better position to sit.

C. Edwards

1 So for those reasons, I am denying your motion as to
2 new counsel.

3 Now, you want to recuse me.

4 THE DEFENDANT: Yes, your Honor. If a jury, a
5 selected jury from the panel has made an error that the
6 Court feels is an error, the juror should have been allowed
7 to come back in and explain as your Honor had seen fit.

8 The mere fact that a juror could just be simply kicked
9 off by, allegedly by not swearing in, when I am sitting
10 here as a witness also, I saw all the jurors swear in.

11 The defense and the District Attorney both picked
12 jurors, and a jury got booted and one got placed that was
13 not even picked.

14 THE COURT: So, as to your motion to recuse for
15 failure to seat that juror, you said it exactly right. I
16 offered to bring that juror out to explain if they failed
17 to swear and why. _____

18 And the attorneys on their own agreed to simply
19 replace that juror. That is a strategic decision by both
20 sides. That has nothing to do with the Court and it
21 certainly is no basis for the Court to be recused. The
22 Court actually made the suggestion that you recommended.

23 THE DEFENDANT: Hence, my first motion, your Honor.

24 THE COURT: I could only go by, if both parties agree
25 to something, I accept that agreement. Now you can't come

C. Edwards

1 back and say, well, you know, we shouldn't agree to that,
2 therefore, you're not fit to be the Judge for the trial.

3 So your motion to recuse is also denied.

4 Let's bring in the jury.

5 (Whereupon, the jurors enter the courtroom and
6 the following occurred:)

7 COURT OFFICER: All rise as the jurors enters.

8 THE CLERK: Case on trial continued. All parties are
9 present. The defendant is present.

10 Do both parties stipulate the jurors are present and
11 properly seated?

12 MR. McGEVNA: Yes.

13 MS. DUNNAN: Yes.

14 THE COURT: Thank you.

15 THE COURT: You may all be seated.

16 All right. Good morning, members of the jury.

17 THE JURORS: Good morning.

18 THE COURT: It certainly is.

19 All right. So before we begin, I wanted to give you a
20 sense of scheduling. I know we got a late start today.

21 It's Monday. I forgive everybody for being a little late
22 Monday. It's okay, but let's not do it again.

23 Let's try to be here at 9:45 every morning. There are
24 ~~things we cannot do until you're here and that's why, even~~
25 though you're back there thinking why aren't we coming out,

C. Edwards

1 we have to discuss certain things before you come out and
2 we can't do that until you're here. So that was the other
3 delay.

4 So please try to be here at 9:45 every morning and
5 everyday we will try to go until about 12:30, 12:45,
6 somewhere between there, and maybe 1.

7 If there's a witness that takes a little longer, then
8 we will take our lunch break. And then start again at
9 2:15. So you have a nice hour and a half lunch break.

10 And then we will continue until about 4:35, somewhere
11 in there, depending, again, where the witness is in the
12 testimony.

13 Each morning and each afternoon, depending on how long
14 the testimony is, I am going to try to take a break in the
15 middle so you don't have to sit here for three hours. You
16 could sit hopefully an hour, hour and a half. We will take
17 a break. Then you could stretch your legs.

18 We did start a little late today, but I think we could
19 still be on track and finish by Thursday, I am hoping.

20 The one thing is for administrative reasons, we are
21 going to start a little late this afternoon. We are going
22 to start at quarter to 3 instead of 2:15.

23 So you get an extra half hour. And, I don't think
24 ~~that will effect our schedule either. But that's how it is~~
25 today. So you have an extra long lunch today.

C. Edwards

1 So we will begin now with the opening statements. We
2 will start with the People.

3 MR. HOLLAND: Good afternoon, ladies and gentlemen of
4 the jury. Good morning.

5 On September 6, 2015, members of the New York City
6 Police Department stopped the defendant, Noel Brown, as he
7 was driving his motorcycle on the lower east side here in
8 New York County.

9 Officers working at the check-point saw the defendant
10 riding with a passenger on the rear of his bike, weaving
11 between cars, and making an improper turn from Bowery onto
12 Delancey Street. They also noticed that the standard
13 headlights on the motorcycle had been replaced with a
14 dazzling flashing headlight. And ultimately that the
15 license plate had been fixed to a different part of the
16 motorcycle.

17 You will hear from Officer Kempinski, the officer who
18 first stopped the defendant.

19 Then upon getting license and registration, Officer
20 Kempinski learned the defendant had four separate active
21 New York suspensions for failure to pay fines.

22 Because the defendant's privilege to drive in New York
23 was suspended, he was not supposed to be operating a
24 motorcycle. And was not supposed to be driving in the city
25 at all.

D C. Edwards

1 Officer Kim Li, who was working with Officer
2 Kempinski, then placed the defendant under arrest and
3 transported him back to the 5th Precinct for driving with a
4 suspended license.

5 Still at the scene, Officer Anthony Kempinski tried to
6 figure out what to do with the defendant's motorcycle.

7 Unable to leave the bike unattended at the scene,
8 Officer Kempinski will tell you that he took the bike back
9 to the 5th Precinct as well.

10 Back at the precinct, officers tried to find someone
11 to take the defendant's motorcycle, but that required
12 finding someone who was licensed to drive the bike, who the
13 bike belonged to.

14 They could not find anyone, so instead, they prepared
15 to put the bike in storage. It was to be held there by the
16 NYPD until the defendant either cleared the suspensions or
17 found someone who is ~~an~~ authorized driver to take the bike
18 out of the precinct.

19 Officer Kempinski will explain when the police voucher
20 a vehicle for safekeeping, as it's called, they are
21 required to search the vehicle and then log their findings.

22 The reason for that is to ensure that when the vehicle
23 in this case, the motorcycle, is ultimately released to the
24 defendant, ~~all of the property could be accounted for and~~
25 correctly returned.

C. Edwards

1 It was during this search that what began as a very
2 routine traffic stop turned into something far more
3 sinister.

4 On the defendant's street bike, there is a gap between
5 the rear wheel and the back part of the seat.

6 On the underside of the seat of the bike, Officer
7 Kempinski found a canvass bag, which had been drilled into
8 the frame of the bike, concealing it underneath the rear
9 seat, and suspending it over the back pipe.

10 Invisible from normal angles, Officer Kempinski will
11 tell you that he had to crouch down to look up underneath
12 what amounts to the rear well on the motorcycle to see the
13 bag underneath.

14 Inside of that bag, Officer Kempinski found a loaded
15 Smith and Wesson 38 caliber revolver with five rounds
16 of ammunition in the cylinder.

17 The defendant's secret gun in a case zipped tied to
18 keep it in place, was assessable, loaded and ready to fire.

19 You will hear when the gun was tested, both the gun
20 and the ammunition found therein, were both operational.

21 Now, I am going on warn you, you may not hear all of
22 of this evidence in order. Due to some scheduling issues
23 we had to reorder some of the witnesses.

24 Try to bear with us, because it's all going to come
25 together at the end of the presentation when you seen all

5
C. Edwards

1 the evidence.

2 At the end of this case you're going to ask whether or
3 not the defendant, in fact, posted the gun outside of his
4 home, and whether he did so with the intent to use the gun
5 unlawfully against another.

6 So, how can you go about doing this, by applying your
7 common sense and experience to the facts of this case. And
8 by applying the law, which the judge gives. Common sense
9 dictates that if the gun is found in the defendant's
10 motorcycle, it is the defendant's gun.

11 But, you will hear a number of other facts that will
12 help you determine that that was, in fact, the defendant's
13 gun, and that he knew that it was attached to the
14 motorcycle.

15 First, you will see pictures of the motorcycle, which
16 isn't a normal motorcycle, but is instead a modified racing
17 bike. It could go about 200 miles an hour.

18 He also changed the license plate mount, changed the
19 front headlight, changed the letter covers to add them onto
20 the fuel tank. He mounted the cameras on the bike. And
21 those changes were made primarily through of law
22 enforcement, something you would want to do if you had an
23 illegal gun strapped to your bike.

24 You will see photographs and hear testimony about the
25 gun bag, and how it was mounted onto the motorcycle.

C. Edwards

1 You will hear that it had been permanently attached,
2 something that only a true continuous owner of the bike
3 would want to do, and in a place only a true owner would
4 know where to find it.

5 You will see that the case had been mounted with
6 screws. You will be able to conclude that the gun was
7 placed in the rear well by someone with complete access to
8 the bike, someone who would want to make modifications for
9 regular long term use.

10 You will hear that the passenger on the bike at the
11 time of the stop did not have a motorcycle license and that
12 no one else was available to pick up the defendant's bike,
13 because he was, in fact, the exclusive owner of the
14 motorcycle.

15 Importantly, you will also hear from the Florida DMV
16 representative that the defendant bought the motorcycle
17 nearly ten years ago in 2009. And that his name is still
18 on the title to the bike. And that he had continuous
19 ownership of the bike since he purchased it.

20 You will also hear from the firearms analyst section
21 detective that the defendant's highly specialized
22 motorcycle, like the defendant's highly specialized
23 motorcycle, the gun was also specialized. It had a laser
24 site, which was designed to shoot faster than most
25 revolvers. He was able to fire more powerful ammunition.

D C. Edwards

1 And it has no safety.

2 Now, it's impossible to see what exactly is inside a
3 person's mind. But as you hear the evidence, ask
4 yourselves for what conscious objective or purpose would
5 someone have a concealed, loaded, deadly weapon strapped to
6 their motorcycle here on the street in Manhattan.

7 Think about all the circumstances surrounding the
8 defendant's possession of the gun.. And your common sense
9 will lead you to the conclusion the defendant knowingly
10 possessed it with the intent to use it unlawfully against
11 someone.

12 After you heard this evidence, you have a clear
13 understanding of what the defendant is charged with and
14 why.

15 At the end of this trial, you will be asked to vote on
16 three separate charges:

17 One, that the defendant knowingly possessed a loaded
18 gun with the intent to use it unlawfully.

19 Two, that the defendant knowingly and unlawfully
20 possessed a loaded gun outside of the home.

21 And three, the defendant drove his motorcycle while
22 his privilege to drive here in New York County was
23 suspended.

24 After you heard all the evidence, I am confident you
25 will come to a reasonable, logical conclusion. This is

C. Edwards

1 that the defendant is guilty of both counts of criminal
2 possession of a weapon in the second degree, and one count
3 of aggravated unlicensed operation of a motor vehicle in
4 the third degree.

5 Before you deliberate on these charges, ADA Dunnan
6 will come back before you and will ask you to hold the
7 defendant accountable for possessing an unlicensed loaded
8 and concealed firearm in the streets of Manhattan.

9 She will ask you to analyze the facts, and vote in the
10 only manner consistent with the evidence, guilty on all
11 counts. Thank you.

12 THE COURT: Thank you, Ms. Holland.

13 Does the defense wish to open?

14 MR. McGEVNA: Yes.

15 THE COURT: Mr. McGevna.

16 MR. McGEVNA: Good morning. I want to, first to just
17 put something that the assistant told you. ==

18 The claim was made that my client attempted to hide
19 from police. I just want you to know that in this
20 particular case, my client was stopped by police because he
21 had strobe lights. It went all different colors and were
22 very bright and it's exactly the kind of thing you would
23 use if you were not worried about police stopping you.

24 Having said that, let me just briefly talk to you.

25 This case is about one issue, and the issue is whether

C. Edwards

1 or not Noel Brown knowingly possessed a weapon, and whether
2 he knowingly possessed that weapon with intent to use it
3 unlawfully against another.

4 You heard the evidence, the People's statement of how
5 my client came to be stopped by police, particularly by
6 Police Officer Kempinski.

7 Officer Kempinski, needless to say, told him about the
8 strobe lights that were on the car and how he wasn't
9 supposed to have those strobe lights.

10 Now, this was in a busy area well covered by police.

11 In fact, there was a check point. So when Mr. Brown
12 was told about the strobe lights, he talked to Officer
13 Kempinski and essentially he said that he had the strobe
14 lights to let other people know, so he wouldn't get hit by
15 cars. And he did tell the officers this is a show bike.

16 We just got it out of storage. We are coming up from
17 Florida. We flew up. The storage place is on 34 Street.
18 No, I don't live at that address in Brooklyn. This is
19 bull. I will get somebody to pick up the bike.

20 Essentially, he told the officer that he had just
21 gotten the bike out of the storage and that he had been out
22 of state and that he told him the location of the storage
23 facility. These are the actions of a man who has nothing
24 to hide, who believes he has nothing to hide.

25 You're going to hear about certain test that were done

C. Edwards

1 in an attempt to connect Mr. Brown to that weapon.

2 Fingerprint test, DNA test, and you are going to find
3 that none of those tests connected Mr. Brown in any way to
4 that weapon.

5 This is a case where the People have to prove to you
6 beyond a reasonable doubt that Mr. Brown knowingly
7 possessed a weapon with intent to use it, obviously possess
8 the weapon.

9 And I believe that when you consider all of the
10 evidence in this case, the fact that my client was more
11 than forthcoming at the scene, the fact that nothing in the
12 testing established in any way that Mr. Brown had any
13 connection with that gun, at the end of the People's case,
14 and at the end of all the evidence, I am going to ask you
15 to, and I believe you must find my client not guilty of the
16 gun charges. Thank you very much.

17 THE COURT: Okay. Thank you, Mr. McGevna.

18 The People call your first witness.

19 MR. HOLLAND: The People call to the stand, Mario
20 Rallo.

21 MARIO L RALLO, after having first been duly sworn was examined
22 and testified as follows:

23 COURT OFFICER: In a loud clear voice, please state
24 your first and last name, spelling your last name.

25 THE WITNESS: Mario Rallo, R-A-L-L-O.

C. Edwards

1 COURT OFFICER: And your county of residence?

2 THE WITNESS: Residence Miami, Dade County.

3 THE COURT: We don't have any microphones. I am going
4 to ask you to keep your voice up as if you're talking to
5 the last two jurors at the end.

6 THE WITNESS: Sure.

7 THE COURT: Thank you.

8 People you may inquire.

9 DIRECT EXAMINATION

10 BY MR. HOLLAND:

11 Q Good morning, Mr. Rallo.

12 A Good morning.

13 Q Sir, who are you employed by?

14 A I work for the Florida Department of Highway Safety
15 and Motor Vehicles.

16 Q How long have you been employed there?

17 A Almost 14 years.

18 Q And what is your position there?

19 A My official title is senior liaison officer, which
20 includes being a custodian of records for the State of Florida.

21 Q What is the Florida Realtime Vehicle Information
22 System?

23 A It is our data base that has all of the transactions
24 for all the Florida vehicles in the State.

25 Q And what kind of information would that contain?

C. Edwards

1 A Registration information, title transactions,
2 certificate of titles, any scan documents with regards to a
3 vehicle.

4 Q I am showing you what's been marked as People's
5 Exhibits 8 for identification. I am also showing it to defense
6 now.

7. (Passing.)

8 Q Sir, do you recognize this?

9 A Yes, I do.

10 Q What do you recognize it to be?

11 A It is from our Florida Realtime Vehicle Information
12 System data base, a screenshot for a, for vehicle record for a
13 2008 Suzuki.

14 Q What is the license plate of the bike for this record?

15 A Currently?

16 Q On the document, yes.

17 A 5617RG

18 Q Does the Florida DMV
19 the regular course of business?

20 A Yes, they do.

21 Q Is it the regular course of the business for Florida
22 DMV to make and keep these records?

23 A Yes.

24 Q Are these records made at the time of the transactions
25 listed therein or at a reasonable time period thereafter?

C. Edwards

1 A Yes..

2 Q Is the person who makes these records in the courts
3 under a business duty to do so properly?

4 A Yes.

5 Q Is there a certification on the document?

6 A Yes, there is.

7 Q If you would, please read the certification for the
8 Court?

9 A I, Stephanie D. Duhart, Chief Bureau of Records,
10 Division of Motorist Services, Department of Highway Safety and
11 Motor Vehicles, of the State of Florida, do hereby certify that
12 this is a true copy, and correct copy of the motor vehicle or
13 driver license record from the official records on file in the
14 department, with the signature from Stephanie Duhart.

15 Q Is there a stamp on these documents?

16 A Yes.

17 MS. DUNNAN: Your Honor, the People move this,
18 People's 8 for identification be moved into evidence.

19 THE COURT: Any objection?

20 MR. McGEVNA: No.

21 THE COURT: People's 8 is admitted without objection.

22 MR. HOLLAND: Thank you, sir.

23 Q So you had a chance to review People's Exhibit 8,
24 correct?

25 A Correct.

C. Edwards

1 Q Does it list when the motorcycle was purchased?

2 A Yes, it does.

3 Q And when was that?

4 A 7/14/2009.

5 Q 7/14/2009. What was the first interaction between
6 that particular vehicle and the Florida DMV?

7 A It was the certificate of title application done on
8 8/10/2010.

9 Q And who was the individual who applied for the
10 certificate of title?

11 A Yes.

12 Q Who is the person who purchased the motorcycle?

13 A Noel L. Brown.

14 Q So what is the certificate of title that was done in
15 2010?

16 A Well, the person bought the vehicle in New York and
17 transferred it down to Florida and they applied for a
18 certificate of title.

19 Q So the certificate of title is necessary to transfer
20 the bike essentially to Florida?

21 A Correct, and register it.

22 Q And did he ultimately register the motorcycle in
23 Florida?

24 A Yes.

25 Q Was the plate on the motorcycle in 2009, 65580J?

C. Edwards

1 A Yes.

2 Q Now, how did that plate get issued to this motorcycle?

3 A It was on another motorcycle, and then it was
4 transferred over to the motorcycle that was purchased.

5 Q So, in Florida, it's acceptable to transfer a plate
6 from one vehicle to another?

7 A Correct; yes.

8 Q Did the defendant have another interaction with the
9 DMV in 2015?

10 A Yes.

11 Q About what happened?

12 A He got a duplicate plate, not a duplicate place, I am
13 sorry, a replacement plate.

14 Q And was the number for that replacement plate 5617RG?

15 A Correct?

16 Q Now, starting on January 17, 2015, what was the
17 license plate attached to this vehicle?

18 A 5617RG.

19 Q Does that mean the other 65580J was no longer the
20 plate attached to that motor vehicle?

21 A Yes.

22 Q That was no longer a legal plate to that motorcycle?

23 A Correct.

24 Q Did the defendant have any interactions with the Court
25 of DMV in 2017?

1 A Yes.

2 Q And what was that interaction?

3 A It was a duplicate title.

4 Q So the defendant applied for a duplicate title for the
5 Florida DMV?

6 A Correct.

7 Q It's not possible to have two license plates at once,
8 correct, for the same vehicle?

9 A Correct.

10 Q Now, the record that you had a chance to examine, does
11 it show whether or not Mr. Noel Brown had continuous ownership
12 between the date of purchase and 9/6/2015?

13 A Correct, he was the only vehicle owner.

14 Q If he had transferred the bike or sold the bike, would
15 he have been required to register it with Florida DMV?

16 A Yes.

17 Q If he had given the bike away to someone, would he
18 have to register it with the DMV?

19 A Yes.

20 Q So, based off of a record that you have, he was the
21 sole owner between the date of purchase in New York and the --
22 excuse me, 9/6/2015?

23 A Correct.

24 Q And if you would, just provide the VIN number for the
25 record?

1 A JS1GS72A782109087.

2 Q And what is a VIN number?

3 A It's a vehicle identification number, the number of
4 the vehicle.

5 Q And is it essentially unique to the vehicle?

6 A Correct, yes.

7 Q Okay. No further questions for this witness?

8 THE COURT: Okay. Mr. McGevna?

9 MR. McGEVNA: Thank you.

10 Q Good morning.

11 CROSS-EXAMINATION

12 BY MR. McGEVNA:

13 Q Good morning.

14 A Good morning.

15 Q Welcome to New York. I was going to say, probably
16 enjoying the heat. This is probably for you a cold spell?

17 A ~~It's~~ It's hotter up here.

18 Q I just have a few questions.

19 You said that the car, I am sorry, the motorcycle in
20 question, was for years registered in Florida?

21 A Correct.

22 Q Now, obviously you keep records as to registration and
23 as to any contact in terms of changing vehicle indictment, etc.?

24 A Correct.

25 Q But you don't keep records and there is no way you

C. Edwards

1 can, as to where the vehicle is?

2 A Correct.

3 Q You don't have any idea where a car, I am sorry a
4 motorcycle validly registered in Florida is at any particular
5 time?

6 A Correct.

7 Q And, of course, you could see that the particular
8 vehicle, in this case, a motorcycle, can be in a different state
9 from the owner of that vehicle?

10 A Correct.

11 Q And there is no necessity that the owner of the
12 vehicle have that vehicle in his possession?

13 A Correct.

14 Q It could be, for example, while he is in Florida, your
15 State, and the State in which Mr. Brown registered his vehicle,
16 while the person is in Florida, the vehicle can be in New York
17 for a period of time?

18 A Correct.

19 Q Even a lengthy period of time?

20 A Correct.

21 Q Would you have any way of knowing that that vehicle
22 was in the custody of someone else other than the owner?

23 A No.

24 Q So, basically you could track ownership but you can't
25 track location?

C. Edwards

1 A Correct.

2 Q No further questions.

3 THE COURT: Any redirect?

4 MR. HOLLAND: No redirect, thank you.

5 THE COURT: Thank you, Mr. Rallo, have a nice day.

6 (Whereupon, the witness exited the courtroom and
7 the following occurred.)

8 THE COURT: Okay. People.

9 MS. DUNNAN: The People call Ms. Freida Jefferson.

10 COURT OFFICER: Please raise your right hand and face
11 the clerk.

12 FREIDA JEFFERSON, after having first been duly sworn was
13 examined and testified as follows:

14 COURT OFFICER: In a loud, clear voice, please state
15 your first and last name, spelling your last name.

16 THE WITNESS: Freida Jefferson, J-E-F-F-E-R-S-O-N.

17 COURT OFFICER: And your county of residence?

18 THE WITNESS: Kings.

19 THE COURT: Ms. Jefferson, we don't have any
20 microphone. So I am just going to ask you to keep your
21 voice up. All right.

22 THE WITNESS: No problem.

23 DIRECT EXAMINATION

24 BY MR. HOLLAND:

25 Q Ms. Jefferson, by whom are you employed?

C. Edwards

1 A The Department of Motor Vehicles.

2 Q And how long have you been employed by the DMV?

3 A Eleven years.

4 Q Just to be clear, this is the DMV for which state?

5 A New York State.

6 Q What is your position there?

7 A I served as a motor vehicle representative and as the
8 clerk in traffic Court.

9 Q In your capacity as a DMV representative, do you have
10 access to the computer system within the DMV?

11 A I do.

12 Q And what kind of information is confined in the DMV
13 computer system?

14 A Information such as pedigree information on whether a
15 person is actually licensed or not, everyone who has a record
16 with the state has driving privileges; information on special
17 endorsements, license class, whether a person has vehicles ...
18 registered within the state are insured, things of that nature,
19 record of point, suspensions, things like that.

20 Q Can you explain for the jurors what a DMV abstract is?

21 A Sure. A DMV abstract is an official transcript of the
22 general history of a person within the State of New York.

23 So if the person has had any points, you would see
24 visible on the abstract, if the person has had any suspensions,
25 you would see it visible on the abstract.

1 You would see their pedigree information, address, any
2 special endorsements they may have, including license class,
3 things like that would be present.

4 Q I am showing you what's been marked as People's
5 Exhibit 7 for identification. I am going to show it to defense
6 first.

7 . Ms. Jefferson, do you recognize this?

8 A I do.

9 Q What is it?

10 A It's an abstract record, driving record.

11 Q For who?

12 A Mr. Noel Brown.

13 Q Does the DMV make and keep driving records in the
14 regular course of business?

15 A Yes.

16 Q Is it the regular course of business in the DMV to
17 make and keep driving records? =====

18 A Yes, it is.

19 Q Are these records made at the time of the transactions
20 or the events listed therein or within a reasonable time
21 thereafter?

22 A Yes.

23 Q Is the person who makes these records and reports
24 under a business duty to do so on properly?

25 A Yes, we are.

1 Q Is there a certification on the document?

2 A There is.

3 Q Please read the certification for the Court?

4 A Okay. This is to certify that this document is a true
5 and complete copy of an electronic record on file in the State
6 of New York, Department of Motor Vehicles, Albany, New York.

7 The record was made in the regular course of New York
8 State, Department of Motor Vehicles Daily Business.

9 It is the business of the New York State, Department
10 of Motor Vehicles to create and maintain the records of drivers
11 in the State of New York.

12 Entries in this document are made at the time the
13 recorded transactions or events took place or within a
14 reasonable time thereafter.

15 The person who reports the information is under a
16 business duty to do so accurately.

17 MR. HOLLAND: Your Honor, the People move People's 7
18 for identification, moved into evidence as People's Exhibit
19 No. 7.

20 THE COURT: Any objection?

21 MR. McGEVNA: No.

22 THE COURT: People's 7 is admitted without objection.

23 MR. HOLLAND: Thank you.

24 Q Now, Ms. Jefferson, you previously testified this is
25 an abstract for Mr. Noel Brown?

C. Edwards

1 A Correct.

2 Q Their date of birth or identifying information listed
3 on there?

4 A Yes.

5 Q What is the date of birth you just provided for the
6 record?

7 A December 3rd, 1974.

8 Q You had an opportunity to look through this record
9 prior to testifying in court today, correct?

10 A I have.

11 Q What was the status of Mr. Brown's driver's license on
12 September 6, 2015?

13 A Mr. Brown was suspended, therefore, making him unable
14 to legally drive in the State of New York.

15 (Whereupon, the following was recorded by
16 Official Court Reporter Robin Ashby:)

17 * * * *

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25

C. Edwards

Jefferson - Peo. - Direct (Holland)

1 Q Now, how many suspensions did the defendant have
2 on September 6, 2015?

3 A Four.

4 Q And on how many separate dates?

5 A Two.

6 Q What were those suspensions for?

7 A They were two suspensions for failure to pay fines
8 and two subsequent suspensions for failure to -- two for
9 failure to answer summons and then two for failure to pay
10 the fines.

11 Q Now, when a person is suspended for failing to pay
12 fines, how do they learn they are suspended or to be
13 suspended?

14 A Well, first and foremost on the face of each
15 ticket that's issued there's something written where it
16 tells you that failure to address the ticket will lead to a
17 suspension of your license. That's on every ticket. It's
18 been on every ticket since I've been employed with the
19 agency.

20 But, moving forward, there's cases where people
21 forget or lose a ticket or whatever. A letter will always
22 be sent out to the address on record prior to the suspension
23 going into effect as a warning.

24 Some suspensions are avoidable so they'll send out
25 a letter approximately about a month prior to the suspension

Jefferson - Peo. - Direct (Holland)

1 going into effect giving the person time to rectify it. If
2 the person does not, then they would go into the suspension
3 at the date put on the letter.

4 Q But on the face of each ticket that would result
5 in this kind of suspension it also lists that they have to
6 answer the ticket in one capacity or another?

7 A Right. It doesn't instruct them to pay it, it
8 just instructs them to address it.

9 Q What does that mean?

10 A Meaning, some people don't have to pay it -- I
11 mean some people don't want to pay it. You have an option
12 to either paying the ticket if that's what you choose and
13 then you have the option of pleading not guilty and setting
14 up a court hearing in the future to try to fight it.

15 So basically it's instructing you to address it
16 and it tells you to address it within fifteen days. But,
17 truthfully, it's really thirty. We actually give a window
18 of thirty but we tell people fifteen hoping they'll make it
19 within thirty.

20 Q So ultimately the existence of those suspensions,
21 though, indicates what about the defendant's response to the
22 ticket?

23 A They didn't respond to it either way.

24 Q So didn't pay the ticket or did not try to contest
25 the ticket in court.

Jefferson - Peo. - Direct (Holland)

1 A Correct.

2 Q Now, what are the dates for the active suspensions
3 on 9/6/2015?

4 A The dates are -- I'll go in order. The first date
5 was January 13, 2015 and the second suspension date was
6 March 24, 2015.

7 Q So that is to say that those were tickets or
8 suspensions that came into effect in early 2015?

9 A Correct. Or based upon the suspension date of
10 January 13 I would be more inclined to say that the ticket
11 was issued in maybe early December leading to a suspension
12 in January. He couldn't have gotten the ticket in January
13 and been suspended that quick.

14 Q Just to be clear, ultimately the driving abstract
15 doesn't have the exact date of when the ticket is issued,
16 right?

17 A No. They don't record the issuance date, just the
18 dates of suspensions.

19 Q You're just basing that off of your previous
20 statement about the general thirty day allowance a person is
21 given?

22 A Correct.

23 Q To clarify, on September 6, 2015 the defendant was
24 suspended how many times?

25 A Twice. I mean four.

Jefferson - Peo. - Direct (Holland)

1 Q Four times on how many different dates?

2 A Twice.

3 Q What does it mean to be suspended on a date?

4 A There are various reasons why a person could have
5 multiple suspensions. One could be that they were issued --
6 let's say I'm issued five tickets and I fail to address five
7 different tickets even though they initiated from the same
8 car stop. When I go into suspension, not addressing or
9 answering the summons, I'm going to be suspended five times.

10 Q But that would be five times on one date you're
11 saying?

12 A Right. So that's where the date comes in and it's
13 number on the suspension may be different from the date
14 because things like that happen. So I would assume that he
15 had, and I could be wrong, but it could be in this case that
16 he was issued multiple tickets, failed to address multiple
17 tickets and got double suspensions each time.

18 Q The only thing you can testify to though
19 confidently off that record is that he was suspended four
20 times on two dates, correct?

21 A Yes, that's a fact.

22 Q So, just finally, the defendant did not have the
23 permission or authority from the DMV to drive on that date,
24 right, on September 6, 2015?

25 A No.

Jefferson - Peo. - Cross

1 MR. HOLLAND: No further questions for this
2 witness.

3 THE COURT: Mr. McGevna.

4 MR. MC GEVNA: Yes. Just a few questions.

5 CROSS-EXAMINATION

6 MR. MC GEVNA:

7 Q If a person's license is suspended for failure to
8 appear or failure to pay a fine, what does the person have
9 to do?

10 A They would have to just go in and address it.
11 They can do various things. If they wanted to plead guilty,
12 they can go online, plead guilty to the ticket online. They
13 can go into any one of our offices and address it. If it's
14 still an open status and they decide they want to fight it,
15 they can pay money to lift the active suspension and then
16 opt to fight it. So there's a few things they could do.

17 Q So, essentially, payment would lift the
18 suspension?

19 A Correct.

20 Q You said that letters are sent. Would some of
21 those letters, perhaps, be sent to the wrong address?

22 A I don't understand the question.

23 Q In other words -- I'm going to withdraw the
24 question if you don't understand it. Probably more sensible
25 not to ask it.

Jefferson -Peo. -Redirect (Holland)

1 You send a letter, or motor vehicle sends a letter
2 to someone who has not appeared in court.

3 Obviously in sending that letter you depend that
4 the person who is the subject of the letter is at the
5 address that --

6 A Correct.

7 Q It's obvious if that person is not at that address
8 he or she couldn't receive the letter.

9 A Correct.

10 MR. MC GEVNA: Thank you.

11 THE COURT: Any redirect?

12 MR. HOLLAND: Just very briefly.

13 REDIRECT EXAMINATION

14 BY MR. HOLLAND:

15 Q Is someone under a duty to change and update there
16 address with the DMV?

17 A Yes.

18 Q And what is the window that the DMV allows a
19 person to change their address?

20 A Thirty days.

21 Q And what's the address that's on file with the
22 DMV?

23 A I have an address of 115 Lincoln Road, Apartment
24 1G, Brooklyn, New York 11225.

25 Q And I just want to be clear here. The face of the

Proceedings

1 ticket that a person would receive would also indicate to
2 them that they need to address the ticket, correct?

3 A Correct.

4 Q Or that they would be suspended if they didn't.

5 A Correct.

6 MR. HOLLAND: No further questions.

7 THE COURT: Anymore cross?

8 MR. MC GEVNA: No.

9 THE COURT: Okay, thank you, Ms. Jefferson,
10 have a nice day.

11 THE WITNESS: You too.

12 (Witness excused.)

13 THE COURT: Come on up.

14 (Whereupon, there was a discussion held of
15 the record.)

16 THE COURT: All right, ladies and gentlemen.
17 We're actually caught up so we have no more witnesses
18 for the morning.

19 Now, I don't want you to be concerned about
20 our scheduling because -- no surprise, we were talking
21 about scheduling, and we anticipate the People
22 finishing their case tomorrow so we are actually a
23 little bit ahead of schedule.

24 You have an extremely long lunch break now.
25 I don't know what you want to do but you have until

Proceedings

1 quarter to three.

2 Have a great lunch and I'll see you at a
3 quarter to three.

4 COURT OFFICER: All rise as the jury exits.

5 (Whereupon, the jury exited the courtroom.)

6 THE COURT: You can be seated.

7 Just to put on the record our bench
8 conference, the People anticipate having two more
9 witnesses this afternoon. The People anticipate
10 finishing their case tomorrow morning.

11 The defense has told me that if they do put
12 on a case it will be tomorrow afternoon which means we
13 will probably sum and charge Wednesday morning.

14 All right, Mr. Brown, we are just waiting for
15 that hallway to clear and then we will bring you back
16 and see you after lunch. Have a good lunch everybody.

17 MS. DUNNAN: Since we're all here there's
18 just one thing that I wanted to briefly bring up after
19 the opening statement of defense counsel.

20 THE COURT: Okay.

21 MS. DUNNAN: Just so we do it now so we don't
22 waste time later.

23 THE COURT: Okay.

24 MS. DUNNAN: During the hearing, the stop of
25 the defendant I had withdrawn statement notice and I

Proceedings

1 made it pretty clear that I don't intend to elicit any
2 statements from the defendant. We didn't have a
3 hearing on it.

4 THE COURT: Okay.

5 MS. DUNNAN: So I'm not going to elicit any
6 statements from the defendant. Mr. McGevna commented
7 on statements that he anticipated his client or
8 believed his client had made at the scene but they're
9 not going to be elicited in the People's direct
10 examination of Officer Kempinski so it's my position
11 that those statements should be precluded from coming
12 in.

13 THE COURT: Mr. McGevna.

14 MR. MC GEVNA: Judge, I don't see that at
15 all. It seems to me that until the beginning of this
16 case that the People had served notice that they
17 intended to use those statements which established that
18 he was on the bike and in fact talked about the strobe
19 lights which were the basis of the -- well, they were
20 going to use the statements against him. It is part of
21 the case, it's certainly relevant. I don't see what
22 basis for preclusion there is in this case.

23 THE COURT: Let me ask you a simple question.
24 You are not challenging the constitutionality of the
25 statements made by your client?

Proceedings

1 MR. MC GEVNA: Of course not.

2 THE COURT: So there would be no need for any
3 hearing to determine at a minimum whether your client
4 understood what was happening when he made those
5 statements that they were voluntary, correct?

6 MR. MC GEVNA: Right.

7 THE COURT: So, People, I guess if Mr.
8 McGevna wants to ask a witness what the defendant said
9 and it's not self-serving, why couldn't he ask that
10 question if he's not moving to suppress anything?

11 MS. DUNNAN: The prior attorney, not Mr.
12 McGevna, had moved to suppress it. I did withdraw
13 statement notice because I don't intend to elicit them.

14 The one thing that I would say is that if I
15 don't elicit them in my direct examination, which I
16 don't intend to do, then I would just say they would be
17 beyond the scope of direct examination. And I do
18 believe they're self-serving statements because Mr.
19 McGevna made it very clear during his opening statement
20 why he intends to elicit it which is to try to make it
21 seem like this bike was in some storage unit where I
22 guess someone else had access to it.

23 THE COURT: I guess it cuts both ways which
24 is why you or the original assistant served statement
25 notice because it shows that he had dominion and

Proceedings

1 control over this motorcycle, right?

2 I'll think about it over lunch but unless
3 it's self-serving I don't see why Mr. McGevna shouldn't
4 be able to cross on it. I understand what you're
5 saying in terms of it being beyond the scope, but at
6 the same time all that means is that Mr. McGevna will
7 just have to recall the witness on the defense's case.
8 Based upon about what Mr. McGevna just told me I don't
9 think he would have any problem if you elicited those
10 statements, right?

11 MR. MC GEVNA: Not at this point, no.

12 THE COURT: So I'll look into it, I'll think
13 about it. It kind of threw me at this point.

14 MR. MC GEVNA: Can I just add one thing. I
15 don't think the People have the right to say well, we
16 wanted to use this statement because it hurts the
17 defendant but there's a part that doesn't hurt the
18 defendant and we don't want to use that and we want to
19 preclude it because you get the whole magilla. The
20 assistant asked -- filed a statement notice or maybe
21 the predecessor filed statement notice and intended to
22 use it right up until the beginning of this trial
23 because it does establish certain facts that they have
24 to establish. But, it comes with --

25 THE COURT: I understand the law and I

Proceedings

1 understand how the People are correct that if the
2 statement is totally self-serving there wouldn't be a
3 basis for bringing in the hearsay. But, again, I have
4 to think about the statement, really. I have to relook
5 at the VDF and go over it in my head but I'll give you
6 a ruling this afternoon.

7 Are any of those witnesses testifying this
8 afternoon?

9 MS. DUNNAN: Officer Kempinski and Officer Li
10 for this afternoon.

11 THE COURT: Okay, so I'll give you an answer
12 after lunch.

13 MS. DUNNAN: Thank you, Judge.

14 THE COURT: Sure.

15 (Luncheon recess taken.)

16 *****

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

18 COURT CLERK: Case on trial continued.

19 All parties are present. Defendant is also
20 present.

21 THE COURT: Who's your first witness after
22 lunch?

23 MS. DUNNAN: Anthony Kempinski.

24 THE COURT: At the break before lunch the
25 People moved to suppress statements made by the

Proceedings

1 defendant to the police officer. I said that if it was
2 against penal interest it would be admissible but I did
3 not remember what the statement was and I had to look
4 at the statement over lunch.

5 Just for the record, the defendant cannot
6 introduce the statement to advance his own case. And
7 that's People v. Sostra, 51 NY2d 958 1980.

8 Only the portion of the statement that is
9 found to be against the declarant's interest is
10 admissible. And that's People v. Ennis, 11 NY3d 403
11 from 2008 and People v. Delgado, 287 AD2d 327 of the
12 First Department 2001.

13 After reviewing the statement I find that the
14 first part is arguably a statement against penal
15 interest and I will allow it, but as to the second half
16 I see no basis -- I'll hear from the attorneys if they
17 want to add something but basically the statement, "I
18 have the strobes on to let other people know so I don't
19 get hit by cars, this is a show bike," I will allow
20 that in, but everything after that seems to be
21 self-serving.

22 MR. MC GEVNA: Judge, may I be heard?

23 THE COURT: Yes, of course.

24 MR. MC GEVNA: I respectfully disagree most
25 strongly with the Court's opinion.

Proceedings

1 In the first place this is not self-serving
2 at the time it was made. At that point in time there
3 had been no search of the vehicle.

4 They were talking about a stop here and he
5 was simply discussing the stop. Now, his statements
6 not only showed about the vehicle but they also
7 indicate that he had the control of the car because he
8 said, "We just got it out of storage," which can be
9 evidence, certainly evidence he had dominion and
10 control over the car and he said that we were coming up
11 from Florida, I don't know whether we were coming up
12 from Florida, but he did say the storage place is at
13 34th Street. We just got out of the storage is not
14 self-serving in the circumstances for one point.

15 Secondly, the People had an opportunity. I
16 kind of telegraphed what I was going to say. I
17 indicated that Officer Kempinski and my client had a
18 conversation. I talked about the strobe light which is
19 the first part of the conversation, then I went to the
20 other part of the conversation. There was no objection
21 at all and since there was no objection when the State
22 of Florida representative got on the stand I
23 cross-examined him on the basis of statements that were
24 permitted by me to discuss at the time of the opening
25 statement, so I depended on the fact that there was no

Proceedings

1 objection to it and cross-examined as to a person being
2 in one state and a vehicle in another and how that was
3 certainly very possible and there was no way that they
4 would have any record of that.

5 I did that because the statement indicates
6 that he had just gotten it out of storage. I don't
7 see -- at the time it was made it was not a
8 self-serving statement and the People are intent on
9 using it.

10 THE COURT: Well, let me ask you this: Even
11 though you say that it's not a self-serving statement,
12 it is hearsay so under what exception would it be
13 admissible?

14 MR. MC GEVNA: Because they're all
15 essentially admissions. I am willing to accept the
16 admissions so that I can cross-examine but they are
17 admissions. The fact of the matter is we just got it
18 out of storage means he was the one who had the ability
19 to get it out of storage. And I'm sure the People
20 would argue that.

21. THE COURT: But what about we're coming up
22. from Florida, how is that relevant to anything? That
23. is not an admission to any element of any crime that
24. he's accused of.

25 MR. MC GEVNA: It does provide a context in

Proceedings

1 which the other statements were made.

2 THE COURT: Well, just to be clear --

3 MR. MC GEVNA: It's not self-serving.

4 THE COURT: Just to be clear, I'm not
5 precluding your client from testifying to statements he
6 may have made and I'm not precluding someone from the
7 storage facility testifying that the bike was there.
8 All I'm precluding at this point is cross-examination
9 of certain portions of this statement.

10 All right, I see a little bit better your
11 argument as to "we just got it out of storage" showing
12 that he had possessory rights but the rest of it, I
13 don't see how any of that can come in. How any of it
14 you can see is a statement of penal interest, statement
15 against penal interest, but, People, I'll hear from you
16 if you disagree.

17 MS. DUNNAN: I don't have a disagreement with
18 Your Honor. Again, I do think that the statements
19 about being out of Florida and we can argue about
20 whether it was against his interest at the time, I
21 mean, but the part about it being them having just come
22 up from Florida and it being in storage and having just
23 gotten it out of storage, to me that's -- if the
24 defendant were to testify I think he would get up and
25 say, well, I didn't know about this gun being on my

Proceedings

1 bike because I just got it out of storage, I don't
2 really know anything about what could have happened
3 while it was in storage.

4 THE COURT: I guess what Mr. McGevna is
5 saying we just got it out of storage implies that he
6 has a possessory right to the bike and therefore it's a
7 statement against penal interest.

8 I'm saying, one, do you disagree with that
9 and, two, I'm inclined to think everything after that
10 is self-serving and shouldn't come in.

11 MS. DUNNAN: I do think that is self-serving.
12 There's really no way to really like parse out what
13 each -- like each little part of the statement. Like
14 if I were on my direct, because I know that Mr. McGevna
15 is going to have an opportunity to cross about certain
16 things, if I were to ask Officer Kempinski, what do you
17 remember the defendant saying at the scene, I think he
18 would just kind of say the whole thing. There's not
19 really a way to parse it out.

20 THE COURT: If he asks an open-ended
21 question, we would anticipate an objectionable response
22 and so if you objected I would sustain it. Since he's
23 crossing, when it gets to that section I would suggest
24 that you just read him the three statements that are
25 admissible and ask him if his client said that.

Proceedings

1 So, Mr. McGevna, I'll give you that extra
2 sentence, "we just got it out of storage," I can see
3 your argument but everything after that about Florida
4 and Brooklyn, I just don't see any relevance other than
5 self serving.

6 MR. MC GEVNA: May I respectfully except to
7 the Court's ruling.

8 THE COURT: Understood.

9 MS. DUNNAN: So just to be clear, I'm
10 completely fine with Mr. McGevna cross-examining
11 Kempinski on those three statements, isn't it true he
12 said this and this and this.

13 THE COURT: Right. If he asks an open-ended
14 question and you don't object it will probably all come
15 out, but if you object I will sustain that objection.

16 Anything else before we bring out the jury?

17 MR. MC GEVNA: No.

18 THE COURT: Let's bring out the jury.

19 COURT OFFICER: All rise, jury entering.

20 COURT CLERK: Case on trial continued.

21 All parties are present. Defendant is also
22 present.

23 Do both parties stipulate the jury is present
24 and properly seated?

25 MR. MC GEVNA: Yes.

Proceedings

1 MS. DUNNAN: Yes.

2 THE COURT: We will continue with the
3 People's case.

4 People.

5 MS. DUNNAN: People call Officer Anthony
6 Kempinski.

7 COURT OFFICER: Witness entering.

8 Please raise your right hand and face the
9 clerk.

10 POLICE OFFICER ANTHONY KEMPINSKI, after
11 having first been duly sworn/affirmed, was examined
12 and testified as follows:

13 COURT CLERK: Thank you.

14 COURT OFFICER: You may have a seat.

15 In a loud and clear voice please state your
16 first and last, spelling your last name.

17 THE WITNESS: Anthony Kempinski,

18 K-e-m-p-e-n-s-k-i.

19 COURT OFFICER: Shield number and command.

20 THE WITNESS: Shield 26844, NYPD 5th
21 Precinct.

22 THE COURT: Officer Kempinski, we don't have
23 any microphones. I'm going to keep your voice up
24 as if you're talking to the last two jurors on the end
25 all right?

Kempinski - Peo. Direct (Dunnan)

1 THE WITNESS: Yes, sir.

2 THE COURT: People, you may inquire.

3 DIRECT EXAMINATION

4 BY MS. DUNNAN:

5 Q How long have you been in the New York City Police
6 Department for?

7 A Sixteen years.

8 Q And how much of that time have you spent at the
9 5th Precinct?

10 A A little under sixteen years.

11 Q As part of your training for the New York City
12 Police Department did you receive any training in firearms.

13 A Yes, I did.

14 Q Can you just describe what that training entailed
15 for the jury?

16 A Several days at the New York City Police
17 Department shooting range, identification of firearms, types
18 of firearms that there are, use of firearms as well.

19 Q At the 5th Precinct what are your duties and
20 responsibilities?

21 A Currently assigned to traffic safety. Responsible
22 for construction sites that affect traffic, vehicle
23 violations, multiple locations and responding to any
24 emergency situation.

25 Q As part of that did you receive any training in

Kempinski - Peo. Direct (Dunnan)

1 regard to traffic violations?

2 A Yes.

3 Q Can you just describe what that was for the jury?

4 A In the academy we're taught to identify several
5 regular occurring violations; red lights, cellphone using
6 seat belt.

7 And in addition in the street we're taught to find
8 additional violations; improper turns, disobey traffic
9 control device, signs, crossing double yellow lines and
10 several other vehicle violations, headlights, taillights,
11 improper license plate display as well as a slew of others.

12 Q Approximately how many arrests have you made
13 throughout your career with the NYPD?

14 A Over 200.

15 Q And probably how many arrests have you made or
16 assisted in that were related to firearms, approximately.

17 A Over two.

18 Q So directing your attention to September 6 of
19 2015, were you working on that day?

20 A Yes, I was.

21 Q And what hours were you working?

22 A I was working 8 p.m. to 4 a.m.

23 Q And what was your assignment that day? That
24 night?

25 A We were assigned to conduct motor vehicle safety

Kempinski - Peo. Direct (Dunnan)

1 checkpoint for driving while intoxicated as well as vehicle
2 violations.

3 Q Can you just describe for the jury what a
4 checkpoint is?

5 A A checkpoint is going to an area, a predetermined
6 area where we begin to pull vehicles over in a numerical
7 situation which is every third vehicle or fifth vehicle or
8 seventh vehicle depending on the predetermination either by
9 the assignment or the supervisor on scene.

10 Once that's done we go to a location, we set up,
11 we block a lane, set up cones, flares and then begin pulling
12 over vehicles that are in vehicle violation or the third,
13 fifth or seventh vehicle.

14 Q And what's the point of a checkpoint?

15 A Increase vehicle safety in the area.

16 Q Who else were you working with -- sorry, let me
17 step back a second.

18 Where was the checkpoint that you were working at
19 on September 6 located?

20 A Northeast corner of Delancey, Bowery and Kenmare.

21 Q Is that in New York County?

22 A Yes.

23 Q Who else were you working with at that checkpoint?

24 A I was working with my lieutenant, Lieutenant
25 Doyle, Police Officer Ken Li, Police Officer Hector Dillon,

Kempinski - Peo. Direct (Dunnan)

1 Police Officer Musenyack (ph), his first name D'Kenedy (ph).

2 Q And were you in uniform or plainclothes?

3 A Uniform.

4 Q Were you on foot or in a police car?

5 A I drove to the scene in a police car and then I
6 was on foot at the site.

7 Q Now, you previously said that this was located at
8 Delancey and Bowery in New York County.

9 A Correct.

10 Q Are you familiar with that location?

11 A Yes.

12 Q How are you familiar with that location?

13 A I've been working in that location for
14 approximately fifteen years.

15 Q In the fifteen years or so that you been at the
16 5th Precinct have you ever set up a traffic safety DWI
17 checkpoint in that location before?

18 A Yes.

19 Q Approximately how many times?

20 A More than four.

21 Q I'd like to show you what I previously marked as
22 People's Exhibit Number 1 for identification.

23 Do you recognize the location there?

24 A Yes.

25 Q And how do you recognize it?

Kempinski - Peo. Direct (Dunnan)

1 A This is a map of my precinct with FDR Park here in
2 the center, actually the lower half of the picture. Bowery
3 is in the middle of the map, Delancey is running just off
4 center on the low right quadrant of the map.

5 Q Is it fair and accurate as to the buildings, the
6 streets and any other landmarks in that area?

7 A Yes.

8 MS. DUNNAN: So I'd like to submit People's
9 Exhibit 1 into evidence.

10 THE COURT: Any objection?

11 MR. MC GEVNA: No.

12 THE COURT: People's 1 is admitted without
13 objection.

14 MS. DUNNAN: I realize you don't have an
15 easel.

16 THE COURT: We do.

17 MS. DUNNAN: Thank you.

18 Q So, Officer, if you wouldn't mind just stepping
19 down briefly for a minute.

20 A Sure.

21 MS. DUNNAN: And if I may just approach the
22 witness and hand him a Sharpie.

23 Q Can you just, before you start drawing anything,
24 just briefly describe the orientation of this map for the

Kempinski - Peo. Direct (Dunnan)

1 A Sure. According to the compass at the top of the
2 map here, northbound would be this direction. Bowery runs
3 north and south, two direction traffic as well as
4 Christopher Street running north and south.

5 Kenmare Street is on the western side of the
6 intersection here and ends on the western side of Bowery,
7 Delancey and Kenmare.

8 Delancey Street is here. Begins and ends both
9 east and west direction on the eastern side of the
10 intersection.

11 Q So going back to the traffic and safety DWI
12 checkpoint that you were working on September 6 of 2015,
13 where were you set up for that checkpoint?

14 A We were set up on the northeast corner here --
15 sorry, southeast corner of Delancey, Bowery and Kenmare
16 Street. We're on the eastbound lanes of the four lanes of
17 eastbound travel just east of Bowery.

18 Q And using a circle could you please just mark on

Kempinski - Peo. Direct (Dunnan)

1. A This is a map of my precinct with FDR Park here in
2 the center, actually the lower half of the picture. Bowery
3 is in the middle of the map, Delancey is running just off
4 center on the low right quadrant of the map.

5 Q Is it fair and accurate as to the buildings, the
6 streets and any other landmarks in that area?

7 A Yes.

8 MS. DUNNAN: So I'd like to submit People's
9 Exhibit 1 into evidence.

10 THE COURT: Any objection?

11 MR. MC GEVNA: No.

12 THE COURT: People's 1 is admitted without
13 objection.

14 MS. DUNNAN: I realize you don't have an
15 easel.

16 THE COURT: We do.

17 MS. DUNNAN: Thank you.

18 Q So, Officer, if you wouldn't mind just stepping
19 down briefly for a minute.

20 A Sure.

21 MS. DUNNAN: And if I may just approach the
22 witness and hand him a Sharpie.

23 Q Can you just, before you start drawing anything,
24 just briefly describe the orientation of this map for the
25 jury.

Kempinski - Peo. Direct (Dunnan)

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2 map here, northbound would be this direction. Bowery runs
3 north and south, two direction traffic as well as
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10 intersection.

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12 checkpoint that you were working on September 6 of 2015,
13 where were you set up for that checkpoint?

14 A We were set up on the northeast corner here --
15 sorry, southeast corner of Delancey, Bowery and Kenmare
16 Street. We're on the eastbound lanes of the four lanes of
17 eastbound travel just east of Bowery.

18 Q And using a circle could you please just mark on
19 the map where that is.

20 A (Witness complied.)

21 MS. DUNNAN: Just for the record the witness
22 has drawn a circle on the southeast corner of Bowery
23 and Delancey.

24 Q So you can go back to your seat. Thank you.
25 Now, on September 6 of 2015 at approximately 9:30

Kempinski - Peo. Direct (Dunnan)

1 p.m. did anything unusual happen or were you involved in a
2 traffic stop?

3 A Yes, I was.

4 Q And can you just briefly describe what happened.

5 A I observed a two wheel vehicle, a motorcycle
6 coming southbound on the Bowery with blinking lights on the
7 front end of his vehicle, of the front end of the vehicle
8 effecting an improper turn coming from southbound Bowery to
9 turn left to go eastbound on Delancey Street.

10 Q And we're going to get into some details in a
11 moment but who was the operator of that vehicle?

12 A Mr. Noel Brown.

13 Q And would you recognize Noel Brown if you saw him
14 again today?

15 A Yes.

16 Q Looking around the courtroom can you see if you
17 recognize Noel Brown.

18 A Yes, I do.

19 Q Could you please point to him and indicate a
20 article of clothing that he's wearing.

21 A Mr. Brown is wearing a white buttoned down shirt.

22 THE COURT: Indicating the defendant.

23 Q So getting back to the things that brought your
24 attention to Mr. Brown, can you describe -- you said a
25 blinking headlight.

Kempinski - Peo. Direct (Dunnan)

1 Can you describe what you mean by that?

2 A Sure. Blinking strobe light, a blinking light on
3 the vehicle other than its actual headlight, these lights
4 were located at different location were flashing lights much
5 like a police or emergency vehicle.

6 Q And you also mentioned an improper turn. Can you
7 just describe what you mean by that?

8 A An improper turn is anything other than the proper
9 lane at a safe time.

10 In this case Bowery has three lanes of southbound
11 travel. Lanes one, two and three from left to right. Lane
12 number one is a left turn lane only as indicated by a left
13 turn arrows accompanied by the word "only."

14 These arrows are painted on the ground and the
15 word "only" approximately 10 to 20 feet north of the
16 northern crosswalk. =====

17 This separated lane number one. It's separated on
18 its right side from lane number two, the middle lane by a
19 solid white line. That solid line white line is the line
20 marking to separate the two lanes.

21 Lane number two is indicated the southbound lane
22 only by arrows pointing straight ahead accompanied by the
23 word "only" at 10 and 20 feet north of northern crosswalk.

24 Lane number two is for southbound travel only.
25 Once entering the intersection from lane number two you must

Kempinski - Peo. Direct (Dunnan)

1 go straight.

2 At this moment motorcycle entered from lane number
3 two and effected a left turn going eastbound onto Delancey
4 Street at the same time as another vehicle was effecting a
5 left turn from lane number one.

6 As this vehicle came towards our location I can
7 see the blinking lights and the motorcycle was riding
8 between cars.

9 Q And by riding in between cars can you just
10 describe what you mean?

11 A Surely. On Delancey Street four lanes of travel,
12 lanes one, two, three and four.

13 My vehicle safety checkpoint having lanes three
14 and four occupied, left lane one and two open.

15 The motorcycle riding between cars, it was between
16 both passenger and driver's side of vehicles all ready
17 occupying those lanes.

18 As the motorcycle proceeded eastbound on Delancey
19 Street that's where he was coming towards me between rows of
20 vehicles.

21 Most people know when you're driving down the
22 street and a motorcycle gets between you, some of us get
23 jealous, some of us get upset, some of us just roll our eyes
24 and just keep driving.

25 In this case the motorcycle was coming towards me

Kempinski - Peo. Direct (Dunnan)

1 at that location where I stepped in front of him. Actually
2 I believe we had lane three blocked as well. Lane three was
3 opened so three lanes of travel were open, one, two and
4 three and we taking over an extremely wide fourth lane.

5 Q Before we get to when you stopped the defendant,
6 what direction is Delancey going in eastbound?

7 A Delancey Street is eastbound, it's going towards
8 the bottom of the map. Where the circle is on the map is
9 the eastbound lanes.

10 Q Like in real life what's -- if you continue east
11 on Delancey what do you hit?

12 A Heading towards the Williamsburg Bridge. It would
13 be way pass the end of the map.

14 Q Now, when you stopped the defendant what did you
15 do?

16 A I pulled the motorist into the traffic safety at
17 checkpoint where I informed the motorist of the violations I
18 observed.

19 Q Were those violations the three that you just
20 mentioned?

21 A Yes.

22 Q And after you informed him of the violations, what
23 did you do next?

24 A I requested his driver's license.

25 Q And what driver's license did you receive?

Kempinski - Peo. Direct (Dunnan)

1 A I received Mr. Brown's driver's license issued by
2 the State of Florida and it was a Class A license,
3 commercial driving license.

4 Q When you got Mr. Brown's license, what did you do
5 next?

6 A I went back to my police vehicle and conducted a
7 validity check of his driver's license.

8 Q Can you briefly describe for the jury what you
9 mean by the checks that you ran?

10 A Utilizing the Department of Motor Vehicle's
11 computer we take a driver's license either by name or
12 number, identify if the motorist has privilege to drive in
13 the state, meaning New York State. Can be from any other
14 state. You can have a license from any other state of the
15 fifty states but once you're in New York you're subject to
16 New York driving laws.

17 New York driving laws mean that you have to have
18 the ability to be cross-honored, so if you have a New Jersey
19 driver's license, you're driving in New York and have no
20 prior violations in New York, your license is valid as long
21 as you maintain the New Jersey valid driver's license.

22 Q And what information did you put into the system
23 to run Mr. Brown, the defendant's information?

24 A His name and date of birth.

25 Q And when you ran that information what if anything

Kempinski - Peo. Direct (Dunnan)

1 did you discover?

2 A His license was suspended in the State of New
3 York.

4 Q So what does that mean to you?

5 A His privilege for driving is not honored in New
6 York State.

7 Q Now, when you pulled the defendant over did you
8 make any observation about what kind of motorcycle he was
9 driving?

10 A Yes, I do.

11 Q Can you just describe what kind of motorcycle it
12 was for the jury?

13 A It was a sport bike. I believe it was a Hayabusa
14 model.

15 Basically you have three types of motorcycles; off
16 road which have the knobby tires, usually stand very high,
17 a cruiser which rides very low like a Harley Davidson. In
18 this case the Hayabusa rides more like a sport bike. Much
19 more streamlined. The front of the bike looks more
20 aerodynamic. The whole bike actually looks more
21 aerodynamic.

22 Q What's your familiarity with motorcycles?

23 A I have a motorcycle license. I have ridden
24 motorcycles before, I've worked on motorcycles.

25 Q Now, when you stopped the defendant did you

Kempinski - PEO. Direct (Dunnan)

1 observe anyone else on the motorcycle?

2 A Yes, I did.

3 Q Who did you observe?

4 A A passenger, a female passenger.

5 Q Did you ever get that female passenger's name?

6 A No, I didn't.

7 Q Now, after you ran the defendant's information
8 through the system what if anything happened next?

9 A We placed Mr. Brown under arrest for operating a
10 motor vehicle with a suspended license.

11 Q When you say we, who was the arresting officer?

12 A Officer Kim Li.

13 Q And so can you just describe what it was that he
14 did?

15 A Officer Li then placed Mr. Brown into handcuffs
16 and transported him back to the 5th Precinct.

17 *SA/AMX* Q What if anything did you do at that time?

18 A I remained at the scene, continued with the safety
19 checkpoint.

20 Q Where was the defendant's motorcycle?

21 A At the safety checkpoint with me.

22 Q Were you in constant custody of the motorcycle?

23 A Yes, I was.

24 Q And did there come a time when you left the scene
25 of the checkpoint?

Kempinski - Peo. Direct (Dunnan)

1 A Yes, I did.

2 Q Can you just describe what you did?

3 A I actually road the motorcycle back to the 5th
4 Precinct.

5 Q Why was it you that drove the motorcycle back?

6 A I have a motorcycle license.

7 Q Now, when you rode the motorcycle back to the
8 precinct what happened next?

9 A I parked the motorcycle in front of the precinct
10 and then began taking an inventory of the motorcycle.

11 Q Now, can you describe what the 5th Precinct looks
12 like?

13 A The 5th Precinct was built in 1881. It's probably
14 still the oldest functioning police building as a police
15 precinct.

16 It is basically a front building. There's one
17 entrance, one exit. There is no parking lot. It's in the
18 middle of the street.

19 It's historic, it's over a hundred years old and
20 it's on street.

21 Q When you got back to the precinct and you said --
22 where was Officer Li when you got back to the precinct?

23 A He was in the cells in the arrest processing room.

24 Q And what were you doing back there?

25 A I was taking inventory of the motorcycle and

Kempinski - Peo. Direct (Dunnan)

1 placing it into a voucher.

2 Q Did anyone at any time during the arrest
3 processing come to pick up the defendant's bicycle?

4 A No.

5 Q So when no one is available to pick up a bicycle
6 what's NYPD procedure?

7 A We actually invoice the motorcycle taking stock of
8 all its parts and ability to function and place it into
9 safekeeping.

10 Q What is the purpose of that?

11 A To protect it, to protect both the motorcycle and
12 officers. So we actually take the motorcycle and place it,
13 documenting all the parts and everything that's with it
14 that's fully functional so in this way it also doesn't get
15 stolen.

16 Q And when you were in the process of inventorying
17 the motorcycle were you constantly aware of where it was and
18 who was around it?

19 A Yes, I was.

20 Q Can you describe what you did while you were doing
21 this inventory search?

22 A I actually go around the motorcycle, I disabled it
23 and make sure nobody can just run up, start the engine and
24 take off on the motorcycle. I disconnect the battery
25 removing any essential connections.

Kempinski - Peo. Direct (Dunnan)

1 I also take stock of all the parts that are with
2 the motorcycle, some that are both standard and some that
3 are after market features, meaning they're bought and then
4 put on after the bike is brought home or removed from the
5 dealer.

6 Q At this time what were the lighting conditions
7 like?

8 A It was dark.

9 Q Were you using a flashlight?

10 A Yes, I was.

11 Q And what if anything did you discover while
12 searching the vehicle?

13 A I discovered a gun case located underneath the
14 rear passenger seat of the motorcycle directly above the
15 rear tire.

16 Q And how did it come to your attention? —

17 A I was actually -- a gentleman passing by was
18 trying to help me figure out how to get the rear passenger
19 seat off. The rear passenger seat has a small compartment
20 in it. Sometimes people put documents in there, valuables.
21 We have to remove that to take anything out that's in there.
22 Once we remove that the gentleman that was helping me trying
23 to figure out how to remove the seat said, oh, there's a
24 tool kit under here. My response was don't touch it. Soon
25 as I looked at it there's a logo on it for Smith and Wesson.

Kempinski - Peo. Direct (Dunnan)

1 Once I saw the logo I asked the gentleman to step
2 away and began taking inventory of what was inside the case.

3 Q Were you watching this passerby the whole time?

4 A Yes, I was.

5 Q Did you ever get the passerby's information?

6 A No, I did not.

7 Q From what you can tell did that passerby touch
8 what he thought was a tool kit?

9 A No, he did not.

10 Q So after you noticed the Smith and Wesson logo can
11 you just describe I guess for the jury what Smith and Wesson
12 is?

13 A Smith and Wesson is a firearms company. It makes
14 several items including knives, handcuffs and guns. Their
15 logo is almost everywhere.

16 Q After you noticed that logo what is the next thing
17 you did?

18 A I unzipped the gun case and I discovered a firearm
19 inside of the gun case.

20 Q What was the firearm that you discovered inside of
21 the gun case?

22 A It was a small framed five shot .38 caliber
23 revolver.

24 Q And was it loaded?

25 A Yes, it was.

Kempinski - Peo. Direct (Dunnan)

1 Q How was it loaded?

2 A It was loaded with five rounds in the cylinder.

3 Q And after you discovered it what was the next
4 thing that you did?

5 A I informed my supervisor.

6 Q And after that what did you do?

7 A I made it safe.

8 Q Can you describe for the jury what you mean to
9 make a firearm safe?

10 A Making a firearm safe entails removing the bullets
11 and making sure that the gun is inoperable while you're in
12 possession of it.

13 Q While you were making the gun safe did that mean
14 you had to touch it?

15 A Yes, I did.

16 Q Were you wearing gloves when you touched it?

17 A No, I was not.

18 MS. DUNNAN: Now, if I can just have the
19 court officer help me out and move the map to the side.
20 We are going to use the television.

21 Q Going back to the motorcycle, more generally I'd
22 like to show you some photographs that I marked as People's
23 exhibits 6-A through 6D for identification.

24 Can you look at those and when you're done looking
25 at those just look up at me.

Kempinski - Peo. Direct (Dunnan)

1 Do you recognize those photographs?

2 A Yes, I do.

3 Q How do you recognize them?

4 A I took two of them and the other ones are pictures
5 of the motorcycle that I vouchered.

6 Q Are they fair accurate as to how the defendant's
7 motorcycle appeared on September 6, 2015 and thereafter?

8 A Yes, it is.

9 MS. DUNNAN: I'm going to submit People's 6A
10 through 6G into evidence.

11 THE COURT: Any objection?

12 MR. MC GEVNA: No.

13 MS. DUNNAN: Can I have those photographs
14 back so we can use them on the monitor.

15 Q Starting with 6A, I apologize if there's a little
16 bit of a glare here, can you just briefly describe what
17 we're looking at and where this is?

18 A This is in front of the 5th Precinct. You can see
19 the railing there. That's the 5th Precinct, front of the
20 building.

21 This right here is the motorcycle that I vouchered
22 and this is of course the street where it's legally parked.

23 Q So this is 6B. This is just another angle of the
24 motorcycle.

25 A Yes, it is.

Kempinski - Peo. Direct (Dunnan)

1 Q Are you familiar with the Hayabusa motorcycle?

2 A I am a little.

3 Q And can you just briefly describe what if anything
4 you know about it.

5 A This is a 2008 Hayabusa. When this bike was
6 produced and sent out, it was sent to retail, it was the
7 fastest production bike at the time without modification.
8 It had speeds of over 200 miles per hour.

9 Q So now I'm going to go to People's Exhibit 6C.

10 Now, in looking at the -- when you were
11 inventorying going through the motorcycle on September 6,
12 2015, what if any modifications or other things did you
13 notice about the motorcycle?

14 A This motorcycle has twin exhausts, tailpipes that
15 on this bike are after market. They are actually wrapped in
16 carbon fiber. They're straight pipes. They offer very
17 little muffling ability.

18 In addition, this motorcycle has a camera on the
19 rear end of it. If you -- can I point real quick?

20 Q Yes, if you want to step down and point.

21 A There's a small wind screen on the front of the
22 bike. Wind screen is this area here. In this wind screen
23 here these are actually bullet casings that were attached.
24 inside. There were small like bullet casings that were
25 actually flipped over like that. You shoot a bullet, the

Kempinski - Peo. Direct (Dunnan)

1 casing's behind. I believe that's this area here. So those
2 are on market. These tailpipes are after market.

3 There is no red rear reflector here. Motorcycles
4 when they're sold have to have a rear red reflector towards
5 the back end of the bike.

6 This is a camera. The monitor is up here. This
7 motorcycle I don't recall is equipped with reverse or not
8 but most motorcycles do not have a reverse.

9 Q You can have a seat. Thank you.

10 What if anything did you notice about the license
11 plate for this motorcycle?

12 A The license plate is displayed here. You can
13 actually see it here. It's supposed to be in the rear by
14 the rear tire.

15 Q And when the license plate is affixed there
16 instead of the rear, is it able to be picked up by license
17 plate readers?

18 A No.

19 Q Why not?

20 A Well, what you see here, this is a brake pedal.
21 The foot peg would be here. The rider's foot can be
22 blocking the license plate. Also most cameras are pointed
23 into the front or to the rear of the vehicle as they're
24 passing by.

25 Q Can you just briefly describe what plate readers

Kempinski - Peo. Direct (Dunnan)

1 are for the jury.

2 A License plate readers are cameras that are either
3 on police vehicles or on light poles around New York City.
4 They're designed -- or at toll plazas. As you're passing
5 through a toll plaza the license plate reader will read your
6 license plate automatically. This way you don't have to
7 stop, you can just go straight through.

8 Q During the arrest processing of the defendant did
9 you ever locate a second Florida license plate?

10 A Yes, I did.

11 Q Can you just briefly describe or describe the
12 circumstances that led to you coming across a second Florida
13 license plate.

14 A When questioning Mr. Brown about the motorcycle he
15 actually handed us a second license plate. This license
16 plate was expired. He actually had the valid license plate
17 in a bag.

18 Q So I'd just like to show you what I marked as
19 People's Exhibit Number 5 for identification.

20 (Handing).

21 Do you recognize that?

22 A Yes, I do.

23 Q How do you recognize it?

24 A This was the license plate that Mr. Brown gave us.

25 Q How do you know it's the license plate he gave

Kempinski - Peo. Direct (Dunnan)

1 you?

2 A From the voucher that we placed it on that evening
3 as well as I did a check and this was the valid license
4 plate for the motorcycle on the date September 6, 2015.

5 MS. DUNNAN: So I'm going to submit People's
6 Number 5 into evidence.

7 THE COURT: Any objection?

8 MR. MC GEVNA: No.

9 THE COURT: People's 5 is admitted without
10 objection.

11 Q I just want you to hold that up for the jury.
12 What is the number on this license?

13 A 5617RG.

14 (Next page, please.)

15

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25

1 DIRECT EXAMINATION

2 BY MS. DUNNAN:

3 Q And it's kind of hard to tell from the photograph
4 unless I hand it to you, but I would like to hand you up
5 People's Exhibit 6C. And could you please read the number of
6 the license that was actually affixed to the defendant's
7 motorcycle?

8 A 65580J.

9 Q So now, going back to the motorcycle, you described
10 that during the search you recovered or observed a gun case and
11 where it was on the bicycle. I am going to put up People's
12 Exhibit 6D.

13 Can you just describe or actually if you wouldn't mind
14 stepping down and kind of showing the jury where it was that you
15 recovered this gun case?

16 A Sure. This gun case was under here. It's above the
17 tire here. As you could see, this is actually a fender that's
18 cracked on top of the fire.

19 Directly above, under the seat pan here, this would be
20 the passenger seat. Under here is where the gun case was
21 actually placed and held into place.

22 Q And if you don't mind staying right there, I got
23 another one like this.

24 A Sure.

25 Q People's Exhibit 6E, is that just a closer view of

C. Edwards

1 that same area?

2 A Yes, it is.

3 Q Now, going to the People's Exhibit 6F, is this, can
4 you describe what the different things are in this photograph so
5 we could just kind of orient ourselves?

6 A Surely. This is actually my arm. This is the tire.
7 This is the gun case, the zipper pull, P-U-L-L, right here. And
8 this is the firearm that handles the firearm here.

9 Q And how were you able to determine how -- I am going
10 on to show you People's Exhibit 4 for identification.

11 A Do you recognize that?

12 A Yes, I do.

13 Q What do you recognize it to be?

14 A This is a Smith and Wesson gun case that I, that I
15 removed from the Hyabusa.

16 Q And how do you know it's that gun case?

17 A I placed it into this plastic security envelope.

18 Q And what was the number that you invoiced it under?

19 A The invoice number is 1000694094.

20 Q And were you, in fact, the officer who vouchered this?

21 A Yes, I was.

22 Q And is that in the same condition as it was on
23 September 6 of 2015?

24 A Yes.

25 Q So, I am going to submit People's Exhibit No. 4 into

C. Edwards

1 evidence.

2 THE COURT: Any objection?

3 MR. McGEVNA: No.

4 THE COURT: People's 4 is admitted without objection.

5 Q I am just going to ask if the officer will let me open
6 this case.

7 Q So, if you could just hold People's Exhibit 4 up for
8 the jury.

9 Can you just point out where the Smith and Wesson logo
10 is?

11 A Right there.

12 Q Can you just -- briefly, for the record, the witness
13 is pointing to embroidery on the gun case.

14 Q Now, once you removed the gun case and the gun from
15 underneath the motorcycle, were you able to determine how it was
16 affixed there in the first place?

17 A Yes, I was.

18 Q Could you please describe that for the jury?

19 A It was actually attached via zip ties, which are still
20 here. It was zip tied through the back of the motorcycle.
21 Someone actually cut through the motorcycle and then cut through
22 the case to put these zip ties. They actually put it under,
23 almost like this, so that the zipper once opened the gun handle
24 would be here.

25 Q Inside of the gun case is there, is there a strap to

C. Edwards

1 hold the gun in place?

2 A Yes, there is.

3 Q And when you say that in order to affix the way that
4 you saw it, you would have to cut through the motorcycle. Could
5 you just describe that in a little more detail?

6 A Yes, over the rear of the tire, underneath the seat
7 pan, not part of the fender. This is actually on the body of
8 the motorcycle. There's a small plastic portion. This would be
9 actually in front of that red break light, directly between the
10 two, the turn signals here.

11 And it would be underneath. So it's a very thin layer
12 of plastic, just to prevent mud from collecting underneath or
13 road dirt that was cut through. And this was zip tied to the
14 plastic underneath.

15 Q Now, going to the firearm that was recovered, I am
16 going to show you, I am going to project what has been submitted
17 into evidence as People's Exhibit 6G.

18 Now, is that the firearm that you previously
19 described?

20 A Yes.

21 Q And when you first recovered the firearm, were you
22 able to determine what the serial number of it was?

23 A Yes, I was.

24 Q Do you recall what the serial number of it was?

25 A Yes.

C. Edwards

1 Q Is there anything that would refresh your
2 recollection?

3 A A copy on the voucher, the gun or either one of those
4 two things.

5 Q And where is the serial number located inside of, on
6 this firearm?

7 A Once you open the firearm, meaning once you remove --
8 real quickly, if I may, this portion here is called the slider.

9 Once you open the gun, meaning open the cylinder, it
10 actually pulls out. Directly on the arm, which would be in this
11 area here, is, the arm holds the cylinder in place. Behind that
12 arm is the serial number.

13 Q And so just looking at the piece of paper in front of
14 you, if you could just look for a moment and see if that
15 refreshes your recollection as to the serial number that was on
16 this firearm?

17 A Yes, it does. =

18 Q And so what was the serial number?

19 A CWF8098BG38.

20 Q Now, I would like to show you what I previously marked
21 as 6H for identification.

22 In the photograph that we are looking at right now,
23 though, that's up there, is the firearm still loaded?

24 A No.

25 Q So looking at 6H in front of you, do you recognize

C. Edwards

1 A The cartridges themselves.

2 Q When you were initially voucherizing this firearm, did
3 you make any marks on the cartridges?

4 A Yes.

5 Q What were the marks that you made on the cartridge?

6 A I numbered them.

7 Q I guess, why did you number them?

8 A So I would know what slider they would be in. It
9 would be from top clockwise.

10 Q So the markings that you made exactly -- I am sorry,
11 you said they were numbers.

12 What do the numbers correspond, what do the numbers
13 correspond to?

14 A A portion of the slider which each chamber would be.
15 So every chamber holds one bullet in the revolver in a case.
16 All five chambers were filled with these bullets. And I
17 numbered them. You could actually see my markings there and
18 black sharpie on the bottom of the last two, sharpie, permanent
19 marker.

20 Q So I would just like to show you what has previously
21 been marked as People's Exhibit No. 3 for identification.

22 Do you recognize People's Exhibit 3?

23 A Yes, I do.

24 Q What do you recognize it to be?

25 A These are the cartridges from the firearm.

C. Edwards

1 Q And how do you recognize those to be the cartridges
2 from the firearm?

3 A Number one and two are here and here. That's my
4 markings there, and I made that with the indelible marker.

5 Q Were you able to see your markings on any of the other
6 cartridges in the package?

7 A It's kind of hard with the glair. I can't see on that
8 one. No. 4 is right here, so the top one there.

9 Q And were those vouchered under a specific number?

10 A Yes, they were.

11 Q What number was that?

12 A I don't have it in front of me.

13 Q And?

14 A They are initially on this voucher as well.

15 Q What, if any, changes were made to those items from
16 when you initially saw them?

17 A One of the rounds, two of the rounds were fired.

18 Q But otherwise, based on the number that you put on
19 them, you recognize them as the cartridge you recovered from the
20 defendant's gun?

21 A Yes, I do.

22 Q So, I am going to submit People's Exhibit No. 3 into
23 evidence.

24 THE COURT: Any objection?

25 MR. McGEVNA: No.

1 THE COURT: People's 3 is admitted without objection.

2 Q And just looking at the packaging, do you see on the
3 packaging what the invoice number is?

4 A Yes, I do.

5 Q What is the invoice number?

6 A 1000694166.

7 Q I am also going to briefly show you People's Exhibit
8 No. 2 for identification.

9 Do you recognize People's Exhibit No. 2?

10 A Yes, I do.

11 Q And how do you recognize it?

12 A This was the firearm that I recovered.

13 Q How do you recognize it?

14 A Exactly the same frame, same type of firearm. If I
15 could open the slider.

16 Q If you're able to just carefully open the cylinder.

17 Q Could you check and look at the serial number on People's
18 Exhibit 2.

19 A CWF8098BG38.

20 Q And is that the same serial number as what you
21 recovered from the defendant's motorcycle, the revolver that you
22 recovered from the defendant's motorcycle?

23 A Yes, it is.

24 MS. DUNNAN: I am going to submit People No. 2 into
25 evidence, subject to connection.

C. Edwards

1 THE COURT: Any objection?

2 MR. McGEVNA: No.

3 THE COURT: People's 2 is admitted subject to
4 connection.

5 Q Now, what you're holding -- you could put the slider
6 back in.

7 Just what you're holding in your hand is a voucher
8 bag?

9 A Correct.

10 Q Can you describe for the jury what vouchering is?

11 A Vouchering is taking items, whether evidence or
12 safekeeping property, found property, into possession by the
13 police department. Once that's done, we assign it to a plastic
14 bag, which are all three of these.

15 While they are in these bags, we also document the
16 condition, what they are, sorry, on a property clerk invoice.

17 Q And what is, just for the purpose of vouchering
18 something?

19 A Identifying it to make sure we could identify it later
20 to both return it to the person or used in Court. It's also to
21 make sure that it's safe and preserved.

22 Q So you could.

23 Now, at any point during arrest processing or
24 searching the defendant's motorcycle, did you ever come across a
25 license to carry a firearm?

C. Edwards

1 A No, I did not.

2 Q So just briefly, you previously said in the back of
3 the motorcycle, let me show you People's Exhibit No. 6D, there
4 was a camera affixed to the back of the motorcycle?

5 A Correct.

6 Q And have you ever seen cameras mounted onto the back
7 of a motorcycle before?

8 A Go Pro, yes. In this fashion, no.

9 MR. McGEVNA: Sorry, I didn't understand.

10 THE WITNESS: In Go Pro, small mountable cameras, I
11 seen them attached to different motorcycles. I used to
12 watch the bicycle race in France or, you know, the tour of
13 France. And you would see the motorcycle with very large
14 cameras attached to it, regular motion picture cameras I
15 seen, but I never seen this before today, the Fifth of
16 September.

17 MS. DUNNAN: I have no further questions for this
18 witness.

19 THE COURT: All right. Ladies and gentlemen, why
20 don't we take a five minute break, so you could stretch
21 your legs; use the bathroom. And then we will begin the
22 cross examination.

23 THE COURT: Officer, do you need to use the bathroom?
24 You could sit here or step out.

25 MS. DUNNAN: Judge, if I may, can I grab all the

C. Edwards

1 exhibits?

2 THE COURT: Leave them there. As soon as the officer
3 comes back, we will take them.

4 (Recess.)

5 COURT OFFICER: All rise. As the jurors enter.

6 THE CLERK: Please be seated.

7 Case on trial continued. All parties are present.

8 The defendant is present.

9 Do both parties stipulate all jurors are present and
10 properly seated?

11 MS. DUNNAN: Yes.

12 MR. McGEVNA: Yes.

13 THE COURT: Okay. Mr. McGevna.

14 MR. McGEVNA: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. McGEVNA:

17 Q Good afternoon, Officer Kempinski.

18 A Good afternoon, sir.

19 Q I first have to sympathize with you trying to open
20 heavy plastic with an injured arm.

21 Let's move forward.

22 You testified that you were on a surveillance, a unit
23 examining every 5th, 7th or 3rd car?

24 A It was a safety check.

25 Q A safety check.

C. Edwards

1 A Yes, sir.

2 Q And in the course of that safety check, you said there
3 came a time when you saw Mr. Brown on a motorcycle?

4 A Correct, sir.

5 Q Can we just go back.

6 This was the night before the West Indian Day Parade,
7 is that correct?

8 A Labor Day weekend, yes.

9 Q And as with, I guess, every parade, the night before
10 the parade, the night, the day of the parade, the night after
11 the parade, would it be fair to say that the police presence is
12 probably greater than it is on normal days?

13 A Yes, sir.

14 Q And other than the group that you described, on direct
15 examination, assigned to the safety check, did you see any other
16 police officers out of the ordinary in terms of the number?

17 A No.

18 Q You didn't notice any.

19 Did you see any, did you see any police officers on
20 Bowery, North of Delancey?

21 A No, I did not.

22 Q Now, what was the traffic like at this particular
23 time?

24 A Moderate to heavy.

25 Q When you say, moderate to heavy, could you be a little

C. Edwards

1 more specific?

2 A Heavy traffic would be bumper to bumper slow moving.
3 Moderate would be with the flow of the traffic, light smaller
4 brakes.

5 Q So there was time when it was bumper to bumper and
6 times it wasn't?

7 A When the light was red, it was bumper to bumper.

8 Q Bumper to bumper when the light was red, backed up?

9 A No, it wasn't backed up.

10 Q In other words, it never backed up from Delancey into
11 Bowery?

12 A I don't recall, sir.

13 Q You don't recall.

14 Now, when was the first time you saw the motorcycle
15 that Mr. Brown was driving?

16 A Southbound on the Bowery, entering the intersection.

17 Q So this was even before ~~there was any turn?~~

18 A Correct.

19 Q And what about that motorcycle drew your attention?

20 A Flashing lights.

21 Q And that was unusual?

22 A Yes, sir.

23 Q So someone who is driving a motorcycle with flashing
24 lights, probably wasn't trying to hide himself?

25 A No.

1 Q Okay. And you said that when the turn was made, you
2 stopped Mr. Brown and his passenger?

3 A Yes, sir.

4 Q And was that difficult or did they cooperate?

5 A Very cooperated.

6 Q And did they appear to you by their appearance in
7 dress to be about the, about to celebrate or celebrating the --

8 MS. DUNNAN: Objection.

9 THE COURT: Why don't you ask him how they were
10 dressed.

11 Q How were they dressed?

12 A I don't recall. Appropriate motorcycle attire.

13 Q And when you stopped Mr. Brown, did you tell him why
14 you were stopping him?

15 A Yes, sir.

16 Q And, if you recall, what did you say to him in terms
17 of stopping him? ____

18 A I explained he had the flashing lights on his
19 motorcycle. He was riding between rows of vehicles and improper
20 turn.

21 Q Did you give him any tickets for those?

22 A I did not.

23 Q You didn't give any tickets at all?

24 A ... No...

25 Q Would it have been your job to give tickets for those

C. Edwards

1 particular violations?

2 A Yes, sir.

3 Q But you didn't give tickets?

4 A Not that I recall, no, sir.

5 Q And do you recall in the course of your conversation
6 with, with Mr. Brown, asking him questions and getting an answer
7 from him, this particular answer.

8 I have the strobes on to let other people know so I
9 don't get hit by cars.

10 You recall him giving that explanation for having the
11 strobe lights?

12 A I don't recall, no.

13 Q You recall him saying it was a show bike?

14 A Yes, sir.

15 Q You do recall that. And did you recall it when he
16 said he just got it out of storage?

17 A Yes, sir.

18 Q While we are on it, you indicated that some time later
19 on, if I may move ahead, briefly, Mr. Brown produced an updated
20 license?

21 A Correct.

22 Q From the State of Florida?

23 A Correct.

24 Q If you know, did somebody have to be in Florida to get
25 an updated license like that?

1 MS. DUNNAN: Objection.

2 THE COURT: Well, I will allow it. If you know.

3 THE WITNESS: No, I don't know.

4 Q You don't know. So, as far as you know, do you know
5 whether it could be done by mail?

6 A In the State of Florida, no, I don't know.

7 Q I understand New York. What would be the rule of the
8 State of New York?

9 A Renewal of license plates can be done on-line and the
10 person at the Department of Motor Vehicles.

11 Q To get a different license plate, I am talking about?

12 A You would have to surrender your plates or they would
13 mail you or you would pick them them up at the Department of
14 Motor Vehicles.

15 Q So, basically, there's a, you have to act beyond
16 simply using the mail, you have to surrender something?

17 A Not if it was a temporary plate situation.

18 Q How about a permanent plate?

19 A No, actually I had a set of license plates that they
20 told us, just describe them and throw them away. That was back
21 when they switched to Liberty Place, the Statute of Liberty on
22 the front and we had to switch the entire state plates.

23 Q But he had just stated he had just gotten the vehicle
24 out of storage?

25 A Yes, sir.

1 Q And when you, when you tried to ascertain whether his
2 license was valid or suspended, what did you find?

3 A His license was suspended in the State of New York.

4 Q And what did you do next?

5 A We placed him under arrest.

6 Q Was there any discussion when you placed him under
7 arrest as to the -- the vehicle being taken by another person?

8 MS. DUNNAN: Objection as to discussion.

9 THE COURT: Well, yes, Mr. McGevna, what do you mean?

10 Q Did you indicate to Mr. Brown, did you indicate to Mr.
11 Brown that if he had someone who could pick up the vehicle with
12 a valid license, that he would allow, that you would allow the
13 vehicle to be released? Do you recall having that conversation?

14 A I don't recall that.

15 Q Is it possible you didn't have that conversation?

16 A No, sir. We would have had that conversation at one
17 point: _____

18 Q But you don't remember that conversation?

19 A No.

20 Q Do you recall whether you asked the passenger if she,
21 in fact, had a motorcycle license?

22 A No, I did not.

23 Q You didn't ask her?

24 A No.

25 Q Now, you said that there came a point in time when Mr.

C. Edwards

1 Brown was taken into custody by another officer.

2 Do you recall who it was?

3 A Do I recall?

4 Q Do you recall who it was?

5 A Officer Kim Li.

6 Q And where was the passenger at this point?

7 A On the sidewalk.

8 Q And what, if anything, happened with her?

9 A She was taken back to the precinct or walked back to
10 the precinct at some time.

11 Q You're not sure whether she walked or was taken back
12 by RMP?

13 A I don't recall, sir.

14 *Sobat* Q And you said that you remained on the check point with
15 the vehicle?

16 A Yes, sir.

17 Q Do you recall how long you were there with the
18 vehicle?

19 A No, I don't.

20 Q Did any time, while you were there before you left the
21 check point, did you drive the vehicle?

22 A Could you restate.

23 Q At any time before you left the check point, did you
24 drive the motorcycle?

25 A No, sir.

C. Edwards

1 Q Did you see it, did you have a chance to examine it?

2 A I didn't examine it thoroughly, but I kept my eyes on
3 it while at the check point.

4 Q So, as far as you know, did anyone approach the cycle
5 and try to drive away on it?

6 A No.

7 Q Okay. So it was kept safely in your possession?

8 A Correct.

9 Q When you finally left the check point, how long after
10 the arrest of Mr. Brown was that?

11 A I don't remember.

12 Q But there did come a time, excuse me, I am sorry, I am
13 clumsy here.

14 There did come a time when you left the check point?

15 A Yes.

16 Q And you left by way of the motorcycle?

17 A Yes, sir.

18 Q How did you proceed on the motorcycle to get to the
19 Fifth Precinct on Elizabeth Street?

20 A I effected a right turn on Chrystie Street, headed
21 southbound for approximately three blocks. Made a right turn on
22 Hester Street, left turn onto the Bowery. Right turn onto Canal
23 Street. And a left turn going the wrong way onto Elizabeth
24 Street.

25 Q When you got on the motorcycle, did you notice

C. Edwards

1 anything unusual about the rear fender?

2 A Yes.

3 Q What was that?

4 A The rear reflector was missing.

5 Q Other than that?

6 A Yes, there was a camera there and there was no license
7 plate where it should have been.

8 Q Did you notice any protrusions in any way?

9 A No.

10 Q Okay. And you drove the vehicle for those blocks that
11 you described.

12 Was there anything unusual about the way it drove?

13 A I have no experience Hayabusa, so I wouldn't know.
14 The first time riding it.

15 Q It seem smooth enough?

16 A I was driving slowly, sir. I mean, I didn't have the
17 helmet on. — — —

18 Q So you drove it without a helmet?

19 A Correct, sir.

20 Q Better to drive one that can go 200 miles slowly when
21 you don't have the helmet?

22 A Any motorcycle.

23 Q Now, when you got to the precinct and you parked the
24 vehicle, did you go into the precinct?

25 A Yes, sir.

1 Q And at that point in time, was there any attempt made
2 to inform Mr. Brown that someone, if available, could pick up
3 the motorcycle?

4 A I don't know.

5 Q You didn't do it yourself then?

6 A No.

7 Q So you never told him somebody is available, if
8 somebody is available the motorcycle can be picked up, I am
9 having trouble with the motorcycle?

10 A I don't remember, sir.

11 Q You don't remember?

12 A No.

13 Q Now, was it at the precinct when Mr. Brown told you he
14 had a valid plate, a valid license plate from the State of
15 Florida?

16 A No.

17 Q When did he tell you that?

18 A At the check point.

19 Q At the check point.

20 So he told you basically when you were discussing
21 things at the check point?

22 A Correct.

23 Q And did he produce that plate for you?

24 A Yes, he did.

25 Q And the other plate, I take it, was out of date?

C. Edwards

1 A I believe it was expired, yes.

2 Q Can you tell me how long it was expired?

3 A No, sir.

4 Q But he volunteered and showed you the valid plate?

5 A Yes, sir.

6 Q So in every way he was cooperative with you?

7 A Yes, sir.

8 Q Now, you described the inventory search that you
9 conducted, and you said that you were trying to take off the
10 bag. Was it the back or front seat?

11 A The back seat.

12 Q And you were having difficulty with it?

13 A Yes, sir.

14 Q And a passersby came by?

15 A Yes, sir.

16 Q And what happened then?

17 A We were looking at the motorcycle trying to find a
18 release or a bolt holding the seat cover in place. And he said,
19 look, there's a tool kit under here. I said, don't touch it.

20 Q So, he was the person who saw that tool kit?

21 A He said tool kit.

22 Q And how, did he look under the fender?

23 A Yes, sir.

24 Q So it was a tool kit, I take it; there was -- it was
25 not visible to him when he looked at it originally, before he

1 looked under the fender?

2 A - No.

3 MS. DUNNAN: Objection as to ask what another person
4 saw when they saw it.

5 MR. McGEVNA: Let me rephrase it.

6 Q Was it visible to you as you looked at the fender
7 without looking underneath it?

8 A No.

9 Q So this was something that would be hidden generally
10 from a driver unless he or she knew that it was in fact
11 underneath? In other words, the only way you could see it if
12 you looked underneath knowing it was there or at least to check?

13 A Yes, sir, it was concealed.

14 Q Now, when you recovered the gun, what, if anything,
15 did you do with it?

16 ~~STOP~~ A Made it safe.

17 Q And you described that. What happened after you made
18 it safe?

19 A I made sure that the supervisors were aware that I
20 recovered it, the arresting officer that I recover it, and I
21 kept it in my possession.

22 Q Now, is it normal for the New York City Police
23 Department to conduct certain tests with respect to weapons?

24 A Yes, sir.

25 Q And were those test, would those tests include an

C. Edwards

1 examination for fingerprints?

2 A Yes.

3 Q And would they include an examination of DNA?

4 A Yes, sir.

5 Q And if you know, were those examinations conducted
6 with respect to this weapon?

7 A Yes, they were.

8 Q And were any fingerprints found on the weapon that
9 belonged to Mr. Brown?

10 A I don't know, sir.

11 Q Were any DNA found on the weapon?

12 A I don't know, sir.

13 Q You don't know any of the rules from the test?

14 A No, sir.

15 Q But you do know test were conducted?

16 A Yes, sir.

17 Q And other than --

18 MR. McGEVNA: May I have just a moment, Judge.

19 THE COURT: Yes.

20 Q In reading the police reports, I saw a phrase that I
21 never heard before. It's dusted and fumed. What does fumed
22 mean?

23 A Fume means they place the item to be fingerprinted in,
24 I guess you could say, under either in a box or under a bag and
25 then they utilize -- I am not exactly sure what it is. I know

C. Edwards

1 it could be done with almost a crazy glue substance where they
2 place it, and it will actually develop prints on different
3 items.

4 Q And now that you told me what it is, thank you very
5 much.

6 Do you know if such a test was conducted with respect
7 to this case?

8 A Yes, sir.

9 Q And do you know, again, if there was any connection to
10 Mr. Brown?

11 A I don't know, sir, no.

12 Q Thank you very much.

13 THE COURT: Any redirect?

14 MS. DUNNAN: Nothing from the People, Judge.

15 THE COURT: Thank you, Officer Kempinski. Have a nice
16 day.

17 MR. McGEVNA: Judge, I am sorry, I have one further
18 question.

19 THE COURT: Very quick.

20 MR. McGEVNA: It will be quick.

21 CROSS-EXAMINATION

22 BY MR. McGEVNA:

23 Q This Smith and Wesson gun that you have identified, is
24 it a fairly common weapon?

25 MS. DUNNAN: Objection.

C. Edwards

1 THE COURT: With regard to what?

2 MR. McGEVNA: In terms of numbers?

3 THE COURT: You mean in terms of his experience?

4 MR. McGEVNA: In terms of his experience.

5 THE COURT: Have you seen that gun at all?

6 THE WITNESS: I only seen it in catalogs, actually to
7 recovering it.

8 Q Is it a weapon that is authorized for police use?

9 A No.

10 MR. McGEVNA: No further questions, Judge.

11 THE COURT: Any redirect as to that?

12 MS. DUNNAN: No, Judge.

13 THE COURT: Okay. Thank you, Officer. Have a nice
14 day.

15 (Whereupon, the witness exited the courtroom and
16 the following occurred.)

17 THE COURT: All right. Ladies and gentlemen, I told
18 you this morning I tried to get you out everyday between
19 4:30 and 5. So rather than start the next witness, I think
20 now is probably a good time to just break.

21 I am going to again ask you to come 9:45 sharp
22 tomorrow, so we could start a little sooner.

23 Three things, number one, please don't talk about the
24 case with anyone tonight...I know that temptation is a
25 little bit higher. You actually know things about this

C. Edwards

1 case.

2 Number two, please don't do any research.

3 And number three, have a wonderful evening.

4 I will see you all tomorrow.

5 COURT OFFICER: All rise. The jury is exiting.

6 (Whereupon, the jurors exited the courtroom and
7 the following occurred.)

8 THE COURT: You may be seated. Just so I have a
9 sense, People, who do you expect to call.

10 MS. DUNNAN: So tomorrow, I have Officer Li, whose the
11 arresting officer. I think he will be pretty brief. And
12 then I have Detective Brado from the firearms unit. And
13 then someone from the New York City Police Department
14 licensing division.

15 THE COURT: And then that's it?

16 MS. DUNNAN: And then that should be it.

17 THE COURT: Okay.

18 MS. DUNNAN: Based upon what you told me, you should
19 rest in the morning?

20 MS. DUNNAN: Yes.

21 THE COURT: And, Counsel, you will know for sure
22 tomorrow morning whether you are going to put on a case?

23 MR. McGEVNA: Yes.

24 THE COURT: So you will let us know then, if it
25 doesn't look like you will, you could at least sum up

C. Edwards

1 tomorrow afternoon.

2 I will probably give them the chance first thing in
3 the morning, depending on how long your summations are
4 going to be, okay.

5 MS. DUNNAN: Thank you, Judge.

6 THE COURT: See you tomorrow 9:45.

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