

APPENDIX

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APPENDIX A

**STATE OF NEW YORK
COURT OF APPEALS**

No. 63

THE PEOPLE &c.,

Respondent,

v.

PABLO PASTRANA,

Appellant.

Nov. 21, 2023

Mark W. Zeno, for appellant.
Nicole Neckles, for respondent.

Hon. Letitia James,
New York State Attorney General, intervenor.

TROUTMAN, J.:

In June of 2015, defendant was driving a vehicle that was stopped at a roadblock set up by police on a bridge leading from Manhattan into the Bronx on the same day as the annual Puerto Rican Day Parade. After officers smelled marijuana in the car, they conducted a search, during which they recovered a loaded firearm. In 2018, defendant was convicted, upon a jury verdict, of criminal possession of a weapon in the second degree, criminal possession of marijuana in the fifth degree, and unlawful possession of marijuana. The Appellate Division affirmed (205 AD3d 461 [1st Dept 2022]), and a Judge of this Court granted defendant leave to appeal (38 NY3d 1135 [2022]). We

reject defendant's contentions on this appeal as without merit or unpreserved.

I.

Defendant first contends that the People did not meet their burden at the suppression hearing to demonstrate the constitutional validity of the roadblock pursuant to which his vehicle was stopped. We conclude that the lower courts properly determined that the People met their burden.

At the suppression hearing, the People offered the testimony of a detective who was responsible for questioning the driver of vehicles that were stopped pursuant to the roadblock. That detective testified that he was assigned to conduct a vehicle checkpoint on the bridge in question, and that the purpose of the checkpoint was vehicle safety. To that end, the detective asked each driver he approached to produce their driver's license, insurance, and registration. The detective would also check for "improper inspections, equipment, [and] seat belts." The purpose of the roadblock was not specifically to check for drunk drivers, but the detective testified that if police found an intoxicated driver, they would take appropriate action. The checkpoint was conducted during daylight hours and marked by cones and two vans.

The detective further testified that the procedure for the checkpoint was to stop every third car that passed through. The detective was not responsible for counting cars and directing them to pull over, but he testified that defendant's car was pulled over pursuant to this established procedure. The detective asked defendant to roll down the windows in the vehicle, and when defendant complied, there was a strong odor of

marijuana coming from the vehicle. The detective testified that he observed marijuana in plain view in the car. The detective then commenced a search of the car, and after noticing a strong odor of marijuana near the glove box, he opened it, finding a larger quantity of marijuana and a loaded firearm. Defendant was then arrested.

The detective's testimony satisfied the People's burden to demonstrate a permissible primary programmatic purpose for the roadblock, that it was maintained "in accordance with a uniform procedure which afforded little discretion to operating personnel," and that the checkpoint was conducted with fair warning to motorists and with precautions regarding motorist safety (*People v Scott*, 63 NY2d 518, 526 [1984]; *see generally City of Indianapolis v Edmond*, 531 US 32 [2000]). That testimony established that the primary purpose of the checkpoint was roadway safety, not general crime control (*see Indianapolis*, 531 US at 44; *People v Jackson*, 99 NY2d 125, 131-132 [2002]; *Matter of Muhammad F.*, 94 NY2d 136, 145-146 [1999], *cert denied* 531 US 1044 [2000]). It further established that the checkpoint was maintained in accordance with a uniform procedure that gave little discretion to operating personnel, i.e., every third car was stopped (*see Scott*, 63 NY2d at 526). Finally, the detective's testimony established that the roadblock was conducted with adequate precautions that gave fair warning to motorists (*cf. Muhammad F.*, 94 NY2d at 147).

Defendant's challenge to the validity of the checkpoint is, in large part, essentially a challenge to the credibility of the detective's testimony. But this Court has no power to revisit the factual finding of the sup-

pression court that the detective's testimony was credible (*see People v Concepcion*, 38 NY2d 211, 213 [1975]). Moreover, to the extent defendant contends that the decision to set up a roadblock was discriminatory, that contention is not supported by the record. The roadblock was set up on the day of the National Puerto Rican Day Parade, and the record demonstrates that the post-parade traffic was particularly heavy. Thus, the reasonable inference to be drawn from the detective's testimony is that the roadway safety checkpoint was chosen for that date and location because of the large volume of traffic that would be crossing the bridge.

The People's evidentiary showing as to the authorization for the roadblock certainly could have been more robust (*see e.g. Scott*, 63 NY2d at 523 [written documentation regarding authorization for roadblock]; *Jackson*, 99 NY2d at 128 [testimony from senior officer responsible for initiating the roadblock]). Nevertheless, we conclude that the detective's testimony and the reasonable inferences to be drawn therefrom were sufficient, albeit barely, to satisfy the People's burden.

II.

Defendant further contends that the Marihuana Regulation and Taxation Act (MRTA) should be applied retroactively to his case to render the search of his vehicle unlawful. The Appellate Division has rejected that contention (*see e.g. People v Boyd*, 206 AD3d 1350, 1354 [3d Dept 2022], *lv denied* 38 NY3d 1149 [2022]; *People v Babadzhanov*, 204 AD3d 685, 686-687 [2d Dept 2022], *lv denied* 38 NY3d 1069 [2022]; *People v Vaughn*, 203 AD3d 1729, 1730 [4th Dept 2022], *lv denied* 38 NY3d 1036 [2022]). We agree

with the Appellate Division and therefore conclude that defendant's contention is without merit.

The MRTA, which became law in 2021 (*see L 2021, ch 92*), added Penal Law § 222.05, which provides that with certain exceptions not relevant here, the odor of cannabis or burnt cannabis, or the possession of cannabis in the amounts authorized by the MRTA, shall not be the basis for a "finding or determination of reasonable cause to believe a crime has been committed" (*id. § 222.05 [3]*). In short, Penal Law § 222.05 (3) provides that the odor of marijuana or possession of marijuana in legally authorized amounts can no longer be the basis for a police search.

Penal Law § 222.05 became effective on March 31, 2021, nearly six years after the search of defendant's vehicle was conducted. If the search of defendant's vehicle had been conducted after that effective date, it would not be valid under the MRTA, given that it was based solely upon the odor of cannabis. Defendant contends, however, that this provision of the MRTA should be applied retroactively to invalidate searches that occurred *before* the effective date of the statute.

"It is a fundamental canon of statutory construction that retroactive operation is not favored by courts and statutes will not be given such construction unless the language expressly or by necessary implication requires it" (*People v Galindo*, 38 NY3d 199, 207 [2022], quoting *Majewski v Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 584 [1998]). Nothing in the text or legislative history of the MRTA requires or supports the conclusion that the legislature intended for the newly-enacted Penal Law § 222.05 to apply retroactively to invalidate searches that were conducted

before the effective date of the statute.* The fact that Penal Law § 222.05 was to take effect “immediately” merely supports the conclusion that as of March 31, 2021, law enforcement could no longer conduct searches based solely on the odor of cannabis. “[T]he date that legislation is to take effect is a separate question from whether the statute should apply to claims and rights then in existence,” and the legislature’s expression that a statute is to take effect immediately is equivocal in a retroactivity analysis (*Majewski*, 91 NY2d at 583).

Importantly, the legislature included provisions in the MRTA intended to remedy past discriminatory practices regarding the policing of marijuana, including provisions regarding vacatur of prior marijuana-related convictions (see CPL 440.46-a). Thus, when the legislature intended the MRTA to impact convictions that became final before the law’s effective date, it provided express provisions to that effect. There is no similar expression of legislative intent with respect to Penal Law § 222.05. Moreover, applying the MRTA retroactively to invalidate searches that have already

* We reject defendant’s assertion that an appeal to the Appellate Division from a judgment of conviction and sentence is a “criminal proceeding” within the meaning of Penal Law § 222.05 (3). The Criminal Procedure Law separately defines “criminal court” and “intermediate appellate court” and contains different provisions applicable to each court (see CPL 1.20 [19], [22]; CPL article 450). Pursuant to these provisions, intermediate appellate courts review appeals as of right from criminal proceedings, but an appeal as of right does not itself constitute a “criminal proceeding” (see CPL 1.20 [18]). Like Judge Halligan, we do not address whether Penal Law § 222.05 applies in a post-enactment suppression hearing regarding a pre-enactment search, as that issue is not before us (see Halligan, J., dissenting op at 2 n 1).

occurred would not deter any police misconduct because, as defendant concedes, at the time police searched his car in 2015, a search based on the odor of marijuana was lawful. Defendant points to no provision in the text or legislative history of the MRTA that would support the staggering impact of the retroactive application he proposes: the vacatur of scores of convictions, even those for weapons possession or violent crimes, because the police conducted a search based on the odor of marijuana that was lawful at the time. Nothing in the text of the statute or the legislative history supports a conclusion that this was the legislature's intent.

III.

Finally, defendant contends that his conviction of criminal possession of a weapon in the second degree is unconstitutional pursuant to the Second Amendment to the United States Constitution, relying on the Supreme Court's 2022 decision in *New York State Rifle & Pistol Association, Inc. v Bruen* (597 US —, 142 S Ct 2111 [2022]). For the reasons explained in *People v Cabrera* (decided today), we conclude that defendant's contention is unpreserved for appellate review.

Accordingly, the order of the Appellate Division should be affirmed.

RIVERA, J. (dissenting):

I agree for the reasons discussed by the majority that defendant Pablo Pastrana's challenge to the roadblock that led to the search of his vehicle and the eventual discovery of an unlicensed loaded firearm and illegal amounts of marijuana is without merit, and that the Marijuana Regulation and Taxation Act is not retroactive. However, for the reasons I discuss in my dissent in *People v Garcia*, decided today, defendant's Second Amendment facial challenge under *New York State Rifle & Pistol Assn., Inc. v Bruen* (142 S Ct 2111 [2022]) is preserved but meritless.

Defendant's alternative as-applied constitutional challenge to the ban on licensing people with felonies requires remittal for further development of a record for appellate review. Defendant has standing to raise both of these claims for the reasons discussed in *Garcia*. I agree with the majority that the lack of an adequate record renders it impossible at this juncture to consider defendant's claim that there is no historical tradition to support New York's universal prohibition on people with felonies obtaining gun licenses. However, defendant had no reason to develop such record pre-*Bruen*. And the prosecutor had no opportunity to establish a historical tradition to justify the restrictions and the sentence because until *Bruen* that was not the standard by which to assess these types of constitutional challenges. Instead, courts in New York, and throughout the country, applied intermediate scrutiny's means-end test in deciding whether the gun regulation is substantially related to achieving an important governmental interest, such as public safety (see, e.g., *Kachalsky v County of Westchester*, 701 F3d 81, 85 [2d Cir 2012]; *People v Hughes*, 22

NY3d 44, 50-51 [2013]; *Kanter v Barr*, 919 F3d 437, 447 [7th Cir 2019]).

I would remand for development of the record in accordance with the test articulated in *Bruen*. Otherwise, we risk depriving defendant “of a State forum in which his arguments could be heard” (*People v Patterson*, 39 NY2d 288, 296 [1976], *affd sub nom. Patterson v New York*, 432 US 197 [1977]). Remittal is especially appropriate given that other defendants—convicted after *Bruen* was issued—are raising the same (preserved) claims in our courts. We should not deny defendant the same opportunity to build a record and for the prosecutor to do the same. Our “procedural rules should be so designed as to keep unjust results to a minimum” (*People v Finch*, 23 NY3d 408, 416 [2014]).

HALLIGAN, J. (dissenting):

I would hold that the People did not meet their burden at the suppression hearing to demonstrate the constitutional validity of the roadblock where Pas-trana’s car was stopped. As the majority correctly notes, Detective Veit testified at the suppression hearing that the goal of the checkpoint was vehicular safety, which is a permissible primary programmatic purpose (*Delaware v Prouse*, 440 US 648, 658 [1979]). But when measured against our prior cases, the record does not adequately establish that the selection of the checkpoint’s particular date and location would be effective in serving that objective, or that the check-point was properly authorized.¹

Both this Court and the U.S. Supreme Court have used a balancing test to determine whether a suspicionless stop is reasonable (see *People v Abad*, 98 NY2d 12, 16-17 [2002], citing *Brown v Texas*, 443 US 47, 50 [1979]). One element, termed the “effectiveness” factor, is “the degree to which the seizure advances the public interest” (*id.* at 17). Here, the Peo-ple offered no testimony as to why this date and loca-tion were selected for the checkpoint. The majority concludes a reasonable inference can be drawn that it was because a large number of cars would be crossing

¹ With respect to whether the Appellate Division properly de-clined to apply the MRTA’s probable cause provision to reverse defendant’s conviction, I agree with the majority that the statu-tory term “criminal proceeding” cannot fairly be read to encom-pass direct appeals at the Appellate Division (Penal Law § 222.05 [3]). Whether that provision, which governs a “finding or determination of reasonable cause,” applies to a post-enact-ment suppression hearing concerning a pre-enactment search is a closer question in light of the statutory text, and given that it is not squarely presented, I would not reach it here.

the bridge, given the parade scheduled for that day. That may indeed have been why the roadblock was conducted at that time and place, but the People did nothing to establish the point.

More concerning is the absence of any testimony regarding how the checkpoint was authorized. In *People v Scott*, this Court emphasized that “a plan embodying explicit, neutral limitations on the conduct of individual officers” is essential to adequately protect Fourth Amendment concerns (63 NY2d 518, 525-526 [1984], quoting *Brown*, 443 US at 51). Such a plan should ensure that “officers in the field” do not have “unfettered discretion” in order to reduce the risk of arbitrary invasions (*Matter of Muhammad F.*, 94 NY2d 136, 142 [1999], quoting *Brown*, 443 US at 51; *see also United States v Martinez-Fuerte*, 428 US 543, 559 [1976] [“The location of a fixed checkpoint is not chosen by officers in the field, but by officials responsible for making overall decisions as to the effective allocation of limited enforcement resources”]; *Delaware*, 440 US at 654-655 [Fourth Amendment requires safeguards to “assure that the individual’s reasonable expectation of privacy is not subject to the discretion of the official in the field”] [internal quotation marks omitted]).

Scott provides an example of how this can be accomplished: the checkpoint there was “established pursuant to a written directive of the County Sheriff” that detailed the purpose for the stops and procedures for selecting sites and conducting the stops, and the locations were “selected in advance by senior personnel” (*Scott*, 63 NY2d at 522-524). “[T]he specific procedures devised and promulgated to law enforcement personnel by the head of their department” allowed the court to conclude that the checkpoint “was being

maintained in accordance with a uniform procedure which afforded little discretion to operating personnel,” among other factors (*id.* at 526; *see also Abad*, 98 NY2d at 15 [noting that guidelines for livery cab stop program were “spelled out” in Police Department Operations Order]).

As with the reason for selecting the particular date and location for the checkpoint, proper authorization was not established by the People. Detective Veit testified that when on patrol, “[w]e receive a specific assignment”; that on the day in question, he “was assigned to the Puerto Rican Day Parade, and [his] assignment was a vehicle checkpoint on the University Heights bridge and Fordham Road”; and that this was a “unique assignment.” Whether that suffices to show proper authorization is not a question of the detective’s credibility, but whether the record includes any information indicating how, or by whom, the checkpoint was approved. To the extent any additional inference could have been drawn from Detective Veit’s comments, it would stretch too far to ensure that officer discretion was sufficiently constrained for purposes of the Fourth Amendment.

Order affirmed. Opinion by Judge Troutman. Judges Garcia, Singas and Cannataro concur. Judge Rivera dissents in an opinion. Judge Halligan dissents in a separate opinion, in which Chief Judge Wilson concurs.

Decided November 21, 2023

APPENDIX B

**SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION,
FIRST JUDICIAL DEPARTMENT**

Gische, J.P., Kern, Oing, González, Scarpulla, JJ.

THE PEOPLE OF THE
STATE OF NEW YORK, Ind. No.
15884 *Respondent*, 2026/15
-against - Case No.
PABLO PASTRANA, 2018-4537
Defendant-Appellant. May 5, 2022

Robert S. Dean, Center for Appellate Litigation,
New York (Mark W. Zeno of counsel),
for appellant.

Darcel D. Clark, District Attorney, Bronx
(Nicole Neckles of counsel), for respondent.

Judgment, Supreme Court, Bronx County (John W. Carter, J.), rendered April 19, 2018, convicting defendant, after a jury trial, of criminal possession of a weapon in the second degree, criminal possession of marijuana in the fifth degree and unlawful possession of marijuana, and sentencing him, as a persistent violent felony offender, to an aggregate term of 16 years to life, unanimously affirmed.

The court properly denied defendant's motion to suppress the physical evidence recovered from his vehicle after it was stopped at a checkpoint. Initially, we

find no basis for disturbing the court's credibility determinations (*see People v Prochilo*, 41 NY2d 759, 761 [1977]), regarding the circumstances of the checkpoint stop as well as the ensuing search.

The police testimony, and reasonable inferences to be drawn therefrom, were sufficient to satisfy the People's burden at the hearing of establishing the elements of a valid checkpoint stop (*see People v Dugan*, 57 AD3d 300 [1st Dept 2008], *lv denied* 11 NY3d 924 [2009]). The testimony established that the primary purpose of the checkpoint was vehicular safety and enforcement of vehicular laws and regulations rather than general crime control, that the checkpoint was effective in advancing those interests, that the checkpoint and its primary purpose originated at a higher police supervisory level than the officers at the scene, and that the degree of intrusion on drivers' liberty and privacy interests was minimal (*see Indianapolis v Edmond*, 531 US 32 [2000]; *People v Scott*, 63 NY2d 518 [1984]). The officer's testimony that the checkpoint stopped every third car satisfied the requirement that "the procedure followed be uniform and not gratuitous or subject to individual discriminatory selection" (*People v Serrano*, 233 AD2d 170, 171 [1st Dept 1996], *lv denied* 89 NY2d 929 [1996]), and there was no credible evidence of unlawful discrimination adduced at the hearing. We have considered and rejected defendant's remaining arguments on the checkpoint issue.

The hearing evidence also established that there was probable cause to search the locked glove box where a pistol and other contraband were found. Pursuant to the automobile exception, "[s]tate actors may search a vehicle without a warrant when they have probable cause to believe that evidence or contraband

will be found there" so long as there is "a nexus between the arrest and the probable cause to search" (*People v Galak*, 81 NY2d 463, 467 [1993]; *People v McCray*, 195 AD3d 555, 556 [1st Dept 2021], *lv denied* 37 NY3d 1028 [2021]). When defendant's car was pulled over at the check point, the officer directed defendant to roll down the windows, at which time he detected a "very strong" odor of marijuana emanating from the car. The officer asked defendant to step out of the car and for his license and registration. When defendant did so, the officer observed a "twist" of marijuana on the passenger side floor. Based upon the strong smell of marijuana in the car, and the presence of marijuana in plain view, the officer searched the interior of the car for more marijuana. Noticing that the smell was strongest in the front passenger area in the vicinity of the glove compartment, the officer opened the glove compartment wherein he discovered two large Ziploc bags. One contained seven bags of marijuana; the other contained a 9 millimeter firearm, a magazine and cartridges. The strong odor of marijuana, coupled with the visible presence of marijuana in the car, provided probable cause to search the interior of the car and provided a nexus that justified the officer's search of the glove box (*compare People v Ponder*, 195 AD3d 123 [1st Dept 2021] [odor of marijuana emanating from car did not provide probable cause for search of trunk]).

We also conclude that newly-enacted Penal Law § 222.05(3), which affects whether a finding of probable cause may be made on evidence of the odor of cannabis, should not be applied retroactively (*see Davis v United States*, 564 US 229, 241 [2011]; *People v Martello*, 93 NY2d 645, 648 [1999]). "[N]othing in the plain language of Penal Law § 222.05 (3) indicates that the

legislature clearly intended that provision to have retroactive effect" (*People v Vaughn*, 203 AD3d 1729, 1730 [4th Dept 2022]).

We also decline to vacate defendant's marijuana convictions based on recent changes to the law relating to substantive marijuana offenses (see *People v Utsey*, 7 NY3d 398, 404 [2006]; *People v Walker*, 81 NY2d 661 [1993]). Instead, CPL 440.46-a provides a specific mechanism for the resentencing of defendants who were convicted under former article 221, but whose conduct would constitute a lesser offense or no offense under article 222 (see *People v Ramos*, 202 AD3d 410 [1st Dept 2022]).

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

ENTERED: May 5, 2022

/s/ Susanna Molina Rojas
Susanna Molina Rojas
Clerk of the Court

APPENDIX C

**SUPREME COURT OF THE
STATE OF NEW YORK
BRONX COUNTY: CRIMINAL TERM: PART 19**

THE PEOPLE OF THE
STATE OF NEW YORK

- against -

PABLO PASTRANA,

defendant.

Decision and
Order

Indictment
#2026-2015

Jan. 7, 2018

PROCEDURAL HISTORY

Defendant is charged on the instant indictment with one count each of Criminal Possession of Weapon in the Second, Third, Fourth and Fifth Degrees, Criminal Possession of Marijuana in the Fifth Degree and other related charges for an incident that occurred on June 14, 2015 in Bronx County. The defendant has moved to suppress the firearm and marijuana as fruits of an unlawful arrest. A Mapp Hearing was held before this court on January 3 and 4, 2108. One witness, Det. Jeremy Viet, testified for the People. One witness, Ektien Karell, testified for the defendant.

Detective Viet has been employed by the New York City Police Department for 12 years, 6 of those as a detective. The past two plus years Det. Viet has worked in the Strategic Response Unit of the Anti-Crime Division of the NYPD which is a plainclothes unit assigned to areas throughout the city where there has been a spike in violent crime. Prior to that, he was in Bronx Narcotics for 5 years. Prior to that he was

assigned to the 33 Precinct. Det. Viet has made approximately 700 arrests and has been involved in approximately thousands more. 15-20 arrests have involved guns, 100 involved marijuana.

On June 14, 2015, following the Puerto Rican Day Parade in Manhattan, at approximately 6:20 pm, Det. Viet was assigned to a footpost, vehicle safety checkpoint at West Fordham Rd., and University Heights in Bronx County. He was in uniform and was working with Sgt. Rosario, POs Shelley, Banks, Morell and a few others. The purpose of the checkpoint was to check for valid driver's licenses, registrations, vehicle inspections, equipment and seatbelts. PO Banks directed every 3rd car to pull over into a designated lane near 2 marked police vans and cones. Det. Viet was to interview the pulled over drivers.

At approximately the above time a green 2001 Audi driven by the defendant was pulled over. There were 3 occupants in the car. The defendant, a female Alexis Cortes who was seated in the front passenger seat and Ektien Karell who was seated in the rear. Det. Viet approached the driver while PO Morell approached the passenger side. Det. Viet asked the defendant to roll down the windows and asked for his license, registration and insurance. When the windows were rolled down, the Det. smelled marijuana and alcohol coming from inside the car. Det. Viet also observed the person in the back seat to have an open bottle of alcohol—Llord's Strawberry Liquor—partially consumed underneath his right arm next to his hip. It appeared to Viet that Karell was trying to conceal the bottle. Viet asked Karell if he was drinking. Karell responded "What, I'm not allowed to drink in the car." Viet asked him for identification and Karell refused. Viet described Karell as somewhat defiant.

Det. Viet then asked Karell to exit the vehicle. Having received defendant's license and registration Viet asked him to exit and finally asked the female to exit.

As Ms. Cortez exited, Det. Viet noticed that she had large snake wrapped around parts of her body. He also observed a purse on the floor of the car where she had been sitting that contained an open bottle of Grey Goose Vodka. He also observed, on the floor, in the same area, a "twist of marijuana" which he described as a plastic bag torn open at the ends and tied up with a substance in the middle. Det. Viet testified that from his experience as a police officer and Bronx Narcotics, he recognized the twist as common form of packaging of narcotics. The twist was the size of a golf ball.

At that point, Det. Viet started "a systematic search of the car". He testified that the odor of marijuana was very strong on the passenger side of the car. He retrieved the car keys from the console of the car and open the locked glove box. Inside were 2 plastic bags. One contained 7 zip lock bags of marijuana, the other, contained a 9mm Ket Tech firearm loaded with 6 rounds with 2 additional loose rounds also in the bag. He described the bag with the gun as black. In the criminal court complaint, he described the bag as white.

Following the discovery of the drugs and the gun, all 3 persons were handcuffed, arrested and taken to the precinct. There, Det. Viet conducted an inventory search of the car and recovered latex gloves, a fed ex uniform, compact discs and masks. The masks, marijuana and the firearm were all vouchered. The other property was returned.

Det. Viet was also questioned about a Substantiated Complaint determined against him by the Civilian Complaint Review Board. At a precinct in 2012, a person in custody alleged that an officer with skull tattoos on his leg displayed the tattoos to him and threatened him, saying that "the last person who said they were going to call IAB, his partner kicked him in the head so hard his eyeball popped out". After an investigation and the discovery that Viet who was present at the time with the person in custody and had very similar tattoos as described by the complainant, Viet was questioned by CCRB. At first Viet refused to disclose whether he had the tattoos on his leg but when asked again at a subsequent interview, Viet admitted to the tattoos but denied making the statement then and again at the hearing.

Ektien Karell testified for the defendant. He is 27 years old and had formally worked as a concrete field inspector but had lost his job the previous week due to car failures. As of June 14, 2015, he had known the defendant for approximately 1 year and had hung out with him 2-3 times.

On June 14, 2015, Karell bumped into the defendant at the Puerto Rican Day Parade. When the parade was over they decided to go to the beach in the defendant's car. Karell sat in the back seat. A female whom he did not know sat in the front passenger seat. Karell testified that she had a snake but it was on the dashboard, never on her while she was in the car. Karell also testified that there was a plastic bag on the floor of the back seat which contained a bottle of alcohol which he took one sip from. It was sweet. He put the bottle back in the bag, put the top on and covered it so that it did not stick out. He also noticed that the female had a bottle of Grey Goose vodka with the top on

sticking out a little from her purse. He testified that the car never smelled of marijuana or alcohol. Except for the defendant's window which was slightly rolled down, all the windows were up. During the ride to the beach they made several stops. At one of the stops when the female left the car for a brief period Karell sat in the front passenger seat. He testified that he observed nothing on the floor.

When they arrived at the checkpoint, Karell noticed that the car in front of defendant's driven by what looked like an Asian person was not stopped. The car behind them, driven by what looked like a Latino male, was stopped but not searched. The defendant's car was pulled over. A police officer asked the defendant for his license and registration but then immediately ordered him and everyone else out of the car. He testified that he was cooperative with the officer and complied with every request.

While he was held with his back against the trunk of the car Karell testified that he heard a scuffle coming from the car. He also heard an officer demand the car keys from defendant while saying that he was going to search the car and heard the defendant say that they could not search the car without his consent and that he was not consenting to the search. Karell then heard the officer ransack the car.

Once they were all handcuffed and taken to the precinct, one of the officers took the gun out, wrapped a black plastic bag around it and displayed it to him and the defendant. I found the detective to be credible. I found Mr. Karell's testimony to be not credible.

CONCLUSIONS OF LAW

On a motion to suppress physical evidence, the People have the burden of going forward to show the legality of police conduct. Once they have made this showing, the defendant bears the ultimate burden of proving that the police conduct was unlawful. *People v Berrios*, 28 NY2d 361 [1971].

Here, the first action taken by police officers in this case was the stop of the defendants' automobile.

There is no question that a check point stop is a seizure within the meaning of the Fourth Amendment. *People v Scott*, 63 NY2d 518 (1984), citing *People v John B.B.*, 56 NY2d 482, 487 (1982). However, the "permissibility of the practice is a function of its reasonableness" which is determined by balancing the Fourth Amendment intrusion against the interests of the government. *People v John B.B.*, at 487

The only requirement of a check point stop is that the procedure followed by the police be uniform and not gratuitous or subject to individually discriminatory selection. See, *People v Ingle*, 36 NY2d 413, 416 (1975); see also, *People v Serrano*, 233 AD2d 170 (1st Dept. 1996)

Here, Det. Veit testified that he was on duty that evening on the University Heights Bridge on Fordham Road in Bronx County as part of a safety checkpoint detail. He further testified that he was aware that the parameters of the checkpoint were to stop every third car for the purpose of checking for any VTL violations, including, seatbelts, valid inspection stickers, licensed drivers, to name a few. Although he testified that he himself did not count the vehicles before they were told to stop at the checkpoint, he observed PO Banks count cars and tell drivers to pull over to where Det.

Veit was waiting to interview the drivers between two marked police vans. Det. Veit testified that it was not a search for weapons or for drunk drivers specifically.

Defendant argues that the stop of the vehicle was pretextual and a product of racial profiling.

New York courts have employed a primary motivation test to determine whether a stop is pretextual. This standard involves a dual purpose. While the police have observed a traffic violation and have a legitimate right to stop the car to enforce the traffic laws, they often have unrelated concerns that fall short of reasonable suspicion, much less probable cause. The hearing court should examine the officer's subjective as well as objective reasons for stopping the vehicle and determine, as a question of fact, whether a pretext or ruse was employed. If it is found that the primary motivating factor for the stop was the traffic violation, the stop will be deemed nonpretextual and therefore valid. See, e.g., *People v Washington*, 238 AD2d 43 [1st Dept 1998] [stop motivated by car driven wrong way on one-way street, not by suspicion of robbery in progress]; see also, *People v Woods*, 189 AD2d 838 [2d Dept 1993] [stop motivated by tinted windows, not investigation of recent robberies; suppression granted on other grounds].

Where, however, the court finds that the police did not act primarily to enforce traffic regulations, but, rather, for reasons that were not constitutionally permissible, the reason for the stop is ruled pretextual, and the stop invalidated. See, e.g., *People v Laws*, 213 AD2d 226,227 [1st Dept], lv denied 85 NY2d 975 [1995] [stop not motivated by broken tail-light, but by fact out of state car was parked in drug prone location]; *People v Llopis*, 125 AD2d 416 [2d Dept 1986] [stop not motivated by parking infraction

and speeding, but by occupants' suspicious movements]; see also, *People v Vasquez*, 173 AD2d 580 [2d Dept 1991].

This Court finds that the police officers' stop of the defendant's vehicle was not pretextual. The only evidence defendant offered to support that contention was Mr. Karel's, testimony that a silver minivan in front of their vehicle was not stopped (with an Asian driver) and that the vehicle behind them was stopped, although not searched (with a Latino driver). Mr. Karel did not testify that he observed only Latino men being stopped and in fact testified that he could not see much beyond the van in front of him at the checkpoint. He also testified that he couldn't count the cars himself because of his limited view. He offered no other evidence that the stop of the Audi was racially motivated either by words or actions of the police.

The police testimony here satisfies the elements of a valid checkpoint stop. The testimony established that the primary purpose of the checkpoint was roadway safety and enforcement of vehicular laws and regulations rather than general crime control, that the checkpoint was effective in advancing those interests, and that the degree of intrusion on drivers' liberty and privacy interests was minimal. *People v. Dugan*, 57 A.D.3d 300 (1st Dept 2008); *People v Scott*, 63 NY2d 518, 526-527).

Once the initial approach of the vehicle has been found to be justified, the Court must next determine if the search itself was proper.

Defendant argues that there was no probable cause for the search of the closed glove box and that the detective had no authority to search it given that the defendant did not consent, that all the occupants

were outside of the vehicle and no longer posed a safety risk to the officers. Defendant's contention is misguided

Probable cause for a search of a vehicle may exist independent of reason for the stop, before any arrest is made. Specifically, as in this case, the distinctive odor of marijuana alone emanating from a vehicle, can provide officers with probable cause to search the vehicle and its occupants. *People v Chestnut*, 43 AD2d 260, aff'd by, 36 NY2d 971 (1975); *People v Ventura-Almonte*, 78 AD3d 524 (1st Dept 2010); *People v Badger*, 52 AD3d 231 (1st Dept 2008).

Here, not only did Det. Veit smell marijuana but also smelled an odor of alcohol emanating from the vehicle and observed the open bottle of liquor being secreted by the Mr. Karel and an open bottle of vodka in Ms. Cortez's purse. This clearly gave officers reason to believe there may be additional contraband. *People v Belton*, 55 NY2d 49, 55 (1982).

Where police have reason to believe that a car may contain further evidence related to a crime, they do not need to stop with the initial recovery of drugs or other contraband but may search the entire vehicle. *People v Galak*, 81 NY2d 463 (1993); *People v Blasich*, 73 NY2d 673 (1989); *People v Scott*, 18 AD3d 285 [1st Dept 2005] This includes closed containers and a locked trunk. *Id.* See, *US v Ross*, 456 US 798 (1982); *People v Howard*, 81 AD3d 404 [1st Dept. 2011]; *People v Vasquez*, 155 AD2d 297 (1st Dept 1993). There only needs to be a nexus between the probable cause to search and the crime for which the arrest is being made. *Id.*

Here, after stopping the vehicle and asking the occupants to step out in order to further investigate, the

Det. testified that a bottle of Gray Goose Vodka was protruding out of Ms. Cortez's purse, a fact corroborated by Mr. Karel's testimony. The detective then observed, in plain view, a twist of marijuana on the floor of the passenger side of the vehicle, and testified that the odor of marijuana was particularly strong on that side of the vehicle. Thus, the detective was justified in using the keys of the vehicle and opening the glove box. *People v Valette*, 88 AD3d 461 (1st Dept 2011); *People v Cruz*, 7 AD3d 335 [1st Dept 2004]

The search and subsequent recovery of the 7 bags of marijuana and the firearm was lawful. *Id.*; *Blasich, supra*; *Galack, supra*.

CONCLUSION

Accordingly, Defendant's motion to suppress the marijuana twist, the two bottles of alcohol, the seven (7) additional bags of marijuana and the 9mm semi-automatic weapon is denied in its entirety. This constitutes the decision and order of the Court.

Dated: January 7, 2018

Bronx, New York

/s/ John W. Carter

John W. Carter, J.S.C.

APPENDIX D

**SUPREME COURT OF THE STATE OF NEW YORK:
COUNTY OF BRONX: CRIMINAL TERM PART 19**

PEOPLE OF THE STATE OF
NEW YORK,
-against-
PABLO PASTRANA
Defendant.

INDICTMENT
NO. 2026/15
HEARING

265 East 161st Street
Bronx, NY 10451
January 3, 2018

BEFORE:

HONORABLE JOHN W. CARTER,
Justice of the Supreme Court

APPEARANCES:

DARCEL D. CLARK, ESQ.,
District Attorney, Bronx County
BY: DANIELLE M. DRASSER, ESQ.
Assistant District Attorney

DAWN FLORIO, ESQ.
Attorney for Defendant

MICHAEL SALVIETTI
SENIOR COURT REPORTER

THE CLERK: Calling number four on the calendar in the matter of the people of the State of New York against Pablo Pastrana under indictment 2026 of 2015.

Let the record reflect the defendant is in the court-room, it's now 12:18 p.m., his counsel is present as well as the assistant district attorney of record.

Counsel, appearances for the record.

MS. DRASSER: Danielle Drasser for the office of the district attorney.

MS. FLORIO: Dawn Florio, F-L-O-R-I-O, of the Dawn Florio Law Firm; I represent my client, who is seated to the left of me, Mr. Pablo Pastrana. Good afternoon.

THE COURT: Could you please ask your client why he's come so late? What happened today?

MS. FLORIO: They didn't have mittens.

THE DEFENDANT: They went from Brooklyn court, then from Brooklyn I went to Manhattan.

THE COURT: Mittens?

COURT OFFICER: Hand restraints, I think they call them.

THE DEFENDANT: Then the bus, they decided to go to Brooklyn Criminal, Brooklyn Supreme, Manhattan Criminal to Manhattan Supreme and then here.

MS. FLORIO: I know we're doing hearings today, but when we pick a jury I would ask the card be marked civilian clothes?

THE COURT: Sure, sure.

Case is on for hearing and trial. Are both sides ready?

MS. DRASSER: Yes, your Honor.

MS. FLORIO: Yes.

THE COURT: What kind of hearings were ordered?

MS. DRASSER: Mapp only, your Honor.

THE COURT: Mapp hearing?

MS. DRASSER: Yes.

MS. FLORIO: Was it Mapp/Dunaway or--

MS. DRASSER: I have the decision from Judge Bruce that indicates Mapp hearing only was granted.

THE COURT: We are going to do a Mapp/Dunaway, okay?

MS. FLORIO: Yes, your Honor.

THE COURT: Has there been an offer?

MS. DRASSER: Yes, your Honor. Being that the defendant is a mandatory persistent felon, the offer has been a D felony, which is attempted 265.03 (3), attempted criminal possession of a weapon second degree, with the 12 years to life, waiver of right to appeal.

THE COURT: Okay. Is he interested in that?

MS. FLORIO: Your Honor, it's also my understanding when we had a bench conference that it's not the intention of the People to put in any of the Rikers calls. I did get a disc with a lot of the Rikers calls on it today. I will speak to my client about that, but I wanted to put on the record, my application is that at

this point if the People want to introduce on their direct case any Rikers calls that they be precluded. I will talk to my client about the offer.

THE COURT: Okay. And the maximum is what?

MS. FLORIO: Sixteen to life on the C.

MS. DRASSER: Your Honor, may I make a brief record about the Rikers calls?

THE COURT: Sure.

MS. DRASSER: As Ms. Florio did say, I did turn over a disc containing the Rikers calls from when the defendant was initially incarcerated after his arrest. While I didn't plan on using them on my direct case, I'm reserving my right to use them for Harris purposes, as there are some calls that could be used for that purpose.

(Whereupon, there was a pause in the proceedings.)

MS. FLORIO: Your Honor, I have had ample opportunity to speak to my client about the offer of the D felony with 12 to life. And he wants to avail his opportunity to proceed to hearing and trial.

THE COURT: Did you explain to him what the maximum could be?

MS. FLORIO: I told him the minimum, I told him--

THE COURT: Or the range.

MS. FLORIO: I told him the range. I told him 16 to life is the minimum, in the unlikely event, or unfortunate event if he gets convicted.

THE COURT: Of the top charge?

MS. FLORIO: On the top charge, and the maximum is 25 to life. The range is from 16 to life to 25 to life.

THE COURT: You are not interested in their offer of 12 to life?

THE DEFENDANT: No, sir.

THE COURT: Okay. Would you let me know for my own understanding, there were allegedly three people in the car?

MS. DRASSER: Yes, sir.

THE COURT: What happened to the other two?

MS. DRASSER: Two codefendants were dismissed by the grand jury.

THE COURT: Okay. And you have how many witnesses for the hearing?

MS. DRASSER: I have one witness for this hearing, your Honor. I do have a witness list. These are People's witnesses for hearing and trial. I included them as they are names you may hear throughout the hearing. However, the first witness, Det. Jeremy Veit, he is the witness for the hearing today.

THE COURT: All right. And if the case goes to trial, how many of these people are going to be testifying?

MS. DRASSER: In all likelihood, your Honor, approximately between four and six witnesses.

THE COURT: All ready to go?

MS. DRASSER: Yes.

THE COURT: After we pick a jury you will have them all ready to go, right?

MS. DRASSER: I will have them all ready to go.

THE COURT: You turned over all of the discovery, Rosario for the hearing?

MS. DRASSER: Your Honor, I did turn over the Rosario on the last Court date when we were last before you. I had initially turned it over to Mr. Weinstein, he handed it to Ms. Florio. I did make a record on that last date what I did turn over, and that included the DA summary; Det. Veit's memo book; there were notes taken by the AUSA when this case was being considered for trigger lock; Det. Veit's grand jury minutes; the CCRB materials relating to Det. Veit. Mr. Weinstein was already in possession of the two lawsuits against Det. Veit, both of which were settled.

I have a brief Giglio record to make as well regarding those materials, but those were all turned over on the last date; discovery had been previously turned over.

I was speaking to Ms. Florio, and as she was reviewing discovery she did indicate to me there were a couple of items she found were missing. Discovery had been previously served by a prior assigned ADA. It was my understanding all discovery had been served, but I let Ms. Florio know if there was anything she was missing I would be happy to turn that over as soon as possible. But I believe all discovery necessary for the hearing has already been turned over.

MS. FLORIO: That is correct, your Honor. And this morning I noticed a couple of things that were missing. I spoke to Ms. Drasser and she did provide them to me. I believe for the particular hearing I have what I need for this particular witness, Det. Veit.

THE COURT: Tell me about this CCRB?

MS. DRASSER: Yes, your Honor.

Would your Honor like a copy as I make my record?

THE COURT: Sure.

MS. DRASSER: Your Honor, the first page of the packet which I provided to the Court is officer history. These are all of the allegations and CCRB investigations that have been conducted against Det. Veit.

You will note there is only one CCRB that was substantiated; that was CCRB No. 2010/17490. The allegation substantiated there was abuse, threat of force, verbal or physical. That case, while substantiated, there was no disciplinary action taken against Det. Veit as the statute of limitations on that case had expired, therefore, Det. Veit also lost an opportunity to appeal that finding after the fact.

Your Honor, I would argue that pursuant to Giglio this is not necessary material relevant to the officer's credibility as he testifies in this hearing. The allegations made in this case were that the detective showed the defendant tattoos that were on his leg and then made a threat of violence against him. While that was substantiated, Det. Veit states that never took place, never occurred.

As I stated, due to the fact the statute of limitations expired, he never had the chance to appeal that finding. While this is a bad act that was substantiated by CCRB, it has no bearing on this officer's credibility nor are the facts of the case very similar to the facts in this case. You will hear this was a car stop pursuant to a checkpoint and there was a search of the vehicle. None of those facts are similar or relevant to what was found in the CCRB finding.

As to the other CCRB history this officer does have, the dispositions included those that were unfounded. Unfounded dispositions within CCRB are those that the -- there is sufficient credible evidence to believe that the subject officer did not commit the alleged act. There are also exonerated findings. Exonerated findings mean the subject officer was found to have committed the act alleged but the officer's actions were determined to be lawful, therefore there was no misconduct committed.

The other findings are either unsubstantiated or the complainant was unavailable or uncooperative. In the unsubstantiated findings that means the available evidence is insufficient to determine whether the officer did or did not commit the misconduct; therefore, they are hanging allegations which there was no finding made against this officer that misconduct was actually committed.

Furthermore, the other findings of complainant being unavailable, uncooperative or truncated investigation, CCRB states this means no factual findings were ever made about whether or not misconduct actually occurred. Once again, these are hanging allegations based on the fact these other findings are either unfounded, exonerated or mere allegations against this officer, they do not rise to the level of being material and relevant to this officer's credibility.

THE COURT: All right. Do you want to reserve until you have had a chance to read this stuff?

MS. FLORIO: Yes, your Honor.

THE COURT: We are not going to get into any cross before lunch.

MS. FLORIO: Yes, your Honor. Also, I would also like you to review the two lawsuits that were settled.

MS. DRASSER: I do have a copy for the Court, your Honor.

MS. FLORIO: One was for \$250,000 or something to that effect; other amount was, you know, it was not disclosed, it was a secret settlement.

MS. DRASSER: I do have a record to make about those lawsuits as well, your Honor.

THE COURT: Go ahead.

MS. DRASSER: So in both lawsuits -- well, in both lawsuits Det. Veit is named, Det. Veit was the assigned arresting officer in those cases, meaning he signed the complaint. In the case of Vernon Branch, this was a case that was settled out of court for the monetary figure of \$224,000 that Ms. Florio has indicated. There are allegations in that case made by the plaintiff alleging an officer assaulted and battered him on the date in question. However, the allegations made against Det. Veit are that he signed the complaint after being informed by the complaining officer; therefore, the only allegation against Det. Veit was that he knew or should have known that the information set forth in the criminal felony complaint was not true, out of context and was false. That is not a statement of fact, that is conclusory in nature and that is only an allegation against Det. Veit in this case.

As stated, this case was settled out of court and the lawsuit was dismissed without any admission of liability by the police officers.

Your Honor, under People v Smith, there must be a good faith basis of raising an issue of the prior bad acts alleged in the federal lawsuit. Being the actual misconduct was not alleged against Det. Veit, he merely signed the complaint in this case, I would argue there's no good faith basis for any questioning

about the fact that he actually knew these allegations were false. He was informed by the complaining officer and signed off on the complaint. And any allegations made against Det. Veit, as I stated, are conclusory in nature.

As to the lawsuit regarding plaintiff Melissa Jiminez, this was a case involving a search during a narcotic investigation. Once again, this is a case where Det. Veit was the assigned arresting officer and signed the complaint. In fact, in the lawsuit the allegations of unlawful search were made against a female officer, Jane Doe. The detective's name is named in here because his name was on the criminal complaint. The allegation against him was that he issued illegal process against the plaintiff in the form of criminal complaint, despite lacking probable cause the case against plaintiff could succeed. Once again, this is a settled lawsuit dismissed by the Court and the allegations against Det. Veit are conclusory in nature; therefore, this lawsuit as well does not rise to the level of defense having any good faith basis for raising issue of prior bad acts, being the only alleged bad act is that he signed the complaint.

THE COURT: Settled for?

MS. DRASSER: The monetary settlement is not included on the order, your Honor.

THE COURT: Okay. Ms. Florio, you have these?

MS. FLORIO: I do have these.

THE COURT: Do you want to speak to these?

MS. FLORIO: Your Honor, I will let you read them first and then we'll take it up after lunch.

THE COURT: All right. Anything else before we start the hearing?

MS. DRASSER: No, your Honor.

THE COURT: All right, let's call your first witness, or your witness.

MS. DRASSER: People call Det. Jeremy Veit.

MS. FLORIO: You Honor, may I ask for daily copy for the hearing minutes? My client's family has run out of money. They don't have any money to pay for the hearing minutes.

THE COURT: For the hearing minutes, okay.

DET. J E R E M Y VEIT, a witness called by and on behalf of the People, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: In a clear voice, state and spell your name, give me your shield number and command.

THE WITNESS: Jeremy Veit, V-E-I-T; my shield is 2516, my command is Strategic Response Group.

THE CLERK: Jeremy with a J?

THE WITNESS: J-E-R-E-M-Y

THE COURT: Detective, good afternoon.

THE WITNESS: Your Honor, how are you?

THE COURT: Okay, you can proceed.

MS. DRASSER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. DRASSER:

Q. Good afternoon.

A. Good afternoon.

Q. Detective Veit, how long have you been a New York City police officer?

A. Thirteen and a half years.

Q. What is your current assignment?

A. Strategic Response Group anti-crime team.

Q. How long have you been assigned to the Strategic Response Group?

A. A little over two years.

Q. Can you please describe what your duties and responsibilities are as a member of the Strategic Response Group.

A. Sure. It's a plainclothes unit deployed throughout the city in precincts that have a spike in violent crime.

Q. As part of your duties, are you assigned to assist a specific borough on a certain day?

A. No, we go to all five boroughs.

Q. Each time you patrol, are you assigned to all five boroughs or do you receive a specific assignment?

A. We receive a specific assignment for the day.

Q. Prior to being assigned to the Strategic Response Group, did you have any prior assignments within NYPD?

A. Yes; Bronx Narcotics.

Q. How long were you with Bronx Narcotics?

A. Approximately five years.

Q. Prior to working with Bronx Narcotics did you have any other assignments?

A. Yes, the 33rd Precinct and Transit District Three.

Q. How long have you been a detective?

A. Coming up on six years.

Q. Prior to becoming a police officer, did you receive any training?

A. Yes, the police academy.

Q. How long did the police academy last?

A. Six months.

Q. You graduated?

A. Yes.

Q. Have you received any additional training since graduating the police academy?

A. Yes.

Q. What sort of training have you received over the course of your career?

A. When I was assigned to Narcotics, Borough Organized Control Bureau, I took a three-week course that trained us in narcotic identification, buy and bust operations, field testing narcotics.

Q. Do you have any certifications in relation to any of the trainings you've received?

A. Certified to do field testing of narcotics.

Q. Over the course of your career, approximately how many arrests have you made or participated in?

A. I've made over seven hundred personally and I have been involved in thousands.

Q. How many of those arrests that you yourself have made or those that you participated in, approximately how many have involved an individual who possessed a firearm?

A. Fifteen to 20.

Q. How many of those arrests involved an individual who possessed marijuana?

A. Over a hundred.

Q. I would like to direct your attention to June 14, 2015. Were you working on that day as a detective with the NYPD?

A. Yes.

Q. What was your assignment that day?

A. I was assigned to the Puerto Rican Day Parade, and my assignment was a vehicle checkpoint on the University Heights bridge and Fordham Road.

Q. Were you still working on the Strategic Response Group on that date?

A. Yes.

Q. Was this a common assignment that you would receive being a member of S.R.G.?

A. No.

Q. What sort of detail was this?

A. A parade detail. The Puerto Rican Day Parade was a unique assignment. I was in uniform that day.

Q. What county were you assigned that day?

A. Borough of Bronx.

Q. Do you remember what tour you worked?

A. 2:30 by 11:05 p.m.

Q. Were you working alone that day?

A. I was with other officers.

Q. What other officers were with you?

A. The overall supervisor was Sgt. Rosario. It was myself, PO Banks, PO Morell, PO Shelley and a few others I can't recall.

Q. And you mentioned you were in uniform?

A. Yes.

Q. Were your other team members in uniform as well?

A. Yes.

Q. Were you on a footpost as part of the parade detail?

A. Yes; my footpost was part of the vehicle checkpoint.

Q. I would like now to direct your attention to the date of June 14, 2015, at approximately 6:20 p.m. in the vicinity of West Fordham Road and the University Heights bridge in Bronx County, New York: Where were you at that approximate date and time?

A. I was on the University Heights bridge on Fordham Road conducting a vehicle checkpoint.

Q. And can you please tell us what the parameters were of that checkpoint?

A. It was every third car and it was for any VTL violations, safety checkpoint.

Q. Were you yourself the officer assigned to be counting the cars?

A. No, I was not.

Q. Who was the officer assigned to count the cars?

A. PO Banks.

Q. And can you please describe how Officer Banks went about counting the cars and initiating a traffic stop?

MS. FLORIO: Objection.

THE COURT: I'll allow it.

A. He would count every third car, he would direct the third car to pull into a lane designated for the cars to be pulled over that were the third vehicle in the checkpoint.

Q. Did he make that indication to pull over to the drivers or to the officers assigned to the checkpoint?

A. To the drivers of the vehicles.

Q. And where were you in relation to Officer Banks?

A. The checkpoint was set up with two vans, two marked vans with cones. It was the outbound lane from Manhattan into the Bronx. Officer Banks was in the front of the checkpoint counting the cars, I was along the middle down with the cones, laned area for the vehicle to be pulled over.

Q. Was that area well lit during the checkpoint?

A. Yes.

Q. How was it lit?

A. It was daylight.

Q. Did there come a time when you were involved in an arrest on that date, time and location?

A. Yes.

Q. Do you recall the name or names of the individual or individuals that you arrested?

A. Yes.

Q. Who did you arrest?

A. Pablo Pastrana, Ehtien Karell, Alexis Cortez.

Q. Detective, can you please take a look around the courtroom and tell me whether any of the individuals that you arrested that day are present in the courtroom?

A. Yes.

Q. And which of those individuals if any do you observe?

A. The defendant, Pablo Pastrana.

Q. Can you please point to the individual and describe an particle of clothing that Pablo Pastrana is wearing?

A. He's the gentleman in the orange suit.

THE COURT: Indicating the defendant.

MS. DRASSER: Thank you, your Honor.

Q. Detective, how did you come to interact with the defendant on that date, time and location?

THE COURT: Actually, before the get into the body of it, let's just break for lunch. We'll resume 2:15.

MS. DRASSER: Okay.

(Whereupon, there is a luncheon recess taken and the case adjourned to 2:15 p.m.)

AFTERNOON SESSION

THE CLERK: Come to order.

Recalling the case continued on hearing in the matter of the People of the State of New York against Pablo Pastrana.

Let the record reflect the parties' appearances are as previously noted.

THE COURT: All right.

MS. FLORIO: Your Honor, can I put on the record that over the luncheon recess I was able to review the video statement of Alexis Cortez as well as Mr. Karell, the front seat passenger and the back seat passenger. I saw those video statements that I didn't have before. I was able to review them.

THE COURT: Okay. Do you want to be heard on the CCRB matter and the Federal Court settlements?

MS. FLORIO: Your Honor, I believe that I should be able to ask the officer about the substance of fact about the complaint, sorry CCRB that was actually substantiated. That would be my application.

It's my understanding that the officer -- what happened in that particular case is that the civilian could not make an actual identification. So a lot of the other charges based upon, you know, excessive force and false arrest were, he was exonerated because of that. But with respect to the actual charge that he was, that was substantiated, that was when he was in a precinct and the allegation is he lifted up his pant leg and there was skulls on it and he threatened the guy saying whatever he said in the complaint. So I should be able to ask him about that. That is my application with respect to the CCRB, the underlying facts. I'm stuck with his answer.

And I also would like to ask him, when he was asked about it he refused to speak about it at first then later on he came back and then he did say that he did have tattoos. He first didn't want to reveal that he had tattoos on his leg. That was another thing I wanted to let the Court know what the scope of the examination would be.

With respect to the other lawsuit, I understand there was a settlement, a substantial amount, \$200,000. I know I'm not allowed to ask about the actual settlement, I could ask about the underlying facts. However, for the purposes of this hearing I don't choose to go into those because the arresting officer, he was the assigned arresting officer.

THE COURT: Yes, there is nothing in those federal lawsuits, he was a named defendant but there was no indication in the lawsuits that he participated in the illegal acts or that he was even present to observe them; it was just that he signed the complaint. There is not enough information. I don't think it's relevant to either here or at trial to bring it up. But with regard to the CCRB complaints, I do think it goes to his credibility, you know, the fact that the plaintiff -- the complainant was able to describe the tattoos on the officer's leg where the officer denied ever lifting his pant leg up. So they determined that there was no way for this complainant to have described them in such detail unless he had seen them. Given that the detective denied ever having done that, I think it does go to his credibility, so you can ask him about that. Okay.

MS. FLORIO: Okay.

THE COURT: That's my ruling. Let's get him back.

COURT OFFICER: Witness entering.

THE CLERK: Detective, let me remind you, you're still under oath.

THE WITNESS: Okay.

THE COURT: You may continue.

MS. DRASSER: Thank you, your Honor.

DIRECT EXAMINATION (Cont'd)

BY MS. DRASSER:

Q. Detective, directing your attention back to June 14 of 2015 at approximately 6:20 p.m. in the vicinity of East Fordham Road and the University Heights bridge in Bronx County, New York: How did you come to interact with the defendant on that date, time and location?

A. The defendant was operating a vehicle that was designated as a third car and was pulled over in a vehicle checkpoint that I was at.

Q. And what kind of vehicle was it that the defendant was driving?

A. A green 2001 Audi A6.

Q. After the vehicle was pulled over, where specifically at that location did it pull over?

A. In between the two parked cars in the coned lane designated for the cars to pull over.

Q. Did there come a time you approached that vehicle?

A. Yes.

Q. Did you observe the occupants of that vehicle?

A. Yes.

Q. How many people were inside the car?

A. Three.

Q. And can you describe who those individuals were and where they were seated in the car?

A. Yes. The driver was the defendant, Pablo Pastrana; the back rear passenger was Ethan Karell, seated behind the driver; and the front passenger was Alexis Cortez.

Q. When you approached the vehicle, where specifically did you approach it?

A. The driver's side, front driver's side window, and the rear driver's side window.

Q. Did any other officers on your team approach the vehicle as well?

A. Officer Morell.

Q. Where did he approach?

A. Passenger side.

Q. Once you approached the driver's side, what if anything did you observe?

A. I initially engaged the defendant, Pablo, in conversation. I asked him for his license, insurance, registration. I asked him to roll down all the windows, at which point there was a smell of marijuana and alcohol emanating from the car. When looking around in the car, the rear passenger sitting behind Pablo was attempting to conceal a bottle of Llold's Strawberry Liqueur underneath his right arm next to his hip.

Q. Could you observe whether that container of liquor was open?

A. Yes.

Q. Had it been opened?

A. Yes.

Q. Was the bottle of liquor full or partially consumed?

A. Partially consumed.

Q. What happened next after you made that observation?

A. I began to engage the rear passenger in conversation. He was a little defiant with his body language. And at that point I asked him to step out of the car.

Q. For what purpose did you ask the rear seat passenger to step out of the car?

THE COURT: Hold on. When you say defiant, what do you mean?

THE WITNESS: His body language. He refused to make eye contact with me, he was playing with his phone while I was asking him for his ID. When I had asked him for his ID he said, "For what?" I asked him, was he drinking. He said, "What, I can't drink in the car?" which is a little bit of a defiant attitude towards me.

THE COURT: Okay, all right. Go ahead.

Q. For what purpose did you remove that person from the vehicle?

A. To retrieve ID.

Q. Just to clarify, the rear passenger, that was Mr. Karel?

A. Yes.

Q. After he had been removed from the vehicle--

THE COURT: I'm sorry, the rear passenger was Alexis?

THE WITNESS: Alexis Cortez was front, female was the front passenger; Ehtien Karell was the rear passenger.

THE COURT: I had it backwards.

Go ahead.

Q. After Mr. Karell had been removed from the vehicle, what happened next?

A. I retrieved the license and the registration information from the driver and asked him to step out of the vehicle.

Q. Who was the registered owner of that vehicle?

A. The defendant, Pablo Pastrana.

Q. And after the defendant was removed from the vehicle, what happened next?

A. He was removed to the rear of the vehicle, I then moved around to the passenger side of the vehicle and asked Ms. Cortez to step out of the car as well.

Q. What if any observations did you make about Ms. Cortez?

A. She had a large boa constrictor snake on her.

Q. Where specifically on her?

A. It was wrapped around her neck and hands and arms.

Q. And after Ms. Cortez stepped out of the vehicle, did you make any observations about the interior of the front passenger area?

A. Yes.

Q. What did you observe?

A. There was an additional bottle of Grey Goose alcohol opened on the floor of the passenger's side along with a twist of marijuana.

Q. And as to the bottle of Grey Goose, you mentioned it was open?

A. Yes.

Q. Was the bottle full or partially consumed?

A. Partially consumed.

Q. Was this on the floor?

A. Yeah, it was -- the bottle was actually in her purse but the neck was sticking out so I could see it was a bottle of Grey Goose, but it didn't fit and it was on the floor of the front passenger side.

THE COURT: And you said a twist of marijuana?

THE WITNESS: Plastics twist on the floor of the front passenger compartment of the vehicle.

THE COURT: Thank you. Go ahead.

Q. Were you able to observe the substance that you believed to be marijuana inside that plastic twist?

A. Yeah.

Q. Can you please describe what that substance looked like?

A. Green leafy substance with a distinct odor.

Q. Are you familiar with the packaging that this was contained in?

A. Yes.

Q. Can you please describe your experience with plastic twists?

A. It's plastic bags torn open at the end and tied up, commonly used to package narcotics.

Q. Did you learn about packaging of marijuana during your time with Bronx Narcotics?

A. Yes.

Q. Did you also learn about the packaging of marijuana during your time in training--

A. Yes.

Q. -- for narcotics?

A. Yes.

Q. After you made the observation in the front passenger area of the vehicle, what did you do next?

A. I started a systematic search of the car. I began where I took the rear passenger out originally, started there, went to the driver's side, made my way over to the passenger side. When I got to the passenger's side, the odor of marijuana was very strong in that particular section of the vehicle. The last possible place that it could have been is the glove box. At that point I opened up the glove box, there was two large plastic bags inside the glove box. I took the first one out, it contained an additional amount of marijuana; I took the second plastic bag out and it was a lot heavier, it had a metal object inside. When I opened it, it was a firearm.

Q. Now, prior to opening the glove box, the glove box in fact was completely closed?

A. Yes.

Q. Before you opened it you could not see any of the contents inside of the glove box?

A. No.

Q. Was the glove box unlocked?

A. It was locked.

Q. How were you able to open it?

A. I used the vehicle key.

Q. And once you retrieved the two bags from inside the glove box, I would like to speak to the first bag that you removed with the alleged marijuana. How many bags of marijuana did you observe inside the larger bag?

A. Seven additional Ziplocs.

Q. Can you describe the substances contained in those seven Ziplocs?

A. It was the same green leafy substance with an odor as the plastic twist, marijuana.

Q. You previously testified that you're certified in field testing narcotics?

A. Yes.

Q. Did there come a time when you field tested any of the alleged marijuana recovered from the vehicle?

A. Yes.

Q. And when did you do that?

A. At the 52nd Precinct.

Q. After you conducted the field test, what were the results?

A. That it was positive for marijuana.

Q. Can you please describe how you conducted the field test?

A. Yes. You put a small amount of the marijuana into the field test kit, you break the glass tube and if the liquid turns purple, purple means positive for marijuana.

Q. Now I would like to speak about the second bag that you recovered from the glove box. Can you please articulate what you observed inside that bag?

A. The bag containing --

Q. The firearm.

A. All right. It was a black .9 mm Ket Tech firearm loaded with six rounds with two loose outside the firearm in the bag.

Q. After you recovered the marijuana from both the passenger compartment of the vehicle and the glove box, and the firearm from inside the glove box, what happened next?

A. The three defendants were placed under arrest and removed to the 52nd Precinct for the arrest processing.

Q. What charges were the defendant and the two passengers arrested for?

A. Criminal possession of a firearm, criminal possession of marijuana.

Q. Detective, was the defendant ever taken to the 45th Precinct for IDTU testing?

A. No, he was not.

Q. Why not?

A. After speaking with him and interacting with him, it was my opinion that he was not intoxicated driving the vehicle.

Q. In your training and experience as a police officer, are you familiar with the signs or indicia of intoxication?

A. Yes.

Q. In your personal life have you ever been around individuals who are intoxicated?

A. Yes.

Q. What are some of the signs or indicia of intoxication?

A. Slurred speech; blurry eyes; watery, red, bloodshot eyes; trouble with fine motor skills like walking, things like that.

Q. Through your investigation did you determine whether or not the defendant exhibited any of these signs or indicia of intoxication?

A. He did not.

Q. Did there come a time when you returned to the precinct?

A. Yes.

Q. What precinct did you go to?

A. Fifty-second Precinct.

Q. Did you transport the defendant and the two passengers?

A. No, I did not.

Q. How were they transported?

A. Transported by other members of the vehicle checkpoint. I transported the vehicle itself with the evidence back to the 52nd precinct.

THE COURT: Do I need to know this?

MS. DRASSER: I'm laying the foundation for a further search of the vehicle at the precinct.

THE COURT: Okay.

Q. Detective, once you went back to the precinct with the vehicle, what if anything did you do with the vehicle?

A. I vouchered it and conducted an inventory search.

Q. Did you recover any additional items from the vehicle?

A. There was personal property and masks that were recovered, like masks.

Q. What sort of personal property did you recover from the vehicle?

A. Latex gloves, a FedEx uniform, CDs. That's about it.

Q. Of the additional items that you recovered from inside the vehicle, did you voucher any of those items?

A. I vouchered the masks.

Q. Why did you not voucher the personal property?

A. We had a boa constrictor snake, so we had a family member come and get the snake from the precinct, at which time I allowed that family member to take some of the personal property that was taken from the car.

Q. In addition to the masks, did you voucher any other items that you recovered from the vehicle?

A. Just the contraband.

Q. And what did that contraband include?

A. Firearm and the marijuana.

Q. Did you voucher the bottles of alcohol recovered from the vehicle?

A. I did not, no.

Q. Why not?

A. They contained liquid. That is not commonly vouchered, things containing a liquid.

Q. Did you memorialize the bottles of alcohol that you recovered from the vehicle in any way before disposing of them?

A. Yes.

Q. How did you do that?

A. With a photograph.

MS. DRASSER: Your Honor, I'm holding a single page document. I ask that it be marked, or deemed marked People's 1 for Identification?

THE COURT: Okay.

(Whereupon, there was a pause in the proceedings.)

MS. DRASSER: I ask what's been deemed People's 1 for Identification --

THE COURT: Can we put it in Evidence?

MS. FLORIO: In Evidence for the purpose of the hearing.

THE COURT: People's One in Evidence, deemed.

(Whereupon, People's Exhibit 1 was deemed marked in Evidence.)

Q. Detective, can you please tell the Court what is contained in People's 1 in Evidence?

A. Two bottles of liquor recovered from inside the vehicle at the time of arrest, Llord's Strawberry Liqueur and a bottle of Grey Goose.

MS. DRASSER: I ask for the exhibit back from the witness?

Thank you very much.

Q. Detective, prior to pulling over the defendant's vehicle at the checkpoint, had any other vehicles been pulled over prior to that car?

A. Yes.

Q. Approximately how many?

A. More than 20.

Q. Out of the those 20 cars, approximately how many other arrests were made on that day?

MS. FLORIO: Objection.

THE COURT: Over -- sustained.

MS. DRASSER: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. FLORIO:

Q. Good afternoon, detective.

A. How are you?

Q. Good, thank you.

Detective, I first want to start with where you were physically positioned on the bridge.

A. Checkpoint was towards the Bronx side of the bridge. So it was inbound, coming from Manhattan into the Bronx.

Q. Fair to say the vehicle that you stopped that Pablo Pastrana was in was coming from Manhattan going into the Bronx, correct?

A. Yes.

Q. And can you describe how many lanes are on the portion going into, from Manhattan to the Bronx?

A. I don't think --

Q. How many cars fit, that's what I'm asking.

A. I don't want to guess. It's either one or two but I'm not a hundred-percent sure. I have to look.

Q. Can you tell us where you -- you said there was two vans, like where? There were cones at the checkpoint. Is that like right by the Bronx section? Towards the middle of the bridge? Where exactly was it?

A. The bridge has a structure, metal structure. Right past the metal structure towards the Bronx side on the outbound from Manhattan before you would enter the Bronx, right above what would be the Major Deegan.

Q. I know where the Major Deegan is, like going, I guess to the Bronx, correct, not going upstate? From where the Major Deegan is, where was your vehicle positioned from the Bronx side?

A. The front of the van was directly behind the metal structure of the inbound from Manhattan lane, inbound to the Bronx from Manhattan.

Q. Can you tell me approximately how many feet it was from the Deegan?

A. I can't guess for you. If I had a photograph in front of me I would be able to.

Q. Where you are here, like can you tell us, say that's the Deegan right on the Bronx side, right, where the checkpoint was?

A. Like I said, if you put a picture in front of me I would be able to tell you exactly where it was set up. From just trying to explain it--

Q. Would it be fair to say it was very close to the Bronx -- to the Bronx side where the Major Deegan was? Would that be fair to say?

A. Well, there's an entrance to the Major Deegan from the bridge.

Q. Correct.

A. The cars that we were targeting were cars coming -- entrance that you're talking about is the entrance that enters on the Major Deegan from the University Heights Bridge?

Q. Correct.

A. So we were taking the cars -- it was prior to that turn that would go on the Major Deegan.

Q. But would it be fair to say it was closer to the Bronx side, correct?

A. Yes.

Q. How many cars did you personally observe that were pulled over, like the third cars?

A. I don't understand the question.

Q. I'll rephrase. Would it be fair to say that -- did you decide which cars were going to be pulled over?

A. I did not, no.

Q. Were you told which cars would be pulled over?

A. No.

Q. Did someone point to you and tell you which cars should be pulled over, or the cars were already pulled over?

A. Cars were directed by Officer Banks into the lane designated for cars to be pulled over. As Officer Banks would point out the third car, he would count, he would direct them into the lane where I was standing. I would watch the car pull up and then interview that particular person.

Q. You don't know specifically if it was every third car, correct? You didn't sit there and count the cars, correct? That was not your job?

A. My job at the checkpoint was not to count cars. I was stationed to interview the drivers that pulled up, the designated third drivers.

Q. Basically, the car was pulled over by your fellow officer and then you interacted with the driver, correct?

A. Yes, ma'am.

Q. So it's your testimony that you don't really know if it was every third car that was actually pulled over, correct?

THE COURT: Right, he can't say that.

Q. You can't say that, right?

A. I didn't do the count, no.

Q. The car that you pulled over that you say Mr. Pablo Pastrana was driving, did the car have tints?

A. I don't recall tints, no.

Q. When you first approached Mr. Pastrana, were the windows up or down?

A. Initially when I approached him the windows were partially down, at which point I told him to roll the windows fully down.

Q. And did Mr. Pastrana comply with your order?

A. Yes.

Q. And when you had seen Mr. Pastrana, did you notice if there were other people in the car?

A. Yes, I did.

Q. And what if anything did you notice about Mr. Pastrana?

A. Nothing out of the ordinary other than that he was the driver of the vehicle.

Q. When you first saw him, did you notice if his eyes were bloodshot and watery?

A. No.

Q. Did he have slurred speech?

A. He did not.

Q. Did he comply with everything that you asked him to do?

A. Yes, he did.

Q. And the first thing that you did is, you had a conversation with Mr. Pastrana; correct?

A. Momentarily, yes.

Q. What was the first thing you asked him?

A. I asked him for his driver's license and registration for the car.

Q. And did he give that to you?

A. Not immediately, no.

Q. When you say not immediately, is that because your attention was directed to someplace else or he had to look for it?

A. My attention was directed someplace else.

Q. So the only thing you asked Mr. Pastrana for was his license and registration and to lower the window, correct?

A. Initially, yes.

Q. You said when he first lowered the window -- did he lower the window all the way down?

A. Yes.

Q. Was that just the driver's window or all of the windows?

A. All of the windows.

Q. You had asked him to lower all of the windows down, correct?

A. Yes.

Q. You said you smelled marijuana at that point, correct?

A. Yes, it is.

Q. You smelled alcohol?

A. Yes.

Q. Did you smell marijuana on Mr. Pastrana?

A. The odor was emanating from the car. I couldn't determine exactly where it was emanating from.

Q. Did Mr. Pastrana smell of alcohol when you were having the conversation with him?

A. The odor of alcohol was emanating from the vehicle. After I asked them to step out of the car and I had a conversation with him, at that time I did not smell alcohol on him, no.

Q. And you indicated that his speech was not slurred, correct?

A. Yes.

Q. So when you spoke to him he answered in a regular tone, correct?

A. Yes.

Q. He was very cooperative with you, correct?

A. Yes, he was.

Q. So you said that after you asked Mr. Pastrana to lower all of the windows, he lowered all of the windows, correct, then your attention was drawn to the back passenger's seat; correct?

A. Yes, ma'am.

Q. And what was the first thing that you saw when you looked in the back seat?

A. I could see the rear passenger was nudging a bottle in between his arm and his, what would be his right thigh area trying to conceal it from me seeing it.

MS. FLORIO: Objection to what he was trying to do.

THE WITNESS: I'm sorry.

THE COURT: Sustained.

Q. Was the bottle in a bag?

A. Yes.

Q. What kind of bag was it in?

A. Brown paper bag.

Q. Brown paper bag?

A. Yes.

Q. You're sure that this was a brown paper bag and it was not a black plastic bag that you would buy liquor in, correct?

A. Brown paper bag.

Q. That's what you recall?

A. Yes.

Q. And isn't it true that you could not see what was in the bag?

A. That's not true. I could see the top neck of the bottle sticking out, which is common as an alcoholic bottle.

Q. Okay. But at that point when you saw the bottle -- the neck of the bottle I think you're talking about, right?

A. Yes, it is.

Q. That bottle, the top was closed, correct?

A. It had a cap on it, yes.

Q. I wasn't open, correct?

A. The seal was broken.

Q. But you didn't know if there was alcohol in there or not at that particular time, correct?

A. Well, I asked the rear passenger if he was drinking and he stated to me, "What, I'm not allowed to drink in a car?" That was indicating to me that he was drinking alcohol in the car.

Q. You didn't see him drinking alcohol in the car, correct?

A. No, I didn't see him actually drink it.

Q. What you had actually observed was an individual sitting behind Mr. Pastrana, correct?

A. Yes.

Q. You said you saw a brown bag with a bottle of -- the neck of a bottle of liquor sticking out; correct?

A. Yes.

Q. At that particular time you didn't know if it was full or empty or partially drunk, correct?

A. At that time particular moment, no.

Q. So then you said you engaged in conversation with that particular individual?

A. Yes.

Q. You said that individual was sort of not really trying to interact with you, correct?

A. Yes.

Q. Okay. That individual didn't yell or scream at you?

A. No.

Q. When you made the observation of the individual with the alcohol in the brown paper bag, that's when you ordered him out of the car; correct?

A. Yes. I initially asked him for his ID, and he refused.

Q. You took him out the car?

A. I asked him to step out of the vehicle.

Q. You bring him to the back of the car, right, the Audi?

A. Yes, ma'am.

Q. Do you have a picture of the Audi? Did you take -- you yourself, did you take any pictures of that Audi?

A. No, I did not.

Q. That Audi was vouchered, correct?

A. Yes, ma'am.

Q. It was not given back to the owner, correct, as far as you know?

A. As far as I know, no.

Q. We have no pictures of the Audi, correct?

A. No.

Q. So you put the back seat passenger in the back of the car, correct?

A. Yes.

Q. And then you -- do you go in and take the bottle and look at it, or do you go straight to my client?

A. At that time I was able to see -- when he got out I was able to see that it was a bottle of liquor, and I looked at it.

Q. Before when he was sitting there you didn't know it was a bottle of liquor?

A. I knew it was a bottle of liquor.

Q. What changed once he got out and once -- and before he got out? Like you said, you could really tell it was a bottle of liquor.

A. When he was attempting -- well, he was concealing it partially with his body. When he stepped out the bottle of liquor was sitting in the car without his body attempting to position it, at which point I could see it was a bottle of Llord's Strawberry Liqueur.

Q. Still in the bag, correct?

A. Yes.

Q. You could see in the bag that it was a bottle of Strawberry Llord's Liqueur, correct.

A. I looked at the bottle.

Q. You actually took the bottle out of the bag, correct?

A. Yes.

Q. Was that before or after you asked Mr. Pas-trana to get out the car?

A. That was before I asked him to get out of the car.

Q. So you have the back passenger secured in the back, the rear of the vehicle; correct?

A. Yes.

Q. You go look and you said it's alcohol, correct?

A. Yes.

Q. But you never saw the top opened of the alcohol, it was always on the bottle, correct?

A. Correct.

Q. Then you go and have a conversation with Mr. Pastrana, correct?

A. Yes, ma'am.

Q. Then you tell him to get out the car?

A. I asked him to step out of the car, yes.

Q. Did you ask him any questions before you tell him to get out the car?

A. I remember him telling me he was coming from the Puerto Rican Day Parade. That's the only conversation we had.

Q. How did that come up?

A. I asked him where he was coming from, he told me the Puerto Rican Day Parade.

Q. Okay. And why did you ask him to get out the car?

A. I was going -- due to the strong odor of marijuana emanating from the car, I believed there was going to be a large amount of the marijuana in that car, along with the addition of alcohol, due to the odor of alcohol emanating from the car and the bottle that I originally seen in the back seat.

Q. So then did you ever get the registration and the license from Mr. Pastrana?

A. Yes.

Q. And when did that happen?

A. When he stepped out of the car.

Q. So you asked him to step out of the car, then you also bring him to the back away from the car so

he's secured at the back as well as the back passenger in the back of the vehicle; correct?

A. Yes.

Q. And did you ever have time to see any other bottle before you took my client out the car?

A. At that particular moment in time we're speaking of, no.

Q. Did you see any marijuana in the car at that particular time?

A. No.

Q. And did you see -- did you find any burnt marijuana or cigarettes in the car?

A. No.

Q. Did you look in the ashtray to see if there was any burnt cigarettes or marijuana in the car, blunts?

A. I don't recall.

Q. You certainly did not find any smoked marijuana, correct?

A. No, I did not.

Q. Then after Mr. Pastrana is secured in the back, as well as Mr. Karell, then you said you were the one that went over and spoke to Alexis, the female?

A. Yes.

Q. You said that you saw a snake around her neck?

A. She had a snake; it was kind of intertwined within her body.

Q. But isn't it true that the snake was on the dashboard and not on the female?

A. When she got out of the car, the snake was with her, mostly for the fact most of us officers were kind of scared. It was large, we were unfamiliar with it. She was in possession of that snake up until the time that she was handcuffed.

Q. Isn't it true that no one ever noticed the snake at all until the female was out of the car?

MS. DRASSER: Objection.

THE COURT: Overruled.

A. I noticed the snake; that's all I can testify to. It was a big snake. She had it.

Q. Your testimony is she had a snake around her neck while she was still seated in the car? That's your testimony?

A. My whole remembering of the snake was that she had a snake and it was in her possession.

Q. When you said "in her possession," was she holding it? Was it around her neck? Was it in close proximity to her?

A. It was a live animal that was on her. It was in her possession and she got out with it.

THE COURT: Let's move on.

Q. Okay. So then you tell her to get out the car, correct?

A. I asked her to step out.

Q. You asked her for ID?

A. At that time I just asked her to go directly to the back of the car.

Q. She went to the back of the car with the snake, correct?

A. Yes.

THE COURT: So she was the last one you asked to get out of the car?

THE WITNESS: Yes; she was the last one.

Q. Before she gets out the car, you don't see any alcohol on the floor in her bag, right, before she got out, correct?

A. When she is stepping out of the car, that's when I made my observation of the plastic twist and the other bottle of alcohol that was in the car.

Q. The bottle of alcohol was actually in her purse, correct?

A. Yes, it was similar. The Grey Goose, neck of the Grey Goose bottle was hanging out of her purse, like I could see the birds on it. That indicated it was a bottle of Grey Goose; I knew it was a bottle of alcohol.

Q. The top was on it, correct?

A. It's a cork, so it was corked.

Q. It was on it, correct?

A. Yes.

Q. It was not an open bottle, correct?

A. Top was on it. Seal was broken, but top was on it.

Q. It was -- you testified earlier that you saw it on the floor. You actually saw it on the floor in her purse, correct?

A. Yes.

Q. She didn't have her purse on her, correct? Like it was not -- she was not holding her purse when she was sitting down?

A. At the time I noticed the purse, no, she did not.

Q. So it was after she was getting out of the car that you noticed the purse and you noticed this twist of marijuana, correct?

A. Yes, ma'am.

Q. And can you describe what this twist looked like?

A. It was a circular ball shaped amount of marijuana that was tied off, what would be the corner of a plastic bag.

Q. And so you referred to it as a twist; is that correct?

A. Plastic twist.

Q. Not a large plastic bag, correct?

A. I refer to it as a plastic twist.

Q. Now, so all three people now are out of the vehicle, correct?

A. Yes, ma'am.

Q. And that is, they're all secure in the back of the car, correct?

A. Yes.

Q. And other officers are watching them, correct?

A. Yes.

Q. And you have your gun out?

A. No.

Q. Did you have your hand on your gun?

A. No.

Q. So when you had all three people out of the car how did you get the car keys?

A. The car keys were in the car.

Q. So you just -- did you ask permission -- did you ask Mr. Pastrana for permission to go into the car?

A. No.

Q. To go through the glove box?

A. No.

Q. Did Mr. Pastrana tell you, "I'm not giving you consent to search the car?"

A. No, not to me.

Q. Did you hear him say to any other officers I'm not giving you consent to search the car?

A. No.

Q. So it's your memory that the keys were in the ignition and they were not on top of the dashboard, correct?

A. That's incorrect, I never said the keys were in the ignition, I said they were in the car.

Q. So could you tell us where you saw the keys?

A. The keys were either -- the keys were in the center console.

Q. So the glove compartment was locked, correct?

A. Yes, ma'am.

Q. So you took the keys without anybody's permission, correct?

A. Yes.

Q. And you went yourself and you opened up the glove box, correct?

A. Yes.

Q. And it's true that traffic was backed up because of the checkpoint, correct?

A. It was post parade traffic entering from the Bronx into Manhattan, I'll let you imagine what that would look like.

Q. Well, there was cars behind Mr. Pastrana's car, correct?

A. Yes.

Q. And that is an issue that the car right behind Mr. Pastrana was also pulled over?

A. No, that I can't testify to. I do not know.

Q. Because it didn't happen or you don't remember?

A. That's because --

MS. DRASSER: Objection.

THE COURT: Sustained.

Q. So what was your information about this checkpoint?

A. It is a vehicle safety checkpoint where we were doing inspections for VTL violations across, you know, on every third vehicle.

Q. So it was not to search for weapons, correct?

A. No, it was not.

Q. It was not to search for drunk drivers, correct?

A. A drunk driver would be apart of a check-point. If somebody pulled up and they were intoxicated we would take enforcement for that.

Q. But that was not the specific goal of the check-point, correct?

A. The specific goal of the checkpoint was a vehicle safety checkpoint.

Q. What does that mean, vehicle safety?

A. We're checking for people's license of drivers, registered vehicles, improper inspections, equipment, seat belts.

Q. So basically its for the well being of the car and to make sure that the vehicles are inspected and have proper registration, correct?

A. Yes.

Q. So you're not looking for guns and you're -- the whole purpose is not to check for guns, correct, or not to check for drugs, correct?

A. Correct. The investigation take --

Q. Not check for drunk drivers, correct?

A. Well, I'm a police officer, I'm always going to take enforcement against drunk drivers.

Q. No, but I'm not asking --

A. It's a crime.

Q. The checkpoint, was the checkpoint specifically for drunk drivers?

A. It was not specifically for drunk drivers, no.

Q. Thank you.

So it's fair to say that my client -- did my client have bloodshot eyes?

A. No.

Q. Was my client observed to be slightly disoriented?

A. No, he did not.

Q. So do you recall having a conversation with an assistant district attorney right after the arrest and described to the assistant district attorney facts that you observed before a criminal court complaint was actually generated?

A. Yes.

Q. In fact, there was a criminal court complaint generated and you signed it because you were the arresting officer, correct?

A. Yes.

Q. You were not the assigned arresting officer, you actually made observations and you actually read the complaint then you signed it under perjury?

A. Yes.

Q. So did you tell an assistant district attorney that you observed my client to be slightly disoriented and have bloodshot eyes, did you tell the assistant district attorney that?

MS. DRASSER: Your Honor, I just ask what document Ms. Florio is referring to?

MS. FLORIO: The DA write-up.

Q. Did you tell an assistant district attorney that?

A. I don't remember.

Q. Did you tell an assistant district attorney that you observed a glass bottle of liquor sitting on the right hand side of the back passenger seat near the person that was arrested?

A. Yes.

Q. Did you tell the assistant district attorney that you had observed a one large bag of marijuana on the front passenger side floor, did you tell him that?

A. I told him there was a plastic twist of marijuana on the floor.

Q. So let's go then to the criminal court complaint. So you actually signed a two page criminal court complaint, correct?

A. Yes, ma'am.

Q. And on the criminal court complaint it says false statements herein are punishable by a Class A misdemeanor pursuant to 210.45, correct?

A. Yes.

Q. And you actually read this complaint before you signed it, correct?

A. Yes.

Q. To make sure it was accurate?

A. Yes.

Q. And what color was the plastic bag that was inside you said there was two plastic bags in the car in the glove compartment?

A. Yes.

Q. And what color were they?

A. The firearm plastic bag was a black plastic bag. I'm not going to guess for the other color.

Q. So did you state that inside of the Audi A6 glove compartment was wrapped a white plastic bag with one loaded Kel Tec 9 millimeter semi automatic pistol, did you say that in the criminal court complaint?

MS. DRASSER: Objection, Your Honor. The witness stated he doesn't remember. It's improper impeachment.

MS. FLORIO: He said he remembered one, he didn't remember the other.

THE COURT: Yes, I will allow it.

Q. Did you say that you would like to refresh your recollection?

THE COURT: Wait a minute.

The question is did you say that, if you recall?

THE WITNESS: I don't recall. I don't recall the color.

Q. So now you're saying you don't remember the color?

THE COURT: What was the question?

Q. The question is, in the criminal court complaint, did you state that the gun was in a white plastic bag?

A. If that's in the criminal court complaint I don't remember. And I said that I don't remember the color of the plastic bag.

Q. Can you look at this and let us know if that's what was in the complaint that you signed to.

(Whereupon, the document is being handed up to the witness.)

A. The complaint says a white plastic bag.

Q. That the gun was contained in, correct?

A. Yes.

Q. And you said you don't recall what color bag the marijuana was in, correct?

A. Yes.

MS. FLORIO: May I have that back, please?

THE WITNESS: Sure.

(Whereupon, the document is being handed back to the defense counsel.)

Q. Did you also state in the criminal court complaint that you signed that you had seen inside of the Audi A6's front passenger floor area one large plastic bag containing a dry green leafy substance with a distinctive odor in public view?

Did you state that in the criminal court complaint?

A. Yes.

Q. And you said nothing about a twist, correct, in the criminal court complaint?

A. Plastic bag, plastic twist.

Q. But in the --

THE COURT: Again, just the question. Did you say that in the complaint?

THE WITNESS: If I signed that, yes, then I said that.

Q. So you're admitting that you did say one large plastic bag, correct?

THE COURT: He's admitting that it's there. That's what it says?

MS. FLORIO: Okay.

Q. Did any of the officers have their guns drawn when they approached the car?

A. No.

Q. How many officers actually approached the car?

A. The only people I can remember approaching the car for the initial approach was myself and Officer Morell.

Q. And what color was the car?

A. It's a green 2001 Audi A6.

Q. So I direct your attention to an incident. Do you recall being questioned about a William Norwood Jr?

A. Yes.

Q. And when you were questioned about William Norwood Jr., you were questioned by the Civilian Complaint Review Board personnel, correct?

A. Yes.

Q. And do you have tattoos on your legs?

A. Yes.

Q. And what are the tattoos that were on your legs?

A. They're an assortment of things.

Q. Well, do you specifically have a tattoo of an array of seven color skulls on both legs which extend to your knee to your ankle and a full sleeve?

A. I do have -- I don't know if your count is correct, but I do have a skull tattoo and it extends from my knee to my ankle

Q. And when you were questioned by the CCRB, did you refuse to answer the question about whether you had tattoos on your legs?

A. No.

Q. Isn't it true that an investigator asked you do you have any tattoos at all besides the ones that are visible on you left arm and that you asked your attorney if you had to answer that. Do you recall that?

A. Yes.

Q. And then -- and then you said that you were not willing to disclose whether or not you had skull tattoos on your legs, do you recall that?

A. My attorney representing me at the CCRB, I felt uncomfortable discussing all the tattoos that I had on my body to an individual in a professional setting, so I asked my attorney could I refrain from disclosing tattoos images, they told me I could, at which point I told them I didn't want to answer that question.

Q. So the answer is that at first you said no, I don't want to disclose whether or not I have tattoos on my legs, correct?

A. Under the advisement of my attorney, yes.

Q. But you were satisfied at first?

A. Yes.

Q. And then you were interviewed again, correct?

A. Yes.

Q. And that was on February 7th of 2012, correct?

A. I don't recall the exact date.

Q. And then at that time you admitted that you had tattoo on your legs, correct?

A. Well, the CCRB investigator went through the legal process and found out. I guess it was legal for them, that I would have to answer that question at the time, so under the department guidelines I had to answer the questions and I answered the question.

Q. And did you show your tattoos, the skulls, the tattoos on your leg to a William Norwood and tell him that if he files a complaint with the Internal Affairs Bureau that you would show him your skull tattoos, and that you said to him, the last person that said they were going to call IAB, my partner kicked him in the head so hard his eyeball popped out, did you say that to that individual?

A. Absolutely not.

MS. FLORIO: Can I have a chance to consult with my client?

THE COURT: Yes.

(Brief pause.)

MS. FLORIO: Detective, I have no further questions. Thank you very much.

THE COURT: Thank you. Redirect?

MS. DRASSER: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. DRASSER:

Q. Detective, I would like to direct your attention to the part of the cross examination when there were questions about the container of marijuana that you observed on the floor of the passenger compartment area.

Can you please describe your training and experience, what a plastic twist of marijuana is?

A. A plastic twist is -- it's a plastic bag that is filled with narcotics. A larger plastic bag, it's pulled tightly and tied into a knot and then ripped off, packaging the narcotic substance.

Q. So a twist is in fact a bag?

A. In fact a plastic bag, yes.

Q. And how -- what size of a plastic twist would you say that the marijuana on the floor of the passenger compartment was?

A. It was a round size of a gulf ball.

Q. And in your experience and training as a police officer, is that a large quantity of marijuana; a small quantity of marijuana?

A. It's larger than a typical bag that somebody would buy and smaller than say what a large amount would be. It's all respective to what you think a large and small amount is. A round small amount to others, I really don't know how to answer it.

MS. DRASSER: No further questions, Your Honor.

MS. FLORIO: I have nothing further.

THE COURT: Thank you very much, detective. You have any other witnesses for this hearing?

MS. DRASSER: No, Your Honor, the People rest.

THE COURT: Any Witnesses?

MS. FLORIO: Yes.

THE COURT: Call your witness.

MS. FLORIO: Yes, the defense calls to the stand Mr. Ehtien Karell, E-H-T-I-E-N K-A-R-E-L-L.

MS. DRASSER: Your Honor, may I make a brief record?

THE COURT: Go ahead.

MS. DRASSER: Last night Ms. Florio indicated to me that she was calling Mr. Karell as a witness. This morning I did ask her if she had any interview notes relating to his testimony and she told me that she did not have anything beyond pedigree information. However, under the rules of reciprocal discovery, if Ms. Florio has any notes, I would request them.

MS. FLORIO: I don't have any.

THE COURT: All right, thank you. Let's get the witness.

E H T I E N K A R E L L, a witness called on behalf of the defendant after having been first duly sworn and having stated his County of residence, took the witness stand and testified as follows:

THE CLERK: In a clear voice state and spell your name.

THE WITNESS: Ehtien Karell. E-H-T-I-E-N. Last name K-A-R-E-L-L.

THE CLERK: County of resident.

THE WITNESS: New Jersey, Bergen County.

THE CLERK: Occupation?

THE WITNESS: Right now nothing.

THE COURT: All right, Mr. Karell, please try to speak in the microphone.

DIRECT EXAMINATION

BY MS. FLORIO:

Q. Good afternoon, Mr. Karell.

A. Good afternoon.

Q. Mr. Karell, I'm just going to ask you to speak really loud so every one can hear your testimony, okay?

A. Okay.

Q. How old are you?

A. Twenty-seven.

Q. And you live in what part of New Jersey?

A. Bergen County.

Q. And where did you grow up?

A. I grew up in Manhattan.

Q. Where specifically?

A. 102nd in Lexington.

Q. How long have you been unemployed for?

A. A week.

Q. And why have you become unemployed?

A. I had car failures, so they said that they couldn't anticipate, depend on me because of me having car failures. I have an old vehicle so I lost my job based on those experiences.

Q. What did you do before that?

A. I was a concrete field inspector.

Q. You was still working construction in different aspects?

A. Yes.

Q. What specifically did you do with the concrete, you said you were a concrete inspection?

A. We test for strength, we make sure when they are applying concrete to the ground that they are applying it correctly.

Q. And before you had lost your job, before your vehicle, you had problems with your vehicle, were you paid on the books?

A. I was always paid on the books.

Q. You always worked in construction?

A. Not always, until recently the last two years, yes. Before that it was Old Navy, petty jobs.

Q. So I want to ask you if you know an individual by the name of Pablo Pastrana?

A. Yes.

Q. And do you see him in court?

A. Yes.

Q. Can you point to that person and identify an article of clothing he's wearing?

A. He's wearing orange.

MS. FLORIO: Let the record reflect that the witness has pointed out and identified my client.

THE COURT: Yes.

MS. FLORIO: Mr. Pastrana.

Q. Can you tell us how you knew Mr. Pastrana on the day of the arrest? Like how did you meet him, how many times, how did you know him?

A. It was the day of the Puerto Rican Parade, we were all going to hang out in big groups and I saw him when I got there. So we spoke briefly for 30 seconds.

THE COURT: She's asking you how long you knew him.

A. Oh, through mutual friends for a year maybe.

Q. And through mutual friends how many times did you actually speak to him or hang out with him?

A. Maybe two, three times maybe.

Q. Within that year, correct?

A. Within that year, yes.

Q. And so you say you had seen Mr. Pastrana at the parade, correct?

A. Correct.

Q. Just tell us what happened?

A. I saw him, I briefly spoke to him for 30 seconds and I went about the rest of the parade and at the very end of the parade he asked me if I was doing anything after and I told him, not really doing anything, I said what do you have in mind?

He said let's go to the beach, let's hang out. He said let's go. We went to the vehicle, got in his vehicle,

we drove, made about two more pit stops before we got to the bridge.

Q. Okay. So can you tell us who was driving?

A. He was.

Q. Pablo?

A. Correct.

Q. And did you know his last name at that particular time?

A. No.

Q. Did you later find out his name through the arrest process?

A. Yes, we were locked up and they said his full name.

Q. Was any other person inside the car?

A. Yes, a female.

Q. And had you ever met her before that day?

A. No, I met her that day.

Q. And tell us where were you seated?

A. I was behind the driver in the rear.

Q. And where was the female seated?

A. Passenger seat.

Q. Did you know her name?

A. No.

Q. Can you tell us what happened when you first got in the car, did you notice anything?

A. Yes, I noticed a black bag covered on the floor, so I picked it up, and then I saw there was alcohol inside of it, like maybe a sip and then I took a sip of it and then I left it next to me on the side.

Q. Was there anything else inside of the black bag?

A. Like a sandwich, like some sort of sandwich, like eaten sandwich already.

Q. When you first got in the car did the car smell like alcohol?

A. No.

Q. Did the car smell like marijuana?

A. Definitely not.

Q. Do you smoke marijuana?

A. No, I do not.

Q. So after you had taken a little sip of what was in the bottle, did you say anything to Pablo?

A. Yes, I did. I said, I said oh, you have liquor and you're holding out on me now.

He said no, this is not mine, this is there for days previously from someone else.

Q. And can you describe the black bag that -- do you know what kind of alcohol it was?

A. I actually don't remember what kind. It was probably something very sweet, I don't remember name brands.

Q. I show you what has been admitted into evidence as People's number one. Do you recognize any of the bottles in People's 1?

A. Well, the one on the left, the strawberry one seems to be the one because that's the sweet one, Grey Goose is very bitter and Vodka. The one on the left is the strawberry one.

THE COURT: You don't remember specifically if that's the one?

THE WITNESS: Yes. Yes and no. Because I only unveil the top, the golden top.

Q. So can you tell us was any of the bottle, the neck of the bottle exposed in that black bag?

A. No, not at all, it was completely covered.

Q. And when you had gotten -- when you first noticed that there was a bag underneath the seat and you looked into it, where did you put the bag?

A. I put it next to me on the seat. Next to me on the seat on the side of me, but like away from me, but in the middle of the seat.

Q. And at any time could you see what was inside of the bag if you were standing outside of the car?

A. No, not at all.

MS. DRASSER: Objection.

THE COURT: Sustained.

MS. DRASSER: I request to strike.

THE COURT: Well, he said -- all right, the objection is sustained.

Q. From where you were seated when you looked at the bag, did you see any portion of the neck of the bottle sticking out?

A. I knew that it wasn't because I'm the one that covered it. So I made sure nothing was sticking out of it.

Q. Now, did there come a time that you had an opportunity to be in the front seat of the car before you were in the back seat?

A. Correct.

Q. Please tell the court about that?

A. Well, going back to the two pit stops we made, the first pit stop that we made the female, the passenger got out to use the bathroom, I jumped in the passenger seat so I could hang out with him because I didn't want to be in the back anymore, plus the back doesn't recline, so I jumped in the passenger seat and went to lit a cigarette and he tells me there's no smoking allowed in my car.

When I dropped the cigarette on the floor I went hunting for it and I couldn't find my cigarette.

Q. And did you see anything on the floor?

A. No, not at all.

Q. Did you see --

THE COURT: See what on the floor?

MS. FLORIO: See anything on the floor.

THE COURT: Oh.

Q. Did you see a bag of marijuana?

A. No, definitely not.

Q. Did you see a twist of marijuana?

A. No.

Q. Are you familiar with that car?

A. Yes.

Q. And can you describe the passenger front seat, if anything could fit underneath the seat?

A. Barely. Audi's have a mechanical system, a reclining system, it's not like regular cars where you can put your hand under the car, you can't, it's a mechanical thing that blocks.

Like I dropped my cigarette, I went hunting for it myself and I'm guessing I probably dropped it outside of the vehicle, I couldn't find anything there, I didn't see any bags of anything on the floor.

Q. And so how much time had passed from the time that you had dropped the cigarette until the time that you had gotten stopped by the police?

A. I'd say maybe 20, anywhere from 20 to a half hour because there was traffic.

Q. And could you tell us, did you notice if there was a checkpoint on the bridge, University Bridge?

A. No, we didn't see one until we got on the bridge.

Q. And once you got on the bridge what, if anything, did you see?

A. I saw a green minivan in front of us, until maybe the green minivan got five feet away from the checkpoint, that's when we seen the checkpoint and I saw a green Honda Civic behind me.

Q. So the car in front of you, did that get stopped?

A. No.

Q. And could you just describe the car and the person whose in that car?

A. It was a silver minivan, it didn't look old.

MS. DRASSER: Objection. Relevance.

THE COURT: Sustained.

THE WITNESS: It didn't look old.

THE COURT: Don't answer.

Q. Just with respect to the car, the third car being stopped?

THE COURT: He said the car in front of him wasn't stopped.

MS. FLORIO: Correct.

THE COURT: Why are you asking him to describe the person whose driving.

MS. FLORIO: Correct.

THE COURT: Why is that relevant?

MS. FLORIO: To show this is based on racial profiling, that the cars were not being stopped systematically every third car, they were stopping people of a certain race.

THE COURT: Okay, he can testify to that.

MS. FLORIO: Go ahead.

A. It was, I recall a minivan, the car wasn't that up. The person looked Asian.

Q. And they would let that car go?

A. They let that car go. They stopped our car and the car behind us.

Q. And the car behind you, can you describe what that car looked like?

A. It was an old maybe 1995 Honda Civic, green, and the driver was a Latino man.

Q. And did you actually see that car being searched?

A. No, actually that car didn't get searched at all, but they pulled him out of the vehicle.

Q. You saw him get out?

A. Yes, that's how I knew what he looked like.

Q. And did you see like every third car being stopped?

A. No, because at that point after they let --

Q. Well, before you got stopped?

A. No, we couldn't see that at all because the car in front of us was blocking our view.

Q. So can you tell us what happened when you were coming over the bridge, what happened?

A. When we came over the bridge the first car got let go, we got pulled over and then the cop walked up to Pablo Pastrana, asked him -- I don't know if he asked for license and registration, but in the blink of an eye he was told to get out of the car, then I was told to get out the car and then the female was told to get out the car last.

Q. Now the officer that asked you to get out the car, did you see him in the hallway today?

A. I actually don't remember what the officer looked like.

Q. Can you tell us what, if anything, did you hear that officer first state, like what did he say, did he speak to you first, did he speak to Pablo first?

A. That officer was talking to Pablo. The officer that pulled me out in the end, he was an African American.

Q. Can you describe what, if anything, happened to you?

A. Repeat that question, I'm sorry I don't understand.

Q. You said that you saw Pablo get pulled out of the car, correct?

A. Correct.

Q. And then where did you see him go to?

A. The back of the car.

Q. And then did anyone else get pulled out of the car?

A. Yes, and I was next. I was pulled out to the back of the car by the trunk.

Q. Did you see anyone else get pulled out?

A. No, not at this point, until we were all cuffed and put in the minivan.

Q. So you just described when you were pulled out of the car by an African American officer, where was that black bag that contained the alcohol?

A. It was next to me as a passenger, it was next to me.

Q. And so is it your testimony that you were pulled out first from the car and then brought to the back?

THE COURT: First --

MS. FLORIO: First -- withdrawn.

Q. It was your testimony that when you were pulled out the car the bag was still there?

A. Correct.

Q. Did the officer ask you about anything that was in the bag?

A. Not when I was being pulled out, no.

Q. Were you playing on your phone?

A. Correct, I was.

Q. And did the officer say anything to you before you got out the car?

A. No. He didn't say anything.

Q. Well, did you cooperate with the police officer?

A. Correct.

Q. Did you raise your voice or give the officer an attitude?

A. No, not at all.

Q. Did you comply with the commands of the police officer?

A. Correct.

Q. Once you were in the back of the car, which way were you facing?

A. The car was facing forward, my back was against the trunk -- so my back was against the trunk basically. I don't know how to explain that.

Q. Is it fair to say you could not see what was going on in the car at that particular time?

A. No, I could not see what was going on in the front of the car.

Q. You were actually facing toward Manhattan?

A. Yes, there you go.

Q. So then can you tell us what happened next after you and Pablo were in the back?

A. The officer came and said hey, don't worry about it, we just found an open container, we will give you a ticket and you guys will be on your way.

Q. Was that the black officer?

A. That was the black officer.

Q. And then what happened?

A. And then there was some type of scuffling going on in the vehicle and Pablo turned around and said what are you guys doing, and he said I'm going to search your vehicle, where are the keys? And Pablo said you guys don't have permission or the right to go through my vehicle without my consent and I do not give consent.

Q. And then what happened?

A. And the officer, I guess he was --

Q. Well, don't guess. What did you hear?

A. What I heard was the officer had like an aggressive tone, like he wasn't complying what Pablo request was, and he ransacked the vehicle.

Q. Now how do you know he ransacked the vehicle? At some point did you turn around and see what he was doing or could you hear it?

A. You could hear it, you could hear the scuffling, they opened all the doors in and out of the car.

Q. Now did there ever come a time that you saw another bottle in the car, like a Grey Goose bottle?

A. I knew that the girl had it in her purse but I didn't like see it like out being flashed. I just knew it was in her purse because it stuck out a little bit, I knew she had a Grey Goose personal bottle.

Q. And can you tell us when it is that you noticed she had a Grey Goose bottle?

A. Within the middle of the ride maybe, it was stuck out a little bit, you know women purses they are always open usually, it was sticking out.

Q. Was the top on?

A. Yes, it was.

Q. And did you notice at any time, did you notice any marijuana being displayed?

A. Definitely not, no.

Q. And throughout the whole ride did you smell any marijuana?

A. No.

Q. Now tell us what happened. Did you see a snake in the car?

A. Yeah, he was walking around with it through the parade.

Q. Where was the snake?

A. On the dash.

Q. At any time did you see the female with a snake around her neck?

A. Yeah, in the parade.

Q. But I'm talking about while she was in the car, did you ever see her?

A. No.

Q. At all times when you were in the car, where did you see the snake?

A. On the dash.

Q. And if you were standing outside of the car could you see the snake?

A. No.

Q. And why is that?

A. Because in Audi's, on the front dash they have this very faded like, faded out lining, so where the snake was it was under the fade. So from the outside you couldn't see in, you couldn't see the snake in the dash unless you drove up close.

Q. Did there come a time when there was a discussion about the snake?

A. Between --

Q. When the officers found the snake?

A. Yeah, they did and they were speaking out loud about the snake.

Q. What did you hear them say?

A. We need a box, call animal control. Nobody wants to touch the snake.

Q. You were in handcuffs?

A. Correct.

Q. At what point were you put in handcuffs?

A. After maybe five, ten minutes after the first officer said we are going to give you guys a ticket and you can go home. Five, ten minutes later the officer said put your hands behind your back.

Q. Do you know if anything was actually recovered from the car, any drugs or guns?

A. No.

Q. Did anyone at the scene show you --

A. No, not at all.

Q. Did anyone tell you that anything, any drugs or guns was found in the car?

A. No, not until I got to the precinct.

Q. Can you tell us what happened? Did you ever see the female get out of the car?

A. When she was being put in the van.

Q. So at what point did the female come out of the car?

A. Last. After me and Pablo were cuffed in the van they had taken her out, gave her a pep talk and put her in the van.

Q. You saw officers speak to her?

A. Yes.

Q. And you were -- I'm sorry. Is it your testimony that the female was in the front passenger seat when you were already in handcuffs?

A. Yeah, I believe so.

Q. And can you tell us what, if anything, did you saw -- how did the female get out of the car?

A. She was told to step out like anybody would be.

Q. And what did you see, did you see if she had a snake around her neck?

A. No, I knew she didn't have the snake on her because it was on the dash.

Q. And did there come a time when you were brought to the precinct?

A. Yes.

Q. And at the precinct were you shown anything?

A. Yes, but in a weird way, in a weird fashion.

Q. Okay, what were you shown?

A. Well, as we were standing in the precinct handcuffed, me and Pablo side to side, a cop didn't pull the firearm out the bag, he took the firearm and wrapped the bag around it and showed it as a print of a pistol and was kind of joking about it.

Q. What was the color of the bag?

A. Black.

Q. And did you see any other bags?

A. No.

Q. Was any marijuana shown to you at the precinct?

A. No, not at all.

Q. Did any of the officers besides the black officer have any conversation with you?

A. During what point?

Q. During the car stop.

A. No. I only spoke to the African American officer.

MS. FLORIO: Can I have a moment to consult with my client, Your Honor?

THE COURT: Go ahead.

(Whereupon, defense counsel is conferring with her client.)

Q. Did you see anyone with a snake around their neck at the precinct?

THE COURT: No, sustained.

Q. Were the windows opened or closed when the officer told you to get out of the car?

THE COURT: Don't guess, only if you remember.

A. They were closed.

Q. Did you see Pablo's window pulled down when the officer was first speaking to you and Pablo, if you remember at all?

A. It was rolled down just a bit.

Q. And how do you remember that your window was still up?

A. Because I didn't want the wind in my face while he was driving.

Q. What about when the car was stopped at any time, did Pablo pull the windows down?

A. He pulled his window down I guess so he could speak to the officer.

Q. But it's your recollection that your window was not pulled down, correct?

A. Correct.

MS. FLORIO: I have no further questions.

THE COURT: Let's take five minutes.

(Whereupon, a brief recess is taken in the proceedings.

COURT OFFICER: Witness entering.

THE CLERK: Let me remind you, you're still under oath.

THE WITNESS: Okay.

THE COURT: Go ahead.

MS. DRASSER: Thank you, your Honor.

CROSS-EXAMINATION

BY MS. DRASSER:

Q. Good afternoon, Mr. Karell.

A. Good afternoon.

Q. I'm Assistant District Attorney Danielle Drasser. I will be asking you some questions.

A. Yes.

Q. You're 27 years old?

A. Correct.

Q. You testified that you grew up in Manhattan, correct?

A. Correct.

Q. How long were you living in Manhattan?

A. Since I was 18 years old.

Q. Did you ever come back to the city since you moved out of Manhattan?

A. Yeah.

Q. How often would you say you come back to the city?

A. Maybe two, three times a week.

Q. You still have some friends who live in Manhattan?

A. Yeah.

Q. Do you have any friends who live in the Bronx?

A. Female friends.

Q. You have been to the Bronx before?

A. Yes.

Q. Approximately how many times have you been to the Bronx?

MS. FLORIO: Objection.

THE COURT: Sustained. Let's move on.

Q. In the times that you have been to the Bronx, have you ever gone to Orchard Beach before?

A. Yes.

MS. FLORIO: Objection.

THE COURT: Why? How is this relevant?

MS. DRASSER: Your Honor, if I may make an offer of proof, on this day they were going from the Puerto Rican Day Parade to the beach. So at the time they were going to the beach, the beach was closed.

Q. Had you ever been to Orchard Beach before?

A. Correct.

Q. Approximately how many times had you been to Orchard Beach.

A. Maybe three times.

Q. What time on June 14, 2015, did you decide you were going to the beach?

A. Right after the Puerto Rican Parade.

Q. Approximately what time was that?

A. I couldn't tell you that.

Q. Was it in the afternoon?

A. Yes.

Q. Are you familiar with what time the beach closes?

A. Not at all.

Q. You didn't know the beach was closed at 6 p.m.?

A. Not at all.

Q. You were stopped coming into the Bronx at approximately 6:20 p.m., is that correct?

A. Yes.

Q. If the beach does close at six o'clock, that was 20 minutes after the beach had already closed, correct?

MS. FLORIO: Objection, relevance.

THE COURT: Overruled. You made your point.

Q. You testified that you learned the name Pablo Pastrana after you were arrested, correct?

A. Correct.

Q. But you had met this defendant a year prior to June 14th of 2015, right?

A. Correct.

Q. You had seen him a handful of times, correct?

A. Three times.

Q. What did you call him if you didn't know his name?

MS. FLORIO: Objection to the testimony he didn't know his full name Pablo Pastrana.

THE COURT: All right. What is it, you didn't know his full name?

THE WITNESS: I didn't know his government name.

THE COURT: What did you call him?

THE WITNESS: I called him Rome.

Q. In the times that you had seen Rome before, or the defendant before, had you ever been inside his car?

A. No. I seen his car before.

Q. You had seen it before?

A. Yeah.

Q. But you'd never been inside before?

A. Once.

Q. You testified that you work in construction, correct?

A. Yes.

Q. You had a few petty jobs before that, as you categorized it; is that correct?

A. Yes.

Q. You were never a mechanic, were you?

A. No.

Q. You never worked in an Audi dealership, did you?

A. No.

Q. On your way to the Bronx, you testified that you made two pit stops, correct?

A. Correct.

Q. And was it on the first or second pit stop that the front female passenger exited the car?

A. First.

Q. Where did you stop once you exited the car?

A. In Spanish Harlem, upper east side.

Q. Was that a store, gas station?

A. We pulled over.

Q. Approximately how long was the female passenger out of the car?

A. Ten minutes.

Q. When she got out of the car you got into the front seat, correct?

A. Correct.

Q. You testified that you were searching all over the passenger area of the car, and it was your testimony during direct that you didn't see anything there, correct?

A. Correct.

Q. Had the female passenger taken her purse with her to the bathroom?

A. I'm not sure.

Q. So if you're not sure, the purse could have been there?

A. It may have or may not.

Q. You did testify that she did have a bottle of Grey Goose in her purse, correct.

A. Yes.

Q. You made an additional pit stop before going to the Bronx, correct?

A. Yes.

Q. And approximately how long were you there at that pit stop.

A. For 30 seconds.

Q. What pit stop was that?

A. Another location in Spanish Harlem.

Q. What location was that?

A. 114th Street.

Q. A store?

A. No.

Q. What were you doing at that location?

A. We saw some friends, we pulled up, said hey, what's up? What are you guys doing? They said what they're doing. We said we're going to the beach, you guys want to come with us? They said no. We left.

Q. How much time passed between the first pit stop and the time that you pulled over corning over the bridge?

A. Twenty, 30 minutes.

Q. It took you 20 to 30 minutes to travel up through Spanish Harlem up to the Bronx; is that your testimony?

A. Well, there is traffic there. I'm not being very detailed about timing because it was two years ago, but I'm guessing 20, 30 minutes.

Q. And you weren't sitting in the front passenger seat during that trip, were you?

A. No.

Q. The female passenger, when she got back from the bathroom, she gets back in the front passenger seat, correct?

A. Yes.

Q. She was in the front passenger seat for the rest of the trip, correct?

A. Correct.

Q. So you didn't see what was on the floor of the front passenger seat in the 20 to 30 minutes it took for you to get to the Bronx, did you?

A. Repeat that again?

Q. When the female passenger was in the front passenger seat, you didn't see what was on the floor in the front passenger seat for that 20 or 30 minutes prior to the Bronx, did you?

A. No.

Q. Prior to going to the beach, you were at the Puerto Rican Day Parade, correct?

A. Correct.

Q. It was held outside?

A. Yes.

Q. It was June, correct?

A. Yes.

Q. Is it fair to say the weather was warm?

A. Yes.

Q. You were going to the beach afterwards, correct?

A. Yes.

Q. So it was warm enough to go to the beach, right?

A. Yes.

Q. You testified when you were in the car your passenger side window was not rolled down at all; is that right?

A. Correct.

Q. But Pablo's was slightly rolled down, correct?

A. A-hum.

Q. Didn't the defendant have the air conditioner on in the vehicle?

A. I don't remember.

Q. You also testified there was traffic going to the Bronx, right?

A. Yes.

Q. There must have been a lot of traffic on the bridge, right?

A. Yes.

Q. But it's your testimony that you didn't want the window rolled down because you didn't want wind in your face, correct?

A. Correct.

Q. You don't have any training in narcotics, do you?

A. No, I don't have any training in narcotics.

Q. You don't have any training in the identification of marijuana, do you?

A. No training.

Q. It's your testimony that you've never smoked marijuana before?

A. Once when I was a child.

Q. Now I would like to talk to you about when you were pulled over. You were pulled over on the bridge, correct?

A. Correct.

Q. There were other cars that were being pulled over as well, right?

A. Not that I can see.

Q. It's your testimony you didn't see --

A. Only one car, and a car behind us that the cop pulled over.

Q. You testified that you observed the checkpoint, right?

A. A-hum.

Q. There were police officers there, correct?

A. Yeah.

Q. They were wearing uniforms?

A. Yeah.

Q. You could tell they were police officers, right?

A. Yeah.

Q. Did you see any traffic cones?

A. No.

Q. You didn't see any traffic cones on the bridge?

A. That's why we didn't know until we got very close.

Q. Now, after the vehicle was pulled over -- that was an Audi, correct?

A. Correct.

Q. The defendant was seated in the seat, correct?

A. Yes.

Q. He was driving?

A. Yeah.

Q. And you were sitting in the rear passenger seat, right?

A. Yeah.

Q. The female was still sitting in the front passenger seat, correct?

A. Correct.

Q. Now, you testified that you found a bottle of alcohol in the back seat; isn't that right?

A. Yes.

Q. That was Llord's Strawberry Liqueur?

A. Yes.

Q. You decided to take a drink from that bottle, correct?

A. Yes, took a sip.

Q. That was while you were in the car, right?

A. Yeah.

Q. You opened the top of the bottle, right?

A. Yes.

Q. And you took a sip, correct.

A. Yes.

Q. Then you closed the bottle back up?

A. Yes.

Q. And you testified there wasn't that much in there, right?

A. Yes.

Q. But you took a sip, right?

THE COURT: Come on; he said he took a sip.

Q. After you took a sip, there was still alcohol left in that bottle, right?

A. Yes.

Q. Then it's your testimony that you put the bottle to your right?

A. Yes.

Q. When the officer approached the vehicle, you were playing on your phone?

A. Correct.

Q. Did the officer ever speak to you while you were in the vehicle?

A. No.

Q. He just immediately pulled the defendant out of the front seat?

A. Correct; then I was next.

Q. Then it's your testimony that you and the defendant were in the back of the car, right?

THE COURT: You mean outside of the car in the back?

MS. DRASSER: Outside of the vehicle.

Q. You were brought to the rear of the vehicle behind the car, correct?

A. Correct.

Q. You were waiting there, right?

A. Yes.

Q. And it's your testimony that the female was still in the car?

A. Yes.

Q. While you were waiting at the rear of the vehicle, the African American officer came to speak to you?

A. Yes.

Q. He told you you were going to get a ticket and you were going to be let go?

A. Yes.

Q. It was after that that you heard shuffling in the car, right?

A. Yes.

Q. So after you heard the shuffling in the vehicle, that's when you were placed under arrest?

A. Repeat.

MS. FLORIO: Objection, "placed under arrest."

Q. That is when you were placed in handcuffs?

A. After the shuffling.

Q. And is it your testimony that the female was still in the vehicle at the time that you heard the shuffling?

A. No.

Q. So she had been removed from the vehicle, correct?

A. Yes.

Q. The female was removed from the vehicle before the shuffling, right?

A. A-hum.

Q. And you weren't placed in handcuffs until after the shuffling, right?

A. A-hum.

Q. Then the female was outside the car at the time that you were placed in handcuffs, correct?

A. Yes.

Q. You didn't know the name of the female, correct?

A. No.

Q. You didn't have any other nickname that you called her that day?

A. No, I didn't know her name.

Q. That was the first time you had met her?

A. Right.

Q. Did Pablo tell you whether he knew her?

A. He said he met her the day before.

Q. Did the defendant know her name?

A. I'm hoping that he did.

MS. DRASSER: I have no further questions, your Honor?

MS. FLORIO: Nothing further.

THE COURT: Thank you.

(Witness exits courtroom)

THE COURT: Do you have any other witnesses?

MS. FLORIO: No, your Honor.

THE COURT: Defense rests?

MS. FLORIO: Yes.

THE COURT: Any rebuttal?

MS. DRASSER: No, your Honor.

THE COURT: Okay, both sides rest. Ready for argument?

MS. FLORIO: May I have a few minutes?

THE COURT: Or do you want to give it to us tomorrow?

MS. FLORIO: Tomorrow.

THE COURT: Where do you live?

MS. FLORIO: I will be in the Bronx tomorrow.

THE COURT: Whether it snows or not, you will be here?

MS. FLORIO: Of course. As long as you are here, I will be here.

THE COURT: All right, see you tomorrow at 10 o'clock.

MS. DRASSER: Your Honor, in the event that the office is closed, Court is closed, would we be administratively adjourned to Friday?

THE COURT: Yes. I'm sure we will be here. If you hear Court is closed, you don't have to be here.

MS. DRASSER: Can I assume it will be on Friday morning at 10 a.m.?

THE COURT: Yes.

MS. FLORIO: It's your intention tomorrow after we do arguments to start picking?

THE COURT: I don't know yet; I'm not sure.

(Whereupon, court is recessed and the case adjourned to Thursday, January 4, 2018, at 10:00 a.m.)

(See next page)

SUPREME COURT OF THE STATE OF NEW YORK:
COUNTY OF BRONX: CRIMINAL TERM PART 19

PEOPLE OF THE STATE OF
NEW YORK,
-against-
PABLO PASTRANA
Defendant.

INDICTMENT
NO. 2026/15
HEARING

265 East 161st Street
Bronx, NY 10451
January 4, 2018

BEFORE:

HONORABLE JOHN W. CARTER,
Justice of the Supreme Court

(Appearances same as previously noted.)

MICHAEL SALVIETTI
SENIOR COURT REPORTER

(Whereupon, the following takes place on the record in open court in the presence of the defendant, all counsel and the Court:)

THE CLERK: Calling case continued on hearing in the matter of the People of the State of New York against Pablo Pastrana under indictment number 2026 of 2015.

Let the record reflect the defendant entered the courtroom, his attorney is present as well as the assistant district attorney.

Appearances for the record.

MS. DRASSER: Danielle Drasser for the office of the district attorney; good morning, your Honor.

MS. FLORIO: Good morning, your Honor, Dawn Florio of the Dawn Florio Law Firm; my client is Pablo Pastrana.

THE COURT: Good morning.

Okay. Both sides rested yesterday after the hearing. We're ready for argument.

Ms. Florio.

MS. FLORIO: Yes, your Honor. Can we just approach for one second?

THE COURT: Yes.

(Whereupon, there was an off-the-record discussion held at the bench between the Court and counsel.)

THE COURT: Let's proceed.

MS. FLORIO: Your Honor, I am asking this Court on behalf my client, Mr. Pablo Pastrana, to suppress all of the evidence that was found in his car.

I first want to start off by stating that the defendant's car was unlawfully stopped. It is my position this was not a valid checkpoint. The officer that pulled the car over -- it was racial profiling, your Honor, and nobody came in to testify that it was my client's car or a third car. We did not hear from Officer Banks. Detective Veit said under cross-examination he had no idea like what number the car was when the was pulled over because he was not in charge of pulling cars over, he simply testified to what he saw. He also testified that it was not a DWI checkpoint, it was simply for safety, a safety checkpoint and to look

at registrations to make sure the registrations were correct and that the people had the proper paperwork.

An essential factor in determining the validity of a roadblock is lack of arbitrariness in the procedure used, that the police have discretion to select which cars they want to stop and which cars they will permit to pass. If the procedure is arbitrary and discriminatory it will not be upheld by the Courts.

Now, most checkpoints are established pursuant to a written directive of a police department or agency. And we did not see any written directive introduced into evidence.

In reviewing the constitutionality of a checkpoint, the Court will review or should review the specificity of the guidelines used to create the roadblock. For example, a Court should examine the procedures for site selection, scope of the problem or its frequency, whether the plan is written or oral, how long the plan has been in effect, the warning to motorists of the existence of the checkpoint, the nature of inquiry of motorists stopped and whether the officers are free to ask any questions, the factors to be considered before a sobriety test can be used at a sobriety checkpoint, and the criteria to determine at what point vehicles can pass through when traffic becomes congested.

In addition, the Court should review the procedures to see if everything was done not by, you know, not being arbitrary and capricious simply with this every third car.

We heard from the arresting officer, Det. Veit, that he did not, he could not tell us if this was a third car. Because Officer Banks, who was the one who selected the cars, did not testify. There is nothing in the record to show this was a valid checkpoint.

Detective Veit testified this was the day of the Puerto Rican Day Parade, this happened on the University bridge, and he just said when Officer Banks, when the car was pulled over he went to that particular car.

Now, he also testified that my client was the driver, that there was a female, Alexis Cortez, in the front seat, and Ehtien Karell was in the back seat. He also testified that -- even Ehtien Karell testified there was a car in front of him that was a silver van with an Asian man who was not pulled over. He also indicated that there was a car in the back of their car, which it couldn't be my client's car was the third car.

There was no third car that was stopped because the car right in back of him was also stopped, and he said that he had observed it was a green car with a Latino man, and he observed the officers taking the people in the car out of that particular car.

So it is my position this was based on racial profiling, the officers had their own hunches or personal preferences to which cars would be pulled over.

Is it a coincidence it happened to be the Puerto Rican Day Parade? Obviously, they were looking for people who would attend the Puerto Rican Day Parade and looking for alcohol or, you know, things of that nature.

So I specifically asked the officer, was this a DWI checkpoint? He said no, it was not, just for safety.

So I just want to talk now about -- so my position is, if the car should not have been pulled over, if the car should not have been pulled over then everything else should fall. But I'm also arguing this is an illegal search and seizure because assuming that the car was

pulled over legally, I submit that Det. Veit's testimony was not credible.

Detective Veit testified that he approached the driver's side of my client's car and asked him to roll the window down, roll all of the windows down. So my client, according to Det. Veit, rolled all of the windows down. Mr. Karell said he did not roll all of the windows down, he just lowered his window so he could speak to the officer.

My position is that the officer states that he smelled marijuana and he smelled alcohol like right away. So if he smelled alcohol and marijuana right away, why didn't he just pull my client out of the car at that particular time? He didn't. He said that he made other observations. He went to look -- he had a conversation with the person in the back seat.

The reason why I say that is incredible, his testimony that he smelled marijuana, is that, the testimony is that he had later recovered a little baggy, like a little twist on the floor but that was not open. And in the -- it was packaged with like, in a sandwich bag like probably the size of like a golf ball, it was not burnt. Obviously he did not recover any burnt marijuana in the car. There is no way from where he was standing that he could smell marijuana.

The other marijuana that he said he recovered from the locked glove compartment was not only in baggies, not burnt but it was in a plastic bag as well.

So there is no way he could have smelled marijuana. Also, I dispute that he smelled any alcohol. Because I asked him, did you smell any alcohol on my client? He's like no, I smelled alcohol emanating from the car.

I submit that is not credible because the two bottles, although they had been opened, they were not open in the car. It's not like they had a beer can that you can smell alcohol. I submit you can't really smell Grey Goose. I submit that the testimony was not credible.

With respect to what Mr. Ehtien Karell testified to is that the driver was pulled out and he was pulled out almost the same time, they were put in the back. So there was no issue with respect to reaching for, you know, anything in the car. The officer testified there was a bag, a difference with respect to what the color of the bag was. The officer testified that the bag in the back seat was a brown paper bag; Mr. Karell testified that it was a black plastic bag. And he was adamant that it was covered.

He testified also that he knew it was a checkpoint because he saw people getting pulled over. It doesn't make any sense that he would allow the open bottle to be sticking out.

He said he had seen the bottle -- he had seen the bag and asked my client what was in the car, you're holding out on liquor. He said he took a sip, he didn't like it and he put it back and put it on the seat next to him.

So my position is that the officer removed all occupants from the car and he was clear about that there was no dispute about it, and that's with respect to the testimony of both defense witness and the officer, and that there was no opportunity for anybody, because other officers were surrounding them -- to grab anything in the car.

My position is that the officer should not have gone into the glove compartment because he did not

see anything, had no reason to believe any alcohol would be there or any other marijuana would be there.

I submit it was, he was not credible when he said he smelled, he could smell marijuana from the inside of the glove compartment. This was not a pound, it was a small amount of marijuana wrapped up also in bags and actually a bigger bag.

He was looking for guns and drugs and he got lucky and he found it. But the search was illegal. The stop was illegal and everything should be suppressed based upon that.

With respect to the officer being -- all of the occupants were out of the car and the car was searched, he indicated that he actually took the witness -- he said he didn't ask for permission but my client stated through -- Mr. Karel heard my client state, you know, I'm not giving you permission to search the car, you don't have consent; I'm not agreeing to this. But the officer still went ahead and did it.

There is a case which is **Arizona versus Gant** G-A-N-T, which is 1-6-1, I'm sorry, which is 5-5-6 U.S. 332, 2009. In **Arizona versus Gant** the Supreme Court regressed on its decision to afford such broad latitude to police. In **Gant** the defendant was arrested for a suspended license and then handcuffed and locked in the back of a patrol car. After placing the defendant out of harm's way the police searched the defendant's automobile, at which time one officer found a gun and the other discovered a bag of cocaine in the pocket of a jacket in the backseat.

The defendant challenged the search as conducted as beyond the scope of the search incident to arrest exception that he posed no threat to the officers after he was handcuffed in the patrol car.

At the suppression hearing the officers did not seek to justify the search based upon the concerns as to their safety or the destruction of evidence, but rather admitted their course of action was motivated by the mere fact that it was permissible by the law.

The Court wholly rejected this contention finding the officers' actions unreasonable under the circumstances. The Court held police are authorized to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment or other areas to be searched at the time of their arrest.

So it's my position, your Honor, that this was a locked glove compartment. The officer admitted that he took my client's keys, opened the glove compartment box and removed a gun and marijuana.

I believe that, it's my motion the officer's testimony was not credible and he was not a forthright witness.

Even when I asked him about his alleged prior bad act, he completely denied it, although he also admitted that he had an opportunity to show his leg to CCRB and he decided not to do it. It seems like he was covering up, hiding.

It is my motion this was an illegal search and seizure, he had a hunch people coming from the Puerto Rican Day Parade -- there was my client, a female and an individual in the back seat, and he just had a hunch there was drugs or guns in the car and he was going to find it. That's actually what he did.

This is not -- he was not pulled over, he was not the third car pulled over. This was not a valid check-point.

People have not met their burden in establishing this was a valid checkpoint. They should have produced either a written plan or even -- you don't need a written plan but someone to come in and say this is what we decided, this is what we were doing, this is what was valid, and the reason for it. But we don't even know if my client's car was the third car that was pulled over. We know from the defense witness that the car right in back happened to be a Latino man in an old, beat-up car was also pulled over.

I submit, your Honor, the stop was based on racial profiling, they violated all my client's rights, and everything in the car -- you know, they never went to get a warrant. They could have gotten a warrant; they had time to do that. They could have brought the car back to the precinct, got a warrant. They didn't do that.

For all those reasons I'm asking you, most respectfully, to suppress everything that was in the glove compartment, in the trunk and anything else found in the car.

Thank you.

THE COURT: Thank you.

MS. DRASSER: Thank you, your Honor. May I proceed?

THE COURT: Yes.

MS. DRASSER: Your Honor, in a Mapp/Dunaway hearing People have the initial burden of going forward with credible evidence to establish the legality of police conduct pursuant to **People v Whitfield**.

However, the defendant has the ultimate burden of establishing the illegality of police conduct by a preponderance of the evidence pursuant to **People versus Berrios**.

In this case the Court heard from Det. Jeremy Veit who, I submit, testified in a credible and forthcoming manner that on June 14th, 2015, at approximately 6:20 p.m. he was assigned to a vehicle safety checkpoint in the vicinity of West Fordham Road and the University Avenue Bridge in Bronx County, New York; the same day as the Puerto Rican Day Parade.

Detective Veit was assigned to a team, a detail, and each officer had different roles. His role was to approach the vehicles that had been pulled over.

Detective Veit also testified it was Officer Banks who was counting cars and indicating, telling the drivers to pull over. The defendant's vehicle was one of the vehicles counted and told to pull over.

There were two police vans additionally set up creating this roadblock for that checkpoint designating an area by traffic cones, and all of these officers were in uniform.

Detective Veit testified not only to the parameters of the checkpoint but also to its purpose, which was vehicle safety and for violations of the Vehicle & Traffic Law. He mentioned they were looking for improperly licensed drivers and expired registrations. And when asked about intoxicated drivers by Ms. Florio he correctly pointed out driving while intoxicated is in fact a violation of the Vehicle and Traffic Law, although it was not the main purpose of this checkpoint.

Pursuant to **People versus Scott**, which is 63 NY 2d, 518, 1984 Court of Appeals -- I do have a copy of that case, if your Honor would like a copy, also I

have a copy as well for Ms. Florio. In that case permissibility of a particular practice is a function of its reasonableness.

The Courts have found that a checkpoint stop is in fact a limited seizure, but that there is also a diminished expectation of privacy in an automobile and that individualized suspicion is not the prerequisite of seizure of an automobile.

In **Scott**, the Court of Appeals found that the reasonableness of the police practice is determined by balancing its intrusion on the Fourth Amendment interests of an individual against its promotion of governmental interests.

Here, like in **Scott**, the importance of governmental interests is clear. This was a vehicle safety checkpoint on the day of the Puerto Rican Day Parade. And while driving while intoxicated was not the main focus of the checkpoint, the checkpoint in and of itself would cause a deterrent to drunk drivers on the day for celebration further.

Furthermore, the First Department found checkpoints to be reasonable seizures even beyond the governmental interest of driving while intoxicated cases.

In **People v Serrano**, 233, AD2D, 170, First Department, 1996, a roadblock to check for stolen vehicles was found to be permissible. And that stop did not follow a systematic approach, such as counting every three cars.

Here the officers were instructed to pull over cars driving down the block with the only limitation being manpower -- that's referring to **Serrano**.

In **People v Dugan**, D-U-G-A-N, citation is 57 AD 3d, 300, 2008, First Department, held that a

checkpoint was constitutional where the primary purpose was roadway safety and enforcement of vehicular laws and regulations rather than general crime.

Detective Veit testified this was in fact the primary purpose of the checkpoint, and not to seek out weapons and other contraband.

As in **Dugan**, the procedure was uniform and not gratuitous or subject to individual discriminatory selection. Detective Veit testified that Officer Banks was assigned to count cars and indicated every third car to pull over.

Detective Veit did not testify that the car behind the defendant's vehicle was pulled over as well; that testimony only came from Ethien Karell, an individual not in the best position to see the manner in which Officer Banks was counting or where Officer Banks was standing, and we cannot speculate as to any other reason why that vehicle may have been pulled over, if in fact it was.

THE COURT: Is it enough for any officer to testify that this is the purpose of the checkpoint, every third vehicle, even though the officer testifying doesn't know in fact whether that procedure was followed?

MS. DRASSER: The officer testified--

THE COURT: Is it People's burden? Do they have to, as Ms. Florio states, put on a witness who can testify specifically as to this was the purpose, this is what we did, this was written out, et cetera?

MS. DRASSER: Your Honor--

THE COURT: I'm asking, I don't know.

MS. DRASSER: It's my argument Det. Veit was part of this team, he was given instructions as part of

this specific detail, this was the detail and how it was supposed to be run.

THE COURT: He didn't know whether every third car was being pulled over. That's my question.

MS. DRASSER: Correct.

THE COURT: He testified he didn't know. Do you have to put on someone who in fact knew every third car was being pulled over or is it enough for Veit to say this was the parameters and I was just, you know, following my instructions?

MS. DRASSER: Your Honor, I would have to examine, consult the case law a little bit further to see whether or not that's a requirement.

From my understanding of **Dugan**, if the procedure was uniform and not gratuitous, that it is constitutional and not unreasonable.

THE COURT: I understand that. I'm just -- this may have been reasonable. My question is, we don't know.

Who testified in **Dugan**? Who put on the evidence to demonstrate that the checkpoint parameters were reasonable?

That's my question.

MS. DRASSER: I don't know the underlying facts beyond the First Department decision in **Dugan**. I could look into it further, the underlying facts, as to who specifically testified.

THE COURT: All right. Go ahead.

MS. DRASSER: I would argue, in any event, I will speak more towards credibility at the end. But the

only testimony that this was not a fair checkpoint came from defense witness Ehtien Karell.

THE COURT: I understand.

MS. DRASSER: I would argue --

THE COURT: They haven't satisfied their burden.

MS. DRASSER: Correct.

THE COURT: Go ahead.

MS. DRASSER: Your Honor, People have shown the purpose of the checkpoint was traffic control and safety and that the checkpoint was effective in advancing those interests. The degree of intrusion was minimal and that the procedure was uniform; therefore, People would argue that the stop of the defendant's vehicle was reasonable, not an unconstitutional infringement of the defendant's Fourth Amendment rights.

As to the search of the vehicle, the Court of Appeals held a vehicle may be searched without a warrant pursuant to the automobile exception if the police have probable cause to believe that the vehicle contains contraband, evidence of a crime or weapons, according to **People versus Blasich**, B-L-A-S-I-C-H. Citation is 73 NY2d, 673, 1989.

THE COURT: Can they do that? Whereas here all three people who were in the automobile were secured by the police so that there was no danger of, you know, there wasn't any testimony they were in fear of their safety or anything like that, or destruction of contraband.

MS. DRASSER: Yes, your Honor, search of the vehicle and a closed container therein is constitutional

so long as there is probable cause and a nexus between probable cause and the arrest.

This case is distinguished from the **Arizona versus Gant** case referred to by Ms. Florio. In that case the defendant had already been removed from the car, was in handcuffs and secured in a patrol car and was under arrest for an unrelated charge, mainly driving without a valid license. This case is distinguished as the officer had probable cause to search the vehicle and the containers therein. The defendant and the occupants of the vehicle were not placed in handcuffs and arrested until after the marijuana and the firearm were recovered from the vehicle.

As I was stating, there must be a nexus between the arrest and probable cause for the search pursuant to **People versus Galak**, G-A-L-A-K, 81 NY2d, 463, 1993. Those grounds may be satisfied even if the arrest was not based out the same grounds as the stop. Here the vehicle was stopped lawfully pursuant to the safety checkpoint.

However, during the course of the officer's investigation, Det. Veit observed a strong odor of marijuana emanating from the vehicle. In addition, there was a partially consumed bottle of alcohol in the back seat passenger area and an odor of alcohol coming from the car.

The Court of Appeals affirmed the lower Court's decision in **People versus Chestnut**, which is, the underlying decision is 43 AD2d, 260, Third Department, 1974, where two police officers with extensive training in marijuana detection were permitted to search the vehicle for evidence of a crime and contraband after smelling the strong odor of marijuana emanating from the vehicle.

Furthermore, in addition to the odor of the marijuana, Det. Veit further observed a plastic twist containing what he recognized to be marijuana in plain view on the floor by the front passenger seat. He testified he later field tested the contents and it tested positive for marijuana.

In this case Det. Veit testified to his extensive training and experience working for the New York City police department; his years working for Bronx Narcotics and training in the identification of marijuana and also his certification in field testing; therefore, Det. Veit had probable cause to search the vehicle for additional contraband, including additional marijuana. Therefore, there is a sufficient nexus between the probable cause and the arrest itself.

Additionally, there was evidence in this case that defendant may have been impaired by alcohol, which is an additional basis for the search of the vehicle.

In **People versus Martin**, citation is 50 AD3d, 1169, Third Department, 2008, a vehicle was stopped for speeding and the police observed the driver have red and glassy eyes and the car smelled of alcohol and there was an open container of alcohol in the center console. While in **Martin** the search of the vehicle was pursuant to an inventory search, the Court found that nevertheless the circumstances established probable cause to suspect a violation of the Vehicle & Traffic Law, and a search of the vehicle for additional containers was proper.

Here, I would argue, the officers had probable cause to believe there may be additional evidence of open containers in the vehicle. Putting aside the strong odor of marijuana, which is probable cause in and of itself, Det. Veit detected an odor of alcohol upon

approaching the driver's side of the vehicle, and further observed two partially consumed bottles of alcohol. Those factors, I would argue, combine to establish probable cause to search the vehicle for additional containers of alcohol pursuant to **Martin**.

Courts have held it is permissible to search closed containers within the vehicle for evidence of a crime and contraband.

In **People versus Valette**, V-A-L-E-T-T-E, citation is 88 AD3d, 461, First Department case from 2011, during a lawful car stop the police officers observed the odor of marijuana coming from the inside of the vehicle, and defendant further admitted to smoking marijuana. Those facts rose to the level of probable cause to search not only the vehicle but also the trunk.

Further, in **People versus Cruz**, citation is 7 AD3d, 335, First Department 2004, Court held where police have reason to believe that a vehicle may contain further evidence of a crime, they need not stop after the initial recovery of contraband and may search the entire vehicle, including closed containers therein.

THE COURT: Do you have the those cases?

MS. DRASSER: I do, your Honor.

THE COURT: Thank you.

MS. DRASSER: In **Vasquez**, which is a First Department case, the citation is 195 AD2d, 297 of 1993, Court in that case stated inasmuch as the stop of the defendant's vehicle and subsequent arrest were concededly proper and the officers have reason to believe that the vehicle contained evidence related to the

crime for which the occupants were arrested, the automobile exception requirement for a search warrant gave the officers probable cause to search the entire vehicle, including the locked trunk compartment at the scene of arrest.

In this case, having established probable cause to search the vehicle, Det. Veit searched inside the glove box. In addition to the odor of marijuana emanating from the passenger side of the vehicle, Det. Veit observed the plastic twist of marijuana on the floor of the vehicle. Once Det. Veit opened the glove box and saw seven additional bags of marijuana, he then recovered a firearm. It was at that point that the defendant and the passengers were each placed under arrests and the vehicle was transported back to the 52nd Precinct where it was further searched pursuant to an inventory search; therefore, seizure of the marijuana and the firearm were both proper.

Your Honor, I want to speak to credibility. You heard the testimony of the two witnesses in this case. Detective Veit testified for the People and Ehtien Karel testified for defense. I would argue that the testimony of Det. Veit was credible but the testimony Ehtien Karel was not.

Detective Veit testified to the best of his ability regarding the events of June 14, 2015. He was honest and up front about facts he did not remember. While being cross-examined by Ms. Florio he did misremember whether the bag in which the firearm was found was black or white, which is reasonable two and a half years later and where one bag was in fact black and one bag was white; one of each color was recovered.

He also was questioned about whether or not the bag containing the marijuana on the floor was a twist

or a bag. But he explained, through his training and experience plastic twist is in fact the bag, this has the top ripped off and is tied closed.

He conducted an investigation of whether or not the driver was in fact intoxicated and did not overcharge the defendant after determining he did not exhibit any signs or indicia of intoxication.

While he was questioned about his one substantiated CCRB out of an entire career of 13 years with NYPD, his answers were consistent with his answers in the interview with CCRB, and he explained when asked by CCRB to show his tattoos, initially he conferred with his attorney who was with him and it was his attorney who advised him he did not need to share that information or display his tattoos. Once he realized that he didn't need to do that, he went back and showed the tattoos without any further issue.

You can also rely on his testimony regarding the identification of the odor of marijuana, as he testified to his significant training in that area.

I would argue you cannot rely on the testimony of Mr. Karell. He testified inconsistently about multiple parts of the story. He was inconsistent about his testimony when the female in the front seat was in fact removed from the vehicle versus when he was handcuffed. Initially he stated he was placed in handcuffs while the female was still in the car, then he stated he was placed in handcuffs after the vehicle was searched, then he later did state that the female was removed before the search; therefore, she was removed before he was handcuffed.

He also testified that he is very familiar with the Audi A6, defendant's car; however, he also testified that he was only inside the car once prior to that day.

He's not a mechanic, does not work at an Audi dealership. He stated the car does not smell of marijuana, but he does not have any formal training. At first he stated he had never smoked marijuana and then he said when he was younger he smoked marijuana.

They were headed to the beach but it had already closed that day. He had an open bottle of alcohol and drank from that bottle of alcohol while in the vehicle, and that does support the detective's testimony there was an odor of alcohol emanating from the vehicle.

While Mr. Karell did state he didn't see anything on the floor while he was in the front seat, he did testify that there was a period of 20 to 30 minutes between the time that he was in the front seat and the vehicle was actually stopped.

He said there was no consent to search the vehicle; however, he did say during his testimony that he only spoke to an African American officer and not Det. Veit.

Detective Veit said he never heard from the defendant that there was no consent to search the car; however, in any event there was probable cause to search.

He did testify that the windows were rolled all the way up; however, this was the middle of June, a summer day, it was warm, they were headed to the beach. He testified the air conditioning was not on, yet he wanted all of the windows rolled up because of the wind, despite the fact there was heavy traffic conditions.

This is the only testimony that the car behind this defendant's vehicle was pulled over. I would argue that for the aforementioned reasons you cannot rely on Mr. Karell's testimony.

Your Honor, defense failed to meet their burden of demonstrating that the property recovered was illegally obtained and that this defendant was arrested without probable cause; therefore, People request that the Court deny the defendant's motion in its entirety.

THE COURT: Okay. I will take that all under advisement.

MS. FLORIO: May I just say one thing in response?

THE COURT: Sure.

MS. FLORIO: So the prosecutor asked my client about the beach and the prosecutor did not put on anyone to say the beach was closed. Whether the beach was closed or not is really insignificant, so they did not -- just asking questions is assuming the beach was closed or open.

THE COURT: I understand that.

MS. FLORIO: I would ask you not to credit that.

Also the prosecutor argued the checkpoint was like a deterrent. That's not the purpose -- that's what the officer testified to. What we also know is the Puerto Rican Parade was in Manhattan, it wasn't in the Bronx. Why would it be at deterrent for not drinking and driving if the checkpoint is going from Manhattan into the Bronx? That absolutely makes no sense.

I just want to reiterate that the prosecution has the burden to establish the propriety of the checkpoint and they failed to do that. You can't just go on hearsay with what Det. Veit said, oh, well I was told it was every third car and he could not testify that it was every third car.

So therefore, they failed in their burden. We shouldn't even go any further whether -- because the car should not have been pulled over in the first place.

THE COURT: Anything else?

MS. DRASSER: No, your Honor; I rely on the record.

THE COURT: Thank you. We are going to adjourn until Monday; hopefully I will have my decision by then. Be ready to pick a jury. Since we are going right into trial, Mr. Pastrana, the case has already started, obviously you are required to be here, if you are not here the trial can continue in your absence: Do you understand that?

THE DEFENDANT: Yes, sir, your Honor.

THE COURT: Okay. I think they want you in another part, Ms. Florio.

MS. FLORIO: Yes.

THE COURT: Anything else we need to do before then?

MS. DRASSER: No, your Honor.

THE COURT: Actually, the Sandoval. We need to do that.

MS. FLORIO: Can we do that on Monday? I asked the prosecutor to provide my client's record, I didn't get that from the other attorney.

THE COURT: We will do it Monday. See you at 10:30.