STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JEFFREY A. GERSHUNY,

a Judge of the New York City Criminal Court,
New York County.

AGREED
STATEMENT OF FACTS

Subject to the approval of the Commission on Judicial Conduct:

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Jeffrey A. Gershuny ("Respondent"), who is represented in this proceeding by Michael C. Farkas, that further proceedings are waived and that the Commission shall make its determination upon the following facts and exhibit, which shall constitute the entire record in lieu of a hearing.

1. Respondent was admitted to the practice of law in New York in 2002. He has been a Judge of the New York City Criminal Court, New York County, since 2025, having previously served in Kings County, from about 2024 to about 2025, and Queens County, from about 2019 to about 2024.[1] Respondent's term

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[1] Respondent also served as an Interim Judge of the Civil Court, Queens County, from about 2018 to about 2019, and an Acting Justice of the Supreme Court, Kings County, from about 2024 to about 2025.

expires on December 31, 2031.

2. Respondent was served with a Formal Written Complaint dated May 14, 2026. He enters into this Agreed Statement of Facts in lieu of filing an Answer.

<u>As to Charge I</u>

3. On August 5, 2025, while presiding over a suppression hearing in *People v N*[redacted] *F*[redacted] to determine the validity of a police search that resulted in the recovery of a handgun, Respondent undermined the integrity of the judicial process when he intentionally deceived a witness in open court while conducting what he called "a little experiment" involving his personal handgun, during the testimony of a police officer, in that:

A. After the officer had been examined by the prosecution and cross-examined by the defense, Respondent said he was placing his personal firearm in a bag so the officer could provide testimony about "what it is about the bag and [the] firearm in the bag that gives off a distinction of it being a firearm."

B. After discussion with two security officers, Respondent held up his personal firearm for all in the courtroom to see, indicating he would be putting it in the bag despite knowing he had no intention of doing so.

C. While concealing what he was actually doing from the witness, the parties, the lawyers and others in the courtroom, Respondent placed a stapler in the bag.

D. Respondent then asked the officer a number of questions about what he repeatedly and falsely represented was a gun in the bag.

E. Having repeatedly misrepresented himself as to what was in the bag to the witness, the parties, the lawyers and others in the

courtroom, on the record, Respondent then revealed his deception, informing the witness and everyone else in the courtroom that it was a stapler, not a gun, in the bag.

Specifications to Charge I

4. At all times relevant to this proceeding, Respondent owned and was licensed to carry a firearm – a SIG Sauer P365 pistol – which he typically brought with him to the courthouse and, during court proceedings, concealed in a holster under his judicial robe.

5. On August 5, 2025, Respondent presided over a suppression hearing in *People v M*[redacted] *F*[redacted] to determine the validity of a search by law enforcement that led to the recovery of a handgun. A transcript of the proceeding is appended as Exhibit A.

6. Respondent called a recess at the conclusion of the prosecution's direct examination of the police officer who had conducted the search and had retrieved the handgun.

7. During the recess, Respondent went to his chambers, retrieved a shopping bag and a stapler, returned to the courtroom with them, and took the bench. Court was still in recess.

8. At the bench, in a manner that only Sgt. Jessenia Oyola (a court officer) could see, Respondent removed his firearm from its holster, ejected the magazine, and placed the magazine and the firearm on his bench, the top of which

was framed by a four-inch-high lip, such that the gun was not visible to anyone else in the courtroom.

9. In a manner that could not be heard by the witness or the attorneys, Respondent told Sgt. Oyola he wanted to show his gun to the witness, and he asked Sgt. Oyola to check it to ensure there was no ammunition in it. Respondent explained that he planned to tell the witness he was putting the gun in a bag, but in fact he was going to put the gun by his foot and show the witness a bag that contained a stapler.

10. Sgt. Oyola told Respondent that she was uncomfortable with his request and telephoned her supervisor, Capt. Erica Mercado. Sgt. Oyola asked Respondent to wait to recall the case until Capt. Mercado arrived.

11. A short time later, Capt. Mercado entered the courtroom and approached Respondent at the bench.

12. In a manner that could not be heard by the witness or the attorneys, Respondent told Capt. Mercado that he wanted to display his firearm to the witness and make the witness think he was putting the firearm in a bag when in fact he was putting a stapler in the bag.

13. Capt. Mercado replied that she had spoken with her supervisor who had advised against Respondent doing so. Although Respondent does not recall being so advised by Capt. Mercado, he does not dispute that she said it. After

further discussion with Respondent about what he planned to do, Capt. Mercado told him not to give the gun to anybody.

14. When the proceeding resumed, the police officer returned to the stand and was cross-examined by defense counsel.

15. Thereafter, Respondent announced that he had some clarification questions and proceeded to question the witness at length about his encounter with the defendant, including the witness's observations of an L-shaped object in the defendant's crossbody bag.

16. During his questioning, Respondent said that he wanted to conduct "a little experiment" to help him "understand" the officer's "point of view" and that what he had "asked [his] security" to do was "kind of unprecedented" and that he had "security check it out."

17. Respondent then said he had a personally licensed firearm that he was going to place in a "Five Below" bag.[2] Respondent explained that he wanted the witness to describe how he could tell that there was a firearm in the bag by providing testimony about "what it is about the bag and [the] firearm in the bag that gives off a distinction of it being a firearm."

18. Respondent announced that he was going to show the witness his firearm, at which point he displayed the empty firearm to the witness in view of

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[2] "Five Below" is a retail shop that sells a variety of consumer products.

the parties and others in the courtroom. The prosecutor objected and noted *inter alia* that the gun and the bag Respondent was using were different than the ones at issue, and that Respondent could not recreate what had occurred the night of the crime.

19. Respondent overruled the objection, continued to question the officer, then stated he wished to proceed with his "experiment." Respondent announced that he was showing the officer the weapon and he was going to put it in the bag. However, behind the bench, Respondent secretly placed the gun beside his foot and put a stapler into the bag. He then held up the bag while questioning the witness as to how the witness could tell that there was a gun in the bag.

20. Throughout the colloquy between Respondent and the witness, Respondent repeatedly and untruthfully represented that there was a gun in the bag, *inter alia* by saying he had put one in there, which he knew to be untrue, or specifically making references to the gun being in the bag, which he also knew to be untrue. The witness repeatedly declined to say he could see a gun in the bag. At one point, in response to one of Respondent's references to the bag containing a gun, the witness testified that he saw an L-shaped object in the bag, and that he could tell that the L-shaped object had "a predicament [sic] of a firearm," but he would have to conduct a frisk to confirm that. The witness also stated that both

the object and the contours of the bag as displayed by Respondent in court were different than the ones during the street encounter at issue.

21. At the conclusion of his questioning, Respondent revealed that he had put a stapler, not his gun, in the bag, and he told the witness, "I guess you what you identified is an L-shaped object, which is a Swingline Stapler."

22. The prosecutor repeated her objection to the experiment.

23. At the conclusion of the hearing, Respondent suppressed the gun. In explaining his ruling from the bench, Respondent said the officer had made up a "convoluted story" about seeing a bulge. While Respondent referenced his "experiment" as one of several factors influencing his decision, he did not reference his own fictitious story of a "gun" in the bag.

24. Thereafter, the People declined to prosecute, and the case was dismissed. The People did not file an appeal.

25. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article VI, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct ("Rules"); failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the

law and failed to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, failed to perform his judicial duties without bias or prejudice against or in favor or any person, in violation of Section 100.3(B)(4) of the Rules, and failed to dispose of all judicial matters promptly, efficiently and fairly, in violation of Section 100.3(B)(7) of the Rules.

Additional Factors

26. While the Penal Law generally prohibits possessing a licensed handgun in a court or other "sensitive location," judges of certain courts located in New York City – including the New York City Criminal Court on which Respondent sits – are exempted from the prohibition and are authorized to possess their licensed handguns in court. Penal Law §§ 265.01-e(3)(g) and 400.00(2)(d).[3]

27. The Office of Court Administration does not have a policy addressing or prohibiting a judge's possession of a licensed handgun in a New York City court.

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[3] A sensitive location is defined as any place owned or under the control of federal, state or local government, for the purpose of government administration, including courts (*see* Penal Law § 265.01-e[2][a]).

28. Opinion 06-51 of the Advisory Committee on Judicial Ethics holds that judges are not prohibited by the Rules from carrying their duly licensed firearms at the bench while performing judicial duties, although they are advised to keep their firearms concealed and safeguarded on their person while they are on the bench.

29. Respondent avers, and the Administrator has no evidence to the contrary, that he was sensitive to the dangerous nature of firearms, which is why he asked a court officer to verify that his weapon was unloaded and in a safe condition before he performed his deceptive "experiment" with the witness. Respondent nevertheless appreciates now that he put the court officer in a difficult position and should not have performed the "experiment."

30. Since the incident described herein, Respondent no longer brings his firearm into the courtroom.

31. Respondent cooperated with the Office of Court Administration, his Administrative Judge, and the Commission throughout this matter. He was contrite and has acknowledged the impropriety of his conduct.

32. Respondent has no prior disciplinary history with the Commission.

33. In focusing on the Respondent's deceptive and disingenuous conduct, this stipulation takes no position on the merits of his evidentiary ruling to suppress the gun, which would have been for an appellate court to decide.

IT IS FURTHER STIPULATED AND AGREED that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Censure based upon the judicial misconduct set forth above.

IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Censure without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, Respondent or the Administrator and Counsel to the Commission.

Dated: 09/08/2026

Honorable Jeffrey A. Gershuny
Respondent

Dated: 9/8/26

Michael C. Farkas
Attorney for Respondent

Dated: 9/11/26

Robert H. Tembeckjian
Administrator & Counsel to the Commission
(**Mark Levine & Vickie Ma**, Of Counsel)

EXHIBIT A

1 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM, PART GP31
2 ----------X
THE PEOPLE OF THE STATE OF NEW YORK,
3 Ind. No.
[redacted]
4 -against-
Hearing
5 N[redacted] F[redacted],

6 Defendant.
----------X
7

8 August 5, 2025
Kings Supreme Court
9 320 Jay Street
Brooklyn, New York 11201
10
B E F O R E :
11 JEFFREY GERSHUNY,
Supreme Court Justice
12

13
A P P E A R A N C E S :
14
For the People:
15
ERIC A. GONZALEZ
16 District Attorney, Kings County
BY: ASHLICA MALCOLM, ESQ.
17 BY: JORDAN WENIK, ESQ.
Assistant District Attorneys
18

19 For the Defendant:

20 LEGAL AID SOCIETY
BY: JOELLE RYU, ESQ.
21 BY: BRITTANY CURTIS, ESQ.
John Cardillo
22 Senior Court Reporter

23

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1 THE CLERK: On the Part GP31 Calendar. This is
2 Indictment [redacted] of [redacted]. N[redacted] F[redacted]. May I have
3 all appearances, please?
4 MS. MALCOLM: Good morning, your Honor.
5 Assistant District Attorney Ashlica Malcolm,
6 A-S-H-L-I-C-A. M-A-L-C-O-L-M, for the People.
7 MR. WENIK: Assistant District Attorney Jordan
8 Wenik. That is J-O-R-D-A-N. W-E-N-I-K. Good morning.
9 THE COURT: Good morning.
10 MS. RYU: And, good morning, Legal Aid Society
11 by Joelle Ryu, R-Y-U, for Mr. F[redacted].
12 MS. CURTIS: Brittany Curtis. Legal Aid Society
13 on behalf of Mr. F[redacted].
14 THE COURT: Good morning, everyone. Have a
15 seat. Get comfortable. We are on for hearings today.
16 MS. RYU: Yes.
17 MS. MALCOLM: Yes, your Honor.
18 THE COURT: Before we start, what's the final
19 and best offer before we begin? I have CPF and a year.
20 MS. MALCOLM: Yes, your Honor, and I believe
21 Defense Counsel and I are still in discussions, as I spoke
22 to my supervisor, but, at this point in time, the offer
23 still remains CPF and a year.
24 THE COURT: Do we lose it if we start the
25 hearing?

1 MS. MALCOLM: No, your Honor.
2 THE COURT: So I have Huntley/Mapp/Dunaway. Let
3 me take a look at the statement notice.
4 MS. RYU: Your Honor, if I can just add. So we
5 were talking about the plea. I believe that we have had
6 conversations about it changing and nonetheless, my
7 understanding is that while this hearing is pending, until
8 its conclusion, the counteroffer will stay open, and if a
9 conditional were to come down, it would also stay open, as
10 well.
11 MR. MCGEE: That is correct, your Honor. Your
12 Honor, I just handed up the witness list. I also have
13 additional copies for Defense and the court reporter, as
14 well.
15 THE COURT: He has got absolutely no record. I
16 mean, the length of this case. What are we waiting for?
17 What is going to change the offer at this point? What are
18 we doing?
19 MS. MALCOLM: I am just waiting for the word
20 from our supervisor.
21 THE COURT: Why don't we get that now before we
22 start litigating this. Why don't you call your
23 supervisor? You are asking for a conditional discharge?
24 MS. RYU: Originally, we had asked the People to
25 consider a misdemeanor in this matter. In looking at the

1 video and looking at the evidence, we do think that there
2 are some serious concerns in regards to the interaction,
3 the seizure and the search about this case.
4 THE COURT: Right. But we are not going to get
5 there. What I am hearing that then, Counsel, if this
6 hearing closes, you lose that offer. You are either
7 fishing or cutting bait whether you want to litigate this.
8 We are going to go all the way to the end.
9 Again, I haven't seen any of the evidence in this case. I
10 am keeping an open mind versus let's see if there is any
11 interest in getting him down from a felony down to a
12 misdemeanor.
13 We can take it while that's the case. If your
14 guy is completely innocent and you want to go to trial
15 let's do it and forget about discussions and the pleas.
16 There is no issue.
17 MS. RYU: Your Honor, because of the issues that
18 we raise that is why the People are willing to keep open
19 the offers and the potential offer coming down from a
20 conditional on this case.
21 THE COURT: What? I am sorry to cut you off.
22 We are not going to get a decision from me, because once
23 we close the hearing you lose the offer.
24 MS. RYU: I mean, the People are indicating that
25 it remains open.

1 MS. MALCOLM: Yes. We will keep -- well.
2 THE COURT: Do you want to see how I move to
3 suppression before you decide?
4 MS. MALCOLM: Yes, your Honor.
5 THE COURT: Then. Okay. Fair enough. All
6 right. So can somebody, the 710.30 (1) (a) notice. Let's
7 take a look at what I am going to be litigating. I have
8 it here. It is a videotaped statement made at the 71st.
9 MS. MALCOLM: Yes, your Honor.
10 THE COURT: Is that the sum and substance, or is
11 it the entire statement? Are you going to be playing on
12 the video that you --
13 MS. MALCOLM: That is the sum and substance.
14 The video is, I believe, approximately 11 minutes.
15 THE COURT: Is that's what is coming in at
16 trial? All 11 minutes?
17 MS. MALCOLM: Yes.
18 THE COURT: It is the entirety of that
19 statement. Okay. And I guess the Mapp is the seizure of
20 the alleged firearm?
21 MS. MALCOLM: Yes, your Honor.
22 THE COURT: Okay. And this is a street
23 encounter. There is a Dunaway aspect to this?
24 MS. RYU: Yes.
25 MS. MALCOLM: Yes.

1 THE COURT: Anything else you wish me to
2 litigate and resolve as a part of this hearing?
3 MS. RYU: Yes, just briefly, your Honor. First
4 of all, we are moving to preclude all of the unnoticed
5 statements that are here, and I do want some clarification
6 in regards to what the Court is referring to. I have an
7 NDF that was served on October 22nd and also --
8 THE COURT: I have the arraignment 710.30 (1)
9 (a). That is what I am referring to.
10 MS. RYU: Yes. So we would also be moving to
11 preclude as part of non-notice -- lack of notice any other
12 statements that are included in the NDF and elsewhere.
13 THE COURT: Can I see your NDF? I never got a
14 copy of that. Are you looking to get anything off of the
15 NDF into trial?
16 MS. MALCOLM: One moment, your Honor. Well,
17 your Honor, from what I am looking at on the NDF, it is
18 the statements made at the 71st Precinct.
19 THE COURT: It is more drawn out
20 transcription-wise?
21 MS. MALCOLM: Yes.
22 THE COURT: It is everything that you noticed in
23 the 710.30 (1) (a.)
24 MS. MALCOLM: Yes.
25 MS. RYU: That is actually incorrect. At the

1 arraignment, if I can turn to 710.30 (1) (a).
2 THE COURT: There is something here from Utica
3 Avenue, and in transit that was not noticed, right?
4 MS. RYU: Yes, that was not noticed.
5 THE COURT: What else?
6 MS. RYU: And, you know, we believe that part of
7 the issue is that the 710.30 (1) (a) notice of the NDF
8 don't include anything to whom the statements are made to.
9 So it presents a difficulty in terms of trying
10 to actually figure out in which parts of the evidence the
11 People are, you know, pulling that statement.
12 I do recognize that it appears that based on the
13 location they are trying to bring in additional statements
14 of the debriefing room, but, again, we believe that -- we
15 believe that it's one thing to have the notice.
16 We don't think that there is sufficient notice.
17 I mean they gave notice as to the actual sum and substance
18 of the statements on a different date. I don't believe
19 that the same notice at arraignments is the same notice
20 that is given necessarily in the NDF.
21 MS. MALCOLM: Well, it is my understanding from
22 the arraignment notice this is the sum and substance. The
23 NDF, like you just said, your Honor, is more of an
24 expansive version of what was stated in the debriefing
25 room.

1 Your Honor, Defense Counsel has had the
2 body-worn camera with full sum and substance of the
3 statements since October. So I do believe that Defense
4 Counsel has had sufficient notice of the statement.
5 Also on the NDF, as you can see, it states the
6 date and the approximate time and location and the
7 substance of the statement.
8 So I do believe that Defense Counsel had notice
9 of these statements, sufficient notice of these
10 statements.
11 THE COURT: Yes, I am looking at the 710.30 (1)
12 (a). I am looking at the NDF. The NDF doesn't serve any
13 legal notice. Is Defense on reasonable notice of what
14 statement will be used against the defendant at trial?
15 As soon as -- the case law is very clear. As
16 long as it is part of the transaction, it is not a
17 bifurcated incident. There is one with statement, a lapse
18 of time, and another statement made.
19 What is noticed at arraignments is the same
20 notice they seek to get in at trial, at the 71st Precinct
21 on the same date.
22 The fact that the NDF doesn't say who it is made
23 to, NDF is not controlling. It is the noticed statement
24 who it was made on the 710.30 (1) (a). It is made to a
25 Timothy Barrow. It must be an officer or detective.

1 So I find that 710.30 (1) (a) sets forth
2 sufficient notice to the Defense on being able to defend
3 against that statement, cross-examine the witness. It is
4 part of one transaction.
5 It is what I am hearing. 11 minutes. Then, we
6 break, and it comes back for 30 minutes, or one time
7 frame, narrow frame, what is not noticed though. I agree
8 with Defense counsel on this is the statement made at
9 Utica Avenue and in transit. Can you speak to that,
10 People?
11 MS. MALCOLM: Your Honor, the only thing I can
12 say to that is that it is on the NDF, is that Defense
13 counsel had sufficient notice. Unfortunately, I don't see
14 at arraignment that that statement was noticed.
15 However, we did put it in the NDF and, again,
16 Defense Counsel has had the body-worn camera since last
17 year October. Officer Barrow is one of our witnesses what
18 we are actually going to call for this hearing.
19 If Defense counsel wants to cross the officer on
20 any of the statements that were made to him, she obviously
21 is free to do so, but we did notice it in the NDF, and she
22 does have sufficient notice where the body-worn camera
23 since last year October almost a year ago.
24 THE COURT: When was the NDF served and filed?
25 October 24?

1 MS. MALCOLM: I have November 22nd of last year.
2 THE COURT: So November of 2024 and he was
3 arraigned on this September 2024. So it is a 15-day
4 requirement, right?
5 MS. MALCOLM: Yes, your Honor. The original NDF
6 was actually served October 22nd. The NDF and the initial
7 discovery, and then we served another NDF on
8 November 22nd.
9 THE COURT: Okay. To give teeth to the statute,
10 time frames have to mean something. So, again, an NDF
11 does not qualify as, in my opinion, certainly two months
12 after his arraignment you're outside the time frame, and
13 you didn't apply to the Court, in any way, to extend that
14 time frame or any way make an application to reserve
15 notices that I see.
16 So to the extent I will certainly determine the
17 voluntariness of the statement, but with respect to the
18 application to preclude it from being used is not properly
19 noticed. I think I am going to grant that based on what I
20 am seeing, and there being no justification as to why the
21 People are outside the time frame.
22 I will, however, let the People proceed on the
23 71st Precinct notice that is properly noticed on time.
24 Part of one transaction. Let's proceed there.
25 How many witnesses do you have?

1 MS. MALCOLM: One, your Honor.
2 THE COURT: Only one today, or is it one total?
3 MS. MALCOLM: It is one in total. The other
4 officers on the witness list is just names that are going
5 to be mentioned.
6 THE COURT: Okay. So we have Barrow today?
7 MS. MALCOLM: Yes, your Honor.
8 THE COURT: That is the one the statement was
9 made to?
10 MS. MALCOLM: Yes.
11 THE COURT: Anything before we call the witness?
12 MS. RYU: I would also note that we, I don't
13 expect this to come up. However, if it does, we are also
14 moving to preclude any non-noticed identifications and
15 their perspective in-court identifications.
16 THE COURT: Do you have any IDs?
17 MS. MALCOLM: Besides the defendant, no, your
18 Honor.
19 THE COURT: Well, I mean, did anybody, any
20 civilian make an ID on the defendant they are going to
21 introduce.
22 MS. MALCOLM: No, your Honor.
23 THE COURT: Any police officers going to attempt
24 to ID the defendant other than somebody is that is found
25 at the scene? Does anybody know the defendant?

1 MS. MALCOLM: No, your Honor.
2 THE COURT: Do we have a Mosely issue here or
3 no?
4 MS. MALCOLM: No.
5 THE COURT: There will be no identifications,
6 other than the arrest and identifying who was arrested on
7 that day, right?
8 MS. MALCOLM: Yes, your Honor.
9 THE COURT: So other than that, there is no IDs
10 that are going to be made of your client, Counsel. Let's
11 proceed. Let's go ahead and call, at this time, go ahead.
12 Call your witness.
13 MS. MALCOLM: Yes, your Honor. The People call
14 Officer Timothy Barrow.
15 THE COURT: All right. You have premarked
16 exhibits? Ready to go?
17 MS. MALCOLM: Yes, your Honor.
18 COURT OFFICER: Ready for the witness, your
19 Honor?
20 THE COURT: Yes, thank you.
21 COURT OFFICER: Witness entering.
22 THE CLERK: Please raise your right hand.
23 T I M O T H Y B A R R O W, Police Officer,
24 having been called as a witness by and on behalf of the
25 People in this case, having first been duly sworn was

1 examined and testified as follows:
2 THE WITNESS: Yes.
3 THE CLERK: You may be seated. Please state and
4 spell your first and last name for the record.
5 THE WITNESS: For the name is Timothy. Last
6 name Barrow. T-I-M-O-T-H-Y. Last name B-A-R-R-O-W.
7 THE CLERK: Your rank, shield, command number.
8 THE WITNESS: P.O. Police Officer. Shield
9 Number 10731. Command is going to be Chief Department's
10 Office.
11 THE COURT: Okay. Thank you. Your witness.
12 DIRECT EXAMINATION
13 BY MS. MALCOLM:
14 MS. MALCOLM: Thank you, your Honor.
15 Q Officer, how long have you been employed by NYPD?
16 A Three years.
17 Q And can you describe your career starting from the
18 police academy?
19 A Yes. I started off in the 121 Precinct. This is in
20 Staten Island. After that I went to Patrol, Borough of
21 Staten island Community Response Team, and then from there I
22 went to the Citywide Community Response Team. Currently, I
23 am assigned to Chief Department's Office.
24 Q How long have you been assigned to the Chief
25 Department's Office?

1 A Seven months.
2 Q And prior to the Chief Department Office, where were
3 you assigned?
4 A I was assigned to the Citywide Community Response
5 Team.
6 Q What is the Citywide Community Response Team?
7 A The Citywide Community Response Team we do quality of
8 life. We could have quality-of-life issues and within the
9 five boroughs which could range from open containers,
10 community complaints, loud music, and we also go to high
11 prone violence locations within the five boroughs that
12 receive spikes.
13 MS. RYU: Objection. Sorry. Objection.
14 Q And the areas that you covered, does that include
15 Brooklyn?
16 A Yes.
17 Q Now, do you have training in firearms?
18 A Yes.
19 Q Can you describe that training?
20 A Yes. My training in firearms is obtaining a firearm,
21 shooting a firearm and identifying firearms.
22 Q And approximately how many arrests have you made in
23 your career?
24 A Over a hundred.
25 Q Approximately how many arrests for gun possession

1 have you made in your career?
2 A Over six.
3 Q Approximately, how many arrests have you assisted for
4 gun possession?
5 A Over ten.
6 Q I want to direct your attention to September 2nd of
7 2024. Were you working that day?
8 A Yes, I was.
9 Q And what hours were you working?
10 A I was working 12 p.m. to 8 p.m.
11 Q And where did you go first when you went to work that
12 day?
13 A I went to One Police Plaza, where I turn out of the
14 Citywide Community Response Team.
15 Q Were you told to report to a certain location?
16 MS. RYU: Objection.
17 THE COURT: Overruled.
18 A Yes.
19 Q And where were you told to report to?
20 A In the confines of the 7-1 Precinct.
21 Q What county is that located in?
22 A Kings.
23 Q Why were you told to report to that location?
24 A During the time, it was the West Indian Day Parade.
25 MS. RYU: Objection.

1 THE COURT: What's the objection?
2 MS. RYU: Relevance.
3 THE COURT: Overruled. You can answer.
4 A During the time, it was the during the West Indian
5 Day Parade.
6 Q And were you alone or with a partner?
7 A I was working with multiple partners.
8 Q Who were you working with on that day?
9 A I was working with Detective Simmons, Officer
10 Ferguson, and Officer Otway.
11 Q Were you in plain clothes or uniform?
12 A I was in uniform.
13 Q Were you on foot or in a vehicle?
14 A I was in an unmarked vehicle.
15 Q And can you describe the uniform that you and your
16 fellow officers were wearing?
17 A Yes. For the pants we wear khaki-colored pants, and
18 for the vests, our vest says police in the front, and in the
19 back, it says NYPD and my shield patch, my last name, rank,
20 and shield number on my chest.
21 Q What exactly were you told to look for when you were
22 in this location?
23 A To conduct quality-of-life issues within the 7-1
24 Precinct.
25 Q Have you patrolled prior to this date at the West

1 Indian Day Parade?
2 A Yes.
3 Q How many times?
4 A Two times.
5 Q And during those times, did you arrest or assist in
6 an arrest for guns?
7 MS. RYU: Objection.
8 THE COURT: We will see we she goes with it.
9 Overruled.
10 A Yes.
11 Q How many have you arrested or arrest for gun
12 possession?
13 A One.
14 Q Just one?
15 A Yes.
16 Q Now, I want to direct your attention, specifically to
17 September 2nd, 2024, at approximately 9:11 p.m. Where were
18 you?
19 A I was in the vicinity of the 7-1 Precinct at 385
20 Utica Avenue.
21 Q And what county is that located in?
22 A Kings.
23 Q And what, if anything, did you observe on that day?
24 A I observed a male black wearing a red shirt with
25 white shorts, with a flag around his neck with a cross body

1 black bag in front of him.
2 Q And where was that individual?
3 A He was on the sidewalk, approximately 10 yards away
4 from me during the time.
5 Q Where were you in approximation to where this male
6 individual was?
7 A I was in the car at first.
8 Q And did you have an opportunity to step out of the
9 car?
10 A Yes.
11 Q And on that day what were the lighting conditions
12 like?
13 A It was dark.
14 Q Did you happen to use a flashlight?
15 A Yes, I did have to use my flashlight.
16 Q What were the weather conditions like?
17 A Hot and humid.
18 Q And, again, approximately how far away were you from
19 this individual?
20 A At the time where I was at the car it was about
21 10 yards.
22 Q Now, if you see this individual in the courtroom
23 today, can you please point him out and identify an article
24 of clothing that he is wearing?
25 A Yes, the individual sitting right there with a black

1 shirt, white polo slides.

2 THE COURT: Stipulating your client, Counsel?

3 MS. RYU: I'm sorry?

4 THE COURT: Stipulating your client?

5 MS. RYU: Yes.

6 THE COURT: Let the record reflect the witness

7 identified the defendant.

8 Q Now, was the defendant with anyone else?

9 A Not that I know of.

10 Q What did you observe regarding the defendant when you

11 first saw him?

12 A So when I first saw him, I went to get a better view.

13 So I took my flashlight out, and I flashed the defendant.

14 From that point I noticed that there was a heavily weighted

15 cross body bag in front of him.

16 Q And where was the cross body bag?

17 A It was positioned right in front of him. If you look

18 from this point of view, it was towards his left side.

19 MS. MALCOLM: Let the record reflect that the

20 witness has identified his left side of his body.

21 Q Did you initially notice anything unusual about the

22 cross body bag?

23 A Just that it was very heavily weighted from the

24 initial flashlight point.

25 Q And what did you decide to do when you first observed

1 that?

2 A When I first observed the defendant he also gave me a

3 look that he was very irate, sort of like a deer in

4 headlights, very nervous, concerned that I was there.

5 MS. RYU: Objection, speculation.

6 THE COURT: Overruled.

7 Q Now, Officer, what happened next?

8 A From there I kept my flashlight on. The defendant

9 just wanted to do more investigation to see if he could give

10 me more of a reason to do more of an investigation on the

11 defendant.

12 From that point on he was at a standstill. I looked

13 to the left. I decided I just wanted to keep my eye on him in

14 a way where I could without giving up my point of view of the

15 investigation. So from there I went to adjust -- sorry. I

16 went to --

17 MS. MALCOLM: Your Honor, with the Court's

18 permission.

19 THE COURT: Yes, just raise the microphone so we

20 can hear what you are going to say. You will indicate

21 what he is doing.

22 A From there I just wanted to adjust my pants leg.

23 While I adjusted my pants leg I was keeping my eye on the

24 defendant where he was at that time. From there that is when

25 I noticed the defendant moved the black cross body bag behind

1 him, more to the side behind the flag he had around his neck.
2 MS. MALCOLM: Let the record reflect the witness
3 just stood up and adjusted his pants leg and most of his
4 body towards the left side of his body.
5 Q Now, Officer, I want to go back for a second. Why
6 did you and fellow officers get out of the car initially?
7 MS. RYU: Objection.
8 THE COURT: Overruled.
9 A Just to get the quality of life issues that was going
10 on.
11 Q Was there a lot of people outside on that date?
12 A Yes, there was a lot of people outside on that date.
13 Q Now, once you observed the defendant move the cross
14 body bag, what happened next?
15 A From there I took more investigation. Wanted to give
16 him a second. That's when I seen the defendant slightly move
17 to walk away, and that is when I approached the defendant to
18 do a more thorough investigation on the black cross body bag.
19 Q Now, what did you think was inside the cross body bag
20 based on his movement and his behavior?
21 A Initially I wasn't too sure. I wanted to further my
22 investigation by approaching the defendant.
23 Q So when you approached the defendant, did you ask him
24 anything?
25 A I just told him to stop.

1 Q And what did you proceed to do once you approached
2 him?
3 A When I approached him I took my flashlight out. I
4 put my flashlight directly on the black cross body bag, when
5 I noticed there was an L-shape object and predicament of a
6 firearm, and my observation, at first, with the bag being
7 very heavily weighted was true.
8 Q And what made you believe there was a firearm in the
9 cross body bag?
10 A Just the way the firearm was positioned inside the
11 cross body bag. There was printing on the bag and I was able
12 to see that L-shaped bulge.
13 Q And this investigation, in your initial basis, was
14 that based off your training and experience of firearms?
15 A Yes.
16 Q And then what happened once you made this
17 observation?
18 A So when I proceeded to attempt a frisk of the bag,
19 the defendant bladed himself away from me and tightened up
20 his left arm to where I wasn't initially able to put my arm
21 to frisk the bag.
22 MS. MALCOLM: Let the record reflect that the
23 witness just bladed has body and used his left arm to
24 cover up the left side of his body.
25 THE WITNESS: Yes.

1 Q Once the defendant did this, then what happened?
2 A So when I was able to obtain my hand on the black
3 cross body bag I felt the ridge of a firearm slide, the
4 ridges of a firearm slide.
5 Q And --
6 MS. MALCOLM: One moment, your Honor.
7 (Pause in proceedings.)
8 Q Officer, why didn't you ask whether you could search
9 the bag?
10 MS. RYU: Objection.
11 THE COURT: Overruled.
12 A The reason I didn't ask to search the bag is because
13 initially before a search there has to be a frisk conducted.
14 So I conducted the frisk first, and then that's when I felt
15 to believe that there was a firearm. That's when I was able
16 to search.
17 Q And I want to clarify. When you say "frisk," you
18 mean just touching the bag?
19 A Just touching the bag.
20 MS. RYU: Nonresponsive, objection.
21 THE COURT: Overruled.
22 A Just touching the bag.
23 Q And once you -- or after you touched the Bag, when
24 you felt what you felt, what did you believe it was?
25 A A firearm.

1 Q Did the defendant say anything during this time?
2 A No.
3 Q Were you eventually able to gain control of the bag?
4 A Yes.
5 Q And what did you find inside?
6 A That there was a firearm inside the bag.
7 Q Was there anything else inside the bag?
8 A No.
9 Q After discovering the firearm, what did you do next?
10 A I placed the defendant in handcuffs.
11 Q And the defendant was arrested, correct?
12 A Yes.
13 MS. MALCOLM: With the Court's permission, I
14 would like to show the Defense and the witness what has
15 been premarked as People's 1 for identification.
16 THE COURT: Slow it to Counsel and then show it
17 to the witness. People's 1 for ID.
18 (Whereupon, the video referred to was marked for
19 identification as People's Exhibit 1 by the Court
20 Reporter.)
21 Q Officer, do you recognize People's 1 for
22 identification?
23 A Yes.
24 Q What is it?
25 A It is a CD, body-worn camera.

1 Q How do you recognize it?
2 A With People's 1, my last name, my signature and the
3 date.
4 Q And you have watched the contents of People's 1 for
5 identification prior to testifying in court today?
6 A Yes.
7 Q When did you watch it?
8 A Today and previous times.
9 Q Is it a fair and accurate depiction of your
10 interaction with the defendant on September 2nd, 2024 at
11 approximately 9:11 p.m.?
12 A Yes.
13 MS. MALCOLM: Your Honor, at this time, I will
14 be offering this into evidence what has been premarked as
15 People's 1 for identification, as People's 1 for
16 identification in evidence.
17 THE COURT: Any objection?
18 MS. RYU: No objection.
19 THE COURT: Without objection, People's 1 in
20 evidence.
21 COURT OFFICER: So marked.
22 (Whereupon, the video referred to was marked in
23 evidence as People's Exhibit 1 by the Court Reporter.)
24 Q Officer, was your body-worn camera turned on the
25 entire night?

1 A Most of the time during the night, yes.
2 Q And regarding this encounter you had with the
3 defendant, when did you turn on your body-worn camera?
4 A When I initially went to go frisk the bag.
5 Q And why did you turn it on at that time?
6 A So initially when I got out of the car I went to
7 approach to turn my body camera on, and I thought it was on.
8 From there while doing my investigation, I didn't hear my
9 beeping sound that my body cam gives me at the one minute
10 mark. Then, I looked down and said body cam is not on. I
11 had to reactivate it.
12 Q Did you observe the defendant when you turned on your
13 body worn camera -- withdrawn.
14 When you first observed the defendant when you were
15 in the vehicle, was your body-worn camera turned on then?
16 A No.
17 Q Can you see that interaction on your body-worn
18 camera?
19 A Yes.
20 Q And how can you see that interaction your body-worn
21 camera?
22 A From the one-minute buffer.
23 MS. MALCOLM: Your Honor, with the Court's
24 permission, I would like to publish People's 1.
25 THE COURT: Okay.

1 MR. PERRY: And, your Honor, with your
2 permission, if I may give the witness a laser point.
3 THE COURT: Sounds good.
4 MS. MALCOLM: Let the record reflect I am now
5 playing People's 1 into evidence.
6 (Video playing.)
7 MS. MALCOLM: Let the record reflect I am now
8 pausing People's 1 at 14 seconds.
9 Q Officer, who is driving the vehicle?
10 A That's Detective Simmons.
11 Q And who is in the passenger's seat?
12 A Officer Ferguson.
13 Q And who is in the back seat?
14 A Otway.
15 Q And where are you located?
16 A I am behind the passenger.
17 MS. MALCOLM: Let the record reflect I am now
18 resuming at 14 seconds.
19 (Video playing.)
20 MS. MALCOLM: Let the record reflect I am
21 pausing at 26 seconds.
22 Q Now, Officer, can you see the defendant in this
23 frame?
24 A Not right now but if you go a little bit further back
25 where you flash your flashlight, yes, it is a little bit

1 further back.
2 Q So in this frame, you can't see him from your vantage
3 point?
4 A Well, I can see him now. I seen him better if you
5 flash -- once I hit my flashlight.
6 Q I am going back to 22 seconds.
7 (Video playing)
8 A Right there.
9 MS. MALCOLM: Let the record reflect I paused
10 People's 1 at 25 seconds.
11 Q Now, Officer, using the laser point, where did you
12 see the defendant in this frame?
13 A Right there.
14 Q And at approximately how many yards or feet are you
15 away from the defendant?
16 A I would say approximately ten to fifteen yards.
17 Q And can you describe what is happening now in this
18 frame?
19 A What's happening in this frame is me and the
20 defendant are matching eyes with each other. From that point
21 on, the defendant, when he looked at me, it was more like a
22 deer in headlights, very irate, his body language gave me
23 that maybe he was, from everything that was going on with the
24 open containers.
25 MS. RYU: Objection, speculation.

1 THE COURT: Overruled.
2 A That he thought -- it was a lot of people had open
3 containers. He thought maybe I was going to give him a
4 summons. That was the demeanor that he gave me, that I am
5 doing something wrong that I am not supposed to do.
6 Q And, Officer, is there anyone next to the defendant?
7 A Yes, there is two males.
8 Q Resuming People's 1.
9 (Video playing.)
10 Q Pausing People's 1 at 36 seconds. Now, Officer, can
11 you explain what's happening in this frame?
12 A Yes. So this is what I was describing. That I was
13 adjusting my pants leg while keeping my eyes on the
14 defendant. I wanted to give the defendant the knowledge that
15 I wasn't looking at him, but I actually was looking at him.
16 I wanted to see more of an investigation how his demeanor was
17 going to be that he perceived that I was not looking at him.
18 Q And approximately how many feet or yards are you away
19 from the defendant at this point?
20 A Approximately five yards.
21 Q And can you still see the cross body bag?
22 A At this point, yes, a little further. That's when he
23 decided to move the fanny pack towards the backside.
24 MS. MALCOLM: I will let the record reflect I am
25 going to about go back to 27 seconds.

1 Q Let the record reflect I paused at 29 seconds.
2 Officer, you have your flashlight out in this frame?
3 A Yes.
4 Q Why do you have your flashlight out in this frame?
5 A To get more of a better view of the cross body bag
6 and him.
7 Q Resuming.
8 (Video playing.)
9 Q Pausing at 41 seconds. Officer, what is happening in
10 this frame?
11 A So the defendant, he took a step to his left, as if
12 he was going northbound down the block, and that's when I
13 told the defendant to stop.
14 Q Resuming.
15 (Video playing.)
16 Q Pausing at 44 seconds. Officer, what's happening in
17 this frame?
18 A So right here I am asking the defendant to just stay
19 put, that I am going to do a police investigation.
20 Q Resuming. Pausing at 45 seconds. Officer, do you see
21 the cross body bag in this frame?
22 A Yes.
23 Q Can you explain what is happening in this frame?
24 A So right here I took -- I pinned my flashlight
25 directly on the black cross body bag so I can get a better

1 view and a determination view of what I see from here. What
2 I see is the L-shaped object and predicament of a firearm
3 towards the back and also how heavily the bag was from my
4 perspective.
5 Q Pause it at 46 seconds. Officer, can you explain
6 what is happening in this frame?
7 A Yes. So in this frame I went to obtain the bag to
8 frisk the bag. The defendant bladed himself, moved over and
9 made his left arm toward the bag where I couldn't grab the
10 bag initially.
11 Q Were you eventually able to touch the bag?
12 A Yes, I was able to touch the bag.
13 Q What did you feel when you touched the bag?
14 A Once I was able to frisk the bag, that is when I felt
15 the slide, the ridge of a slide on a firearm.
16 Q Continuing at 46 seconds.
17 (Video playing.)
18 Q Pausing at 56 seconds. Officer, can you explain again
19 why it is you have no audio on your body-worn camera?
20 A Initially when I get out of the car you see my hand.
21 I went to try to activate my body cam. I wasn't able to
22 activate it, at the time, and now, I activated my body cam.
23 MS. MALCOLM: Resuming at 56 seconds.
24 (Video playing.)
25 Q Two minutes and one second. Officer, what is

1 happening in this frame?
2 A We were taking the defendant back to the patrol car.
3 MS. MALCOLM: Let the record reflect I stopped
4 playing People's 1.
5 Q Officer, what did you do once you arrived at the 71st
6 Precinct?
7 A I lodged the defendant inside the cells and
8 safeguarded the firearm.
9 Q Was the defendant interviewed at any point?
10 A Yes.
11 Q Who interviewed him?
12 A Detective Walsh from the 7-1 Detective Squad.
13 Q Were you present with the detective and the
14 defendant?
15 A Yes.
16 Q And was any other officers in the room during this
17 interview?
18 A No.
19 Q Were his Miranda rights read to him?
20 A Yes.
21 Q Who advised the defendant of his Miranda warnings?
22 A The detective.
23 Q And what language were the Miranda warnings given?
24 A In English.
25 Q Did the defendant appear to understand them?

1 A Yes.
2 Q Now, during the interview with the defendant, where
3 was your gun?
4 A My gun was lodged in the gun lodging cell outside of
5 the interrogation room.
6 THE COURT: The interrogation room?
7 A The box.
8 THE COURT: What your response to the question?
9 THE WITNESS: My gun was locked outside of the
10 interrogation room and the cells.
11 Q Where was Detective Walsh's gun?
12 A In the same place.
13 Q And were any threats made during this interview?
14 A No.
15 Q Were any promises given to the defendant during this
16 interview?
17 A No.
18 Q Was the defendant provided food or water?
19 A Not that I can remember.
20 Q Was he provided food or water after the interview?
21 A Yes, yes.
22 Q And prior to -- or during the conversations with the
23 defendant, did the defendant ever request an attorney?
24 A No.
25 Q Now, was this interview memorialized, in any way?

1 A Yes.
2 MS. MALCOLM: With the Court's permission, I
3 would like to show Defense and the witness what has been
4 premarked as People's 2 for identification.
5 THE COURT: People's 2 for identification shown
6 to Counsel.
7 (Whereupon, the video referred to was marked for
8 identification as People's Exhibit 2 by the Court
9 Reporter.)
10 Q Officer, do you recognize what is People's 2 for
11 identification?
12 A Yes.
13 Q What is it?
14 A It's People's 2 is the debrief, and it is my rank,
15 signature and date.
16 Q How do you recognize it?
17 A This is the debrief.
18 Q Have you watched the contents of People's 2 for
19 identification prior to testifying in court today?
20 A Yes.
21 Q Are you in the video?
22 A Yes.
23 Q Is it a fair and accurate depiction of your
24 interaction with the defendant on September 3rd, 2024 at
25 approximately one a.m.?

1 A Yes.
2 MS. MALCOLM: Your Honor, at this time, I will
3 be offering into evidence, what is premarked as People's 2
4 in evidence.
5 THE COURT: Any objection?
6 MS. RYU: No, not at this time.
7 THE COURT: Without objection, People's 2 is in
8 evidence.
9 COURT OFFICER: So marked.
10 (Whereupon, the video referred to was marked in
11 evidence as People's Exhibit 2 by the Court Reporter.)
12 MS. MALCOLM: I would like to publish People's 2
13 for the Court, with the Court's permission.
14 THE COURT: Please.
15 MS. MALCOLM: Let the record reflect I am now
16 playing People's 2.
17 (Video playing.)
18 MS. MALCOLM: Let the record reflect I am now
19 starting People's 2 at 57 seconds.
20 (Video playing.)
21 MS. MALCOLM: Let the record reflect I stopped
22 playing People's 2.
23 Q Now, Officer, I want to go back slightly again. When
24 you got out of the car and your fellow officers got out of
25 the car what were they doing?

1 A They were checking quality of life issues themselves.
2 MS. RYU: Objection.
3 THE COURT: If the witness knows he can testify
4 to it. Overruled.
5 MS. MALCOLM: No further questions.
6 THE COURT: What I would like to do is take a
7 five-minute break before we get into cross. Do not
8 discuss your testimony with anybody. You will proceed
9 with my officer. I will bring you back in about five to
10 ten minutes. Everyone remain seated, as the witness
11 leaves the stand.
12 (Witness exiting.)
13 THE COURT: Let's take a five to ten minute
14 bathroom break. We will come right back and do that.
15 (Whereupon, there was a recess, after which the
16 following occurred.)
17 THE CLERK: Recalling Number 1 on the GP31
18 calendar. N[redacted] F[redacted]. All appearances are the
19 same.
20 COURT OFFICER: Ready for the witness, your
21 Honor?
22 THE COURT: I am ready to go. Can we recall the
23 witness?
24 MS. RYU: Before we proceed with
25 cross-examination, I did have a conversation with the

1 People about stipulating to the screen -- the stills from
2 his body-worn camera
3 THE COURT: These are Defense exhibits?
4 MS. RYU: Yes.
5 MS. MALCOLM: No objection.
6 THE COURT: So when will you want to move them
7 in? Now?
8 MS. RYU: Yeah, sure. I think that would make
9 sense.
10 THE COURT: What do you stipulate to? How many
11 do you have there.
12 MS. RYU: There are seven stills from, I guess
13 we can either do Defense A 1 to 7 or we can do --
14 THE COURT: How about A-G.
15 MS. RYU: That's fine.
16 THE COURT: Tell me what A is. Let's just
17 testify to it.
18 MS. RYU: Defense Exhibit A is going to be a
19 body-worn camera still at 25 seconds.
20 THE COURT: I will the People to stipulate at
21 the very end that this is, in fact, what is shown. So
22 this is body camera of Officer Barrow at 25 second still?
23 MS. RYU: Yes.
24 THE COURT: Continue.
25 MS. RYU: The second will be the same but at 34

1 seconds. So Officer Barrow's body-worn camera still at 34
2 seconds.
3 THE COURT: Okay. Continue.
4 MS. RYU: Then, it's Officer Barrow's body-worn
5 camera at 36 seconds.
6 THE COURT: All right.
7 MS. RYU: The other is Officer Barrow's
8 body-worn camera at 39 seconds.
9 And let's make sure I am going through
10 chronological order. The same body camera at 43 seconds.
11 The same body-worn camera 45 seconds.
12 And the same body-worn camera at 46 seconds.
13 THE COURT: Do the People want that? At that
14 point, that is what all seven of those pictures depict.
15 MS. MALCOLM: One moment. Let me just take a
16 look at it.
17 THE COURT: Go ahead. Take a look.
18 MS. MALCOLM: Yes, your Honor, the People
19 stipulate to Defendant's Exhibit A-G.
20 THE COURT: Without objection do you stipulate
21 to them coming into evidence?
22 MS. MALCOLM: Yes, your Honor.
23 THE COURT: Okay. Without objection, are
24 defendant's A through G is now in evidence.
25 MS. RYU: Thank you.

1 THE COURT: Are we ready to recall the witness?
2 Okay. Please. Thank you.
3 COURT OFFICER: Witness entering.
4 THE CLERK: Officer Barrow, I remind you, you
5 are still under oath.
6 THE WITNESS: Yes.
7 CROSS-EXAMINATION
8 BY MS. RYU:
9 Q Good morning, Officer Barrow.
10 A Good morning.
11 Q So on direct you testified that you first noticed a
12 man in red from your RMP?
13 A Yes.
14 Q So while you were still inside?
15 A Yes.
16 Q Over ten-yards away?
17 MS. MALCOLM: Objection, your Honor.
18 THE COURT: Overruled.
19 Q Over ten-yards away?
20 A Outside of my RMP.
21 Q I'm sorry?
22 THE COURT: What was your response?
23 A Outside of my RMP.
24 THE COURT: It was over ten-yards away, outside
25 of your RMP.

1 A Yes.

2 THE COURT: Proceed.

3 Q Because you are outside of your RMP, you are a little

4 bit further away than ten yards.

5 A Approximately.

6 Q Okay. And you noticed a man and you get out and

7 Officer Ferguson stops the car, right? To respond to

8 quality-of-life issues?

9 A Officer Simmons stopped the car.

10 Q Right. But he stops the car, correct?

11 A Yes.

12 Q And you exit -- you exit the car right after it

13 stops, right?

14 A Yes.

15 Q And once you exit the car, you flash your flashlight

16 to a man that is wearing red, right?

17 A Red shirt, white pants.

18 Q Right, with the red flag on. And the red flag is

19 tied around the neck?

20 A Yes.

21 Q Draped around his shoulders?

22 A Yes.

23 Q And down his back, right? From what you can tell.

24 A Yes.

25 Q So once -- and then, it is your testimony today that

1 once you shined the flashlight on the man wearing red, you
2 noticed a cross body bag in front of that individual,
3 correct?
4 A Yes, right in front of his body on his left side.
5 Q Right in front of his body?
6 A On his left side.
7 Q And you notified the other partners that you were
8 with, correct?
9 A No.
10 Q You did not?
11 A No.
12 Q That's your testimony today?
13 A Yes.
14 Q Okay. Officer Barrow, you testified previously in
15 the grand jury proceeding regarding this matter, correct?
16 A Yes.
17 Q Were you under oath?
18 A Yes.
19 Q Were you asked the question in that grand jury
20 proceeding about this same incident, correct?
21 A Yes.
22 Q And in that proceeding you were asked, what, if
23 anything, did you observe at that time.
24 "ANSWER: I observed an individual with a red
25 shirt, gray shorts and a black cross body bag that was

1 heavily weighted." Correct?
2 A Yes.
3 Q And you were also asked, what, if anything, happened
4 next, correct?
5 A Yes.
6 Q And you answered from there I notified my RMP.
7 A You said I notified my RMP?
8 Q Yes.
9 MS. MALCOLM: Objection, your Honor. What page
10 is Defense Counsel referring to?
11 THE COURT: Yes, show Counsel.
12 MS. RYU: I am referring to page five, and I
13 will show the DA.
14 THE COURT: Is there a question before the
15 witness?
16 Q Isn't it true you testified previously under oath
17 that you notified your RMP?
18 A That I was getting out of the vehicle, yes.
19 Q That was not my question. Isn't it true that under
20 oath you testified, as I read, that you notified your RMP?
21 A I notified my RMP of getting out of the vehicle, yes.
22 Q So, Officer Barrow, let me get this straight. You
23 noticed somebody with a cross body bag in front of him,
24 right?
25 A Yes.

1 Q He caught your attention.
2 A Yes.
3 Q And during your direct you went about how you wanted
4 to investigate, correct?
5 A Yes.
6 Q And it is your testimony today that you never
7 notified any of the other officers about what you observed.
8 A I notified my RMP that I was getting out of the car.
9 Q Again, so my question is, you did not communicate
10 what you observed to anyone else in your RMP, correct?
11 A I notified my RMP that I was getting out of the car.
12 THE COURT: That's your answer. Move on.
13 MS. RYU: Okay.
14 Q Now, Officer Barrow, again, in regards to your
15 testimony about the cross body bag, that's positioned in the
16 front, I am going to show you a body-worn camera still from
17 your body-worn camera at 25 seconds. Okay?
18 A Yes.
19 Q I am going to first show the People, and before we
20 look at the exhibit, what was the color of the cross body
21 bag?
22 A Black.
23 Q What was the color of the shirt that the individual
24 was wearing?
25 A Red.

1 Q Okay. Showing the witness Defense Exhibit A. Do you
2 agree with me, Officer Barrow that there is no black object
3 in the front of that red, with the man that is wearing red?
4 A I do not agree with you.
5 Q Okay. You do not agree with me?
6 A No.
7 Q So it is your testimony today that you see a black
8 object in the front of the individual wearing red?
9 A It is my testimony today that you see a black cross
10 body bag, in front of the individual towards his left side.
11 Q So, Officer, after you noticed this individual
12 wearing red, at this point, Officer Ferguson is to the left
13 of -- to the left of you, right?
14 A From this still, I can't tell if that is either
15 Ferguson or Detective Simmons.
16 Q Okay. But one officer is to your left, correct?
17 A Yes.
18 Q And I am not asking you to tell me what it says on
19 there. From your recollection, isn't it true that he walks
20 onto the sidewalk?
21 A Yes.
22 Q He approaches a group of people that's by the smoker
23 on the sidewalk, correct?
24 A Yes.
25 Q Okay. A group of people, right?

1 A Yes.
2 Q I am going to show you Defense Exhibit B. Showing
3 what has been marked as Defendant's Exhibit B at the
4 36-second mark.
5 So within ten seconds of every -- after ten seconds
6 of you getting out and observing this individual, you actually
7 turn your body towards the group that's right by the smoker,
8 right?
9 A My body, yes.
10 Q Okay. And that's to the left of you, right? As you
11 approach him. So it was that group was to the left of you
12 when you first initially approached that sidewalk, right?
13 A Yes.
14 Q Okay. And the person wearing red the person of your
15 interest was not there within that group.
16 A No, the person of my interest is not in this group.
17 Q Okay. Officer Barrow, I am going to show you
18 Defendants Exhibit C. So, once you are on the sidewalk, you
19 also go down and fix your cuff, right?
20 A Yes.
21 Q And then afterwards you still remain with the group
22 that's by the smoker.
23 A Yes.
24 Q So showing Defense Exhibit D. 39 seconds in, you
25 were still with the group by the smoker, right?

1 A Yes.
2 Q There are other officers also there.
3 A Yes.
4 Q Okay.
5 MS. RYU: Can I have that back, please?
6 Q I just want to be clear. Officer Barrow, you
7 testified on direct that you were trained at the police
8 academy, right?
9 A Yes.
10 Q Right. So you are familiar with the patrol guide.
11 A Yes.
12 Q You are also then trained on how to appropriately use
13 your body-worn camera, correct?
14 A Yes.
15 Q So you learned how to turn it on?
16 A Yes.
17 Q And you learn also how to position it?
18 A Yes.
19 Q You learn, not only to activate it, but also when to
20 activate it, correct?
21 A Yes.
22 Q And you know that you are required to activate your
23 body-worn camera any time you take police action, correct?
24 A Correct.
25 Q Right. And police action is any time you are acting

1 or -- withdrawn.
2 You are investigating, in furtherance of your
3 official duties, correct?
4 A Correct.
5 Q And there is even a portion of the body-worn camera,
6 patrol guide, that tells you that you have the discretion to
7 film, even as long as it is beneficial for you, right?
8 Discretionary. Discretionary action to activate your
9 body-worn camera. Are you familiar with that?
10 A Any time I am taking police action I have to activate
11 by body cam.
12 Q Let's stick with that then. Okay.
13 So in addition to knowing that you are supposed to
14 take -- you are supposed to activate the body-worn camera
15 whenever you take police action, I want to be clear you press
16 a button on your body-worn camera, correct?
17 A Yes.
18 Q And you positioned your body-worn camera on your
19 chest that day, correct?
20 A Yes.
21 Q Okay. Fully within access of your hands?
22 A Yes.
23 Q You testified on direct you made over 100 arrests.
24 A Yes.
25 Q And yet you did not activate your body-worn camera

1 when you first got out of the RMP, right?
2 A There was an attempt to activate the body-worn
3 camera.
4 Q You did not activate the body-worn camera?
5 A There was an attempt to activate.
6 Q Let's think about that a little bit. You understand
7 that when you push a button to activate your body-worn camera
8 it makes a beep, correct?
9 A Yes.
10 Q It makes a beep. It makes an audible sound, and only
11 when you press that button does it actually start recording.
12 You understand that?
13 A Yes. And there's also a function on the body-worn
14 camera to where the volume setting where you do press it, it
15 won't make the beep.
16 Q Your testimony today is that your body-worn camera --
17 you purposely made your body-worn camera so that you could
18 not hear the beep when it activated while you were out on the
19 field?
20 A No, that is not my testimony.
21 Q So you didn't adjust the volume?
22 A I did adjust the volume prior to my tour, because the
23 volume of the beep sometimes can make the audio unbearable
24 sometimes.
25 Q The audio unbearable.

1 A Yes, because it has a one minute. Every time the
2 beep hits, it only -- it says when you hit the one-minute
3 mark within the body-worn camera.
4 Q To be clear -- okay. We are going to move on.
5 Let me just be clear. You did not activate your
6 body-worn camera at the 25-second mark when you testified you
7 first noticed the individual, right?
8 A There was an attempt to activate the body-worn
9 camera.
10 Q But you did not?
11 A There was an attempt. I attempted to.
12 Q You did not activate the body-worn camera when you
13 first initially got out of the car, correct?
14 A There was an attempt.
15 Q So you attempted to activate the body-worn camera, as
16 soon as you got out of the car?
17 A Yes.
18 Q And you attempted to activate the body-worn camera at
19 25 seconds when you first noticed the individual.
20 A When I got out of the car that is when I made my
21 attempt to activate the body-worn camera.
22 Q But you actually, in fact, did not start the
23 body-worn camera until the minute mark of that recording,
24 correct, on the body-worn camera. Would you agree with me?
25 A Yes, I would agree with you.

1 Q And that body-worn camera activation occurs after you
2 actually manipulate the bag, correct? After you had already
3 seized this individual?
4 A After I went to go frisk the bag?
5 MS. RYU: Could we play?
6 (Pause in proceedings.)
7 (Video playing.)
8 Q Let's just start from here. Okay. Having played and
9 pausing the camera a body-worn camera at 24 seconds. Officer
10 Barrow, you did not activate -- the body-worn camera is not
11 activated here, correct?
12 A If you go further back, just maybe a second later,
13 you can see that my hand went to attempt to activate the
14 body-worn camera.
15 Q I am asking a simple question. Right now, this is
16 not a portion of the body-worn camera where it has been
17 activated, correct?
18 A Correct but there was an attempt.
19 Q Okay. Moving on. Okay.
20 And stopping at 26 seconds. We still hear no sound,
21 correct?
22 A Correct.
23 Q And that's because right now there had been no
24 body-worn camera activation, right?
25 A Correct.

1 Q Okay. Now, there is an officer to the left?
2 A Yes.
3 Q Right. He steps out onto the sidewalk, right?
4 A Yes.
5 Q Pausing at 31 seconds. There is an officer to your
6 right, correct?
7 A Correct.
8 Q And those officers are -- excuse me. Those officers
9 I'm sorry. Those officers are by a group of people right
10 next to the smoker, right?
11 A Correct.
12 Q And your body-worn camera right now is facing those
13 groups of people and a third officer is on the way, right?
14 A Yes, my body cam view is facing this group.
15 Q So I want to mike sure that I understand. Do you
16 understand that a body-worn camera is intended to be a means
17 to gather evidence, right?
18 A And other ways. It is used in other ways also.
19 Q But you understand that just like it happens right
20 now that it is evidence that will be relied upon by the
21 prosecution, right?
22 A Yes, for today, for this.
23 Q And by the defense?
24 A For today, yes.
25 Q By the judge?

1 A Yes, for today.
2 Q And right now, your body-worn camera at 38 seconds is
3 positioned towards a group of people right?
4 A Yes.
5 Q By the smoker --
6 A Yes.
7 Q -- right?
8 The man in red is not in your view right here of the
9 body-worn camera, right. He is not in that crowd.
10 A From the view of the body camera, yes.
11 Q Right. He is actually behind you, right?
12 A He is towards my right.
13 Q He is towards your right. It is your testimony today
14 that in trying to be careful and investigate further, you're
15 facing this group but turning, craning your neck to the
16 right?
17 A I was not craning my neck to the right. My eyes were
18 looking that way.
19 Q Your eyes were looking that way, but you're pointing
20 your body-worn camera towards somewhere completely different,
21 right?
22 A Well, my body camera is facing this way.
23 Q Right. Not in the direction of the person that's
24 wearing red?
25 A No.

1 Q So, Officer, at 43 seconds, there is still no sound
2 on this body-worn camera footage, correct?
3 A Correct.
4 Q And in this moment, do you agree with me there is no
5 black bag in front of this individual's red shirt?
6 A I do agree with you, but there is no black bag in
7 front of the individual.
8 Q Again, just to circle back. Again, the reason why it
9 doesn't have sound is because the body-worn camera had not
10 been activated, correct?
11 A Yes.
12 Q Officer, I am going to show you at the 45-second
13 mark. Is that your left hand?
14 A I cannot see what.
15 Q Okay. At the 45-second mark, you still -- there is
16 no sound in this video, right?
17 A Correct, there is no sound in this video.
18 Q Because the body-worn camera has not yet been
19 activated, right?
20 A Correct.
21 Q And at 50 seconds you still don't hear a sound on
22 this footage?
23 A Correct.
24 Q Because you still haven't activated your body-worn
25 camera?

1 A Correct.
2 (Video playing.)
3 Q Stopping at 59 seconds. Do you hear that beep,
4 Officer Barrow?
5 A Yes.
6 Q Do you agree with me that is the sound of your body
7 worn camera activating?
8 A Yes.
9 (Video playing.)
10 MS. RYU: No further questions.
11 THE COURT: People?
12 MS. MALCOLM: Yes, your Honor.
13 REDIRECT EXAMINATION
14 BY MS. MALCOLM:
15 Q Now, Officer Barrow, whose decision was it to get out
16 of the RMP?
17 A Detective Simmons.
18 Q And, in your testimony, your cross, you said you
19 noticed the defendant when you were in the RMP?
20 A Yes, initially, way before the buffer.
21 Q And when did you notice the cross body bag on the
22 defendant being heavily weighted?
23 A When I got out of the car.
24 Q And again, why -- why did Detective Simmons why was
25 -- why was it his decision to get out of the car?

1 MS. RYU: Objection.
2 THE COURT: Overruled, if he knows.
3 A Just to conduct quality-of-life issues.
4 Q So did you notice anything unusual about the
5 defendant when you were inside the RMP?
6 A No.
7 Q Now, when did you notice your body-worn camera was
8 off?
9 A When I had two hands on the bag, on the cross body
10 bag and I looked down to make sure that it was capturing
11 everything just for respect-wise, and I went down, and I was
12 like my body cam is not on.
13 Q How did you notice that your body-worn camera was not
14 on?
15 A The light on top was green. So when it's activated
16 it is red. It is a small light on top of the body cam.
17 Q You testified on cross that you attempted to turn on
18 your body-worn camera.
19 A Yes.
20 Q And did you not notice the light was not red at that
21 time?
22 A Yeah, I noticed that. I didn't hear it. I didn't
23 notice it. It was just my focus was on conducting
24 quality-of-life issues.
25 Q Where is your body-worn camera located?

1 A On that time on my vest. It was towards my left
2 side. So I had my flashlight, radio, body-worn camera and --
3 are --
4 Q And can it move?
5 A Yes, my body cam has moved numbers of times.
6 Q Was it loud outside?
7 A Very loud. It was during the West Indian Day Parade.
8 Q And you testified on cross that the volume on the
9 body-worn camera when you turn it on it was off?
10 A Lowered.
11 Q And why did you lower it on that day?
12 A Previously I lowered it lower, because of the audio
13 beeping noise. Sometimes over -- does the audio when we --
14 you are talking about you can't pick up on it, because the
15 beeps are loud from the vibration and everything?
16 MS. MALCOLM: Your Honor, with the Court's
17 permission, can I play People's 1?
18 THE COURT: Yes, it is your evidence. Play it.
19 Q I am going to play People's 1. I want you to tell me
20 when you noticed the bag on the defendant and when you
21 noticed that it's heavily weighted.
22 A Okay.
23 Q Playing People's 1.
24 (Video playing.)
25 Q Pausing at 25 seconds. Going back to 22 seconds.

1 And also, Officer, I want you to tell me when you attempted
2 to activate your body-worn camera. Resuming.
3 A Right there, a little further down.
4 Q Is that 24 seconds -- withdrawn.
5 What is happening in this frame?
6 A So I went to go attempt to activate my body-worn
7 camera.
8 Q And, at this time, you can't hear that the body-worn
9 camera has been activated?
10 A No.
11 MS. MALCOLM: Resuming at 24 seconds.
12 (Video playing.)
13 Q Pausing at 36 seconds. Officer, when did you notice
14 the defendant's bag was heavily weighted? Was it before the
15 36-second mark?
16 A Before.
17 Q I am going to go back. And I want you to tell me
18 when to stop. Going back to 23 seconds.
19 A Right there. It is just a little bit further back.
20 Yep.
21 Q Pause it at 26 seconds. In this frame you noticed
22 that the defendant's bag was heavily weighted?
23 A Yes.
24 MS. RYU: Objection.
25 THE COURT: Overruled.

1 Q Just using the pointer, laser, where is the cross
2 body bag?
3 A In front. You see that in front towards the left
4 side. The right side of his body, if you are looking
5 straight at it.
6 Q Resuming at 26 seconds.
7 (Video playing.)
8 Q Pausing at 36 seconds. Now, you're facing down in
9 this frame.
10 A Yes.
11 Q Are you still in the visual of the defendant?
12 A Yes.
13 Q Where are your eyes located?
14 A My eyes is looking towards my right.
15 Q Where is your body-worn camera located?
16 A Towards. So, my body-worn camera is on my chest. I
17 am looking down, but I'm looking up. The camera view is
18 towards the ground, when my eyes are up.
19 MS. MALCOLM: Let the record reflect the witness
20 just stood up and used his body towards the floor, and
21 turned his right pen to the right. Resuming at 36
22 seconds. Pausing at 39 seconds.
23 Q Do you still have visual of the defendant?
24 A Yes.
25 Q Where are your eyes located?

1 A Towards my right.
2 Q Where is your body-worn camera located?
3 A Towards the left of the group.
4 MS. MALCOLM: One moment, your Honor.
5 THE COURT: Okay. You can turn the lights.
6 Thank you.
7 Q And, Officer, you testified also on cross that your
8 body-worn camera is used to gather and collect evidence,
9 right?
10 A Yes.
11 Q Is it used for any other purposes?
12 A Yes.
13 Q What other purposes is your body-worn camera used
14 for?
15 A My body-worn camera is used to lodge prisoners in the
16 cell. It can be used for car stops. That's mainly what I
17 use my body camera for also.
18 Q And, Officer, when you noticed the defendant, when
19 did you notify your fellow officers?
20 A When I finished my investigation.
21 Q So you didn't notify the officers when you got out of
22 the RMP?
23 A I just know I tell them to get out also.
24 THE COURT: What did you say?
25 THE WITNESS: That I am getting out also.

1 MS. MALCOLM: No further questions, your Honor.
2 THE COURT: Defense, any follow-up?
3 MS. RYU: No, your Honor.
4 THE COURT: I have some questions as fact
5 finder. I have some clarification questions.
6 THE WITNESS: Yes, sir.
7 THE COURT: As part of your training, as what
8 you do, obviously to a layperson you are trained to spot
9 heavily weighted objects or L-shapes, and that's
10 indicative of what you do.
11 THE WITNESS: I am not trained in identifying
12 heavy weighted objects and L-shapes. I am trained in
13 firearm proficiency, which demeanors can give off. Since
14 I carry a firearm every day that can give off that a
15 person is obtaining or concealing a firearm.
16 THE COURT: When you see a heavily weighted bag,
17 do you automatically jump to it must be a firearm?
18 THE WITNESS: No, that is why I initially go
19 towards the defendant or stopped the defendant or search
20 the defendant's bag, because it is still an investigation
21 that needs to be done. It is still steps that I need to
22 take as a police officer.
23 THE COURT: You saw a heavily weighted bag you
24 want to investigate further. That is why you approached
25 the defendant?

1 THE WITNESS: I approached defendant due to him
2 moving the bag, his demeanors, his moving the bag, of him
3 being very nervous, but high alert and in a sense of I am
4 doing something I am not supposed to do, but I am not
5 trying to give it away.
6 THE COURT: When you got up there, and you were
7 actually close to the defendant, were you able to observe
8 what you believe to be the L-shape of a gun, the bulge of
9 a gun?
10 THE WITNESS: Yes, when approach the defendant,
11 when you see on the body cam, just more investigation. I
12 put my flashlight directly on the cross body bag. So that
13 gives me more of an okay. I know what I see.
14 THE COURT: Let me ask you. At that point, was
15 your ah hah moment, like that's the firearm?
16 THE WITNESS: That was a firearm to conduct a
17 frisk, to make sure that he is concealing a weapon, but
18 from the L-shaped, but a firearm is, and an L-shaped
19 letter, yeah, that's where I can do more investigation and
20 conduct a frisk.
21 THE COURT: Were you in fear for your safety at
22 that point?
23 THE WITNESS: No, because I don't know what it
24 is. I am not too sure what it is yet.
25 THE COURT: You didn't get the consent of the

1 defendant to search?
2 THE WITNESS: No, because my search, my search
3 ended off on my probable cause of being a firearm, from
4 the slide of the ridges, slide of a firearm.
5 THE COURT: You weren't fearing for your safety.
6 You didn't get the consent of the defendant. I am trying
7 to understand what happened, because I wasn't there. You
8 reached out and you grabbed the bag.
9 THE WITNESS: To conduct the frisk, to see what
10 was tall.
11 THE COURT: You were doing a frisk?
12 THE WITNESS: Yes, a frisk. When you do a
13 frisk, a frisk doesn't consult to a search automatically,
14 search. When you conduct a frisk, when you feel whatever
15 is in that frisk, that maybe to conceal of a weapon, that
16 is when you conduct to a search.
17 THE COURT: I think you testified you weren't in
18 fear for your safety. You were doing a frisk to confirm
19 what you thought will be a firearm.
20 THE WITNESS: From that, from the L-shape
21 object, from what gave me from the bulge was present on
22 the bag, yes.
23 THE COURT: I don't think it came out. What
24 type of bag was he carrying? How would you describe it?
25 THE WITNESS: I would describe it as a medium to

1 small cross body bag that's very light.
2 THE COURT: What material would you say it was
3 made of?
4 THE WITNESS: Canvass. I can't testify to that.
5 I'm not too educated on material.
6 THE COURT: A Five Below bag?
7 THE WITNESS: Yes, I would say that cheap
8 material.
9 THE COURT: Okay. When you search, was the
10 firearm in the inner compartment, outer compartment?
11 THE WITNESS: It was in the main compartment of
12 the bag.
13 THE COURT: That would be considered the inner
14 compartment?
15 THE WITNESS: Yes. leaning towards the front
16 where I have seen the bulge.
17 THE COURT: So then seeing the L-shape bulge,
18 you didn't call over your unit or your partners.
19 THE WITNESS: Well, when I frisked it and
20 pursuant to what I believe it to be a firearm, I called my
21 partners just in case I had both hands on the bag. So I
22 just wanted to do safety. There was kids, families, I
23 wanted to make sure that whatever is in this bag to what I
24 believe it is a firearm that is safeguarded to the most
25 possibly that I can.

1 THE COURT: So I'm a layperson. I want to
2 conduct a little experiment here. We don't have the
3 weapon in question at the time. I really want to
4 understand your point of view. That is really what is
5 integral to this hearing.
6 What I have asked my security to do and this is
7 kind of unprecedented. I want to try it. I hear a lot
8 about these bulges and L-shapes.
9 What I am going to do is I have already, had
10 security check it out. I have a personally licensed
11 firearm. What I am going to do is place it in a Five
12 Below bag, because you said that a Five Below bag pursuant
13 to what was in there. I want you to describe to me, as a
14 layperson, in your training, what it is about the bag and
15 my firearm in the bag that gives off a distinction of it
16 being a firearm? Can you do that for me?
17 THE WITNESS: Yes.
18 THE COURT: I am going to show you the firearm.
19 Confirm.
20 MS. MALCOLM: Your Honor.
21 THE COURT: Yes.
22 MS. MALCOLM: The People would object to this
23 experiment. This is not the same bag. It is not the same
24 gun. We are not recreating the scene of what happened on
25 September 2nd. The People would just object.

1 THE COURT: Your objection is overruled. I want
2 to understand what heavily weighted and what the L shape
3 of a gun, what is significant about it being a bag that is
4 this officer, what observations he would make.
5 THE WITNESS: So, Judge, just to give a heads
6 up, different guns also, that looks like a Sig, if I am
7 not mistaken.
8 THE COURT: What was the gun you found in the
9 bag?
10 THE WITNESS: I don't remember.
11 THE COURT: Is it similar and safe?
12 THE WITNESS: No, the gun is on my voucher.
13 THE COURT: Is it smaller or bigger than the gun
14 I have?
15 THE WITNESS: I can't recollect.
16 THE COURT: Let me conduct an experiment. What
17 I am going to do is, it has been cleared by my security.
18 I am going to close it. I am not going to put any bullets
19 in it. All right? L shape, right, of the gun?
20 I am showing the officer the weapon. Okay?
21 What I am going to do is put it in the bag. I want you to
22 explain to me what it is about the weight and the shape of
23 it being in the bag, that is very distinctive, that you,
24 again, you're educating a layperson. So I can learn about
25 it, as well.

1 Give me a second. I am going to put it in the
2 bag. All right. So I have now put my gun in this bag.
3 So, first of all, with regard to the weight, what is it
4 specifically about the weight of a gun in the bag that it
5 is very particular to you?
6 THE WITNESS: So when you go grocery shopping or
7 if you carry a bag, an everyday bag, right? The more
8 generally, more stuff in it, the more heavy it can be, or
9 depending on what you put in the bag can either lower the
10 bag to its actual dimension of the bag or could press on
11 towards the bag.
12 THE COURT: What is it about the firearm in the
13 bag that is distinctive to you on the night in question
14 that really stands out to you?
15 THE WITNESS: What really made it stand out is
16 from his bag and from his front body bag, it was actually
17 very, closer, like things were very close. The bag was
18 very close. The material-wise that we discussed --
19 THE COURT: Would it be similar to this type of
20 material?
21 THE WITNESS: Yes, if you moved it a little bit
22 tighter to a firearm that's when you can say, yes, the bag
23 appears to be heavy. The bag appears to be sinking.
24 THE COURT: Does it appear to have the same type
25 of sinking?

1 THE WITNESS: No, because the bag is smaller,
2 and the sink is smaller. Anything that is relatively
3 smaller, if you put something heavy, the edges of it will
4 sink.
5 THE COURT: What about the shape of the firearm
6 in the bag?
7 THE WITNESS: So the way you are holding it,
8 right? The way you are holding the bag, you really can't
9 see the shape, but if you lean it towards yourself.
10 THE COURT: Like if I put it on my shoulder?
11 THE WITNESS: Yes, and lean it towards yourself.
12 THE COURT: I am trying to understand what you
13 are trying to do here.
14 THE WITNESS: Yes.
15 THE COURT: You see the outline of the shape of
16 the gun?
17 THE WITNESS: It depends on certain guns. Also
18 this gun is very small. That if I seen this bag out in
19 person I would not.
20 THE COURT: Does it give a square shape, L-shape
21 at all?
22 THE WITNESS: In a predicament you can tell that
23 there is something from the L, because it is towards the
24 bottom. I can see that.
25 THE COURT: And it has got weight to it?

1 THE WITNESS: Yes, and you see the bottom of the
2 bag.
3 THE COURT: You can see how large the firearm is
4 in the bag based on this?
5 THE WITNESS: No, in a predicament I would have
6 to conduct a frisk.
7 THE COURT: It has a consistency of a gun
8 though, right?
9 THE WITNESS: With the bulge, the weight, it is
10 lower. If I wanted to do an investigation, I would have
11 to frisk first not search.
12 THE COURT: You are certain that when you look
13 at this, you can tell it is a firearm. It has got the L
14 and the weight?
15 THE WITNESS: I can tell it is an L-shaped
16 object, and a predicament of a firearm. Until I frisk it,
17 I can feel things. As you're a firearm owner, you
18 understand that the slide has ridges towards the back from
19 the handle. The handle is also rigid from the trigger.
20 There is a trigger.
21 THE COURT: Fair to say the lighting conditions
22 are better in here than on the night in question?
23 THE WITNESS: 100 percent.
24 THE COURT: The distance, how close would it
25 have to be?

1 THE WITNESS: This is a see-through bag.
2 THE COURT: I don't want to taint your
3 perception to when you walked up. You weren't feeling the
4 bag. You were looking at it and identify it as a firearm.
5 THE WITNESS: That there was a possibility that
6 he was considering concealing the firearm, yes.
7 THE COURT: So you weren't sure if there was a
8 firearm when you saw the L shape, that's not indicative of
9 anything.
10 THE WITNESS: With a flashlight, I go to conduct
11 my frisk. From my frisk I feel the ridges from the slide,
12 and that's when I made my determination to search to
13 actually confirm that, yes, this is a firearm.
14 THE COURT: So with regard to my firearm in this
15 bag, tell me, what about it is very distinct?
16 THE WITNESS: The way it's dropped down. There
17 is not a lot of things that are made with an L off the
18 bag.
19 THE COURT: Can you see the handle here?
20 THE WITNESS: I cannot see the handle. I can
21 see that it's an L. Okay. So I am showing the members of
22 the courtroom, as well.
23 THE COURT: Again, I have learned a lot and I
24 thank you so much.
25 THE WITNESS: I would also say too that it is

1 very uncommon to have a loaded firearm in a bag. Most gun
2 owners carry it in a holster, because it is safer, and for
3 it to be lowered out of the bag, anything you get between
4 the trigger and you don't want that confidentiality.
5 THE COURT: No, I understand and you said this
6 is L shaped, right? You can see the L shaped?
7 THE WITNESS: Yes, sir.
8 THE COURT: Let me see if I have anything
9 further, and I am going it turn it over to the parties to
10 see if there is any follow-up.
11 Including the way I am holding it, I am clearly,
12 shoving it in your face is not what you were dealing with
13 on the night in question, right?
14 THE WITNESS: On the night in question it was
15 very different. Right now, this is in my face. I can
16 articulate better, because it is right here.
17 THE COURT: Tell me what you see. I am very
18 curious as to exactly what you are seeing here. Is there
19 a handle?
20 THE WITNESS: I see an L. I can see that it's
21 down. The bag doesn't appear to be weighted, because of
22 how low it sinks. As you can see it is like the bag is a
23 little bit lower than what it is.
24 THE COURT: Okay.
25 THE WITNESS: Right then and there, as an

1 officer, if I was to see and, like I said, there are steps
2 to it. I would observe you. See if you gave me any
3 reason to where you're very high alert to me, you start
4 your walk increases.
5 THE COURT: So you are saying furtive movements
6 that demonstrate guilt. Like I'm nervous. I walk away
7 from you. What do you mean?
8 THE WITNESS: I don't want to say guilty. I
9 don't want to say people are guilty. I would say it's
10 uncommon. It is very uncommon.
11 THE COURT: Were you visibly a police officer?
12 THE WITNESS: Yes, sir, I was.
13 THE COURT: So it is uncommon for people to walk
14 away from a police officer?
15 THE WITNESS: At a high rate of speed or?
16 THE COURT: Is that what the defendant was doing
17 in this case?
18 THE WITNESS: No, when I turned from -- when I
19 was looking at him, he just started to walk that's. Why I
20 said, Hey, can you please stop?
21 THE COURT: What suspicion, at that time, gave
22 you reason to stop him?
23 THE WITNESS: From his movements before.
24 THE COURT: Moving the bag to the side?
25 THE WITNESS: Moving the bag to the side.

1 THE COURT: Weighted?
2 THE WITNESS: Weighted. Not only that. He was
3 very alert when he seen me at first, and also when I did
4 approach the defendant, he bladed his body away from me.
5 I wasn't able to obtain the frisk at first. Then, also
6 with his left hand he got tighter to where I wasn't able
7 to get the bag.
8 THE COURT: I thank you so much. I guess you
9 what you identified is an L-shaped object, which is a
10 Swingline Stapler. There was no gun in there. It wasn't
11 L shaped. So it shows that police officer observations
12 are in a well lit courtroom kind of flawed, as well. Any
13 follow-up questions to what the officer said?
14 MS. RYU: No, your Honor.
15 THE COURT: Anything from the People?
16 MS. MALCOLM: No, your Honor.
17 THE COURT: You may step down. Thank you so
18 much.
19 THE WITNESS: Thank you, sir.
20 (Witness exiting.)
21 THE COURT: People have any follow up witnesses?
22 MS. MALCOLM: No, your Honor.
23 THE COURT: The People rest?
24 MS. MALCOLM: Yes, your Honor.
25 THE COURT: Defense, have you any witnesses you

1 wish to call at this time?
2 MS. RYU: No. Defendant rests.
3 THE COURT: I will hear argument. People, I
4 believe it is your burden -- or it is it defendant's
5 motion. Defense motion. You can go first.
6 MS. RYU: Sure.
7 MS. MALCOLM: Apologies, your Honor, I just want
8 to note my objection to what just transpired.
9 THE COURT: Okay.
10 MS. MALCOLM: Your Honor, you said it was a
11 stapler in a blue Five Below bag, which was shown to my
12 officer witness.
13 THE COURT: It was indeed a stapler in a Five
14 Below bag. There was never a firearm in that bag.
15 MS. MALCOLM: Understood. I want to note my
16 objection to the experiment. It was completely two
17 different, what was just recreated is completely different
18 from this case.
19 The holding the bag, the demeanor, your
20 demeanor, besides what was in the bag, how you were
21 holding the bag, compared to how the defendant was holding
22 it to the cross body bag, the lighting conditions,
23 completely two different scenarios.
24 I don't believe this experiment has any weight
25 to the hearings. I want to note my objection for the

1 record.
2 THE COURT: No, your objection is certainly
3 noted, and I did experiment to just educate myself on
4 L-shaped objects, weighted objects. The officer testified
5 that the bag was similar to the bag that the defendant had
6 on his person in a very well lit courtroom. I wanted to
7 know what the officer was looking at, and he misidentified
8 what an L-shaped pistol in a bag was not an L-shaped, it
9 was a stapler.
10 I will give it whatever weight it deserves when
11 I make my determination with respect to his credibility on
12 that night. You may proceed with your closing argument.
13 MS. RYU: Yes, your Honor. Your Honor. we are
14 moving to suppress the gun that the People intend to
15 introduce, and as well as all the other fruits, including
16 the noticed statement into this matter, on the basis of
17 the People have failed to make out a -- make out their
18 burden that the item that was -- the gun and the
19 statements were found, and we are revealing -- were
20 revealing and seized as a result, as a result, as a result
21 of legal police action in this matter.
22 I just want to be very clear, the issue actually
23 goes -- the issue here is whether they had an
24 objectionable and credible reason to approach from the
25 outset whether and really ultimately, at the time, that

1 they went to approach my client and digitally manipulate
2 the bag, when they had the level of suspicion required to
3 do that.
4 It is undisputed here the search happened at 45
5 seconds in, when and possibly even earlier, as we say,
6 because my client, according to the police officer, if we
7 were to credit his testimony, he believes that he is
8 moving. He is ordered to stop. It is a stop and
9 immediately the officer's hands go onto the individual
10 manipulating the bag and so forth.
11 I think it was very clear from the conversation
12 that the Court had with clarifying questions that were
13 asked by the Court to the officer that he did not believe
14 that he was in fear for his safety, and also it is very
15 clear from those conversations that the presence of an
16 alleged L-shape bulge.
17 Even if we were to credit his testimony, which
18 we maintain is contradicted by the video in very many
19 ways, but even if we were to credit the testimony that
20 upon approach that he had seen an L-shaped bulge, there is
21 a reason why case law indicates that is not also always
22 enough for a -- especially not enough for a frisk.
23 In order for a frisk to happen lawfully it has
24 to be a reasonable. So from an objective point of view in
25 the totality of circumstances, a reasonable suspicion that

1 a crime is afoot, based on the ordinary and prudent
2 cautious person standard or that the officer is in fear
3 for his safety, because he reasonably believes the
4 individual to be alarmed, and I believe that based on the
5 testimony that came out, and the evidence that is through
6 the body-worn camera, the stills and also through the
7 clarifying conversations and questions from the Court, it
8 is clear that the officer lacked the adequate levels under
9 De Bour required to approach stop, seize and subsequently
10 search my client.
11 And it is our position that the gun that is
12 recovered and the statements the non -- I'm sorry. The
13 noticed statements are, you know, a direct result of that
14 illegality that is unbroken in their chain of events, and
15 we ask the Court to suppress all tangible and intangible
16 fruits of that illegal police interaction and search.
17 THE COURT: Thank you. People.
18 MS. MALCOLM: Thank you, your Honor. Your
19 Honor, the People ask this Court to deny the defendant's
20 application for suppression of the evidence and find that
21 the defendant was lawfully stopped and arrested, and find
22 that the defendant's statement was made knowingly,
23 voluntarily and intelligently without any questions being
24 asked of him, and find that the firearm was lawfully
25 recovered in this case.

1 As a threshold matter, I submit, Officer Barrow
2 is credible and has been forthright about what happened on
3 the date of the incident. His testimony was corroborated
4 by his body-worn camera and his years of experience. I
5 don't believe that there is any record that would way
6 against his credibility.
7 Now, on a motion to suppress physical evidence,
8 the People bear the burden of going forward to the
9 legality of the police conduct.
10 In the first instant, however, it is the
11 defendant who bears the ultimate burden of proving that
12 the evidence used against him.
13 Specifically on a motion, to suppress the
14 handgun, the weight must be afforded the determination of
15 the supression Court to be seen and heard by the
16 witnesses.
17 Here, your Honor, there was testimony from
18 Officer Barrow, that he was in uniform, in an unmarked
19 vehicle patrolling the West Indian Day Parade.
20 During this patrol he observed the defendant and
21 other individuals on the sidewalk with open containers.
22 The defendant was observed standing against a wall with a
23 cross body bag in front of his body towards the left side
24 of his body.
25 Now, Officer Barrow testified that when he got

1 out of the car he observed the defendant's behavior and
2 described it as a deer in headlights. Officer Barrow
3 testified that he was approximately ten to 15-yards away
4 when he observed the defendant's cross body bag to be
5 heavily weighted.
6 When Officer Barrow got closer and went to
7 adjust his pants, he remained in eye contact with the
8 defendant and observed defendant to move the cross body
9 bag behind and close his arms close to his body.
10 Officer Barrow did flash his flashlight to get a
11 better view and observed an L-shaped bulge, and in the
12 fanny pack.
13 Now, based on the defendant's behavior and
14 Officer Barrow described, being a deer in headlights, him
15 moving the cross body bag, Officer Barrow testified that
16 he observed the cross body bag to be heavily weighted.
17 That is when he went to do further investigation and saw
18 the L-shape bulge in the bag.
19 Once that he made that determination that there
20 may be a firearm, he went to touch the cross body bag and
21 felt the ridges of the slide to the gun.
22 Now, Officer Barrow, based on his training and
23 his experience with dealing with arrests with gun
24 possessions and arrest in gun possessions and bags, he
25 believed to be a firearm. I do have case law which rules

1 that officers who observe an L shaped --
2 THE COURT: Can you give a courtesy copy to the
3 Court?
4 MS. MALCOLM: Yes. People v Prochillo and
5 People V Bowen.
6 THE COURT: I will take a look at those.
7 MS. MALCOLM: For the court reporter and I have
8 handed up People v Bowen. I have three copies. I
9 specifically want to direct the Court's attention to
10 People v Prochillo.
11 Now, that Court states for a motion to suppress
12 a handgun, much weight must be afforded the determination
13 of the suppression Court, which has seen and heard the
14 witnesses.
15 Now, the determination depends on the balancing
16 of the engine of the defendant against the reasonableness
17 and appropriateness of the police action. Factors to be
18 considered are proof of a describable object or of a
19 describable conduct providing a reasonable basis for the
20 officers belief that defendant had a gun.
21 The reasonableness of the manner of the
22 officer's approach to the defendant and the seizure of the
23 gun under the circumstances.
24 Now, in People v Prochillo, the Court of Appeals
25 revealed the appeal of three different cases. The first

1 case involved an experienced officer who had the observed
2 the defendant standing, watching the officer's
3 possessions, and saw the defendant make continuous hand
4 motions towards his side and then noticed a bulge at
5 defendant's right hip which formed the complete outline of
6 a revolver through defendant's tight tight outer clothing.
7 The Court of Appeals ruled that here suppression was
8 property denied.
9 Now, in the second case in People v Prochillo,
10 the police officer observed defendant walking along the
11 sidewalk and saw the bulge in his jacket pockets, which
12 struck the officer as having the configuration of a
13 handgun or the outline of a gun.
14 The officer approached the defendant, displayed
15 his shield and said that he would like to have a word with
16 the defendant. The officer put his hand on defendant's
17 pocket and felt what the officer believed to be a gun.
18 The evidence warranted the officer's belief the
19 defendant was carrying a gun, and the suppression in that
20 case was property denied.
21 The first two cases are very similar. The case
22 on hand, as mentioned earlier, your Honor, Officer Barrow
23 had excessive training in firearms, and he was there at
24 the West Indian Day Parade to patrol and look out for any
25 suspicious behaviors as it is a high crime area.

1 When he saw the defendant, again, he observed
2 the heavily weighted bag, the nervous behavior of the
3 defendant, which caused him to approach the defendant and
4 touch the bag, which he felt, which confirmed his
5 suspicion of a gun, an actual gun was found inside.
6 Now, the last case in People V Prochillo, the
7 Court ruled that the denial of suppression must be set
8 aside.
9 On that case, there a police officer testified
10 that before he reached into the defendant's pocket and
11 removed a revolver, the defendant having done nothing
12 wrong. The officer cannot tell what the heavy object
13 therein appeared to be looking at, at the pocket.
14 There is nothing in the officer's testimony to
15 suggest that he was a subject of his own safety or in the
16 fact that the defendant's actually nervous, dissolves
17 nature, or the fact that he had his hand in his coat
18 pocket or removed slowly when he was suggested to do so.
19 There, the Court ruled that denial of
20 suppression must be set aside. That case is different
21 from the case in hand, your Honor.
22 Officer Barrow testified that he could see the
23 bulge, which causes suspicion, and when he saw the L-shape
24 bulge touched it, plus the nervousness of the defendant's
25 behavior, him moving the cross body bag to the side when

1 that made eye contact with Officer Barrow.
2 There, with a combination of the high crime that
3 occurred during the West Indian Parade, the nervousness of
4 the defendant, the L-shaped bulge from the bag the
5 defendant was wearing, the movement of the bag, the moving
6 away from the officer when the Officer attempted to touch
7 the bag all gave Officer Barrow reasonable suspicion, that
8 the defendant had a gun and the search was valid.
9 Now, going to the Dunaway portion. As the Court
10 is well aware, the People must prove that the police
11 conduct was lawful by clear and convincing evidence,
12 including probable cause for arrest.
13 Here when Officer Barrow opened the bag and
14 confirmed his suspicion of a gun, as a covered gun, from
15 the bag.
16 Now, this stands that the officers had the
17 requisite probable cause to believe that a crime had been
18 committed.
19 And finally, your Honor, I just want to touch on
20 the Huntley. The People bear the burden of moving the
21 voluntariness of the statement beyond a reasonable doubt.
22 Once the People's burden satisfy, the burden shifts to the
23 defendant to show that police conduct was unduly
24 suggestive.
25 Now, here, the People have met their burden

1 establishing that Miranda warnings were given and waived.
2 The Defense has not established that the waiver was
3 involuntary, and the defendant's statement should not be
4 suppressed, your Honor.
5 The defendant knowingly and voluntarily waived
6 his Miranda rights by affirmatively stating that he
7 understood his rights and saying that he would speak to
8 Detective Walsh and Officer Barrow.
9 Further, at the precinct, when the defendant was
10 read his Miranda warnings and the acts if he wanted to
11 talk, he announced yes.
12 When talking to the officer. He never asked or
13 requested for an attorney. He never said he did not want
14 to speak to the officers and more specifically, the
15 defendant was provided food and water after the interview.
16 And, as you heard from Officer Barrow and a
17 video that was shown, which is People's 2, the defendant's
18 demeanor was calm and not upset during this time. No guns
19 were drawn. No threats were made. No promises were made.
20 Therefore, for all these reasons, the
21 defendant's statement, as well as the evidence recovered
22 in this case should not be suppressed.
23 THE COURT: I want to thank all of the lawyers.
24 Did a great job in this case. All right. The Court is
25 ready to make its finding of fact and conclusions of law.

1 Today, we did a Huntley/Mapp/Dunaway Hearing.
2 In support of that hearing, the People called Officer
3 Timothy Barrow, who was the officer in this case, who did,
4 based on the evidence, find an alleged firearm that was on
5 defense in the cross body bag.
6 I do find that Officer Barrow, in his
7 description of the events that took place on the night,
8 did testify credibly.
9 He was working the West Indian Day Parade in
10 September of 2024, in and around 9:11 p.m. He was the
11 rear passenger on the passenger's side of a unmarked RMP.
12 doing Citywide community response team functions.
13 What I can gather from his testimony this was
14 basically police presence at the West Indian Day Parade.
15 Evidence of the body-worn camera video indicates that the
16 officers who were in that RMP with Officer Barrow stopped,
17 got out. Officer Barrow made a straight line to the
18 defendant, who immediately flashed his flashlight on
19 defendant, who was standing against a closed and shuttered
20 commercial establishment along with some other
21 individuals.
22 Officer Barrow testified that, it is indicated
23 on the body-worn camera, he adjusted his pant leg but was
24 continued his eyeball on the defendant.
25 So clearly Officer Barrow was interested in

1 defendant from the minute he stepped out of the RMP. He
2 testified that as soon as he got out he was able to see a
3 heavily weighted cross body bag not in front, but on the
4 side of the defendant at a distance of when he got out of
5 the car, he testified to about it ten-yards away, which is
6 about 30 or so feet.
7 And that appears to be consistent with what the
8 video shows. The distance-wise, that was what appeared to
9 be, I think the officer was right on with his distance
10 estimation. So he observes this from a distance of about
11 30 feet, cross body bag on, the dark one, in the middle of
12 the night, on the defendant's side, weighted.
13 So in order to conduct further investigation he
14 checks -- he adjusts his pants leg, continues to keep his
15 eye on the defendant. Officer Barrow then testifies that
16 defendant started acting nervous, and then upon him
17 approaching the defendant, the defendant started to leave,
18 and Officer Barrow wasn't sure what was in defendant's
19 bag, so he told him to stop.
20 And, at that point, Officer Barrow then
21 approaches the defendant, shines a flashlight on his cross
22 body bag. First of all, defendant complies and stops. I
23 mean officer's in his uniform, so it's evidently clear
24 that the defendant is heeding the police officer's order
25 to stop.

1 Officer Barrow shines a flashlight on the cross
2 body bag, that is also testimony consistent with the
3 evidence, and Officer Barrow testifies that he sees an
4 L-shaped bulge, without even touching the bag. He sees a
5 bulge.
6 Which he then states leads to further
7 investigation, at which point Officer Barrow reaches out
8 and grabs the bag and testifies that he feels the ridges
9 of the slide of a firearm.
10 And it is, at this point, that Officer Barrow
11 calls over his team and says 92, which is code for arrest,
12 and defendant is then taken into custody.
13 It is unclear from the testimony when Officer
14 Barrow took the bag, opened it and found the firearm. It
15 is certainly commensurate within that same time frame when
16 Officer Barrow feels what he believes to be the outline of
17 a firearm and then places the defendant under arrest.
18 As part of this hearing, the Court, over the
19 People's objection, conducted for its own edification, the
20 Court was not present on the scene, and this officer's
21 statement what a heavily weighted bag looks like, what an
22 L-shaped bulge looks like. This was not an intention to
23 gotcha the officer. I was just testing his credibility of
24 his observations, and to understand in his mind what does
25 heavily weighted mean? What does L-shaped mean?

1 The Court simulated holding up a Five Below bag,
2 which the officer testified was similar in nature and make
3 and quality of the bag that the defendant was holding that
4 evening. We are here in a very well lit courtroom, as
5 opposed to what the Officer had to deal with, having to
6 use a flashlight on a dark street which is consistent with
7 the body-worn camera.
8 I asked the officer -- the Court asked the
9 officer what he observed in the bag, and the officer
10 testified that he observed an L-shaped, the bag was
11 weighted, and the under -- the officer's impression that
12 there was, in fact, a firearm in the bag in the Court's
13 Five Below bag, and, in fact, there wasn't.
14 It was a Swingline Stapler. It wasn't L shaped
15 at all, and this just goes to the human nature of
16 observations and how people make mistakes.
17 It was important to, at least for edification,
18 from the Court's prospective, I am not a trained observer
19 of heavily weighted objects or L shapes.
20 It is important to know from a police officer's
21 perspective what information that tells them in order to
22 ascertain whether their conduct is reasonable. So, in
23 this case, Officer Barrow says that the minute he steps
24 out of the car he sees a heavily weighted bag.
25 I am not one for commonality, but there is many

1 heavily weighed bags in society. People walking around
2 and leaving with purses, men with fanny packs or different
3 types of bags that have weights.
4 It was very important for me to understand, what
5 you do you mean heavily weighted? There are heavily
6 weighed bags everywhere we go in life. What was so
7 particular about the defendant's bag that makes it so
8 important? And distance of 30 feet, 10 yards, where in
9 this Court's, I have good vision. I didn't see anything
10 particularly concerning from that perspective, but am not
11 a police officer.
12 So in order to ascertain whether Officer
13 Barrow's acting reasonably, tell me, what is it about that
14 bag that stands out? Why did you make a b-line right for
15 the defendant?
16 Of all the people who were walking around the
17 street that day, people holding bags, some of them heavily
18 weighted. Why is the defendant's bag on his side at a
19 distance of 30 feet so important? And I can't the find a
20 reason.
21 I asked the officer -- I think what the Officer
22 Barrow saw was an African American male with a cross body
23 bag. I think these officers are trained to spot cross
24 body bags, and those are places where people secrete
25 weapons.

1 I don't see from this evidence that's in this
2 case, this officer had any credible reason to walk up to
3 the defendant versus anybody else on that street that
4 evening. Stop. Let alone -- he has every right to walk
5 up to him. Let me make that clear, under De Bour.
6 An officer can up walk up to anybody, but when
7 you tell someone to stop, you are stopping their liberty
8 to get away, and there are laws behind that. There is a
9 standard.
10 Does this officer have an objective credible
11 basis to believe that defendant has a firearm based on a
12 shift of a bag and a heavily weighted cross body bag? And
13 the defendant acting nervous. Is that enough to say, sir,
14 I want you to stop? I want to look at that bag.
15 If that's the standard, then everybody who walks
16 around the street at night, who sees a police officer
17 approach and is wearing a heavily weighted purse, bag,
18 decides that they don't want the bag to be, in any way,
19 seen, is a credible basis to stop that person by a police
20 officer so they can do more investigation on that bag.
21 That can't possibly be the standard. And
22 looking at the evidence in this case, it's clear that from
23 this Court's opinion of analyzing the credibility of this
24 officer as he testified before looking at the body-worn
25 camera, as I make an individualized determination specific

1 to the facts in this case, there is no way Officer Barrow
2 could discern at that distance that this defendant was
3 doing anything wrong.
4 Not a reasonable credible basis whatsoever. It
5 defies complete reality and credulousness. It is
6 incredible to believe that he believed that this defendant
7 was doing something wrong at a distance of 30 feet, just
8 because he had a cross body bag moved to the side, and he
9 was looking nervous. That's not enough to stop somebody's
10 liberty.
11 And then, he walks up to the defendant after
12 having stopped him, in this Court's opinion, illegally,
13 because he has every right to walk away from the officer.
14 He then shines a flashlight, which I imagine he
15 has to have some sort of control over the situation, which
16 the body-worn camera shows that he did. He was on the
17 defendant almost on top of the defendant, shines the
18 flashlight on the bag and says he sees an L-shape bulge,
19 and then he goes onto frisk it to confirm his suspicions
20 that it was, in fact, a firearm.
21 Again, a frisk, I thank the People for the
22 cases. It is consistent with what we all know frisks to
23 be. Two reasons you can frisk somebody. You have a
24 reasonable basis to conclude that the person is committing
25 a crime, or you are in reasonable fear for your safety.

1 Officer Barrow testified clearly, unequivocally,
2 he was not in fear for his safety. Officer Barrow also,
3 in this Court's opinion, did not have a reasonable basis
4 to conclude that the defendant had committed a crime in
5 order to just grab out and start feeling up the bag.
6 And the Court comes to this conclusion, because
7 Officer Barrow's actions are inconsistent with someone who
8 feels this. So if Officer Barrow is so concerned, I even
9 put a note here, that this L-shaped bulge is a firearm.
10 Wouldn't you call over? Get some help? I am about to
11 search somebody who I believe to have a firearm.
12 Officer Barrow didn't call over his team, didn't
13 do anything consistent with the police officer in the
14 course of what a police officer would do to make it
15 reasonable to believe that to be firearm.
16 He made a b-line right for the defendant, shined
17 his flashlight and decided to start feeling him. He
18 didn't say, hey, team. I'm going over. I believe we have
19 a firearm here. I want to detain him. No safety measures
20 were taken. It was a crowded street, and you are just
21 going to start patting somebody down on a crowded street
22 who you believe to have a firearm. It doesn't make sense.
23 It is incredulous.
24 It is unclear as to what conversations took
25 place in that car, because the body-worn camera's audio

1 was not activated. I don't hold that against Officer
2 Barrow. He is technically not obligated to start his
3 camera about until he starts interaction with someone.
4 So the fact that, when he steps out of the car
5 he doesn't have the audio playing I believe it is not a
6 violation of his requirements under the patrol guide.
7 It is when he starts to interact with someone
8 that he is obligated to do so, but nonetheless, the video
9 was still playing. We could see what was going on, and I
10 feel that Officer Barrow's actions in this case are
11 inconsistent with an Officer who genuinely believed that a
12 defendant was carrying a firearm, certainly enough to
13 believe that you are going to stop somebody and then start
14 patting him down or the property on him.
15 So with regards to the Dunaway portion of this
16 case, again, this is a situation of good instincts, bad
17 execution. Officer Barrow had some good instincts.
18 Trained instincts.
19 Maybe they are pretextural instincts. That was
20 not at play here. I can tell you this, is that this
21 defendant was no different than any other person on the
22 street that night, based on what I am seeing and based on
23 the evidence before this Court.
24 So for them to focus on him, I believe it is the
25 cross body bag, and I think that is the pretextural thing

1 that is going on here.
2 Because that's immediately what Barrow cites to,
3 cross body bag. It wasn't that he had any other property
4 on him. Cross body bag. That was the focus.
5 So the Court finds with respect to the Dunaway
6 portion that the stop of the defendant was not based on
7 any credible suspicion, that defendant was engaging in
8 unlawful activity. It defies credibility that Officer
9 Barrow saw a heavily-weighted bag hanging off of the
10 defendant's person, which would give him any sort of cause
11 to stop the defendant in his tracks and not let him leave
12 the scene, which he has every right to do.
13 It also defies logic based on this officer's
14 ability to identify a stapler in a bag, let alone a gun in
15 a bag, that he saw an L-shaped bulge, which necessitated
16 him patting down and feeling a firearm through a bag.
17 I don't buy it, not based on the evidence in
18 this case, not on my individual determination of the
19 credibility of Officer Barrow. He seems like a good
20 officer. I think he got this wrong.
21 That's how I am concluding it. This is a
22 measure of whether police are acting lawfully or
23 unlawfully. When police start walking up to African
24 American men, who are carrying cross body bags, and simply
25 because they move those bags to the side, and look

1 nervous. If that is the basis that gives police officers
2 the ability to stop people, that cannot be the threshold
3 that we should be applying.
4 It should be we see the gun. We see evidence of
5 the gun before we stop people. Not make up some
6 convoluted story that I saw a bulge. I saw a heavily
7 weighted bag, because that is what everybody is carrying
8 nowadays. So there is no probable cause to arrest, let
9 alone reasonable suspicion to stop.
10 I find that the arrest of the defendant is
11 unlawful. Therefore, any gun found is therefore
12 suppressed as a result of an illegal search and stop of
13 the defendant, and any statement commensurate to any
14 arrest is, therefore, a fruit of the poisonous tree, and
15 is therefore suppressed.
16 This constitutes the findings and decision of
17 the Court. Motion to suppress is granted. We will put it
18 over 30 days for People to consider the Court, if they
19 wish to appeal, and we will come back in 30 days for
20 further matters for control. Let's pick a date. Are the
21 parties available in late September?
22 MS. RYU: I can be available after the 25th.
23 THE COURT: I am available any date in September
24 for control.
25 MS. RYU: September 26th.

1 THE COURT: That a Friday?
2 MS. RYU: 9/26.
3 THE COURT: That's good. I have a jury trial
4 that month, but we don't meet on Fridays. I will give you
5 as much time as you need. It is only one control anyway.
6 I will fit you in.
7 MS. RYU: Understood.
8 THE COURT: Again, I commend the lawyers. You
9 did a good job. The facts are the facts. Part 31. 9/26
10 for control and bail is continued. See you then
11 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE
12 ABOVE-MENTIONED TRANSCRIPT.
13 John Cardillo
14 JOHN D. CARDILLO
15 SENIOR COURT REPORTER
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