

D3J8FLO1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 DAVID FLOYD, et al.,

4 Plaintiffs,

5 v.

08 CV 1034(SAS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

New York, N.Y.
March 19, 2013
10:05 a.m.

10 Before:

11 HON. SHIRA A. SCHEINDLIN,

12 District Judge

13 APPEARANCES

14 BELDOCK LEVINE & HOFFMAN, LLP
15 Attorneys for Plaintiffs

15 BY: JENN ROLNICK BORCHETTA
16 JONATHAN MOORE

17 COVINGTON & BURLING, LLP
17 Attorneys for Plaintiffs

18 BY: KASEY MARTINI
18 GRETCHEN HOFF VARNER
19 ERIC HELLERMAN
19 BRUCE COREY

20 CENTER FOR CONSTITUTIONAL RIGHTS
21 Attorneys for Plaintiffs

21 BY: DARIUS CHARNEY
22 SUNITA PATEL
22 BAHAR AZMY

D3J8FLO1

1
2
2
3
3
4
4
5
5
6
6
7
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (Cont'd)

MICHAEL A. CARDOZO
Corporation Counsel for the City of New York
Attorney for Defendants
BY: HEIDI GROSSMAN
BRENDA E. COOKE
JOSEPH MARUTOLLO
MORGAN D. KUNZ
SUZANNA PUBLICKER
LINDA DONAHUE
LISA M. RICHARDSON
JUDSON VICKERS

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3J8FLO1

1 (Trial resumed)

2 THE COURT: I understand there was a question about
3 witness sequestration?

4 MR. MOORE: Yes. I understood your prior order was
5 that if a witness was testifying and a witness in the future
6 will testify about the same incident, they should be out of the
7 room.

8 THE COURT: That was, I thought, the ruling. If it is
9 the same incident, the person is not supposed to be in the
10 courtroom.

11 MR. MOORE: I think some of the police officer
12 witnesses who did the photo array of David Floyd were in the
13 courtroom yesterday.

14 THE COURT: There is nothing I can do about yesterday.
15 If they are here today, they shouldn't be here during
16 Mr. Floyd's testimony.

17 Can we have Mr. Floyd come up and can we get started?

18 Yes, what is it, Mr. Kunz?

19 MR. KUNZ: I believe the officers that he's referring
20 to are not involved in the stop. So I don't think they violate
21 the sequestration order. They are not involved in the actual
22 incident.

23 THE COURT: I heard that. If they are involved in
24 what they are testifying to, the idea was they shouldn't be
25 here -- Mr. Floyd please come up -- they shouldn't be here

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO1

1 while he is testifying.

2 Where did we leave off? Cross-examination, right?

3 DAVID FLOYD, resumed.

4 THE COURT: You understand you are still under oath?

5 THE WITNESS: Yes.

6 MR. KUNZ: May I proceed, your Honor.

7 THE COURT: Of course.

8 CROSS-EXAMINATION (Cont'd)

9 BY MR. KUNZ:

10 Q. Thank you for coming in again today, Mr. Floyd.

11 Before we get started, I just want to make sure that
12 last night after your testimony ended you didn't speak to
13 anyone about your testimony?

14 THE COURT: He is allowed to speak to anyone. You
15 mean he didn't speak to any of the plaintiffs' lawyers?

16 MR. KUNZ: Correct.

17 You didn't speak to any of the plaintiffs' lawyers?

18 THE WITNESS: I did not.

19 Q. When we broke last night, we were talking about the April
20 2007 incident, correct?

21 A. I believe so.

22 Q. I believe we had just gotten to the point where you took
23 your wallet out of your pants to give to the police officers,
24 correct?

25 A. OK. Yes.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO1 Floyd - cross

1 THE COURT: You said ID. Was it in the wallet?

2 THE WITNESS: Yes, it was.

3 Q. Prior to giving the officers your ID, none of the officers
4 touched you, correct?

5 A. Correct.

6 Q. Prior to giving the officer ID, none of the officers told
7 you that you could not leave, correct?

8 A. Correct.

9 Q. Now, the two male officers, they were both standing to your
10 left, I believe?

11 A. In front and slightly to the left.

12 Q. There were no officers behind you?

13 A. Correct.

14 Q. Now, you said during your direct testimony yesterday that
15 there was a wall behind you, is that correct?

16 A. The wall from the homes, yes.

17 Q. But that is not true, is it? There was in fact no wall
18 behind you?

19 A. What was it?

20 Q. Well, are you testifying today that there was a wall behind
21 you?

22 A. From the homes, yes.

23 MR. KUNZ: I just direct everyone's attention to page
24 123, line 3, of Mr. Floyd's deposition, through 123, line 17.

25 Q. At your deposition, were you asked the following questions

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - cross

1 have been a smart thing to not have given them the
2 identification. So I gave it to them.

3 MR. KUNZ: Directing everyone's attention to page 125
4 of the deposition, lines 23 through 25.

5 MS. PATEL: One moment.

6 "Q. At that point of time, did you know whether you were free
7 to not give them your ID?

8 "A. I believed in my mind I was free not to."

9 Did you give that answer to that question at your
10 deposition?

11 A. Yes, I did.

12 Q. In fact, you made the decision to stay and talk to the
13 officers and not walk away, correct?

14 A. No.

15 MR. KUNZ: Page 126 of the deposition, lines 23
16 through 25.

17 "Q. You made the decision to stay and to not ask the questions
18 initially?

19 "A. Initially, correct."

20 So initially you made the decision to not walk away
21 from the officers, correct?

22 MS. PATEL: I think that's mischaracterizing the
23 statement here.

24 THE COURT: One moment.

25 MS. PATEL: Not to ask the questions initially.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO1 Floyd - cross

1 THE COURT: Right. That's confusing.

2 MR. KUNZ: I can go back and read a longer section.

3 The context of it was in fact a discussion about whether or not
4 he felt he was free to leave.

5 MS. PATEL: I think counsel is testifying.

6 THE COURT: I think we should just read the questions
7 and answers that you want to point out.

8 MR. KUNZ: OK. I will start at 126, the top of the
9 page, line 1.

10 "Q. At that point of time, did you believe in your mind you
11 were free to leave?

12 "A. Only after getting acknowledgement from them that I wasn't
13 under arrest, which I did not ask. So, therefore, I was
14 staying where I was and continuing on with the engagement.

15 "Q. At that point in time, when the officers approached you
16 and asked you for identification, did you feel like you had a
17 right to leave?

18 "A. Only after I had received other information from them
19 about the stop.

20 "Q. What other information from them did you receive -- what
21 other information did you receive from them that you felt you
22 had the right to leave?

23 "A. There were questions that I didn't ask, that if I had
24 asked, I think I may have been able to, again, legally, that I
25 would be able to continue going. But because I didn't ask the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - cross

1 question, I made a decision to stay.

2 "Q. What type of questions are you referring to?

3 "A. Particularly, if there were probable cause for the stop
4 and I was under arrest.

5 "Q. You made the decision to stay and not to ask the questions
6 initially?

7 "A. Initially, correct."

8 Did you give those answers to those questions?

9 A. Yes. Yes.

10 Q. After you gave them your driver's license, you reached into
11 your pocket, correct?

12 A. Correct.

13 Q. You reached into your pocket to pull out your phone?

14 A. Yes.

15 Q. You also thought you might have a pen in your pocket?

16 A. I wasn't sure if it was a pen or my phone.

17 Q. And your hand actually went inside your pocket?

18 A. That I don't remember.

19 Q. At your deposition, did you testify that your hand went
20 inside your pocket?

21 MR. KUNZ: I refer counsel to page 132, lines 5
22 through 6 of the deposition.

23 "Q. Did your hand go inside your pocket?

24 "A. Yes."

25 Did you give that answer to that question?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO1

Floyd - cross

1 A. Yes.

2 Q. And you state that right then, as you reached into your
3 pocket, one of the officers came over and frisked you, correct?4 MS. PATEL: Excuse me. That's not what the deposition
5 testimony says. Can I read the next line? Or his testimony
6 yesterday at trial.7 The next line is: "So you took your hands out of your
8 pockets and put your hands up in the air?"

9 "Yes.

10 "Above your head.

11 "It was probably somewhere around here, same height."

12 THE COURT: What is the question?

13 Q. My question was, after he put his hands into his pocket, a
14 police came over and frisked him. So I don't understand the
15 question objection.16 THE COURT: I don't know what it has to do with later
17 raising his hands in the air. I don't understand the objection
18 either.19 Q. The point was, after you put your hands into your pocket,
20 that's when somebody came over and frisked you, correct?

21 A. That's when the officer came over and frisked me.

22 Q. And the officer, when he frisked you, he performed a
23 pat-down, correct?24 A. I mean, he frisked me. I don't know -- legally, I don't
25 know the difference.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO1 Floyd - cross

1 Q. At your deposition, you said, "He performed a pat-down in
2 back and in front."

3 MR. KUNZ: I am looking at page 132, line 21.

4 THE COURT: I think all the witness is saying is he
5 doesn't distinguish between a pat-down and the word frisk. Do
6 you?

7 THE WITNESS: Correct. Legally, I don't know the
8 difference.

9 Q. When the officer felt the pocket that you had been reaching
10 into, the pocket with the cell phone, you felt the officer's
11 hand push against the phone, correct?

12 A. Felt and saw.

13 Q. Felt and saw the officer's hand push against the phone?

14 A. Push upward against the phone, yes.

15 Q. And the officer also felt the other pocket, correct?

16 A. Yes.

17 Q. But he didn't take anything out of either of your pockets,
18 did he?

19 A. He pushed the cell phone upward up to the point where it
20 was sticking out.

21 Q. OK. But he didn't take anything out of the pocket?

22 A. No.

23 Q. Now, in the pants you were wearing that day, your cell
24 phone made a bulge in your pant leg, correct?

25 A. I don't know if it was making a bulge or not. At least I

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - cross

1 don't remember.

2 Q. If someone was walking down the street towards you looking
3 at you, they could tell you had a cell phone or something in
4 your pocket?

5 THE COURT: How would he know what people looking at
6 him would know? Objection is sustained. I don't see how in
7 the world he would know what other people see. So I am not
8 going to allow that question.

9 Q. When the cell phone is in your pocket, can you tell that it
10 creates a bulge, can you yourself see that it creates a bulge?

11 A. No.

12 Q. What type of cell phone was it?

13 A. It was a BlackBerry.

14 Q. When the officer was touching your pocket, the one with the
15 cell phone, he specifically asked you if you had any weapons,
16 correct?

17 A. Yes.

18 Q. When he felt the phone, in particular, he asked you what it
19 was, correct?

20 A. Yes.

21 Q. The whole frisk lasted for about 15 seconds?

22 A. More or less.

23 Q. After the frisk, you spoke with the officers for a few more
24 minutes?

25 A. Spoke with them?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3J8FL01 Floyd - cross

1 Q. After the frisk was done, you had a conversation with the
2 officers, correct?

3 A. They were talking to me. They were doing more of the
4 talking. I wasn't saying that much, anything.

5 Q. After the frisk, though, you talked with the officers?

6 MS. PATEL: It was asked and answered.

7 THE COURT: I think that was asked and answered.

8 Q. The whole encounter lasted five to ten minutes?

9 A. Yes.

10 Q. The officers never took your ID to the van?

11 A. Not from what I remember, no.

12 Q. And the officers never cursed at you?

13 A. No.

14 Q. They never pushed you or anything like that?

15 A. No, they did not.

16 Q. You don't know why the officers initiated this encounter,
17 do you?

18 A. I have no clue.

19 Q. And you have absolutely no reason to think that you were
20 stopped because of your race, do you?

21 A. Again, I don't know exactly why they decided to stop me.

22 Q. Right. So you have no reason to think it was because of
23 your race?

24 MS. PATEL: Objection. This is asked and answered.

25 THE COURT: It was asked and answered.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - cross

1 badge numbers, correct?

2 A. Two of the officers, yes.

3 Q. When you filed this lawsuit, you never made -- I'm sorry.

4 Until you filed this lawsuit, you never made a

5 complaint about what happened that day, did you?

6 A. Complaint as in like an official --

7 Q. Right.

8 A. I don't remember doing so, no.

9 Q. You didn't make a complaint to CCRB?

10 A. No.

11 Q. You didn't make a complaint to the police department?

12 A. No.

13 Q. The second incident that you testified about during your

14 direct, it occurred in February 2008, is that correct?

15 A. Yes.

16 Q. You don't recall what you were doing directly prior to that

17 encounter, do you?

18 A. I was leaving my home headed to school.

19 MR. KUNZ: Page 167 of the deposition.

20 MS. PATEL: One moment. What is the line?

21 MR. KUNZ: 7 through 9.

22 "Q. Do you remember what you had been doing during the day

23 prior to that incident?

24 "A. I do not."

25 Did you give that answer to that question?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - cross

1 A. I did give that answer.

2 Q. You don't recall where you slept the night before, do you?

3 A. I mean, I assume I slept in my home.

4 MR. KUNZ: Same page of the deposition, lines 10

5 through 12.

6 "Q. Do you remember if you had slept at home that night before
7 the day of that incident?

8 "A. I don't remember."

9 Did you give that answer to that question?

10 A. I guess I did.

11 Q. Do you recall the date in February of the incident?

12 A. The question?

13 Q. Do you recall which particular date it was in February?

14 A. The 27th.

15 Q. Do you know what day of the week that was?

16 A. No, I don't.

17 Q. Do you know if it was a weekend or a weekday?

18 A. I had class, and I believe at one point in time, while I
19 was still in school, I had Saturday class so it may have been.
20 I'm not sure.

21 Q. You had testified that as you walked out of your apartment
22 you encountered your downstairs neighbor?

23 A. Yes.

24 Q. But you don't know that man's name, do you?

25 A. No.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - cross

1 Q. You don't recall what you were wearing that day, do you?

2 A. At least I don't remember his name.

3 Q. Say it again?

4 A. I said I don't remember his name.

5 Q. Do you recall what you were wearing that day?

6 A. The only thing I remember having, I had on pants, probably
7 jeans, and a pair of sneakers.

8 Q. Now, it was February. Would you have been wearing a
9 jacket?

10 A. Most likely, but I don't remember exactly.

11 Q. Now, when you first encountered the police that day, you
12 were assisting the basement tenant to get into his apartment?

13 A. Yes.

14 Q. This apartment is located at 1359 Beach Avenue?

15 A. Yes.

16 Q. And you were doing this, you were assisting the basement
17 tenant by trying different keys in the lock, correct?

18 A. Correct.

19 Q. So you had, I think you said seven to ten keys?

20 A. Yes.

21 Q. But you didn't know which one was the correct key, right?

22 A. Correct.

23 Q. So you had to fiddle with each key to try to test it to see
24 if it worked?

25 MS. PATEL: Objection. Fiddle with is not his

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - cross

- 1 Q. So the location of this apartment where you lived is behind
2 the building, correct?
3 A. Correct.
4 Q. As you were walking out from behind the building, that's
5 where you first encountered your neighbor?
6 A. Towards the front of the house, yes.
7 Q. He told you he was locked out?
8 A. Correct.
9 Q. He asked for your help?
10 A. Correct.
11 Q. And you agreed to help by going upstairs to the building
12 owner's apartment and getting a spare set of keys, correct?
13 A. I agreed to help him by getting the keys and helping him.
14 Q. And you were able to get into the owner's apartment because
15 she had given you a set or a key to her apartment, correct?
16 A. Yes.
17 Q. So then you went upstairs into her apartment and to the
18 cabinet where she kept the spare keys, correct?
19 A. Yes.
20 Q. When you got to the cabinet with the keys, you didn't know
21 which was the right key, correct?
22 A. Correct.
23 Q. So you grabbed all the keys that were there?
24 A. Yes.
25 Q. And as I said before, it was seven to ten keys.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - cross

1 they were directly behind me.

2 Q. You don't recall exactly what the officer said to you,
3 right?

4 A. I remember them telling us to stop what we were doing and
5 put our hands up.

6 Q. So you also testified about that -- I'm sorry.

7 MR. KUNZ: Directing counsel's attention to 185 of the
8 deposition, lines 16 through 24.

9 MS. PATEL: One second.

10 OK. Thank you.

11 "Q. What did they say?

12 "A. That I don't remember.

13 "Q. In sum and substance, do you know what they said?

14 "A. I'm not going to guess. I don't remember.

15 "Q. Could it have been anything?

16 "A. I don't even remember what they said. What they said, the
17 effect it had on us was for us to stop what we were doing."

18 Did you give those answers to those questions?

19 A. I believe so, yes.

20 MS. PATEL: If you go to page 186, which is a few
21 lines over:

22 "Did you turn around --"

23 MR. KUNZ: Which line?

24 MS. PATEL: 11.

25 "Did you turn around when you realized the officers

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - cross

1 were there or what did you do?

2 "When we realized the officers were there and we
3 stopped, we pretty much kept our backs to them and put our
4 hands up.

5 "How did you know to put your hand up, did they tell
6 you to do so?

7 "Again, I don't remember exactly what they said. What
8 they did say to us had the effect of us stopping what we were
9 doing and putting our hands up."

10 THE COURT: OK.

11 BY MR. KUNZ:

12 Q. Did you give those answers to those questions?

13 A. Yes.

14 Q. So you don't remember what the officers said to you?

15 A. Correct.

16 Q. Now, did you hear the opening statement from your attorney,
17 Mr. Charney?

18 A. I heard most of it, yes.

19 Q. Did you hear Mr. Charney state that when the police
20 approached you, they screamed at you?

21 A. I don't remember.

22 Q. In any event, that's not true, right, you don't remember
23 what the officers said to you?

24 A. You asking about the tone in which?

25 THE COURT: Do you remember the tone?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO1 Floyd - cross

1 THE WITNESS: The tone was forceful.

2 THE COURT: You don't remember what they said, but you
3 do remember the tone?

4 THE WITNESS: Correct.

5 THE COURT: When you say forceful, would you use the
6 word scream? Was it loud?

7 THE WITNESS: It was forceful.

8 THE COURT: Was it loud?

9 THE WITNESS: It wasn't quiet. It wasn't quiet. I
10 guess one could say loud, yeah.

11 Q. Your attorney also said during the opening statement that
12 the officers told you to put your hands up. But that's not
13 true, right, you don't remember what the officers said to you?

14 A. I don't remember exactly what they said.

15 THE COURT: Whatever it was, you said that caused you
16 to put your hands up?

17 THE WITNESS: I put my hands up.

18 THE COURT: Did it cause you to put your hands up,
19 whatever it is they said?

20 THE WITNESS: Yes.

21 Q. Finally, your attorney said during the opening statement
22 that the officers told you to stand against the wall, but
23 that's not true, you don't remember what the officers said to
24 you, correct?

25 A. Again, I don't remember exactly what they said to me.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO1 Floyd - cross

1 THE COURT: Did that cause you to stand against the
2 wall?

3 THE WITNESS: It caused me to stand against the wall,
4 whatever they said. Yes, it did.

5 Q. Well, you didn't mention standing up against the wall
6 anywhere in your deposition, did you?

7 THE COURT: Do you remember being asked that question?
8 Were you asked?

9 THE WITNESS: I remember -- honestly, I would have to
10 see it. I don't remember.

11 MR. KUNZ: OK. Can I show him?

12 THE COURT: What are you going to show him, the entire
13 deposition?

14 MR. KUNZ: If he wants to look through it.

15 THE COURT: I don't want him to read the entire
16 deposition now. But I assume counsel will stipulate.

17 Is there any mention of him standing against the wall?

18 MS. PATEL: Is there a line and page number?

19 MR. KUNZ: I have a line and page number where he
20 talks about this incident. I will say that in the word index
21 the word "wall" does not appear. It goes from walkway to
22 wallet.

23 THE COURT: I assume it didn't mention standing
24 against a wall. Is that fair, Ms. Patel?

25 MS. PATEL: I actually think that it did, but I don't

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO1 Floyd - cross

1 Q. And your wallet was in your back pocket?

2 A. Correct.

3 Q. And the officer that was frisking you, he didn't take
4 anything out of your pockets, did he?

5 A. No.

6 Q. After the frisk, you turned around and you spoke to the
7 officers?

8 A. Yes.

9 Q. The officers wanted to see your ID, correct?

10 A. Correct.

11 Q. And you had ID on you, right?

12 A. Correct.

13 Q. But it was not from New York state, was it?

14 A. No, it was not.

15 Q. It was from Louisiana?

16 A. Correct.

17 Q. And the officers were concerned that you didn't have an ID
18 that said that address on it, that said 1359 Beach Avenue,
19 correct?

20 MS. PATEL: Objection. The question was about
21 concern. That's the state of mind of someone else.

22 THE COURT: Sustained.

23 Q. Well, the officers said to you that your ID did not prove
24 that you lived there, correct?

25 A. I don't remember exactly what they said, but they had a

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO1 Floyd - cross

1 problem with the fact that the address was different.

2 Q. The officers also told you that there had been a number of
3 burglaries in the area, correct?

4 A. That's what they said.

5 Q. And I think you said during your direct testimony that the
6 neighbor that was with you, that he also showed his ID, is that
7 correct?

8 A. At some point in time, he showed them his identification.

9 MR. KUNZ: I am looking at page 196 of his deposition,
10 lines 9 through 12.

11 MS. PATEL: One second.

12 Q. Where you testified that the other man didn't have an ID on
13 him.

14 MS. PATEL: Sorry. What line?

15 MR. KUNZ: 196, lines 9 through 12.

16 Q. You testified at your deposition that the other man didn't
17 have his ID on him, correct?

18 MS. PATEL: Can we read the question and the answer?

19 MR. KUNZ: 196, line 9.

20 "Q. Do you know if the man from the basement apartment was
21 able to produce any form of ID to these officers when you
22 initially turned around?

23 "A. No, not at that point."

24 So isn't that correct that your ID was from
25 out-of-state and did not say 1359 Beach Avenue and the other

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - cross

1 man didn't have his identification on him?

2 A. At the time, he did not have his identification on him.

3 Q. The officers told you that they had been watching you and
4 that they had seen you try to get into the apartment, correct?

5 A. I don't remember exactly what they said.

6 MR. KUNZ: Page 198, lines 3 through 7.

7 "Q. Did they express to you they had observed you trying to
8 get into the apartment?

9 "A. Yes. At some point in the course of this stop they said
10 that they had been watching us for five minutes."

11 Did you give that answer to that question?

12 A. That I did say, yes.

13 Q. And you eventually realized that you had a Con Edison bill
14 in your backpack, correct?

15 A. Correct.

16 Q. And you showed that to the officers?

17 A. Yes.

18 Q. And your downstairs neighbor went around to the back of the
19 apartment where I guess there is another door?

20 A. Correct.

21 Q. And he was able to get in and also produce an ID, correct?

22 A. Correct.

23 Q. After the officers frisked you, so this is -- the officers
24 frisked you immediately in the encounter, right away when they
25 got there?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - cross

1 A. Correct.

2 Q. After they frisked you, the officers were calm during the
3 rest of the encounter, correct?

4 A. They were -- I would say so.

5 Q. Before they frisked you they were not calm, correct?

6 A. Correct.

7 Q. After they had verified that you didn't have any weapons,
8 they calmed down?

9 A. Again, I don't know what was going through their mind, but
10 after the frisk and the conversation around the identification,
11 they were calm.

12 Q. The incident ended after the neighbor came back from the
13 back of the house after he had proved that he lived there?

14 A. I would say it ended when they drove off.

15 Q. They left after that happened, right, after the neighbor
16 came back, the officers left?

17 A. When they left, that's when the incident ended for me.

18 Q. You have no reason to think that these officers stopped you
19 because of your race, do you?

20 A. Again, I don't know. I don't know why they stopped me.

21 Q. In fact, nothing they said to you at all during the entire
22 encounter referenced your race, did it?

23 A. No, it did not.

24 MR. KUNZ: I don't have any other questions.

25 THE COURT: Thank you. Redirect?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO1 Floyd - cross

1 REDIRECT EXAMINATION

2 BY MS. PATEL:

3 Q. Good morning, Mr. Floyd.

4 A. Good morning.

5 Q. You testified that the officers told you they observed you
6 for approximately five minutes, is that correct?

7 A. Yes.

8 Q. This is the 2008 stop and frisk?

9 A. Correct.

10 Q. Before you tried the keys in the door, you went upstairs to
11 your godmother's house and opened the door, is that correct?

12 A. Correct.

13 Q. And you had a key for her front door, is that correct?

14 A. Yes, I did.

15 Q. This was directly before you went downstairs to the
16 basement door, is that correct?

17 A. Correct.

18 Q. How long do you think the process took to go up and get the
19 keys and come back downstairs?

20 A. I couldn't say exactly. It was probably the time it takes
21 to climb a flight of stairs and grab keys. Maybe about five
22 minutes.

23 Q. Five minutes?

24 A. Maybe, maybe about five minutes.

25 Q. Again, how long were you at the door using the keys?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - redirect

- 1 A. We were there for about a minute.
2 Q. Just so that I understand, you entered your godmother's
3 home using a key, is that right?
4 A. Yes.
5 Q. Then you walked up how many flights of stairs?
6 A. After entering her home?
7 Q. Yes.
8 A. It was one flight.
9 Q. One flight?
10 A. Yes.
11 Q. Roughly, would you say it would take 30 seconds to walk up
12 a flight of stairs?
13 A. No. Probably ten seconds.
14 Q. How long would it take you to retrieve the keys then,
15 another, would you say, 30 seconds?
16 A. 30 seconds, a minute.
17 Q. Then to come back down the stairs would take about how
18 long?
19 A. About the same amount of time it took to go up.
20 Q. Did you close the door behind you, if you recall?
21 A. That I don't remember.
22 Q. Then you walked to the basement door and started to try to
23 help your neighbor open the door?
24 A. Correct.
25 Q. If the officers were observing you for five minutes, would

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - redirect

1 they have seen you open the door to your godmother's home --

2 MR. KUNZ: Objection.

3 Q. -- using the keys?

4 THE COURT: Objection is sustained.

5 Q. Mr. Floyd, can you just remind the Court why your neighbor
6 didn't have his identification on his person?

7 A. Well, I don't know exactly what happened with him that
8 morning, but he was locked out. I mean, he got locked out of
9 his home.

10 Q. And his identification was in his home?

11 A. It was in his home, yes.

12 Q. One other thing. From looking at this photograph, do you
13 notice that the entranceway of the door is in shade?

14 A. Yes.

15 Q. Would you say that it's dark around the doorway?

16 A. Darker than -- yeah, I would say so.

17 Q. Meaning it's not in direct sunlight?

18 A. Correct.

19 Q. There is an obstruction of the view?

20 A. Yes.

21 Q. And, also, there are a few steps to go down to the doorway,
22 is that correct?

23 A. There are. You can't really see it quite well from this
24 picture, but there are.

25 Q. How many steps are there, if you recall?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO1 Floyd - redirect

1 A. I want to say between two and four.

2 Q. So is it accurate that in this picture and from your
3 memory, your memory of the doorway, the bottom where your feet
4 would be would not be visible from the street, is that correct?

5 A. Correct.

6 Q. Let's go back to the 2007 incident for a moment.

7 Directly after the stop, when you went home, did you
8 draft a summary of the incident?

9 A. Yes.

10 Q. When did you draft that?

11 A. After the incident. I believe it was immediately or
12 directly after.

13 Q. Within an hour would you say, half an hour?

14 A. I don't remember.

15 MS. PATEL: I am going to show this to the witness.

16 MR. KUNZ: What is the purpose of this?

17 MS. PATEL: Mr. Kunz has asked him questions about
18 this. I would like to show it to him and have it read into the
19 record. I can read it into the record if you prefer.

20 MR. KUNZ: I don't have an objection. I don't think
21 it needs to go in the record, and I don't think it was on
22 either of our exhibit lists.

23 MS. PATEL: I would ask now. He asked a lot of
24 questions about this document.

25 THE COURT: Did you ask questions directly about the
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - redirect

1 document, about what he wrote or what he didn't write? Do you
2 remember?

3 MR. KUNZ: Yeah. I asked him specific questions, and
4 if he testified counter to it, I impeached him with it, yes.

5 THE COURT: Then I will allow you to read the portions
6 that relate to what was asked.

7 MS. PATEL: Could I ask that it be marked into
8 evidence?

9 THE COURT: No. It shouldn't really be received in
10 evidence. It's a prior statement of the witness. It doesn't
11 come in unless it's to rebut a charge of recent fabrication.

12 MS. PATEL: That is what it is being --

13 THE COURT: It is not. He never implied there was a
14 recent fabrication that needs to be rebutted with a
15 contemporaneous statement. If there are portions that you
16 should read to complete the record, in terms of what Mr. Kunz
17 asked, you can do that, but I wouldn't take the document in
18 evidence.

19 MS. PATEL: That's fine.

20 This is dated Saturday, April 20, 2007. It says, "One
21 of the officers, a Latino man named Officer Rodriguez, badge
22 number 12141, asked if I had an ID on me. As I was removing my
23 wallet to get my ID I said, even though I live on this
24 particular block. He said, I want to see your ID. I reached
25 into my pocket, pulled out my wallet and gave it to him. Then

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - redirect

1 waited momentarily before reaching into my other pocket for my
2 pen. I wanted to write down their names and badge numbers. At
3 that point, the white officer, Officer Goodman, badge number
4 9292, began to perform a pat-down. He said --"

5 MR. KUNZ: Objection, your Honor. This is a hearsay
6 statement.

7 THE COURT: It's an admission of a party opponent.

8 MS. PATEL: We addressed this yesterday and on
9 Thursday that this would be permissible. It's offered for the
10 effect on the listener, not for the truth of the matter.

11 THE COURT: If you say I already ruled on it, then go
12 ahead.

13 MR. KUNZ: Your Honor, it is being offered for the
14 truth of the matter because the effect on him is not what the
15 officer said. The effect on him is what he did.

16 THE COURT: The effect on him is what he did in
17 response to whatever was said. It's not offered for the truth.
18 It's not like a statement of facts. It's how it impacted the
19 listener.

20 Go ahead.

21 MS. PATEL: "He said, I get nervous when I see people
22 reaching into their pockets. But he and Officer Rodriguez
23 began to ask me questions. Officer Goodman said, You don't
24 have any weapon or anything illegal on you before I search you,
25 do you? I told him, No, I don't, and I do not consent to this

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - redirect

1 search.

2 "At this point, he had a finger in my pocket and was
3 feeling around. But after I said this, he asked me again if I
4 had any weapons on me. I repeated, I do not consent to this
5 search. I then asked, Why am I being stopped? Do you have
6 probable cause? They didn't answer.

7 "He asked me what the bulge in my right pocket was.
8 And I answered, yes. He was already using his hands outside my
9 pocket, pushed my phone out of my pocket, and his finger
10 already inside my pocket to pull it out. He did the same thing
11 with my other pocket, put his finger inside and feeling around.

12 "Officer Rodriguez questioned me about my driver's
13 license, which is from my home state in South Carolina. The
14 exchange we had is below:

15 "How long have you lived here? About five years. You
16 know it's illegal not to have a New York state ID? I don't
17 drive here so I never had one. I never had to get one.

18 "Both officers then proceeded to tell me how many days
19 I am allowed to be in the city --"

20 MR. KUNZ: Objection. This part I did not cross on.

21 THE COURT: Don't read this portion.

22 MS. PATEL: "Then I was given my ID back. I asked the
23 two officers' names and badge numbers. Officer Rodriguez gave
24 his and the other officer did not answer. I asked Officer
25 Rodriguez again what the other officer's name and badge number

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - redirect

1 Q. What do you think would have happened if you had just
2 walked away?

3 MR. KUNZ: Objection, your Honor.

4 THE COURT: It goes to his state of mind. It's what
5 he thought. It's not whether it would have happened, but what
6 he thought.

7 What did you think would happen?

8 THE WITNESS: In the situation, I didn't know why I
9 was being detained. I was literally fearing that the
10 interaction would escalate to something violent and possibly
11 something deadly.

12 Q. Is that true even though no gun was pulled on you?

13 A. Correct.

14 Q. No one pushed you?

15 A. No.

16 Q. No one threw you against the wall?

17 A. No.

18 Q. You still felt you were in fear, that was the word you
19 used?

20 A. Yes.

21 Q. Let me just clarify something. Yesterday do you recall
22 that the lawyers for the defendants asked you questions about
23 the descriptions of some of the officers that stopped you in
24 2007?

25 A. Yes.

D3J8FL01 Floyd - redirect

1 MS. PATEL: I am actually going to read from the
2 transcript. On page 203, line 8.

3 MR. KUNZ: Hold on for one second.

4 MS. PATEL: Of course.

5 Actually, before, just for purposes of clarity, on the
6 page directly before, page 202, you said, "Look at line 117,
7 lines 1 through 4." It states something about the hair color.
8 You started asking questions about hair color.

9 On page 203:

10 "Q. The female officer you described as white, about 5'5" with
11 blondish hair?

12 "A. Correct."

13 Do you recall being asked that question about your
14 deposition testimony?

15 A. Yes.

16 MS. PATEL: I am going to just read into the record
17 the actual testimony, if that's OK.

18 MR. KUNZ: I don't understand what we are doing here.

19 THE COURT: Neither do I.

20 You want to read yesterday's transcript again, is that
21 what you're saying?

22 MS. PATEL: There was a question about the deposition
23 testimony. I would like to actually read what the deposition
24 testimony said.

25 THE COURT: It wasn't read at cross?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - redirect

1 MS. PATEL: No.

2 THE COURT: It is offered for what purpose?

3 MS. PATEL: Because it was paraphrased.

4 THE COURT: This is about the description of the
5 police officer?

6 MS. PATEL: Yes, your Honor.

7 THE COURT: I don't see the point.

8 BY MS. PATEL:

9 Q. What is your recollection of the hair color of the woman
10 who stopped you?

11 A. I remember her having blondish hair and it was
12 blondish -- like I said before, blondish, brownish color hair.

13 Q. That was your testimony at your deposition, is that
14 correct?

15 A. I am pretty sure it was, yes.

16 Q. Mr. Floyd, can you remind us how you came to have the names
17 Rodriguez and Goodman?

18 A. Those were the names that were given to me by the officers.

19 Q. In addition, how did you get the badge numbers that you
20 wrote down in your statement?

21 A. Again, those were given to me by the officers.

22 Q. Did you have any reason to believe that they would make
23 that up?

24 A. No.

25 MR. KUNZ: Objection, your Honor.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL01 Floyd - redirect

1 THE COURT: It's his state of mind.

2 Did you believe that?

3 THE WITNESS: No.

4 Q. I think the judge said, didn't you believe that those were
5 the names of the officers?

6 A. I did believe that.

7 Q. You didn't know at the time that they were incorrect, did
8 you?

9 A. No, I did not.

10 Q. Mr. Floyd, why did you put your hands up when the officer
11 approached you?

12 A. Again, he lunged toward me. To me that is a sign that
13 whatever I need to be doing I need to stop and raise my hands
14 up.

15 (Continued on next page)

16

17

18

19

20

21

22

23

24

25

D3j9flo2

Floyd - direct

1 BY MS. PATEL:

2 Q. Mr. Floyd, why did you decide you wanted to be a doctor?

3 MR. KUNZ: Objection, your Honor.

4 THE COURT: I don't really see the relevance.

5 MR. KUNZ: And it's beyond the scope of my cross.

6 MS. PATEL: They were asking him all kinds of
7 questions about his background.8 THE COURT: Objection sustained. I understand his
9 background. He's in medical school. Objection sustained.10 Q. Why did you decide you wanted to pursue human rights work
11 after Katrina?

12 MR. KUNZ: Objection.

13 THE COURT: That I might allow. They implied that he
14 was doing the police community relations work there.

15 Why were you there?

16 THE WITNESS: To really help out in the aftermath. I
17 think it's clear from all of the images that the world saw
18 stories that were coming out of, you know, what was happening,
19 what people had, what people didn't have, that there was need
20 for --21 THE COURT: But particularly with respect to human
22 rights violations, what were you trying to do there?23 THE WITNESS: There was -- I heard about the tribunal
24 and that, you know, there was a need to collect people's
25 stories but not everything was necessarily getting out into the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Floyd - direct

1 media.

2 Q. What's the mission of the Malcolm X Grassroots Movement?

3 A. The mission of the Malcolm X Grassroots Movement is to
4 defend and support the human rights and civil rights of African
5 Americans.

6 Q. Last question. When you testified earlier about the
7 position of the two officers when they stopped you in 2007, you
8 testified that they were in front of you slightly to your left;
9 is that correct?

10 A. Yes.

11 Q. Were you walking in the direction of your left?

12 A. Initially when I was walking home?

13 Q. Yes.

14 A. Yes.

15 Q. So to the left is the same direction as your home; is that
16 right?

17 A. Correct.

18 Q. So the officers standing between you and your home?

19 A. Yes.

20 THE COURT: Anything further, Mr. Kunz?

21 MR. KUNZ: Just one brief moment.

22 (Pause)

23 MR. KUNZ: One quick clarification in regard to the
24 April 2007 incident.

25 RE CROSS EXAMINATION

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2

Floyd - recross

1 BY MR. KUNZ:

2 Q. We were just talking about the hair color of the female
3 officer. You said it was blondish, maybe a little bit of
4 brown?

5 A. Blondish brownish.

6 Q. But it was not dark brown, correct?

7 A. I do not remember it being dark brown. I don't know.

8 MR. KUNZ: No further questions.

9 THE COURT: Okay. Done with this witness.

10 Thank you, Mr. Floyd.

11 (Witness excused)

12 MS. VARNER: Your Honor, plaintiffs call Deon Dennis
13 to the stand.

14 DEON DENNIS,

15 called as a witness by the Plaintiffs,

16 having been duly sworn, testified as follows:

17 THE COURT: Thank you.

18 DIRECT EXAMINATION

19 BY MS. VARNER:

20 Q. Good morning, Mr. Dennis.

21 A. Good morning.

22 Q. Mr. Dennis, are you a plaintiff in this case?

23 A. Yes.

24 Q. Where did you grow up?

25 MR. MARUTOLLO: Objection, your Honor.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - direct

1 THE COURT: No. It's important. I don't know if it's
2 New York City or not. I want to understand his experience
3 either here or not here.

4 So where did you grow up?

5 THE WITNESS: I grew up in Harlem, New York.

6 Q. Where do you now live?

7 A. I live in Sumter, South Carolina.

8 THE COURT: When did you leave New York City? How old
9 were you?

10 THE WITNESS: I left New York City -- I left one time
11 in '92 and came back.

12 THE COURT: When you were how old?

13 THE WITNESS: Oh, I was 22.

14 THE COURT: When you left the first time?

15 THE WITNESS: Yes.

16 THE COURT: And then when you left again?

17 THE WITNESS: I left in 2008. And I was 38.

18 THE COURT: Thank you.

19 Q. How old are you now, Mr. Dennis?

20 A. Forty-two.

21 Q. And you currently live in Sumter, South Carolina. How
22 often do you visit New York?

23 A. Three times a year. Or more.

24 Q. And why do you visit New York so much?

25 A. My parents is here and my kids.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - direct

1 Q. Are you currently employed?

2 A. Yes.

3 Q. What is your job?

4 A. I'm a cooler coordinator at Pilgrim Pride.

5 Q. What is Pilgrim Pride?

6 A. It's a processing chicken plant.

7 Q. How long have you worked there?

8 A. I worked there four years or more.

9 Q. Have you ever been stopped by the New York police
10 department?

11 A. Yes.

12 Q. Do you recall the stop that you were including in this
13 case?

14 A. Yes.

15 Q. And in your own words can you just tell the court what
16 happened during that stop.

17 MR. MARUTOLLO: Objection, your Honor. That calls for
18 a narrative.

19 THE COURT: That's true but we need to start
20 somewhere. Can you break it down into question and answer.

21 Where were you when the stop occurred?

22 THE WITNESS: I was standing on 122nd Street and 7th
23 Avenue.

24 THE COURT: What happened there. 122 and?

25 THE WITNESS: And 7th Avenue.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - direct

1 THE COURT: 7th Avenue?

2 THE WITNESS: Yes.

3 THE COURT: What year was this?

4 THE WITNESS: This was in 2008.

5 THE COURT: What time of day was this?

6 THE WITNESS: It was at night.

7 Q. And what had you been doing before you arrived on the
8 street on 7th Avenue?

9 A. My prior girlfriend, she was having a birthday party and we
10 were setting up for the birthday party.

11 Q. Where were you setting up the birthday party?

12 A. At -- on 122nd Street and 7th Avenue upstairs in the
13 apartment house.

14 Q. Who lived in the apartment?

15 A. Me and my former girlfriend.

16 Q. And what did you do while you were helping to set up for
17 the party?

18 A. We was setting up and I was drinking a cup of E&J and a
19 bottle of Heineken.

20 Q. What is E&J?

21 A. It's a brandy.

22 Q. How much Heineken did you drink?

23 A. One bottle.

24 Q. How much E&J brandy did you drink?

25 A. Half an inch. In a small cup.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - direct

1 Q. What color was the cup?

2 A. It was foggy -- a foggy white cup. You could barely see
3 through it.

4 Q. Did you finish the drinks?

5 A. Yes.

6 Q. What did you do with the cup and the bottle when you were
7 finished with the drinks?

8 A. Threw it in the trash.

9 Q. Where was the trash can?

10 A. In the kitchen.

11 Q. Do you remember approximately what time you finished the
12 drinks?

13 A. I don't remember.

14 Q. Other than the Heineken and the half inch of E&J brandy,
15 did you drink anything else that night?

16 A. No.

17 Q. Did the Heineken and E&J brandy get you drunk?

18 A. No.

19 Q. Have you ever been drunk?

20 A. Yes.

21 Q. When?

22 A. When I was about 20 years old.

23 Q. And how much does it take for you to get drunk?

24 MR. MARUTOLLO: Objection, your Honor.

25 THE COURT: In his experience. He says he only did it

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - direct

1 once or twice. So how much did you drink on those occasions?

2 THE WITNESS: It takes a lot because I'm a heavy dude,
3 a heavy guy.

4 Q. Mr. Dennis, what happened after you finished the drinks?

5 A. My former girlfriend, she needed to go to the store so we
6 went down and I smoked a cigarette and she proceeded to the
7 store.

8 Q. Where were you when you were outside the building -- sorry
9 where were you when you were smoking the cigarette?

10 A. Standing on the sidewalk in front of the bus stop.

11 Q. So let's describe the street a little bit. You said that
12 you were looking at the bus stop. Where was the bus stop?

13 A. Right in front of the building.

14 Q. Was that on 7th Avenue?

15 A. Yes.

16 Q. And you were facing the street, facing the bus stop?

17 A. Yes.

18 Q. Can you describe what 7th Avenue looks like.

19 A. It was -- southbound was a corner on the building, and
20 there's a bus stop, a tree, and a store next to the building.

21 Q. How many lanes of traffic are on 7th Avenue on that
22 block?

23 A. It's three on one side, divided three, then the space for
24 the parked cars.

25 Q. So three lanes of traffic plus a space for parked cars or a

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - direct

- 1 bus stop; is that right?
2 A. Yes.
3 Q. How long did it take you to smoke the cigarette?
4 A. About five minutes.
5 Q. Other than the cigarette, was there anything in your hands?
6 A. No.
7 Q. What did you do with the cigarette when you were finished
8 smoking it?
9 A. I threw it on the ground.
10 Q. Did you drink anything while you were standing outside?
11 A. No.
12 Q. What were you wearing that night?
13 A. I was wearing a brown jacket and blue jeans.
14 Q. Did you have anything in your pockets?
15 A. My cellphone, my car keys, and my wallet, and cigarettes.
16 Q. And what pocket was your wallet in?
17 A. My back right pocket.
18 Q. And was that the same pocket that your other things were
19 in?
20 A. No.
21 Q. Which pockets were the other things in?
22 A. I don't remember.
23 Q. Were they all in the same pocket?
24 A. No.
25 Q. Why weren't they all in the same pocket?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - direct

- 1 A. I don't like a bulge in my pocket.
2 Q. And what happened after you finished the cigarette?
3 A. I stand there. And I see a blue and white NYPD van.
4 Q. Where was the van when you saw it?
5 A. It was at a stoplight on 122nd Street going southbound.
6 Q. About how far away from where you were standing was the
7 van?
8 A. I'd say about -- I'd say about 30 to 40 yards.
9 Q. And what did the van do then?
10 A. The light changed. The van proceeded and pulled over in
11 front of me.
12 Q. How far away from you was the van when it started to pull
13 over?
14 A. I'd say about -- between 10 to 15 yards.
15 Q. Do you recall how much time had passed between when you had
16 the drink in the apartment and when the van pulled over?
17 A. I'd say about a half an hour.
18 Q. What happened after the van pulled over?
19 A. Two officers proceeded to approach me.
20 Q. Do you know the names of the officers?
21 A. No.
22 Q. Can you describe them?
23 A. One was a female and one was a male.
24 Q. What were they wearing?
25 A. They was in NYPD uniforms.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - direct

- 1 Q. Did you see if they had any weapons?
2 A. Yes.
3 Q. Did they have weapons?
4 A. Yes.
5 Q. Did they have guns?
6 A. Yes.
7 Q. And then what happened then?
8 A. When they approached me the female officer said -- asked me
9 was that my cup.
10 Q. Did you know what she was talking about?
11 A. Yes. She pointed to it.
12 Q. What did she point to?
13 A. She pointed to a cup on the right of me.
14 Q. How far away from you was the cup?
15 A. About five feet.
16 Q. Can you describe what the cup looked like?
17 A. It was a white tall styrofoam cup.
18 Q. Could you see what was inside it?
19 A. No.
20 Q. Do you know what was inside it?
21 A. No.
22 Q. What did you say to the officer?
23 A. One of the officers asked me was I drinking. I said
24 earlier.
25 Q. Do you remember which officer asked you if you were

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - direct

- 1 drinking?
2 A. The male officer.
3 Q. Just to go back, when the female officer asked you if that
4 was your cup, what did you tell her?
5 A. No.
6 Q. Why did you tell her it wasn't your cup?
7 A. Because it wasn't mine.
8 Q. Did the officers go over and look at the cup?
9 A. No.
10 Q. Did they touch the cup?
11 A. No.
12 Q. Did they smell the cup?
13 A. No.
14 Q. Did they ever say anything to you about smelling alcohol --
15 A. No.
16 Q. -- on your person or breath?
17 A. No.
18 Q. What happened then with the officers?
19 A. The officer asked do I have ID, and I gave him my driver's
20 license.
21 Q. Where was your driver's license?
22 A. In my wallet.
23 Q. And your wallet was in your pocket?
24 A. Yes.
25 Q. Did you say anything before you reached into your pocket?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - direct

1 A. No.

2 Q. And when you reached into your pocket, do you remember
3 where you were standing?

4 A. I was standing on the sidewalk.

5 Q. Where were the officers standing?

6 A. The male officer was on my right. The female was on my
7 left.

8 Q. Was there anything behind you?

9 A. Yes.

10 Q. Were the officers standing in front of you or next to you?

11 A. They was like catty-corner. Like I couldn't walk from it
12 or I couldn't walk to the side.

13 Q. After you -- you testified that you gave your ID to the
14 officer. What happened then?

15 A. The officer proceeded and walked to the van to check --
16 check my ID.

17 Q. Which officer did that?

18 A. The female.

19 Q. And what, if anything, was the male officer doing at that
20 point?

21 A. Standing there with me.

22 Q. Did he touch you?

23 A. He searched me.

24 THE COURT: When you say he searched you, could you be
25 a little more specific. Could you explain to me what he did.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - direct

1 THE WITNESS: He searched my pockets and my jacket,
2 you know.

3 THE COURT: Jacket -- the jacket pocket?

4 THE WITNESS: Jacket, yes.

5 THE COURT: Did he go into your pockets of your
6 jacket?

7 THE WITNESS: Yes.

8 THE COURT: Those would be the outer pockets?

9 THE WITNESS: The inner pockets.

10 Q. Did he search -- he searched the pockets of your jacket?

11 A. Yeah.

12 Q. Did he search anything else, any other pockets?

13 A. My pants pockets.

14 Q. Where were your hands during the search?

15 A. My hands was up. I had my wallet in my hands.

16 Q. When you say your hands were up, can you describe that a
17 little bit more.

18 A. Well this height.

19 MS. VARNER: So let the record reflect that the
20 witness is holding his hands sort of at chest level in front of
21 him.

22 THE COURT: Yes. The record will so reflect.

23 MS. VARNER: Thank you, your Honor.

24 Q. Did the male officer ask your permission to search you?

25 A. No.

D3j9flo2 Dennis - direct

1 Q. Did you give him permission to search you?

2 A. No.

3 Q. Do you remember if he patted you down in addition to
4 searching you?

5 A. I don't remember.

6 THE COURT: I'm sorry. You don't remember that?

7 THE WITNESS: No, don't remember.

8 THE COURT: Okay.

9 Q. Did anyone else see what was going on?

10 A. My --

11 THE COURT: Wait a minute.

12 MR. MARUTOLLO: Objection, your Honor.

13 THE COURT: Sustained.

14 Q. Did you have conversations with anyone else during the time
15 that the officers were interacting with you?

16 A. Yes.

17 Q. Who?

18 A. My ex-girlfriend Kendra Edwards.

19 Q. And when did Kendra -- you testified that she had gone to
20 the store?

21 A. Yes.

22 Q. When did she come back?

23 A. I don't remember the point, what time she came back.

24 Q. Do you remember if it was before or after the female
25 officer went to the van?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - direct

1 A. I remember -- I don't remember.

2 Q. Did you say anything to Kendra?

3 A. Yes.

4 Q. What did you say --

5 THE COURT: He can't say what he said.

6 MS. VARNER: Sorry.

7 Q. Were you concerned about Kendra's presence at the police
8 interaction?

9 A. Yes.

10 Q. Why were you concerned?

11 A. I don't want -- I didn't want her to get upset and she get
12 upset and talk to the cops and aggravate the police officers.

13 Q. And why were you worried about her aggravating the police
14 officers?

15 A. It will make things worse.

16 Q. Did the police ever say anything to you about issuing you a
17 summons?

18 A. No.

19 MR. MARUTOLLO: Objection, your Honor.

20 THE COURT: Anyway the answer is no so it doesn't much
21 matter, okay.

22 Q. Did the police actually ever give you a summons?

23 A. No.

24 Q. Were you ever prosecuted for drinking in public that night?

25 A. No.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo2 Dennis - direct

1 Q. Did you ever have to pay a fine for drinking in public that
2 night?

3 MR. MARUTOLLO: Objection, your Honor.

4 THE WITNESS: No.

5 THE COURT: No. You weren't fined, right? No fine.

6 Okay.

7 THE WITNESS: No.

8 Q. After officer -- after the female officer went to the van,
9 what happened there -- sorry. The female officer went to the
10 van and the male officer searched you. What happened then?

11 A. The female officer came back.

12 Q. And did you ever see that white styrofoam cup again?

13 A. Yes.

14 Q. When did you see it?

15 A. The next day.

16 Q. And where was it when you saw it?

17 A. In the same place.

18 Q. On the street?

19 A. Yes.

20 Q. Did you ever file a complaint against the New York police
21 department for this incident?

22 A. No.

23 Q. Do you know if anyone ever did file a complaint?

24 A. Yes.

25 Q. And what do you know about that complaint?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - direct

1 A. I didn't know too much about it.

2 Q. Do you know who filed it?

3 A. Yes.

4 Q. Who did that?

5 A. Kendra Edwards.

6 Q. Were you there when she filed the complaint?

7 A. No.

8 Q. Did anything ever come of the complaint?

9 A. Yes. A phonecall.

10 Q. Do you remember who called you?

11 A. No.

12 Q. Was it a man or a woman?

13 A. A man.

14 Q. How long did you speak with this man?

15 A. About a minute.

16 Q. And do you remember what you discussed?

17 A. About the stop.

18 Q. Mr. Dennis, why did you decide to become a plaintiff in
19 this case?

20 A. In the near future I'm planning on moving back to New York
21 and want to stop the stop and frisk. I have younger kids, my
22 step-kids. And I don't want them to grow up what I had to went
23 through for years.

24 MS. VARNER: Thank you, Mr. Dennis.

25 THE COURT: All right. Mr. Marutollo.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - direct

1 CROSS-EXAMINATION

2 BY MR. MARUTOLLO:

3 Q. Good morning, Mr. Dennis.

4 A. Good morning.

5 Q. On the evening of January 12, 2008 you were helping to set
6 up for your girlfriend, Ms. Kendra Edwards, birthday party
7 later that night, correct?

8 A. Yes.

9 Q. And the party was scheduled to occur at the apartment you
10 shared with Ms. Edwards at 2034 7th Avenue in Harlem,
11 correct?

12 A. Can you repeat that question again.

13 Q. The party that evening was scheduled to occur at the
14 apartment you shared with Ms. Edwards at 2034 7th Avenue,
15 correct?

16 A. Yes.

17 Q. And Ms. Edwards' party was going to begin at 11:00 p.m.,
18 correct?

19 A. I can't remember that. I don't remember that.

20 Q. I'm sorry?

21 A. I don't remember.

22 MR. MARUTOLLO: May I approach, your Honor?

23 THE COURT: You're showing him his deposition
24 transcript?

25 MR. MARUTOLLO: Yes, your Honor.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo2 Dennis - cross

1 Q. First, Mr. Dennis, you had your deposition taken in this
2 case, correct?

3 A. Yes.

4 Q. And at that -- and that was on August 4, 2009?

5 A. Yes.

6 Q. And at that deposition you were asked questions and you
7 gave answers to those questions under oath, correct?

8 A. Yes.

9 Q. You swore to tell the truth in that deposition, correct?

10 A. Yes.

11 Q. I would just like to turn the Court's attention top page
12 141, lines 16 through 18.

13 "Q. What time was her birthday party scheduled to begin?

14 "A. At 11:00 p.m."

15 Did you give that answer to that question, Mr. Dennis?

16 MS. VARNER: Your Honor, objection. He testified that
17 he didn't remember.

18 THE COURT: So he's refreshing his recollection with
19 his prior testimony. That's fine.

20 Do you see that answer there? On page 141?

21 THE WITNESS: Yes.

22 THE COURT: Okay. Did that refresh your recollection
23 that it was to begin around 11:00 o'clock?

24 THE WITNESS: Yes.

25 THE COURT: Okay.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - cross

1 Q. And you arrived at Ms. Edwards' apartment for the 11:00
2 p.m. party at about 8:00 p.m. that night, correct?

3 A. Yes.

4 Q. After you arrived you helped clean up and you drank a
5 Heineken beer, correct?

6 A. Yes.

7 Q. And you drank that beer out of a twelve-ounce bottle,
8 correct?

9 A. Yes.

10 Q. At the same time you were having a beer you were also
11 drinking brandy, correct?

12 A. Yes.

13 Q. And that brandy was in a cup, correct?

14 A. Yes.

15 Q. And that cup was as big as a medium size Dunkin Donuts
16 styrofoam coffee cup, correct?

17 A. It was similar. It was a description.

18 THE COURT: That's the cup. How much brandy was in
19 it?

20 THE WITNESS: It was -- the cup was a little cup like
21 a water cup. And it was like a half an inch.

22 THE COURT: Half an inch. Okay.

23 Q. When you say -- during your direct examination you
24 mentioned that it was a foggy type cup?

25 A. A foggy, like a water cup.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - cross

1 Q. What do you mean by that, a water cup?

2 A. A water cup is about this size, what you get for water, may
3 have --

4 Q. Is it translucent? Can you see through it?

5 A. You can barely see through it. It's like a foggy cup.

6 Q. You claim it took you an hour to drink a single beer,
7 correct?

8 A. Yes.

9 Q. And you claim it took you 20 minutes to finish the brandy,
10 correct?

11 A. I don't remember.

12 Q. I'm sorry?

13 A. I don't remember.

14 Q. If you could just again turn your attention, Mr. Dennis, to
15 page 145, lines 20 through 21.

16 "Q. How long did it take you to finish the brandy?

17 "A. About 20 minutes."

18 Did you give that answer to that question, Mr. Dennis?

19 A. Yes.

20 Q. And at about 10:55 p.m. that night Ms. Edwards went to the
21 store to pick up party supplies, correct?

22 A. Yes.

23 Q. And at that point you claim that you went downstairs to
24 smoke a cigarette, correct?

25 A. Yes.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - cross

1 Q. It was not cold that night, correct?

2 A. Yes.

3 Q. You exited your building and walked down the ramp in front
4 of your building, correct?

5 A. Yes.

6 Q. And you were actually standing on the sidewalk in front of
7 your building, correct?

8 A. Yes.

9 MR. MARUTOLLO: I'd like to show you Defendant's
10 Exhibit Q-10 which for the record is bearing Bates stamps
11 numbers NYC_2_00025269 through NYC_2_00025273.

12 That should be appearing on the monitor.

13 Q. So, Mr. Dennis, I'm just going to show you -- there's
14 actually five photos of this location first. If we could maybe
15 go through each photo.

16 Can you see that Mr. Dennis?

17 A. Yes, I can see it.

18 MS. VARNER: Your Honor, can I ask that we take these
19 photos one by one instead of running through the entire set.

20 THE COURT: It might be more efficient to go through
21 the whole set. I think things would move along faster. He
22 just wants him to identify them now. I'd rather we just did it
23 that way.

24 Q. Mr. Dennis do these photos accurately reflect 2034 7th
25 Avenue in Harlem?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo2 Dennis - cross

1 A. It looks like the place.

2 Q. Now, if you could just actually go back to NYC_2_002572,
3 one right before it.

4 Mr. Dennis were you standing directly in front of
5 where that ramp is where the door is?

6 A. I was standing I'd say about three feet from the gate.

7 Q. Okay.

8 A. In the middle.

9 Q. And if you could actually go to NYC_2_00025270.

10 Was that no loitering sign, that was present in
11 January 2008, correct?

12 A. I don't remember seeing that.

13 MS. VARNER: Objection, your Honor. This also is not
14 part of the case.

15 MR. MARUTOLLO: Now Mr. Dennis --

16 THE COURT: I'll allow him to show the sign. But the
17 witness actually doesn't recall it being there.

18 Q. Mr. Dennis the front of your body was facing the street,
19 correct?

20 A. Yes.

21 Q. You said that you were standing there smoking a cigarette,
22 correct?

23 A. Yes.

24 Q. You smoked a cigarette for about five minutes, correct?

25 A. Yes.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo2 Dennis - cross

1 Q. You finished smoking the cigarette after 11:00 p.m.,
2 correct?

3 A. I don't remember what time I finished smoking the
4 cigarette.

5 Q. I'm just going to turn your attention again to page -- to
6 your deposition transcript, page 161, lines 21 through 23.

7 "Q. What time was it when you finished smoking the cigarette,
8 approximately?

9 "A. Approximately after 11:00 p.m. or after 11:00."

10 Did you give that answer to that question, Mr. Dennis?

11 A. I didn't see the section yet.

12 Q. I'm sorry. I'll repeat it. It's page 161, lines 21
13 through 23.

14 A. Yeah, approximately. Yeah. That's not at the right time.

15 Q. And just to be clear you were actually standing on the
16 sidewalk, correct, at the time of this encounter?

17 A. Yes.

18 Q. Yes?

19 A. Yes.

20 Q. And you were standing the entire time, correct?

21 A. Yes.

22 Q. And after you finished smoking the cigarette, you waited
23 for Ms. Edwards to come back, correct?

24 A. Yes.

25 Q. You didn't speak to anyone at this point, correct?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2

Dennis - cross

- 1 A. No.
- 2 Q. No you didn't speak to anyone?
- 3 A. I didn't speak to no one.
- 4 Q. And that street has street lights, correct?
- 5 A. Yes.
- 6 Q. In fact, that street is very well lit, correct?
- 7 A. Yes.
- 8 Q. No pedestrians walked by you at this point, correct?
- 9 A. I don't remember.
- 10 Q. Just turn your attention to page 162 of your deposition.
- 11 Lines 17 through 18.
- 12 "Q. Were there any pedestrians that walked by you?
- 13 "A. No."
- 14 Did you give that answer to that question?
- 15 A. Yes.
- 16 Q. And there were no people hanging out on the street,
- 17 correct?
- 18 A. I don't remember.
- 19 Q. You don't remember then, I'll again turn your direction to
- 20 page 162, lines 19 through 20.
- 21 "Q. Were there any people hanging out on the street?
- 22 "A. No."
- 23 Did you give that answer to that question?
- 24 A. Yes.
- 25 Q. And, in fact, besides you the street was empty, correct?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2

Dennis - cross

- 1 A. Excuse me.
2 Q. Besides you being on the street, the street was empty at
3 that point, correct?
4 A. (No response).
5 Q. Again if you don't remember I can point you to your
6 deposition page.
7 I'm asking you not read from the deposition.
8 A. Yes. That's what I said.
9 Q. Now while were you standing facing the street, you claim
10 that a cup was about five feet away from you, correct?
11 A. Yes.
12 Q. And you claim that this cup was white styrofoam?
13 A. Yes.
14 Q. And the cup did not have a cover on it, correct?
15 A. No.
16 Q. Now while you were standing in front of the building, two
17 officers pulled up in a van, correct?
18 A. Yes.
19 Q. The van was a marked NYPD van with a shield emblem on the
20 side of it, correct?
21 A. Yes.
22 Q. The van pulled in the lane closest to you, correct?
23 A. Yes.
24 Q. The van was driving slowly, correct?
25 A. Yes.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo2 Dennis - cross

1 Q. And it was driving actually about five miles an hour,
2 according to you, correct?

3 A. I don't know.

4 Q. Let me turn your attention again to page 165, lines 11
5 through 12.

6 "Q. Under five miles an hour?

7 "A. About five, approximately."

8 Did you give that answer to that question?

9 A. Yes.

10 THE COURT: Okay. We're going to pause here for the
11 morning recess and we'll reconvene in ten minutes. Thank you.

12 (Recess)

13 THE COURT: Mr. Marutollo.

14 MR. MARUTOLLO: Your Honor, before we begin I'd like
15 to enter Exhibit Q-10 into evidence.

16 THE COURT: Okay.

17 (Defendants' Exhibit Q-10 received in evidence)

18 Q. Mr. Dennis just going back for a moment to the cup that you
19 were discussing, the styrofoam cup, you couldn't see if there
20 was anything inside that cup, correct?

21 A. No.

22 Q. Now, you had mentioned before the break that the van had
23 been driving slowly, correct?

24 A. Yes.

25 Q. Now the van stopped right in front of you, correct?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2

Dennis - cross

- 1 A. Yes.
- 2 Q. There were two officers in the van, correct?
- 3 A. Yes.
- 4 Q. After the van stopped the two officers exited the van,
5 correct?
- 6 A. Yes.
- 7 Q. And the two officers approached you, correct?
- 8 A. Yes.
- 9 Q. And the two officers were in uniform?
- 10 A. Yes.
- 11 Q. And one of the two officers was a female Hispanic officer,
12 right?
- 13 A. Yes.
- 14 Q. And the other officer was a male Hispanic officer?
- 15 A. I don't know what his -- I don't know.
- 16 Q. Okay, Mr. Dennis. I'd just like to turn your attention to
17 page 168 of your deposition transcript, lines 19 through 21.
- 18 "Q. Could you tell me what the race of the male officer was?
- 19 "A. He was Hispanic."
- 20 Did you give that answer to that question?
- 21 A. Yes.
- 22 Q. Now, the female Hispanic officer asked you if you were
23 drinking, correct?
- 24 A. No. The male asked me that.
- 25 Q. I'd like to turn your attention to page 166, lines 21

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - cross

1 through 24.

2 "Q. And what did they say to you?

3 "A. They asked me was I drinking, was that my cup.

4 "Q. Which officer said that to you?

5 "The female officer."

6 Did you give those answers to those questions?

7 A. She asked me was that my cup.

8 Q. And she was asking if you were drinking as well.

9 A. I don't remember that.

10 Q. Now the female Hispanic officer was polite to you in asking
11 you these questions, correct?

12 A. Yes.

13 Q. And you told the male Hispanic officer that you had a drink
14 earlier, correct?

15 A. Yes.

16 Q. And you did, in fact, have that brandy and beer earlier,
17 correct?

18 A. Yes.

19 Q. After you told the officers that you had a drink earlier,
20 the officers asked you for your identification, correct?

21 A. Yes.

22 Q. And you showed the officers your driver's license, correct?

23 A. Yes.

24 Q. And at this point the officers did not touch you in any
25 way, right?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - cross

1 A. Can you repeat that again.

2 Q. At this point the officers did not touch you in any way,
3 correct?

4 A. No.

5 Q. That's not correct? Or that is correct?

6 A. No. They didn't touch me when I gave them my ID.

7 Q. Now, you handed your ID to the female Hispanic officer,
8 correct?

9 A. Yes.

10 Q. As you handed your ID to the female Hispanic officer
11 Ms. Kendra Edwards walked up to you, correct?

12 A. I don't remember exactly what time she walked up.

13 Q. I'd like to turn your attention to page 172 of your
14 transcript, deposition transcript, lines 7 through 9.

15 "Q. So Kendra walked up at approximately the time when you
16 handed the officer your identification.

17 "A. Yes."

18 Did you give that answer to that question?

19 A. Yes.

20 Q. So Ms. Edwards was not present when you were initially
21 stopped by the NYPD officers, right?

22 A. No, she wasn't.

23 MS. VARNER: Objection, your Honor, calls for a legal
24 conclusion about what the stop is.

25 THE COURT: At initiation of the stop she wasn't

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - cross

1 there, right?

2 THE WITNESS: No, she wasn't there.

3 Q. And at some point the female officer went back into the
4 NYPD van with your ID, correct?

5 A. Yes.

6 Q. And you saw the female officer go inside the van and speak
7 on her phone, correct?

8 A. Yes.

9 Q. And the female officer was on her phone holding your ID in
10 the van at that point, correct?

11 A. Yes.

12 Q. And then the female officer exited the van and approached
13 you, correct?

14 A. Yes.

15 Q. Now, you're not certain if the male Hispanic police officer
16 searched you before or after the female police officer went to
17 the van, correct?

18 A. Yes. I don't know.

19 Q. Now, you didn't actually file a complaint with the Civilian
20 Complaint Review Board in this case, correct?

21 A. No.

22 Q. Your girlfriend -- your ex-girlfriend, Ms. Edwards made the
23 complaint with the CCRB, correct?

24 A. Yes.

25 Q. And it was her idea to make the complaint, right?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - cross

1 A. I don't know.

2 Q. Let me just turn your attention to page 110 of your
3 deposition transcript. And lines 6 through 8.

4 "Q. Whose idea was it to file a complaint with CCRB about the
5 incident?

6 "A. Kendra Edwards."

7 Did you give that answer to that question?

8 A. Yes.

9 Q. And you -- you can please stop reading.

10 You understood that Ms. Edwards' complaint dealt only
11 with how she was being treated at the police precinct and how
12 they arrested you the wrong way, correct?

13 A. Repeat that again.

14 Q. You understood that Ms. Edwards' complaint to CCRB dealt
15 only with how she was being treated at the police precinct and
16 how they arrested you the wrong way, correct?

17 A. I don't know.

18 MS. VARNER: Objection, compound.

19 THE COURT: Could you rephrase, please.

20 Q. There's two things that Ms. Edwards said was part of her
21 complaint to the CCRB, correct?

22 A. I don't know what she complained about at CCRB.

23 Q. Well let me turn your attention to your deposition
24 transcript, page 106 lines 16 through 25.

25 "Q. So besides complaining about how she was treated at the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2

Dennis - cross

1 police precinct do you know whether she complained of anything
2 else to CCRB?

3 "A. And about me.

4 "Q. Did she tell you she complained about you?

5 "A. Yes.

6 "Q. What did she -- what did she tell you she complained about
7 with respect to you?

8 "A. How they arrested me --"

9 MS. VARNER: Objection, your Honor.

10 THE COURT: Yes. Sustained. This really isn't
11 admissible. You did it at the deposition. That's up to you
12 folks. But it's not admissible here, what she said.

13 MR. MARUTOLLO: Just to refresh his recollection.

14 THE COURT: Yeah, but I wouldn't allow in what she
15 said. So it's an inadmissible offer anyway. So why would I
16 allow his recollection to be refreshed when I wouldn't allow
17 him to testify as to what she said.

18 MR. MARUTOLLO: I think it's on the effect of the
19 listener as well, your Honor.

20 THE COURT: No, it's not. That argument won't work
21 here.

22 Q. Just to be clear again -- one moment, your Honor.

23 MR. MARUTOLLO: It's also, your Honor, directly
24 related to the failure to investigate claim that Ms. Edwards
25 has brought.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2

Dennis - cross

- 1 THE COURT: It may be. But call Ms. Edwards if you
2 want. He can't say it.
- 3 MS. VARNER: Your Honor --
- 4 THE COURT: What is it? What do you want?
- 5 MS. VARNER: I think you said what I was going to say.
- 6 THE COURT: That's right.
- 7 Q. Just to be clear again, Mr. Dennis, Ms. Edwards was not
8 present when the officers initially approached you, correct?
- 9 A. No.
- 10 Q. And an investigator contacted you about Ms. Edwards'
11 allegations?
- 12 A. Yes.
- 13 Q. And you personally never filed any complaints with the
14 internal affairs bureau of the police department about this
15 incident, right?
- 16 A. No.
- 17 Q. No, you did not?
- 18 A. No. I didn't file no complaint.
- 19 Q. And you believe that you were stopped because of your race?
- 20 A. Yes.
- 21 Q. And you claim that the two Hispanic officers stopped you
22 because they don't stop Caucasians, correct?
- 23 A. No.
- 24 Q. No, that's not correct?
- 25 A. Let me rephrase that.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - cross

1 I'm from Harlem. And I --

2 Q. Direct him to answer the question.

3 THE COURT: I can't hear his answer because you
4 interrupted. You asked the question. Now I'd like to hear the
5 answer.

6 MR. MARUTOLLO: It was a yes-or-no question.

7 THE COURT: It wasn't. You were raising the question
8 because of race. He believes that whites aren't stopped.

9 You proceeded to say I'm from Harlem and --

10 THE WITNESS: I'm from Harlem and we get stopped
11 everyday, the majority of the Blacks and Hispanics get stopped,
12 but it's the neighborhoods they stop us in.

13 MR. MARUTOLLO: One moment, your Honor.

14 (Pause)

15 Q. Just to be clear, Mr. Dennis, throughout this entire stop
16 the two Hispanic police officers were always polite to you,
17 correct?

18 A. Yes.

19 MR. MARUTOLLO: One moment, your Honor.

20 (Pause)

21 No more questions, your Honor.

22 THE COURT: Thank you.

23 Any redirect?

24 MS. VARNER: Very brief, your Honor.

25 (Continued on next page)

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - cross

1 REDIRECT EXAMINATION

2 BY MS. VARNER:

3 Q. Mr. Marutollo asked you some questions about photographs of
4 2034 7th Avenue. Do you remember that?

5 A. Yes.

6 Q. I'd like to put up the portion of Defendants' Exhibit Q-10
7 that's been Bates stamped NYC_2_25272.

8 Do you remember looking at this photograph before?

9 A. Yes.

10 Q. Mr. Dennis, can you describe where you were standing when
11 the officers stopped you.

12 A. It's hard to describe. But you see the tissue on the
13 ground.

14 THE COURT: Yes. I do.

15 THE WITNESS: If you go up with the line and the
16 divider is at in the middle -- like right in front of the door
17 but a line in the middle. That's where I was standing.

18 Q. So if I can try to characterize what you've just said. You
19 were standing --

20 MR. MARUTOLLO: Objection, your Honor. I think the
21 testimony speaks for itself.

22 THE COURT: She wants to make it clear for the record
23 so the record understands the relationship of the photograph to
24 the testimony. But go ahead.

25 Q. You were standing --

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - redirect

1 MR. MARUTOLLO: Your Honor just to be clear we have a
2 pointer if that's a little bit easier.

3 THE COURT: That won't reflect it on the record. It's
4 nice for the courtroom but the transcript needs to show it.

5 Anyway how would you say it for the record?

6 BY MS. VARNER:

7 Q. You were standing approximately in the -- on the sidewalk
8 in front of the fence.

9 A. Yes.

10 Q. At the point sort of halfway -- basically directly --

11 A. A block over -- a square block over from the fence.

12 Q. What do you mean by the fence?

13 A. The fence that's going before you go up to the ramp.

14 Q. Okay. So I see what you're referring to as a fence.

15 A. Yeah, a gate.

16 Q. That's sort of immediately before a person would enter on
17 to the ramp?

18 A. Yes.

19 Q. And you're saying that you stood one sidewalk block to the
20 right of the gate where someone would enter onto the ramp?

21 A. Yeah and one center up of that block. So I'm in like that
22 square -- almost where the tissue -- tissue at, but in the
23 middle.

24 Q. Okay. And was your back to the building?

25 A. Yes.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo2 Dennis - redirect

1 Q. And you were facing the street?

2 A. Yes.

3 Q. What's on the street immediately where you were facing?

4 A. I don't remember.

5 Q. Can you look at NYC_2_25273.

6 Does this picture refresh your recollection about what
7 was on the street immediately in front of you?

8 A. A bus stop.

9 Q. Does this picture show the bus stop?

10 A. Yes.

11 Q. And finally I'd just like to look at NYC_2_00025270.

12 Do you see the red sign on -- in this picture?

13 A. Yes.

14 Q. Do you recall seeing this sign in January 12, 2008?

15 A. Never recognized it.

16 Q. Did any of the officers who stopped you on the night of
17 January 12, 2008 ever say anything to you about loitering?

18 A. No.

19 MS. VARNER: That's all, your Honor.

20 THE COURT: Thank you.

21 Anything further?

22 MR. MARUTOLLO: One moment, your Honor.

23 (Pause)

24 (Continued on next page)

25

D3j9flo2 Dennis - redirect

1 RE CROSS EXAMINATION

2 BY MR. MARUTOLLO:

3 Q. Mr. Dennis, you mentioned during the redirect examination
4 just now, you were talking about where you were standing. I'd
5 just like to --

6 MR. MARUTOLLO: If I may approach, your Honor. I'd
7 like to have Mr. Dennis mark the photograph for clarity sake?

8 THE COURT: Sure.

9 Q. Mr. Dennis, could you please mark where you were standing
10 when the police approached you. You can mark it with an X on
11 that document which I believe is for the record NYC_2_00025272.

12 Just we'll enter this into evidence as well.

13 THE COURT: That's fine.

14 MR. MARUTOLLO: If we could publish it on the ELMO.

15 (Defendants' Exhibit NYC_2_00025272 received in
16 evidence)

17 Q. Mr. Dennis did you just mark this X on this document?

18 A. Yes.

19 MR. MARUTOLLO: No further question, your Honor.

20 THE COURT: Anything further?

21 MS. VARNER: Nothing further.

22 THE COURT: Thank you. All done.

23 (Witness excused)

24 THE COURT: Your next witness. Who are the plaintiffs
25 calling now.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Dennis - recross

1 MS. BORCHETTA: The plaintiffs are calling Nicholas
2 Peart.

3 NICHOLAS PEART,
4 called as a witness by the Plaintiffs,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. PATEL:

8 Q. Good morning.

9 A. Good morning.

10 Q. Are you a class member in this case?

11 A. Yes.

12 Q. How old are you?

13 A. I'm 24 years old.

14 Q. What's your highest level of education, Mr. Peart?

15 A. An associates degree from Borough of Manhattan Community
16 College.

17 Q. When did you graduate from Borough of Manhattan Community
18 College?

19 A. 2012.

20 Q. What was your degree there?

21 A. Liberal arts degree.

22 Q. Are you planning to pursue any further education?

23 A. Yes. When my family obligations allow me to do so.

24 Q. Can you explain what you mean.

25 A. I am the guardian, legal guardian and caretaker of my three

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2

Peart - direct

1 younger siblings.

2 Q. How did you come to become the legal guardian of your
3 younger siblings?

4 MS. PUBLICKER: Objection, your Honor. Relevance.

5 THE COURT: It's borderline. I guess it's background.

6 Go ahead.

7 How did that happen?

8 THE WITNESS: My mom passed away from cancer and I
9 gained custody of my siblings.

10 THE COURT: How long ago was that?

11 THE WITNESS: This is two years ago.

12 THE COURT: How old are they, the siblings?

13 THE WITNESS: My -- the youngest is 12 years old, my
14 brother. My other brother, he's 13. And I have -- my sister,
15 she's disabled. She is 20 years old.

16 MS. PATEL: Thank you.

17 Q. Are you currently employed, Mr. Peart?

18 A. Yes.

19 Q. Where are you employed?

20 A. I am employed at the Brotherhood-SisterSol.

21 THE COURT: Sorry?

22 THE WITNESS: The Brotherhood-SisterSol.

23 THE COURT: Brotherhood Sister?

24 THE WITNESS: The Brotherhood slash SisterSol.

25 THE COURT: What's that? What is that?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Peart - direct

1 THE WITNESS: It's a nonprofit organization in Harlem,
2 an organization that I am alumni of.

3 Q. Can you just say what the purpose of the
4 Brotherhood-SisterSol is?

5 A. The purpose of the Brotherhood-SisterSol --

6 Q. The mission.

7 A. I became a part of the Brotherhood-SisterSol in high
8 school. I was part of the right-of-passage program which
9 guides a young boy to being a man. You learn about Pan-African
10 history.

11 We go on college tours. We have weekly sessions of
12 where we define what it is to be a man, brother, and leader.
13 We come up with mission statements as a chapter. We also come
14 up with oaths of dedication after the rights of passage, after
15 the duration of our high school careers.

16 Q. Where is Brotherhood-SisterSol located?

17 A. It is located in Harlem.

18 Q. Is it a service organization in Harlem?

19 A. Yes.

20 Q. What's your responsibility -- what's your position? What's
21 your title?

22 A. My title -- I am the after-school program elementary
23 facilitator.

24 Q. What are your responsibilities in that position?

25 A. My responsibilities are I pick up the kids from school.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Peart - direct

1 Q. How old are the kids?

2 A. The kids are from seven to twelve years old.

3 Q. And what do you do with them in that position?

4 A. I pick them up from school. They have free time.

5 After free time, we serve them a healthy snack.

6 It's homework time for an hour.

7 And we have whatever activity we do for that
8 particular day.

9 Q. Thank you.

10 Mr. Peart, when was the most recent time you were
11 stopped by NYPD officers?

12 A. The most recent time was in 2011, April 2011.

13 Q. Do you recall the exact date of that stop?

14 A. I don't recall the exact date.

15 Q. What -- how did you come to determine that your stop was in
16 April of 2011?

17 A. Because I recently looked at the Facebook post.

18 Q. When did you do that?

19 A. I did that over the weekend.

20 Q. What was it about the Facebook post that made you remember
21 that it was in April 2011?

22 A. I remembered the exact date. The exact date was posted on
23 Facebook. And I recall -- I recall writing it right after my
24 stop.

25 Q. In the past you've referred to the date of this stop as

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Peart - direct

1 May 2011; isn't that correct?

2 A. Yes.

3 Q. Sitting in court today do you now know -- what do you now
4 know is the date of that stop?

5 A. That it was April.

6 Q. Around what time did that stop occur?

7 A. Around 11:00 at night.

8 Q. Can you recall the weather that night?

9 A. It was chilly.

10 Q. What were you wearing on the night of April 13 -- sorry
11 April -- that night in April 2011?

12 A. I was wearing sneakers. I had on jeans. And a hoodie.

13 Q. Do you recall the color of your hoodie?

14 A. Yes. It was red.

15 Q. Where were you stopped, Mr. Peart?

16 A. I was stopped on my block on 144th between Lenox and 7th
17 Avenue.

18 Q. What were you doing at that time?

19 A. I had been -- I had been going to the corner store, the
20 corner bodega to pick up some milk for my siblings for them to
21 have the next morning.

22 Q. What were your sister and your brothers doing when you left
23 your apartment?

24 A. My brothers, they had been in bed. My sister, she was up.

25 Q. What happened when you left your apartment?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Peart - direct

- 1 A. I left my apartment and I walked up the block and I
2 encountered NYPD officers.
3 Q. What were you doing as you were walking down the block?
4 A. I was texting.
5 Q. Were you on the sidewalk?
6 A. Yes.
7 Q. How many officers stopped you?
8 A. Two.
9 Q. When did you first see the officers?
10 A. When they were right in front of me.
11 Q. If you recall, can you please provide the race of the two
12 officers.
13 A. One officer was white. One officer -- I know he wasn't
14 black. He was -- it was a shorter officer. He was white. He
15 had glasses. He was shorter than me.
16 Q. Do you recall the race of the second officer?
17 A. He wasn't black.
18 Q. Is there anything else you can describe about the second
19 officer?
20 A. The second officer, he had salt and pepper hair.
21 Q. What about his height?
22 A. His height, he was about my height or taller.
23 Q. What were they wearing?
24 A. They were wearing NYPD uniforms.
25 Q. What did the uniforms look like?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Peart - direct

- 1 A. The uniforms he had on -- the blue uniforms that NYPD
2 officers wear. He had on a badge with a number. He had -- he
3 had a gun.
4 Q. Excuse me. You're saying he. Is it one officer or both of
5 them?
6 A. Both of them.
7 Q. Excuse me. Go ahead.
8 A. Sorry. They both had guns. They both had the memo pads
9 that officers carry. Black boots.
10 Q. And where was their gun located?
11 A. On -- by their waist.
12 Q. Was there anything else on -- around their waist area that
13 you can recall?
14 A. A night stick.
15 Q. Is there any other reason that you believed the officers
16 who stopped you were New York police department officers?
17 A. Repeat that question, ma'am.
18 Q. Is there any other reason that you believe those officers
19 were NYPD officers?
20 A. Was there any other reason why I --
21 Q. Was there anything else about their description?
22 A. They had walkie-talkies.
23 Q. Where was the officer who was shorter than you -- where was
24 he standing when you first noticed him?
25 A. They were standing directly in front of me.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Peart - direct

1 Q. Where was the officer with the salt and pepper hair?

2 A. He was in front of me as well.

3 Q. Were either of them slightly to your right or to your left
4 or were they directly in front of you?

5 A. They were directly in front of me. They were -- they both
6 were.

7 Q. What happened when they first stopped you?

8 A. When they first stopped me, I was walking up the block
9 texting and when I was stopped one of the officers took my
10 cellphone.

11 Q. Did they say anything to you?

12 A. They told me to put my hands up against the wall, the
13 church wall.

14 Q. It was a wall. What kind of building was it?

15 A. It was a church.

16 Q. Do you know what happened to your cellphone?

17 A. Yes. They took it.

18 Q. Do you know what they did with your cellphone?

19 A. No, I do not.

20 Q. Were you pat down?

21 A. Yes. I was patted down over --

22 Q. Do you which officer patted you down?

23 A. The shorter officer patted me down.

24 Q. Was that the officer with the salt and pepper hair?

25 A. No. That's not the officer with the salt and pepper hair.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2

Peart - direct

1 Q. I'm sorry.

2 What was the officer with the salt and pepper hair,
3 where was he standing while you were getting pat down?

4 A. He was standing to my right.

5 Q. Did the shorter officer -- when he pat you down, did he
6 take any -- I'm sorry.

7 Can you describe the pat-down.

8 A. I was patted down over my upper body, my arms, both my
9 arms, my lower body as well, both my legs.

10 Q. Can you --

11 THE COURT: On the outside of your clothing?

12 THE WITNESS: Yes. On the outside of my clothing.

13 THE COURT: No hands in pockets?

14 THE WITNESS: They put their hands in my pockets.

15 THE COURT: They did put their hands -- which pockets?

16 Pants? Jacket? Shirt?

17 THE WITNESS: Pants.

18 THE COURT: How about the hoodie? Did they have --

19 THE WITNESS: Yeah. The hoodie -- the pockets.

20 THE COURT: And they put their hands in there too?

21 THE WITNESS: I don't recall.

22 THE COURT: But the pants you're sure?

23 THE WITNESS: Pants, yes, I'm sure.

24 THE COURT: Front pockets or back pockets?

25 THE WITNESS: Both.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo2 Peart - direct

1 THE COURT: Okay.

2 Q. Can you -- is there any further detail you can provide of
3 the pat-down?

4 A. Just pat down -- they just patted down my pockets and --
5 yeah, they patted down my pockets and put their hands in my
6 pockets.

7 Q. Can you describe what they did when they pat down your
8 legs.

9 A. When they patted down my legs during the search I know --
10 one of the officers received my wallet.

11 Q. Did the officer -- did he touch your upper body? How did
12 he -- describe how he touched your upper body.

13 A. I was searched from -- they patted both my arms.

14 Q. When you say patted both your arms, what do you mean?

15 A. They patted both my arms, went down.

16 (Continued on next page)

17

18

19

20

21

22

23

24

25

D3J8FLO3

Peart - direct

1 MS. PATEL: Let the record reflect the witness is
2 running his fingers from his shoulders to his wrist.

3 THE COURT: OK.

4 A. Upper torso -- I mean, torso, and they ran their hands
5 through my -- down both my legs.

6 Q. Can you describe what you mean by running down both of your
7 legs?

8 A. They ran -- one officer -- the officer that was patting me
9 down, he had both hands searching me.

10 Q. On the inside and outside of your leg?

11 A. The outside of my leg.

12 Q. Did he run it from your waist to your ankle?

13 A. Yes.

14 Q. Did the shorter officer -- I'm sorry.

15 The officer who was standing to your right, he had
16 salt and pepper hair, that's what you testified to?

17 A. Yes.

18 Q. Did he put his hands in your pockets?

19 A. Yes.

20 Q. Did he take anything out of your pockets?

21 A. No. He had my wallet. That was the officer with my
22 wallet.

23 Q. Did he take anything else out of your pockets?

24 A. He took my keys.

25 Q. What did the officer with the salt and pepper hair do with

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

- 1 your wallet?
2 A. He searched through my wallet.
3 Q. What do you mean by searched?
4 A. He looked through my wallet, and he was the one that
5 discovered my ID.
6 Q. He removed your ID from your wallet?
7 A. Did I remove it?
8 Q. Did he?
9 A. Yes, he removed it.
10 Q. This is while you were standing with your hands against the
11 wall?
12 A. Yes.
13 Q. What did he do with your ID?
14 A. He was looking at the ID.
15 Q. Did the officer ask for permission to remove your wallet
16 from your pocket?
17 A. No. He did not ask permission.
18 Q. Did you give him permission to take your wallet out of your
19 pocket?
20 A. No, I did not.
21 Q. Does your ID have your address on it?
22 A. Yes.
23 Q. Does it have your apartment number?
24 A. Yes.
25 Q. Did you say anything to the officers at this point?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3

Peart - direct

- 1 A. Something to the effect of, what's happening, why is this
2 happening?
- 3 Q. Anything else as he was looking at your ID?
- 4 A. Explaining that I lived on this block, I came from where I
5 said I came from.
- 6 Q. What did the shorter officer, the one standing behind you,
7 what did he do at that point?
- 8 A. At some point I was turned around and the shorter officer,
9 he had my sweatshirt, the sweatshirt that I was wearing, in the
10 ball of his hand.
- 11 Q. Were you handcuffed?
- 12 A. At that point I was handcuffed.
- 13 Q. What did you feel at that point?
- 14 A. I felt criminalized. I felt degraded. I was upset about
15 the incident. You know, I had been going to the corner bodega
16 and for that to happen on my way there was very upsetting.
- 17 Q. Was this the first time you were ever in handcuffs?
- 18 A. It was the first time I was ever in handcuffs.
- 19 Q. How did it make you feel?
- 20 A. I felt degraded.
- 21 Q. What were you thinking about being in handcuffs while you
22 were standing there?
- 23 A. I never had been in handcuffs. I never been in handcuffs,
24 ever have to have my hands put behind my back, I never had that
25 happen before.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

1 Q. Why did that make you feel degraded?

2 A. For me to be stopped on my way to the corner store that's
3 up the block, and to be treated like that by someone who works
4 for New York City, I felt degraded and hopeless.

5 Q. You testified a moment ago that the salt and pepper officer
6 also removed your keys from your pocket. Did he ask you
7 permission to take the keys out of your pocket?

8 A. No, he didn't.

9 Q. Did the salt and pepper officer ask you anything about your
10 keys?

11 A. Yes.

12 Q. What did he ask you?

13 A. He asked which one of the keys opens the door to my
14 building.

15 Q. Did you tell him?

16 A. Yes.

17 Q. Why did you tell the officer which key was for your door?

18 Can I give him some water?

19 A. Repeat the question again.

20 Q. Mr. Peart, why did you tell the officer with your keys
21 which key was for your door?

22 A. I told him because I wanted to further prove that I lived
23 where I said I lived.

24 Q. Did you give the officer with the salt and pepper hair
25 permission to go into your apartment?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3

Peart - direct

1 A. No.

2 THE COURT: You said no, you didn't?

3 THE WITNESS: No, I did not.

4 Q. What did you see the officer do next?

5 A. I watched him go into my building.

6 Q. What were you thinking as you were standing there in
7 handcuffs watching the officer go into your building?8 A. I have kids in the house. I have kids in the house and
9 there wasn't anybody there.

10 Q. How long was he in your building, approximately?

11 A. A couple of minutes. I say around five minutes.

12 Q. After the officer with salt and pepper hair went into your
13 building, what happened to you next?14 A. The officer that had my sweatshirt in the ball of his hand
15 and he turned me around, he put me in the back of the police
16 car.17 Q. Can you just explain, when you said he had your sweatshirt
18 in the ball of his hand, were you wearing your sweatshirt at
19 the time?20 A. Yes. I was wearing my sweatshirt, and he had my sweatshirt
21 like this, fist like.22 MS. PATEL: Let the record reflect that the witness is
23 holding the chest area of his shirt in his hand.

24 THE COURT: The record will so reflect.

25 MS. PATEL: In a ball.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3

Peart - direct

- 1 THE COURT: The record will so reflect.
2 Q. What did the car look like?
3 A. It was an unmarked car.
4 Q. How many doors did it have?
5 A. It had four doors.
6 Q. Where was it parked?
7 A. It was parked in front of the church.
8 Q. What happened next?
9 A. I was put in the back of the police car. I was inside the
10 police car.
11 Q. Did you say anything to the officer as he was putting you
12 in the car?
13 A. I don't recall. Probably so. I don't recall.
14 Q. Did he uncuff you when he put you in the car?
15 A. No.
16 Q. What happened next?
17 A. When he put me in the car, he took off my sneakers, both my
18 sneakers.
19 Q. What did the officer say to you when he took off your
20 shoes?
21 A. He asked me if I had weed on me.
22 Q. What did you say?
23 A. No.
24 Q. Then did he take off the handcuffs?
25 A. No.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3J8FLO3 Peart - direct

- 1 Q. What did he do next?
2 A. He closed the door.
3 Q. Did he do anything before he closed the door?
4 A. Yeah. He took off both my sneakers.
5 Q. Then what did he do?
6 A. He patted over my socks.
7 Q. Then what happened?
8 A. He closed the door.
9 Q. Were you still in handcuffs?
10 A. Yes.
11 Q. What were you thinking at the time?
12 A. At the time, the level of uncertainty, not knowing where
13 the other officer was, just knowing that the other officer was
14 in my apartment -- I mean, my building, knowing that, mixed in
15 with being handcuffed for the first time, and in the back of a
16 police car for the first time.
17 Q. Is there anything else you were thinking at the time?
18 A. I was upset.
19 Q. What was it that was concerning you about the officer in
20 the building?
21 A. That I had kids -- I was concerned that he was at my
22 apartment door.
23 Q. Were you afraid of anything else?
24 A. Yes. I was afraid that, you know, he would -- you know, go
25 inside my apartment.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3J8FLO3

Peart - direct

1 MS. PUBLICKER: Objection, your Honor.

2 THE COURT: State of mind.

3 MS. PUBLICKER: It is speculating at this point.

4 THE COURT: He is not saying it would have happened.

5 He is saying what he feared. It's his state of mind. That's
6 all.

7 Go ahead.

8 A. Just the level of uncertainty, knowing that I had kids in
9 the house, you know, as well as my sister, and not being an
10 adult there, I wasn't there to take care of that situation of a
11 cop being at the door.

12 Q. What happened next?

13 A. What happened next, after the officer that was in the
14 building, he had came back to the -- he had came back up the
15 block.

16 Q. He came back from your building?

17 A. He came back from my building.

18 Q. Was he talking to the other officer when he came back?

19 A. Yes, he was.

20 Q. Could you hear them?

21 A. No, I couldn't.

22 Q. Why not?

23 A. Because the door was closed.

24 Q. Then what happened?

25 A. They opened up the car door and they let me out.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

- 1 Q. They took off your handcuffs finally?
2 A. Yes.
3 Q. How long do you think you were in handcuffs?
4 A. To the best of my recollection, around, like, five minutes.
5 Q. At any point did you ask the officers why you were being
6 stopped?
7 A. Yes.
8 Q. What did they say?
9 A. I don't recall exactly what they said, but I was given a
10 nonchalant response. They didn't seem interested in what I had
11 to say.
12 Q. Did they give you a reason even though it was nonchalant?
13 A. I don't recall at this point.
14 Q. Did they return your keys, phone and wallet?
15 A. Yes.
16 Q. Mr. Peart, did they find any weapons on you?
17 A. No, they didn't.
18 Q. Did they find any drugs?
19 A. No.
20 Q. Did you go to the store and get the milk?
21 A. No, I did not.
22 Q. Why not?
23 A. I just was very upset about what happened to me.
24 Q. Go ahead.
25 A. I was just very upset and concerned about what happened and

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

1 my siblings.

2 Q. Mr. Peart, I am going to jump ahead in time now.

3 Do you recall where you were in the early morning
4 around 5 a.m. on August 5, 2006?

5 A. Yes.

6 Q. Where were you?

7 A. I was on 96th Street and Broadway.

8 Q. What were you doing there?

9 A. I had been celebrating my birthday at my sister's house,
10 and while I was on 96th Street and Broadway, I was sitting in
11 the median of 96th and Broadway.

12 Q. Were there benches on that median?

13 A. Yes, back then.

14 Q. Were you there alone?

15 A. No, I wasn't there alone. I had my cousin and a family
16 friend that was in town.

17 Q. Was it dark outside?

18 A. Yes.

19 Q. Do you recall what you were wearing?

20 A. I was wearing a tank top and blue shorts.

21 Q. What kind of shorts were they?

22 A. Basketball shorts.

23 Q. Were they light blue, dark blue?

24 A. They were light blue.

25 Q. Did they have pockets?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

- 1 A. No, they didn't have pockets.
2 Q. How do you know they didn't have pockets?
3 A. Because I recently stumbled upon those shorts while doing
4 laundry.
5 Q. When you say recently, what do you mean?
6 A. Recently, as in Sunday.
7 Q. What did your tank top look like, if you recall, what color
8 was it?
9 A. To the best of my recollection, it was white. It may have
10 had -- it was mostly white, to the best of my recollection.
11 Q. What happened as you were sitting there?
12 A. I had been sitting there during the night, and I witness a
13 car accident that happened moments before the squad cars pulled
14 up, but I witnessed police cars pull up on 96th Street.
15 Q. Where was that accident?
16 A. Where was that accident?
17 Q. How far away from you?
18 A. It was the opposite walkway of 96th Street and Amsterdam.
19 Q. You were sitting on the benches in the median at 96th and
20 Broadway?
21 A. Yes.
22 Q. Then what happened?
23 A. New York Police Department cars pulled up on us.
24 Q. When you say "on us," where did they pull up?
25 A. They pulled up towards the median of where we were, the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

- 1 benches that we were sitting in.
2 Q. About how many cars came, if you recall?
3 A. At least three.
4 Q. Then what happened?
5 A. The officers came out with their guns pointed at us.
6 Q. Did they say anything?
7 A. They demanded that we get down on the ground.
8 Q. About how many officers eventually came?
9 A. At least five.
10 Q. What did you, your cousin and your friend do?
11 A. We complied with the officers and we got down on the
12 ground.
13 Q. How long do you think it took for you to get down on the
14 ground?
15 A. Two, three seconds.
16 Q. In that time did you hear get down on the ground more than
17 once?
18 A. Yes, from multiple officers.
19 Q. And you heard it more than once?
20 A. Yes.
21 Q. While you were on the ground, did you say anything?
22 A. I don't recall.
23 Q. Do you recall if your cousin or your friend said anything
24 to the officers?
25 A. They may have, to the best of my recollection.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

1 Q. At this time there was at least one gun pointed towards the
2 three of you, is that right?

3 A. Yes.

4 Q. As you were facedown on the ground, what happened next?

5 A. We was patted down.

6 Q. Mr. Peart, can you describe the pat-down?

7 A. They patted over my basketball shorts.

8 Q. Can you explain further?

9 A. They patted over my basketball shorts and I was touched.

10 Q. What do you mean by that?

11 THE COURT: You could feel them touching you in the
12 groin area?

13 THE WITNESS: Yes.

14 THE COURT: I got it.

15 Q. Where else did the officer put their hands?

16 A. Just patted over my basketball shorts and tank top.

17 THE COURT: In the back, too, in the buttocks?

18 THE WITNESS: Yes.

19 THE COURT: OK.

20 Q. Did you observe your friend and your cousin get pat down?

21 A. My cousin because I could see him.

22 Q. What were you thinking as you laid there on the ground
23 getting pat down?

24 A. I was thinking -- I was embarrassed because -- I felt I
25 didn't belong on 96th Street and Amsterdam, you know, me

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

- 1 turning 18 and being in that area, I felt that I didn't belong
2 there. I felt embarrassed because the people that were out
3 there at that point seeing what happened, I felt criminalized.
4 My cousins, they had been visiting me from the suburbs in the
5 Poconos, and they had never been through anything like that,
6 and their parents let them celebrate their birthday with me and
7 something like that happens.
- 8 Q. At any point when you were on the ground, do you recall you
9 or your cousin saying anything to the officers?
- 10 A. They may have. I don't know which one though. Something
11 was said.
- 12 Q. Do you recall what was said?
- 13 MS. PUBLICKER: Objection, your Honor. Hearsay.
- 14 THE COURT: Sustained.
- 15 Q. What happened after the officers finished frisking you?
- 16 A. They told us to get -- they told us to -- after the frisk,
17 they told us to stand up.
- 18 Q. At any point did the officers look at your ID?
- 19 A. Yes. They looked at my ID.
- 20 Q. Which officer looked at your ID?
- 21 A. Officer White.
- 22 Q. How do you know that it was someone named Officer White?
- 23 A. Because I looked at his badge and the number as well.
- 24 Q. What was written on the badge?
- 25 A. His name.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3J8FLO3 Peart - direct

1 Q. And it was White?

2 A. Yes.

3 Q. Did he say anything to you while he was looking at your ID?

4 A. Yes. He told me happy birthday, sarcastically.

5 Q. You said you observed a car accident happening before the
6 officers pulled up?

7 A. Yes.

8 Q. How long do you think you were sitting at the median before
9 the officers arrived?

10 A. I would say around ten minutes, around ten minutes.

11 Q. What race are your cousin and your friend?

12 A. African American.

13 Q. What happened after the officer said happy birthday? Or
14 around that time, did anything else happen?

15 A. He gave me back my ID back.

16 Q. Were you frisked again?

17 A. Patted down once over.

18 Q. Did you say anything to them after you were standing up?

19 A. I remember one of us -- we asked --

20 MS. PUBLICKER: Objection. To the extent he is
21 testifying about what the other individuals he was with said,
22 it's hearsay.

23 THE COURT: Do you know what you said?

24 THE WITNESS: What did I say? I don't recall.

25 Q. Did they give you a reason for stopping you?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

1 A. Yes, they gave us a reason. They played back a radio call
2 that they had.

3 Q. What was the reason they gave you? From playing that, what
4 was the reason they gave you?

5 A. I fit the description.

6 Q. How did you feel after this stop?

7 A. I was embarrassed, and I felt like I didn't belong on 96th
8 Street and Broadway.

9 THE COURT: What do you mean by that, you didn't
10 belong there?

11 THE WITNESS: I felt like, because of -- that wasn't
12 my neighborhood. They are not familiar with me over there.
13 And for me to be over there, at that time, at 18, I felt
14 criminalized for being in that neighborhood. What am I doing
15 in that neighborhood?

16 THE COURT: OK.

17 Q. Your sister lived in that neighborhood, right?

18 A. Yes, she used to.

19 Q. She used to?

20 A. Yes.

21 Q. What is her race?

22 A. She is African American.

23 Q. Did you feel it was wrong that you felt that way?

24 A. I know I shouldn't feel that way.

25 Q. Did you file a complaint about this incident?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3

Peart - direct

- 1 A. Yes.
- 2 Q. Where did you file the complaint?
- 3 A. At the CCRB.
- 4 Q. Were you interviewed by the CCRB?
- 5 A. Yes.
- 6 Q. Did you tell the truth at the interview?
- 7 A. Yes, with the exception of one small detail.
- 8 Q. What was that small detail?
- 9 A. That I received a laceration on my lip.
- 10 Q. When you told the CCRB that you received a laceration, how
- 11 did you tell them you received that laceration?
- 12 A. On my way on the ground.
- 13 Q. Did you ever accuse an officer of injuring you?
- 14 A. No.
- 15 Q. Did you ever correct this mistruth?
- 16 A. Yes.
- 17 Q. Where?
- 18 A. At my deposition.
- 19 Q. Why did you decide to correct the record?
- 20 A. Because I wanted to be honest about what happened. And the
- 21 reason why I said it at the CCRB, I was 18 at the time, and I
- 22 wanted to be taken seriously about what happened to me and my
- 23 cousins.
- 24 Q. Mr. Peart, at any point during the stop, did you give the
- 25 officers permission to touch you or pat you down?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3

Peart - direct

- 1 A. No.
- 2 Q. At any point did they ask you for permission?
- 3 A. No, they did not ask for permission.
- 4 Q. Mr. Peart, were you ever stopped by the New York Police
- 5 Department in Brooklyn?
- 6 A. Yes.
- 7 Q. When did that stop occur?
- 8 A. It occurred in the spring of 2008.
- 9 Q. What were you doing in Brooklyn?
- 10 A. I had been visiting my grandmother's house.
- 11 Q. Where does she live?
- 12 A. She lives in Flatbush, East 49th Street.
- 13 Q. What was the weather like that day?
- 14 A. It was a little chilly because I had on a hoody -- I mean,
- 15 I had on a jacket.
- 16 Q. What kind of jacket?
- 17 A. Dickies jacket.
- 18 Q. Was it a heavy jacket?
- 19 A. It was a light jacket.
- 20 Q. Do you remember the color?
- 21 A. It was black.
- 22 Q. Were you wearing pants?
- 23 A. Yes.
- 24 Q. What happened?
- 25 A. I had been coming out of my grandmother's house, and I was

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

- 1 walking through the driveway and I witness a police car drive
2 past the driveway, and when I turned the corner they were in
3 the process of backing up.
4 Q. Then what happened?
5 A. Three officers came out of that car.
6 Q. What did they do?
7 A. They told me to put my hands up against the garage door.
8 Q. The garage door, whose garage door was it?
9 A. It was a neighbor's garage door.
10 Q. Was it near your grandmother's house?
11 A. Yes.
12 Q. What did you do?
13 A. I complied with the officers and I put my hands up against
14 the garage door.
15 Q. How many officers was it?
16 A. It was three.
17 Q. Can you tell me the race of the three officers?
18 A. One officer was Asian.
19 Q. What about the other two?
20 A. The other two officers were white.
21 Q. Were any of the officers female?
22 A. Yes, one of them.
23 Q. What did she look like?
24 A. She was shorter. She was slim, petite.
25 Q. What was her race?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3J8FLO3

Peart - direct

- 1 A. She was white.
- 2 Q. You said there was an Asian officer. What was the race of
- 3 the other male officer?
- 4 A. He was white.
- 5 Q. What was his physical description?
- 6 A. He was about my height or taller.
- 7 Q. What about his build?
- 8 A. Slim.
- 9 Q. When the officers, when they stopped you and called you
- 10 over, did you feel free to leave?
- 11 A. No, I did not feel free to leave.
- 12 Q. Why not?
- 13 A. Because just the whole scenario of the stop, them reversing
- 14 the car, the police car, and coming out of the car the way they
- 15 did, and them telling me to put my hands up against the garage
- 16 door, I was not free to leave, and there were three officers.
- 17 Q. Where were they standing when you had your hands against
- 18 the wall?
- 19 A. They were behind me.
- 20 Q. Were any of them to your right or left, if you recall?
- 21 A. I know they were behind me. I can kind of see them through
- 22 my peripheral vision.
- 23 Q. Then what happened?
- 24 A. I was searched -- I was patted down.
- 25 Q. Can you describe the way they pat you down?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3

Peart - direct

- 1 A. They patted over both my legs. They patted over both my
2 arms.
- 3 THE COURT: Did they reach inside any pockets?
4 THE WITNESS: They reached inside my pockets.
5 THE COURT: Your pants pocket?
6 THE WITNESS: My pants pocket.
7 THE COURT: Did that have front or back pockets?
8 THE WITNESS: Both.
- 9 Q. When you said they pat you down, how did they pat down your
10 legs?
- 11 A. Both hands.
- 12 Q. What does that mean?
- 13 A. Both hands patted down from my ankles to my waist.
- 14 Q. On the inside and outside of your leg?
- 15 A. On the outside of my leg.
- 16 Q. Outside this way?
- 17 A. Yes. What do you mean inside and outside?
- 18 THE COURT: Your inner thigh, outer thigh.
- 19 A. Inner as well.
- 20 Q. They ran both of their hands up and down the inner part and
21 the outer part of your leg?
- 22 A. Yes.
- 23 Q. From your groin area to your ankles?
- 24 A. Yes.
- 25 THE COURT: We are going to have to stop now. It's 10
SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3J8FLO3

Peart - direct

1 of 1. So we will begin again at 5 after 2. We are adjourned
2 till then.

3 (Luncheon recess)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3J8FLO3

Peart - direct
AFTERNOON SESSION
2:10 p.m.

1
2
3 NICHOLAS PEART, resumed.
4 BY MS. PATEL:
5 Q. Good afternoon, Mr. Peart.
6 A. Good afternoon.
7 Q. When we broke for lunch we were talking about your stop in
8 the spring of 2008, is that right?
9 A. Yes.
10 Q. And you just testified that you had put your hands against
11 the wall of a garage door?
12 A. Yes.
13 Q. What happened next?
14 A. After I put my hands up against the garage door I was
15 patted down.
16 Q. Did the officers go into your pockets?
17 A. Yes.
18 Q. Did they take anything out of your pockets?
19 A. They took out my wallet.
20 Q. What did they do with your wallet?
21 A. They searched my wallet. They looked through my wallet.
22 Q. Do you recall which officer took the wallet out of your
23 pocket?
24 A. I don't recall.
25 Q. Do you recall we were talking about three officers?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3J8FLO3

Peart - direct

- 1 A. Three officers.
2 Q. What was the race of those three officers?
3 A. One of them was Asian and the other two were white.
4 Q. There was one female officer?
5 A. Yes.
6 Q. When they were searching you and frisking you, did you ask
7 them any questions?
8 A. Not that I recall.
9 Q. What happened next?
10 A. They had my wallet, and they took out my ID, and they
11 looked at my ID.
12 Q. Did they ask you what you were doing in Brooklyn?
13 A. Yes. They asked what I was doing in the neighborhood.
14 Q. What did you say?
15 A. I had been visiting my grandmother's house.
16 Q. How did you feel to be asked those kinds of questions?
17 A. I felt that, you know, since I didn't have -- like my ID
18 didn't say, you know, East 49th Street, my exact address, that,
19 you know, that was the reason why I was stopped.
20 THE COURT: Wait a minute. I didn't understand your
21 answer. Can you say that again?
22 A. Repeat your question.
23 Q. My question was, how did you feel to be asked about what
24 you were doing in Brooklyn?
25 A. I just felt the suspicion of, you know, just coming out of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

1 my grandmother's house, I thought, you know, what is the
2 problem, what is the reason for it, what is the logical reason
3 for me to be stopped?

4 Q. You were asking yourself these questions?

5 A. Yes.

6 MS. PATEL: I can't remember if we went over this,
7 your Honor. I'm sorry.

8 Q. Can you describe the pat-down, if you recall?

9 A. The pat-down, both hands -- both of one of the officer's
10 hands patted down both my arms, my legs, in and out.

11 Q. What do you mean in and out?

12 A. The inside, like my thigh, like -- over my clothes, but I
13 was patted down on both legs.

14 Q. From?

15 A. From ankle to my waist and torso up.

16 Q. Torso up also?

17 A. Yes.

18 Q. Where did they touch you on your torso?

19 A. They patted my sides.

20 Q. Where on your sides?

21 A. Like by my rib cage and over my clothing.

22 Q. Did they pat your chest area?

23 A. I don't recall.

24 Q. Did they give you back your ID?

25 A. Yes.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3J8FLO3

Peart - direct

1 Q. Did you have any further conversation with them?

2 A. No.

3 Q. Did you ask them why they stopped you?

4 A. Not that I recall. But I remember the conversation -- one
5 of the officers said that there had been a series of burglaries
6 or something in the neighborhood and that's why I was stopped.

7 Q. Did they give you back your ID then?

8 THE COURT: I can't hear you, Ms. Patel.

9 Q. Did they give you back your ID?

10 A. They gave me back my ID.

11 Q. Then did they leave?

12 A. You said did they leave? Yes.

13 Q. Describe how they left.

14 A. One of the officers asked me if I was OK, and I didn't
15 answer. And one of the officers answered for me. He said,
16 he's OK. The female officer asked me if I was OK.

17 Q. How did you feel to be asked, are you OK?

18 A. How did I feel?

19 Q. How did you feel about it at the time?

20 A. That's not appropriate to ask someone, after they have
21 experienced something like that, are they OK. Of course I'm
22 not going to be OK with that. I was shocked. I had been in a
23 good mood. I had just seen my grandmother and she gave me
24 money, and I was on my way home.

25 Q. And what did you do next?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

1 A. I went back home to Harlem.

2 Q. At any point did the officers ask you for permission to pat
3 you down?

4 A. No, they did not.

5 Q. Did you ever give them permission to pat you down?

6 A. No.

7 Q. Did they ever ask you for permission to go into your
8 pockets?

9 A. No.

10 Q. Did you ever give them permission?

11 A. No.

12 Q. Did you ever give them permission to take your ID out of
13 your wallet?

14 A. No, I did not.

15 THE COURT: Did you take the ID out of the wallet or
16 did they?

17 THE WITNESS: They took the ID out of the wallet.

18 THE COURT: You gave them the whole wallet?

19 THE WITNESS: I didn't give them the wallet.

20 THE COURT: They took the wallet?

21 THE WITNESS: They took the wallet out of my pocket.

22 THE COURT: Then they took the ID out of the wallet?

23 THE WITNESS: Yes.

24 Q. Mr. Peart, were you stopped again by the New York City
25 Police Department in September of 2010?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3

Peart - direct

1 A. Yes.

2 Q. Where were you stopped on that day?

3 A. I was stopped on 144th Street, between Seventh and Eighth
4 Avenue.

5 Q. What were you doing?

6 A. I was coming home from the gym.

7 THE COURT: What time of the day was that?

8 THE WITNESS: This is around 9.

9 THE COURT: 9 p.m.?

10 THE WITNESS: Yes, around 9.

11 THE COURT: It was dark?

12 THE WITNESS: Yes.

13 Q. What were you doing as you were coming home from the gym?

14 A. I had been listening to my iPod.

15 Q. You had your earphones in your ear?

16 A. Yes.

17 Q. Were you walking on the sidewalk?

18 A. Yes.

19 Q. Describe how you came to be stopped.

20 A. I had been walking home from the gym and two officers, they
21 were walking rather briskly towards me, and as they got towards
22 my personal area, I started to slow down and I turned down my
23 music, and one of the officers told me to put my hands up
24 against the wall.

25 Q. At what point did you see them?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

- 1 A. At what point? I seen them through my peripheral. I
2 happen to look back, and I knew there was officers behind me.
3 Q. Because you saw them? How did you know they were officers?
4 A. How did I know they were officers? Because they had on
5 uniforms. They had on -- they had a badge. They had
6 walkie-talkies. They had a gun, navy blue uniforms that the
7 NYPD wear, black boots.
8 Q. Is there anything else that they had on them that made you
9 think they were officers?
10 A. Nightsticks.
11 Q. Did they have weapons?
12 A. Did they have weapons? Yes.
13 Q. What weapons?
14 A. Weapons? A gun.
15 Q. When they stopped you, where were you standing?
16 A. I was standing on the sidewalk.
17 Q. Where were they in relationship to where you were standing
18 when they stopped you?
19 A. They were -- one officer was to my side.
20 Q. Which side?
21 A. He would have been to my right.
22 Q. Your right?
23 A. Yes.
24 Q. What about the other officer?
25 A. He came in front of me.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3J8FLO3 Peart - direct

1 Q. In front of you?

2 A. Yeah.

3 THE COURT: At that point, you were just walking on
4 the sidewalk?

5 THE WITNESS: I was walking on the sidewalk.

6 THE COURT: You weren't yet at the corner?

7 THE WITNESS: I wasn't at the corner yet.

8 THE COURT: You were alone, right?

9 THE WITNESS: Yes.

10 Q. Then you put your hands against the wall, right? They told
11 you to do that and you put your hands against the wall?

12 A. Yes.

13 THE COURT: What wall is this?

14 THE WITNESS: This is a building wall. A building
15 wall.

16 Q. Was the building attached to the sidewalk?

17 A. Yes. The building is attached to the sidewalk.

18 Q. Where were they standing when you put your hands against
19 the wall?

20 A. They were standing -- one officer was behind me and the
21 other officer was to my side.

22 Q. Which side, do you remember?

23 A. I don't recall which side. To the best of my recollection,
24 my right.

25 Q. Besides their uniform, can you say anything else about the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

1 way the officers looked?

2 THE COURT: I don't understand that question.

3 MS. PATEL: I'm sorry. I don't even know what I just
4 said.

5 Q. Besides their uniform, is there anything else about the way
6 they looked that you can describe? Can you describe them in
7 any way, physical description?

8 THE COURT: Height, weight, hair, that kind of thing.

9 Q. Race?

10 A. They weren't black. One of them -- they weren't black.

11 Q. Anything else you remember about either one of them?

12 A. Around my height, possibly taller.

13 THE COURT: Both men?

14 THE WITNESS: Yes.

15 THE COURT: Two white men?

16 THE WITNESS: One of them -- they weren't black. One
17 of them --

18 Q. You couldn't tell the race of one of them?

19 A. Yeah.

20 Q. Or both of them. I'm sorry.

21 A. I couldn't tell.

22 Q. Were you able to tell the race of either officer?

23 A. One of them was white.

24 Q. The other one you testified was not black?

25 A. He wasn't black.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

1 Q. But you're not sure if he was white?

2 A. I'm not sure. I don't recall at this moment.

3 Q. Did you feel free to leave when they first approached you
4 and asked you to stop?

5 A. No, I did not feel free to leave.

6 Q. Why not?

7 A. Because they were walking briskly towards me. I was
8 expecting them to walk past me, but they had directed me to the
9 wall and the officer -- one of the officers unzipped my jacket
10 when I was stopped.

11 Q. Where were you when he unzipped your jacket?

12 A. On the sidewalk.

13 Q. Where were your hands?

14 A. My hands were to my sides.

15 Q. You were standing when he unzipped your jacket or were you
16 against the wall?

17 A. I was facing towards him when he unzipped my jacket.

18 Q. Then what did he do?

19 A. That's when my hands were against the wall and my jacket
20 was open, and I was being patted down.

21 Q. What did you have in your pockets that day?

22 A. I had my wallet, I had my keys, I had my iPod, I had my gym
23 lock.

24 Q. Did they take anything out of your pockets?

25 A. Yes. They took out my wallet.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

- 1 Q. What did they do with your wallet?
2 A. They searched through my wallet.
3 Q. What does that mean?
4 A. I mean, they looked through my wallet.
5 Q. Did they remove anything from your wallet?
6 A. Yes. They removed my ID.
7 Q. Did any of the officers ask you for permission to pat you
8 down?
9 A. No, none of the officers asked me for permission.
10 Q. Did you give them permission to pat you down?
11 A. No.
12 Q. Did any of the officers ask you for permission to go into
13 your pockets?
14 A. No.
15 Q. Did you ever give them permission to go into your pockets?
16 A. No.
17 Q. Did you give them permission to take anything out of your
18 pockets?
19 A. No.
20 Q. What did the officers do after they looked at your ID?
21 A. They put my ID -- they gave me my wallet back and I was
22 sent on my way.
23 Q. Did you continue home after that?
24 A. Yes.
25 Q. Which officer, if you can remember, went into your pocket,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3 Peart - direct

1 the white one or the other one?

2 A. I don't recall at this moment.

3 Q. Do you recall which one of them frisked you, pat you down?

4 A. Yes. I recall.

5 Q. Which one?

6 A. One of them I know I described as Latino, I assume he was
7 Latino. Yes. The Latino officer patted me down.

8 Q. So he was standing behind you?

9 A. Yes. He was standing behind me.

10 Q. And the other officer was standing in which direction?

11 A. To my side. He was the one that -- he patted me down and
12 he was the one that unzipped my jacket.

13 Q. You just testified that the Hispanic officer is the one
14 that patted you down?

15 A. Yes.

16 Q. Which officer unzipped your jacket?

17 A. He was the officer that unzipped my jacket.

18 Q. The Hispanic officer?

19 A. Yes.

20 Q. It was the Hispanic officer who also took the items out of
21 your pocket?

22 A. I don't recall.

23 Q. You don't. OK.

24 When did this stop happen?

25 A. This happened September 2010.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3

Peart - direct

1 Q. Thank you.

2 How did you feel as you walked home that night?

3 A. I felt bad, you know, because I really -- I was coming home
4 from the gym, I felt good. It is one of the things that I am
5 able to do for myself and have time for myself.

6 Q. One of the things you do is what? Can you explain that?

7 A. Going to the gym. That's something that I do for myself
8 that I feel good about.

9 Q. So then how did you feel when you were walking home after
10 the stop?

11 A. I felt -- it wasn't a good feeling. It wasn't a good
12 feeling having a New York City police officer go through my
13 pockets and take out my wallet and look through it.

14 Q. Mr. Peart, why didn't you file a complaint after the stops
15 in 2008, 2010 or 2011?

16 A. Because after the first time I filed a complaint, which was
17 after my 18th birthday, after that I received a letter, like
18 about a year and a half or a year, I don't know exact date, but
19 it said the officers were exonerated for, you know, what I had
20 described. And I felt, if they can get away with that, having
21 guns pointed at us, you know, what is a stop and frisk, what is
22 being patted down? Why am I complaining?

23 Q. Meaning that the complaint -- what do you mean by that?

24 A. I mean, I just didn't feel that it would hold up if I
25 complained about it to the CCRB, because it's my word against

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3

Peart - direct

1 their word.

2 Q. Mr. Peart, why did you decide to become a witness in this
3 case?

4 A. I decided to become a witness in this case because I
5 wouldn't want -- this -- my experiences with the NYPD, I have
6 been prepared from my mom, my mom, she used to --

7 MS. PUBLICKER: Objection, your Honor. Hearsay.

8 THE COURT: Don't tell us what your mom said, but try
9 to explain why you chose to be a witness in this case.

10 A. I chose to be a witness in this case because I wouldn't
11 want my brothers to go through a situation of being stopped by
12 the police. I wouldn't want them to go through that. I
13 wouldn't want the kids that I work with to go through that,
14 and, you know, I don't want --

15 Q. How do you think being a part of this case will make that
16 different?

17 MS. PUBLICKER: Objection, your Honor.

18 THE COURT: It has marginal relevancy. You're just
19 asking how he thinks this will change anything, or do you think
20 it will change anything?

21 MS. PATEL: It does go to the remedy.

22 THE COURT: I will allow it for that purpose.

23 How do you think this case might change anything?

24 A. I think it will empower the community that change can --
25 you know, it's definitely possible for change to come. And I

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO3

Peart - direct

1 think, you know, the relationship that the police have with the
2 community has to change because the hostility in that community
3 shouldn't exist.

4 (Continued on next page)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo4 Peart - direct

1 MS. PATEL: That's it.

2 THE COURT: Who is cross examining?

3 MS. PUBLICKER: I am, your Honor.

4 THE COURT: Ms. Publicker.

5 MS. PUBLICKER: Yes.

6 CROSS-EXAMINATION

7 BY MS. PUBLICKER:

8 Q. Good afternoon, Mr. Peart.

9 A. Hello.

10 Q. You just testified about a number of stops. I'd like to
11 start with the first one chronologically which was the one that
12 occurred on August 5, 2006; is that correct?

13 A. Yes.

14 Q. And that day you were with your cousin Talib Johnson?

15 A. Yes.

16 Q. And with your friend Lamont Freeman?

17 A. Yes.

18 Q. And you call Lamont Freeman Free?

19 A. Yes.

20 Q. That day you were wearing a black and white tank top; is
21 that correct?

22 A. If that's what it says.

23 Q. And you were wearing light blue shorts?

24 A. Yes.

25 Q. And at least one of your friends was wearing a hat, right?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 A. If that's what it says, to the best of my recollection.

2 THE COURT: You keep saying, "If that's what is says."

3 You mean at your deposition?

4 THE WITNESS: Yes, my deposition.

5 MS. PUBLICKER: I'm not talking about your deposition.

6 I'm asking about your recollection.

7 THE WITNESS: Oh, to the best of my recollection, I

8 don't recall.

9 Q. Were you carrying a wallet that night?

10 A. I don't recall.

11 Q. Well, you had a cellphone on you, right?

12 A. Yes.

13 Q. And you weren't carrying a backpack or any other bag?

14 A. No.

15 Q. And you complained to the CCRB about this stop, right?

16 A. Yes.

17 Q. And you spoke to them a few times by phone at first, didn't
18 you?

19 A. Yes.

20 Q. The first time was August 7, 2006?

21 A. I don't know the exact date.

22 THE COURT: Well the day after the stop, did you
23 complain?

24 THE WITNESS: Yeah.

25 Q. And then you spoke to them again by phone on August 11,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 2006?

2 A. Yes. I remember speaking to them twice.

3 Q. And then you actually went into the CCRB for a formal
4 interview on August 26, 2006, correct?

5 A. Yes.

6 Q. And when you went in for your formal interview, you
7 understood that it was important to tell the truth, right?

8 A. Yes.

9 Q. And before you gave your statement to the CCRB you were
10 told that at the end of that interview you would have to sign a
11 verification form attesting to the truth of your statements
12 therein.

13 Do you recall that?

14 A. Yes.

15 Q. And after you were interviewed by the CCRB you signed a
16 verification form, didn't you?

17 A. Yes.

18 Q. And in that form you attested to the truth of your
19 statement, correct?

20 A. Yes.

21 MS. PUBLICKER: Mr. Kunz if you could put up
22 Defendants' Exhibit I-7 for identification.

23 MS. PATEL: What is this?

24 MS. PUBLICKER: It's his verification.

25 Q. Mr. Peart, do you recognize this document?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4

Peart - cross

1 A. Yes.

2 Q. What do you recognize this document to be?

3 MS. PATEL: Can we make it larger?

4 THE COURT: Is that possible, Mr. Kunz?

5 MR. KUNZ: Yep.

6 THE WITNESS: The verification form.

7 THE COURT: That's the verification form that you
8 signed?

9 THE WITNESS: Yes.

10 Q. And is that your signature on this form?

11 A. Yes.

12 MS. PUBLICKER: Your Honor, I would ask that this
13 exhibit be moved into evidence.

14 THE COURT: I assume no objection.

15 MS. PATEL: No.

16 THE COURT: All right. Received.

17 (Defendants' Exhibit I-7 received in evidence)

18 Q. You also signed a declaration in this case didn't you,
19 Mr. Peart?

20 A. Yes.

21 Q. And that was on November 3, 2011?

22 A. I don't know the exact date.

23 Q. Would you like to see the declaration to confirm?

24 THE COURT: No. If you say it's November 3, I'm sure
25 he agrees. If that's the date on it.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 THE WITNESS: Yes.

2 THE COURT: It's fine.

3 Q. And you swore in that statement that it was true under
4 penalty of perjury, correct?

5 A. Yes.

6 Q. Now, your current memory about the stop is not very good,
7 is it?

8 A. It's to the best of my recollection.

9 Q. Which isn't very good, right?

10 MS. PATEL: Objection.

11 THE COURT: We're talking about seven years ago,
12 right, Ms. Publicker?

13 So it's hard to remember what happened seven years
14 ago?

15 THE WITNESS: Yes.

16 Q. Well, you testified today that you were stopped at 96th and
17 Broadway, didn't you?

18 A. Yes.

19 Q. But your declaration which was signed November 2012 says
20 that were stopped at 96th and Amsterdam, correct?

21 A. Yes.

22 Q. But that's not true, is it?

23 A. No, it's not true.

24 Q. And you signed the affidavits anyways?

25 A. I wasn't sure about the location.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 Q. You've also --

2 A. The avenues.

3 Q. You've also given different accounts about whether or not
4 you were at a McDonald's before the stop, haven't you?

5 A. I don't recall.

6 Q. Well do you recall telling the CCRB on August 22, 2006 that
7 before being stopped you had just come from McDonald's?

8 A. Yes.

9 Q. And that your friend Lamont Freeman had gotten a milkshake
10 there?

11 A. I don't recall.

12 Q. You don't recall?

13 A. It's been a while.

14 Q. And that you were inside that McDonald's for ten minutes
15 before being stopped?

16 A. No, I wasn't inside the McDonald's.

17 MS. PUBLICKER: Mr. Kunz, if you could play from
18 Plaintiffs' Exhibit 264 the recording that begins 2006 01345
19 and ending in 904.

20 MS. PATEL: Your Honor, I just would ask whether
21 there's a transcript or anything that we can read along.

22 THE COURT: I don't know.

23 MS. PUBLICKER: There is no transcript. This is from
24 Plaintiffs' exhibit list.

25 THE COURT: What is this audio recording.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4

Peart - cross

1 MS. PUBLICKER: This is an audio recording of
2 Mr. Peart's statement to the CCRB.
3 THE COURT: There is no transcript?
4 MS. PUBLICKER: There is no transcript. I can give
5 you the time stamp that we'll be starting and ending at.
6 THE COURT: Okay.
7 MS. PUBLICKER: This is the interview from August 22,
8 2006 beginning at minute 457 and ending at minute 524.
9 MR. MOORE: Can we just say what exhibit it is again.
10 MS. PUBLICKER: Plaintiffs' Exhibit 264.
11 (Audio recording played).
12 MR. KUNZ: Which one?
13 MS. PUBLICKER: Ending 904.
14 MR. KUNZ: I'm sorry. My fault.
15 Okay. This is the right one.
16 MS. PUBLICKER: At 4 minutes 57.
17 (Audio recording played)
18 Q. Does that refresh your recollection about what you told the
19 CCRB on August 22, 2006?
20 A. That's what I told the CCRB.
21 We were in front of the McDonald's because the
22 McDonald's was closed. It was -- it's a 24-hour McDonald's.
23 It had been closed. The most we have -- would have gotten was
24 a milkshake possibly but I don't recall.
25 Q. So you're telling me that in that recording you did not say

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 that your friend Lamont Freeman got a milkshake?

2 MS. PATEL: I think it said he wasn't sure what his
3 friend got.

4 THE COURT: Well you're better than I am. I couldn't
5 hear what he said.

6 Q. Mr. Peart, was that an accurate recording of your voice
7 from the interview that day?

8 A. I could barely hear the recording.

9 Q. Is that your voice?

10 A. It don't sound like it.

11 THE COURT: You didn't recognize yourself speaking?

12 THE WITNESS: I don't even remember that tape.

13 THE COURT: But do you -- do you want to hear it
14 again? Fresh?

15 THE WITNESS: No. I don't want to hear it again.

16 THE COURT: Okay.

17 MS. PUBLICKER: Your Honor, if we could start this
18 tape from the beginning where Mr. Peart is introduced and is
19 sworn in.

20 THE COURT: Okay.

21 MS. PATEL: We could just ask him again. I mean if --
22 did you --

23 MS. PUBLICKER: No. I mean he stated that that was
24 not his voice.

25 THE COURT: He didn't say that. He said he didn't

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 recognize his voice. He couldn't even hear the tape, which is
2 understandable. I couldn't make it out much myself. I heard
3 the word McDonald's.

4 MR. KUNZ: So we'll start at the beginning of the tape
5 here.

6 (Audio recording played)

7 THE COURT: Okay.

8 Q. Is that -- do you recognize your voice on that recording?

9 A. Yes.

10 Q. But you do not recognize your voice in the past recording I
11 played?

12 A. I could barely hear it.

13 MS. PUBLICKER: Your Honor, I would move this
14 recording into evidence.

15 THE COURT: I won't accept it because I find it
16 irrelevant. I really do. I can barely make it out. It's not
17 very important to me how many minutes he was in front of or
18 inside McDonald's. I'm not going to clutter the record with
19 it. I'm not taking it into evidence.

20 Q. Mr. Peart, you did put in your sworn declaration, didn't
21 you, that the McDonald's was closed that day, right?

22 A. Yes.

23 Q. You testified today that you had identification on you on
24 that evening, correct?

25 A. Yes.

D3j9flo4 Peart - cross

1 Q. But didn't you tell the CCRB that you did not believe you
2 were carrying any identification on you that night?

3 A. Can you read what it says.

4 Q. I know. I'm asking you if you remember telling the CCRB
5 that.

6 A. I don't recall.

7 Q. And you don't recall telling the CCRB that you actually
8 told Officer White your name, address and date of birth, that
9 he did not see an ID from you?

10 A. I don't recall.

11 Q. Now, you stated earlier that you were wearing light blue
12 shorts, correct?

13 A. Yes.

14 Q. And today you've testified that you now know those shorts
15 have pockets, right?

16 A. No. They don't have pockets.

17 Q. They don't have pockets. I'm sorry. They don't have
18 pockets?

19 A. No.

20 Q. Do you know that because you just found them this weekend,
21 right?

22 A. Yes.

23 Q. You've been involved in this case since 2011, right?

24 A. I'm not sure of the exact date.

25 Q. Well did you sign a declaration in this case in 2011?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 A. Yes. In 2011 I did sign a declaration.

2 Q. And you understood that that declaration included the
3 events of August 5, 2006?

4 A. Yes.

5 Q. And you were deposed in this matter, correct?

6 A. Yes.

7 Q. In October of last year?

8 A. Yes.

9 Q. And at no point did you look for your shorts then, correct?

10 A. No.

11 Q. And so you only just found them this weekend?

12 A. Yes.

13 Q. You testified today I believe that around five -- at least
14 five officers arrived; is that correct?

15 A. Yes.

16 For what stop?

17 THE COURT: For the first -- you're talking about
18 first stop, 2006, on Broadway and 96.

19 THE WITNESS: Oh, yes. Five officers.

20 THE COURT: Five officers?

21 THE WITNESS: Yes. At least five. At least five.

22 Q. And they all came at the same time?

23 A. Yes.

24 Q. But didn't you tell the CCRB that they arrived at different
25 times? Just two days after the incident.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 A. If -- I don't recall.

2 MS. PUBLICKER: Your Honor, if I could have one
3 minute, please.

4 (Pause)

5 Q. You testified today that you immediately complied with the
6 officer's orders to get on the ground, right?

7 A. Yes.

8 Q. You did not hesitate?

9 A. Two, three seconds.

10 Q. How many times did you have to be asked to get on the
11 ground?

12 A. I heard it from multiple officers.

13 THE COURT: I'm sorry. Say it again.

14 THE WITNESS: I heard it from multiple officers.

15 THE COURT: Several officers told you to get on the
16 ground?

17 THE WITNESS: I don't know exact.

18 THE COURT: More than one said?

19 THE WITNESS: More than one, yes.

20 THE COURT: What did they say?

21 THE WITNESS: To get down on the ground.

22 Q. Officer White actually was the only officer to tell you to
23 get on the ground, wasn't he?

24 A. No, he wasn't.

25 Q. And he told you to get on the ground twice?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 A. I don't know -- I don't recall.

2 Q. And he only took his gun out after the second time he asked
3 you to get on the ground, correct?

4 A. No.

5 THE COURT: Why is that not correct?

6 THE WITNESS: Because he already had his gun pointed
7 at us when he came up out of the car.

8 THE COURT: He had his gun drawn when he came out of
9 the car?

10 THE WITNESS: Yes.

11 MS. PUBLICKER: Your Honor if I could just try one
12 more recording.

13 THE COURT: Okay.

14 MS. PUBLICKER: It's the same recording beginning at 8
15 minutes, 47 and ending at 10 minutes, 3.

16 MR. KUNZ: Ending 904.

17 THE COURT: She said 10:03.

18 MS. PUBLICKER: The recording ending in numbers 904.

19 THE COURT: Okay.

20 MR. KUNZ: From.

21 MS. PUBLICKER: Starting at.

22 THE COURT: You said 8:47.

23 MS. PUBLICKER: Yes. 8:47. Thank you, your Honor.
24 (Audio recording played)

25 MS. PUBLICKER: Again, your Honor, I would ask that
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 this be admitted into evidence.

2 THE COURT: I'll take that portion in evidence
3 although I have to say I didn't understand every word of it.
4 You could have prepared a transcript.

5 MS. PUBLICKER: I apologize, your Honor.

6 (Defendants' Exhibit recording beginning at 8 minutes,
7 47 and ending at 10 minutes, 3 received in evidence)

8 Q. Where was Officer White when he first ordered you to get on
9 the ground?

10 A. He was coming towards us.

11 Q. He was out of his vehicle?

12 A. Yes.

13 Q. Now, you wrote an article for the New York Times about this
14 stop, didn't you?

15 A. Yes.

16 Q. And in the New York Times article didn't you write a
17 policeman yelled from the window get on the ground?

18 A. Yes.

19 Q. So --

20 A. If that's what -- yes.

21 Q. Okay.

22 MS. PATEL: What did you say? I feel like he was cut
23 off.

24 MS. PUBLICKER: He said yes.

25 THE WITNESS: What was your question?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 THE COURT: What did you write in the New York Times
2 article? Did you write that the policeman said it from inside
3 the car through the window?

4 THE WITNESS: Yes, I believe so.

5 Q. And it's not just a few poor memories about this incident.
6 You've actually lied about this incident, haven't you?

7 A. Lied about --

8 Q. The incident on August 22, 2006?

9 A. You said what.

10 THE COURT: She wants to know if you have lied about
11 describing this incident. Have you ever intentionally lied
12 about it?

13 THE WITNESS: No. No. It was to the best of my
14 recollection.

15 Q. You've never lied about this incident?

16 A. No.

17 Q. So when you spoke to the CCRB, as you told your counsel on
18 direct, you did not tell them that you hit your mouth and
19 sustained a laceration to the inside of your lip?

20 MS. PATEL: That was a mischaracterization of the
21 testimony.

22 Q. Did you tell the CCRB that you -- when you were getting on
23 the ground you hit your mouth and sustained a laceration to the
24 inside of your lip?

25 A. Yes.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo4 Peart - cross

1 THE COURT: Was that true when you said it?

2 THE WITNESS: No it wasn't true that I received a
3 laceration.

4 THE COURT: So that was a lie?

5 THE WITNESS: Yeah. That was a lie.

6 THE COURT: Was that the only lie you told?

7 THE WITNESS: That was the only lie.

8 Q. So you didn't actually get injured in any way during the
9 stop?

10 A. No.

11 Q. So you wanted the CCRB to believe that you had injured
12 yourself while listening to the officer's orders, right?

13 A. Yes.

14 Q. And you repeated that lie to the CCRB twice?

15 A. Did I?

16 Q. I'm asking you, Mr. Peart.

17 A. I don't recall.

18 Q. And you lied to the CCRB because you wanted the officer to
19 get in trouble, didn't you?

20 A. I wanted the officers to be held accountable for what they
21 did.

22 Q. And you thought the best way to do that was lying?

23 A. I didn't accuse any officer.

24 THE COURT: I guess what she's really saying is why
25 did you tell that particular lie that you cut your lip.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 THE WITNESS: I wanted to be -- I was 18 at the time
2 and I wanted to be taken seriously.

3 THE COURT: So you thought if you had an injury they
4 would take it more seriously?

5 THE WITNESS: Yes.

6 Q. You would do anything to make the NYPD look bad, wouldn't
7 you?

8 MS. PATEL: Objection. Argumentative.

9 THE COURT: Sustained. Argumentative.

10 Q. You never admitted to the CCRB that you lied, did you?

11 A. No.

12 Q. Earlier today you said that you corrected this lie by
13 telling the truth at your deposition, right?

14 A. Yes.

15 Q. And that deposition was over six years after you lied to
16 the CCRB?

17 A. Yes.

18 Q. When you stood up from being frisked on the ground you
19 asked the officers why you were stopped, right?

20 A. I don't recall.

21 MS. PUBLICKER: Your Honor, may I approach?

22 It's his deposition.

23 I'm handing you your deposition, Mr. Peart.

24 Q. Going to page 44, line 23.

25 MS. PATEL: Just give me a second.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 BY MS. PUBLICKER:

2 Q. "Question: And then what instruction did they give you
3 after that?

4 "A. After I got off the ground there were no other --

5 THE COURT: I see. He's not there yet. Just one
6 moment.

7 THE WITNESS: What line?

8 THE COURT: Page 44.

9 MS. PUBLICKER: Line 23.

10 THE WITNESS: Okay.

11 BY MS. PUBLICKER:

12 Q. "Question: And then what instructions did they give you
13 after that?

14 "A. After I got off the ground there were no other
15 instructions. I remember -- I recall the cop having my ID and
16 him sarcastically saying happy birthday. That's all I recall.
17 And the radio, they played back on the radio. I remember we
18 did ask them why we were being stopped and frisked and at
19 that --

20 "What point did you ask why you were being stopped and
21 frisked?

22 "After."

23 Does that refresh your recollection?

24 A. Yes.

25 Q. And after you got off the ground the officers played a

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 radio message for you, didn't they?

2 A. Yes.

3 Q. And when I say "played a radio message" I mean the officers
4 asked the radio dispatcher to send back the description of the
5 individuals the officers were looking for?

6 MS. PATEL: Objection. I don't think he knows what
7 the officers did.

8 THE COURT: No. No. That's true.

9 But did you hear the radio message?

10 THE WITNESS: Yes, I heard it.

11 THE COURT: Do you remember what it said?

12 THE WITNESS: I don't recall.

13 THE COURT: Okay.

14 Q. And they actually played it for you three times, didn't
15 they?

16 A. I don't recall. I don't recall.

17 MS. PUBLICKER: Your Honor, I'm going to play what has
18 been marked as Defendants' Exhibit Z-8. It is radio messages
19 from the officers for the night of the incident.

20 MS. PATEL: Excuse me. I just want to --

21 MS. PUBLICKER: Z-8.

22 MS. PATEL: Wait. Are you playing the 911 call?

23 MS. PUBLICKER: The radio message beginning at minute

24 9, 35.

25 MS. PATEL: It's only relevant if they can establish
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4

Peart - cross

1 that he's heard it at the time. And it's also hearsay.

2 THE COURT: I understand. It's not being offered for
3 the truth but that this is what they played for him.

4 I want you to listen to this tape and tell me if
5 that's what the officers played that night.

6 THE WITNESS: All right.

7 MS. PUBLICKER: There are -- the first recording is at
8 9 minutes 35 on the tape.

9 (Audio recording played)

10 THE COURT: Do you remember hearing that that night?

11 THE WITNESS: No. I don't recall that.

12 THE COURT: No?

13 THE WITNESS: No.

14 THE COURT: Okay.

15 Q. The next one is at ten minutes, fifteen seconds.

16 MR. KUNZ: Okay. Ready.

17 (Audio recording played)

18 THE COURT: Do you remember hearing that tape that
19 night?

20 THE WITNESS: No. I don't recall.

21 MS. PUBLICKER: There is one more, your Honor. At 14
22 minutes, 14 seconds.

23 MR. KUNZ: All right. Here we go.

24 (Audio recording played)

25 THE COURT: Do you remember hearing that message that
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross
1 night?

2 THE WITNESS: How many messages is it?

3 THE COURT: It's three different ones. But do you
4 remember hearing any of those?

5 THE WITNESS: No.

6 THE COURT: No?

7 THE WITNESS: I don't recall.

8 Q. Mr. Peart, if I could draw your attention to page 45, line
9 22 of your deposition.

10 A. Yes.

11 MS. PATEL: Wait. I'm sorry. I'm still getting
12 there. Page 45, line --

13 MS. PUBLICKER: 22.

14 Q. And what was said on the radio playback that you heard: I
15 don't remember. I just remember hearing blue shorts.

16 A. Yes.

17 Q. So in October of 2012 you recalled hearing a radio
18 playback?

19 A. Yes.

20 Q. And you recall that radio playback including blue shorts?

21 A. Yes.

22 Q. But you don't recall those three recordings I just played
23 for you?

24 A. No. I recall what I recall as far as like blue shorts
25 that's what I heard that night.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo4 Peart - cross

1 Q. I'm sorry. My question was whether you recalled hearing
2 those three recordings I played for you?

3 A. No. I don't recall.

4 Q. But you do recall the officers playing a description on the
5 radio for you, correct?

6 A. Yes -- can you repeat that question again?

7 Q. You recall the officers playing a description from their
8 radio to you that night?

9 A. Yes.

10 Q. And you and your friends fit that description, correct?

11 A. I had on blue shorts.

12 THE COURT: Were you wearing a tank top?

13 THE WITNESS: Yes. I was wearing a tank top.

14 THE COURT: Do you remember the color?

15 THE WITNESS: No. I don't recall the color. I know
16 it was white.

17 THE COURT: You thought it was white?

18 THE WITNESS: I don't recall.

19 THE COURT: You don't recall? Okay.

20 Q. The officers during the stop didn't say anything about your
21 race, did they?

22 A. No.

23 Q. They said nothing to indicate to you that you were being
24 stopped because of your race?

25 A. No.

D3j9flo4 Peart - cross

1 Q. And when you first complained to the CCRB about the stop
2 you didn't say anything to them about the stop being based on
3 your race, did you?

4 THE COURT: Well actually that's a funny question
5 because they said he fit the description.

6 MS. PUBLICKER: Yes, your Honor.

7 THE COURT: When you think about it, that's his race.

8 MS. PUBLICKER: If you will let me ask the following
9 question.

10 THE COURT: I will, but when you think about it.

11 Q. Did you refuse to tell the CCRB your race when they asked
12 you?

13 A. I don't recall.

14 MS. PATEL: Objection. What's the relevance?

15 THE COURT: I don't know. Anybody can see that, but
16 okay.

17 Q. Well, you believe you were stopped --

18 (Pause)

19 THE COURT: She's trying to cite to you when you were
20 on the phone with the CCRB did they ask you your race on the
21 phonecall where they couldn't see you, did they ask you your
22 race?

23 THE WITNESS: I don't recall.

24 MS. PUBLICKER: Your Honor, I'm going to play the
25 recording of the intake phonecall with Mr. Peart from August 7,
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 2006. The file itself begins 2006-01345 and ends with the
2 numbers 938.

3 This is on Plaintiffs' Exhibit 264 as well. And the
4 recording will go from 2 minutes, 35 and ending at 2 minutes,
5 45.

6 THE COURT: Okay.

7 MR. KUNZ: I'm going to start it.

8 (Audio recording played)

9 THE COURT: You could hear that, right?

10 THE WITNESS: Yes. I can hear that.

11 THE COURT: And they asked you your race and you said
12 you choose not to answer that.

13 THE WITNESS: Yes. I chose not to answer.

14 Q. You also claim to have been stopped on a day in spring
15 2008, right?

16 A. Yes.

17 Q. But you have no idea what month in 2008?

18 A. No, I don't recall.

19 Q. Or what day of the week it happened on?

20 A. No. I don't recall.

21 Q. You have no documents whatsoever that would refresh your
22 recollection about when this stop happened?

23 A. Not to my knowledge.

24 Q. That day you were visiting your grandmother; is that
25 correct?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo4 Peart - cross

1 A. Yes.

2 Q. And you know she lives on east 49th Street in Flatbush?

3 A. Yes.

4 Q. But you don't know the cross street to her house, correct?

5 A. No.

6 Q. When you left your grandmother's house that day you were
7 going to the bus stop?

8 A. Yes.

9 Q. Which bus was that?

10 A. This is the B46.

11 Q. And where was that bus stop?

12 A. This is on Utica Avenue. I don't recall.

13 MS. PUBLICKER: Your Honor, I'm going to be handing
14 the witness what has been marked as Defendants' Exhibit S-10
15 for identification.

16 THE COURT: Can you put it on the screen or is it --

17 MS. PUBLICKER: I was going to ask Mr. Peart to mark
18 on that map.

19 THE COURT: And then you'll put it on the screen?

20 MS. PUBLICKER: Yes, your Honor.

21 MS. PATEL: Which Bates number are you showing him?
22 Can we read the Bates number of the document you provided to
23 the defendant.

24 MS. PUBLICKER: NYC_2_00025281.

25 THE COURT: And that's -- what's on the screen now,
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 that's the map?

2 MS. PUBLICKER: Yes.

3 Q. Mr. Peart, what is the document I just handed you?

4 A. This looks like the map of the neighborhood.

5 THE COURT: The neighborhood in Brooklyn --

6 THE WITNESS: The neighborhood where my grandmother
7 lives.

8 BY MS. PUBLICKER:

9 Q. Could you please mark on that exhibit with a G where your
10 grandmother's house was.

11 THE WITNESS: This isn't an accurate picture.

12 Q. How is it inaccurate, Mr. Peart?

13 A. This isn't -- I'm not able to (pause) this is Avenue J.
14 Avenue N. She's further, about Avenue D. It's not depicted on
15 the map.

16 Q. Avenue D is the cross street to her house?

17 A. No. It's like a block over. Avenue D.

18 THE COURT: You say D or B?

19 THE WITNESS: D as in David.

20 THE COURT: This seems to start with H, Avenue H.

21 MS. PUBLICKER: I'll take that exhibit back from you.

22 Q. So your grandmother's house was a block over from Avenue D
23 on East 49th Street; is that correct?

24 A. To the best of my recollection.

25 Q. In which direction does East 49th Street run?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4

Peart - cross

- 1 A. I'm not sure.
2 Q. Is it east/west, north/south, or something else?
3 A. I'm not sure.
4 Q. You're not sure?
5 MR. MOORE: Up and down, I guess.
6 Q. And do you know what the cross street of the bus stop is?
7 A. The cross street -- I know it goes up Utica Avenue.
8 Q. Can you name any of the cross streets at the bus stop that
9 you would get off at?
10 A. The cross street?
11 Q. Yeah.
12 A. That I would get off to get on the train?
13 Q. To go to your grandmother's?
14 A. Well I get off at Avenue D.
15 Avenue D is where I would get off but it's like a
16 block or two away.
17 Q. You were wearing a black jacket that day?
18 A. No, I was -- no.
19 Q. No you were not?
20 A. You said a black jacket?
21 Q. Yes.
22 A. Yes. I was wearing a black jacket.
23 Q. And you don't remember anything else that you were wearing?
24 A. Not that I know of.
25 Q. But you were carrying your wallet, keys and cellphone?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4

Peart - cross

1 A. Yes.

2 Q. And that was in your front pocket?

3 A. I'm not sure what pocket it was in but it was in one of my
4 pockets.

5 Q. And when you left your grandmother's house you went out to
6 the left?

7 A. Yes.

8 Q. And that's where you first saw the police officers?

9 A. You said -- can you repeat that last question again.

10 Q. The one before that's where you saw the police officers?

11 I asked when you left your grandmother's house you
12 exited to the left and that's where you saw the police?

13 A. The left of what?

14 Q. You exited her house to the left?

15 A. I went to the right.

16 Q. Page 53, line 14.

17 A. You said line 13?

18 Q. Yes.

19 Fourteen. I'm sorry.

20 "Q. So when you left your grandmother's in what direction did
21 you go to get to your bus stop?

22 "A. Left."

23 Did you -- were you asked that question and did you
24 give that answer?

25 A. Yes. I wasn't clear.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4

Peart - cross

- 1 Q. And the officers were in a marked car?
2 MS. PATEL: Wait. He was trying to say something.
3 MS. PUBLICKER: There was no question pending.
4 THE COURT: Were you still in the middle of an answer?
5 THE WITNESS: Yeah. She asked me a question.
6 THE COURT: I know. Are you in the middle of your
7 answer or did you finish?
8 THE WITNESS: Um, I guess I finished.
9 THE COURT: Go ahead.
- 10 Q. And those officers were in a marked police car?
11 A. Yes.
12 Q. And they drove past you at first?
13 A. Yes.
14 Q. And then the car stopped and backed up?
15 A. They drove past the driveway.
16 THE COURT: They drove past the what?
17 THE WITNESS: The driveway.
18 THE COURT: Past the driveway.
19 THE WITNESS: Like --
20 THE COURT: Okay. They drove past the driveway.
21 THE WITNESS: Yes.
22 Past the house.
- 23 Q. And then they stopped and backed up?
24 A. Yes.
25 Q. And there were three officers who exited the vehicle?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4

Peart - cross

- 1 A. Yes.
- 2 Q. And today you gave descriptions of those officers, did you
3 not?
- 4 A. Yes.
- 5 Q. I believe you said that one was of Asian descent?
- 6 A. Yes.
- 7 Q. And the other two were white?
- 8 A. Yes.
- 9 Q. And that one was female?
- 10 A. Yes. One of them was female.
- 11 Q. But at your deposition in October of 2012 you could not
12 recall the descriptions of those officers, could you?
- 13 A. At deposition in 2012. Um, can you read it back to me?
- 14 Q. Sure. Page 54, starting at line I believe 13.
- 15 A. It says can you describe the officers and I said --
- 16 Q. So the question was, "Can you describe the officers?"
- 17 "A. I don't recall what they looked like.
- 18 "Q. Male, female?
- 19 "A. They were -- I'm not sure.
- 20 "Do you recall their race, skin color, anything about
21 their appearance?
- 22 "A. One person was of Asian descent.
- 23 "Q. Do you remember whether the Asian officer was male or
24 female?
- 25 "A. I'm not sure."

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo4

Peart - cross

1 Were you asked those questions and did you give those
2 answers?

3 A. Yes.

4 Q. And when those officers stopped you, they told you to put
5 your hands on the garage door; is that correct?

6 A. Yes.

7 Q. And then they frisked you?

8 A. Yes.

9 Q. And when they finished they explained to you why they
10 stopped you, right?

11 A. Yes.

12 Q. They told you there was a series of burglaries in the
13 neighborhood?

14 A. Yes.

15 Q. And you understood the reason they stopped you, right?

16 MS. PATEL: Objection.

17 THE COURT: Sustained. Sustained. You know what they
18 told you?

19 THE WITNESS: Yes.

20 BY MS. PUBLICKER:

21 Q. And one officer asked if you were okay; is that correct?

22 A. Yes.

23 Q. But you believe that was an inappropriate question for a
24 police officer to ask you?

25 A. Yes.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

- 1 Q. And when the officers told you that they stopped you
2 because there was a series of burglaries in the neighborhood,
3 you didn't have any reason not to believe them, did you?
4 MS. PATEL: Objection.
5 THE COURT: Did you believe them or not?
6 THE WITNESS: About the series of burglaries?
7 THE COURT: Yes.
8 THE WITNESS: I didn't know -- I don't know the
9 statistics on what was happening.
10 THE COURT: So you didn't know one way or the other?
11 THE WITNESS: Yeah.
12 Q. You didn't file a CCRB complaint about this stop, did you?
13 A. No.
14 Q. Even though you knew how to file a CCRB complaint?
15 A. Yes.
16 Q. The officers didn't say anything to you about your race
17 during the stop, did they?
18 A. No.
19 Q. They didn't say anything indicating that you were stopped
20 on account of your race?
21 A. No.
22 Q. You also claimed to have been stopped on a day in September
23 of 2010; is that correct?
24 A. Yes.
25 Q. But you have no idea the date?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo4 Peart - cross

- 1 A. No. I don't recall the date.
2 Q. You just know that it was a weekday, right?
3 A. Yes.
4 Q. But not what day of the week?
5 A. No, not what day.
6 Q. And you have no documents whatsoever that would refresh
7 your recollection?
8 A. No, not to my knowledge.
9 Q. You were walking home from the gym?
10 A. Yes.
11 Q. I believe today you said that was between 7th and 8th
12 Avenue?
13 A. What?
14 Q. Is that not where your gym is? I'm sorry.
15 A. No. That's not where it is.
16 Q. So the stop occurred between 7th and 8th Avenue?
17 A. Yes.
18 Q. And that is only a few blocks from your house; is that
19 right?
20 A. It's the next block.
21 Q. And you were in gym clothes?
22 A. Yes.
23 Q. And you were carrying a bag, weren't you?
24 A. No.
25 Q. You had your wallet, keys, a lock, and your cellphone,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 right?

2 A. Yes.

3 Q. And you had those all in your pockets?

4 A. Yes.

5 Q. But you don't remember which pocket?

6 A. No.

7 Q. When you first saw the officers you claim they were behind
8 you, correct?

9 A. Yes.

10 Q. When you saw them, you turned around?

11 A. I seen through my peripheral. I didn't completely turn
12 around.

13 Q. Well did you turn around at all?

14 A. I knew there was officers behind me.

15 Q. Excuse me?

16 A. I just knew there was officers behind me.

17 Q. Page 60, line 23.

18 "How did you see them if they were behind you? You
19 turned around and looked?

20 "A. I seen them through my peripheral. I may have turned
21 around, and I slowed down."

22 Were you asked those questions? Did you give those
23 answers?

24 A. Yes.

25 Q. And there were two officers?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4

Peart - cross

1 A. Yes.

2 Q. Those two officers were in uniform?

3 A. Yes.

4 Q. They were male?

5 A. Yes.

6 Q. But other than that you can't describe the officers, can
7 you?

8 A. I don't -- my memory -- not that I recall at this moment.

9 Q. Well today you testified -- you started out by saying they
10 both weren't black, correct?

11 A. Yeah. They both weren't black.

12 Q. And then you said one was white?

13 A. Yes.

14 Q. And then you said there was a Latino officer, right?

15 A. Yes.

16 Q. Is the Latino officer the same as the white officer?

17 A. No.

18 Q. So there was one white officer and one Latino officer?

19 A. Yes.

20 Q. But when asked at your deposition at page 68, line 9, "Do
21 you recall the race or skin color of the officers that stopped
22 you?"

23 "A. When?

24 "Q. This stop, the gym stop. September 2010.

25 "A. No. They weren't black."

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

- 1 Were you asked those questions? Did you give those
2 answers?
3 A. Yes.
4 Q. So you did not identify in October of 2012 that one officer
5 was white and the other one was Latino, did you?
6 A. No.
7 Q. And you didn't give the names of the officers at that time?
8 A. No.
9 Q. You didn't ask for the names of the officers?
10 A. No.
11 Q. You saw that they had badges on them, right?
12 A. Yes.
13 Q. But you didn't look at the badge numbers?
14 A. No.
15 Q. And after you saw the officers you slowed down?
16 A. No.
17 Q. No, you didn't slow down?
18 A. When they were closer. When they got closer I slowed down.
19 Q. So when you first saw them they were how far away?
20 A. They were a couple feet away.
21 Q. And then when they came closer than that is when you slowed
22 down?
23 A. When they started walking briskly.
24 Q. And --
25 A. Yeah. Go ahead.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo4

Peart - cross

1 MS. PATEL: He was saying something.

2 THE COURT: That's okay. Go ahead.

3 Q. The officers told you to put your hands on the wall, right?

4 A. Yes.

5 Q. And they only asked you once?

6 A. Yes.

7 Q. And you immediately complied?

8 A. Yes.

9 Q. But you had headphones in, right?

10 A. Yes.

11 Q. Those little ear buds that fit into your ear?

12 A. Yes.

13 Q. And you were listening to music on your iPhone?

14 A. It was an iPod.

15 Q. On an iPod. I'm sorry.

16 A. Yes.

17 Q. And you couldn't hear the officers, could you?

18 A. I turned it down by the time they were in my personal
19 space.

20 Q. Page 64, line 8.

21 "Q. You could hear them even though you were listening to
22 music?"

23 "A. I couldn't hear them. I turned on my music and I slowed
24 down actually."

25 Were you asked that question and did you give that

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 answer?

2 A. Yes.

3 Q. So you couldn't hear them?

4 MS. PATEL: I'm sorry. That's mischaracterizes his
5 testimony.

6 He said he turned it down.

7 MS. PUBLICKER: You turned it down.

8 Q. Your story changed though at some point, didn't it?

9 A. What part?

10 Q. What you originally said that you stopped because they told
11 you to put your hands against the wall, right?

12 A. Repeat that again.

13 Q. You originally stated that you stopped because the officers
14 told you to put your hands against the wall?

15 MS. PATEL: Objection. What does "originally" refer
16 to?

17 THE COURT: The first time he discussed this event.

18 MS. PATEL: Today?

19 THE COURT: I don't know. When is -- the deposition?

20 MS. PUBLICKER: In the deposition.

21 THE COURT: Did you say that at the deposition?

22 MS. PATEL: Is there a page number?

23 THE COURT: Do you recall what you said --

24 THE WITNESS: I'm kind of confused.

25 THE COURT: Okay. Do you recall how you described the
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 event at the time of the deposition or would you like to look
2 at the page?

3 THE WITNESS: I would like to look at the page.

4 THE COURT: Okay.

5 MS. PUBLICKER: Page 63.

6 I'm sorry page 62, line 15. This is a bit of a longer
7 section.

8 "Q. So you were walking. The officers were behind you. You
9 saw them in your peripheral vision. And at some point you
10 slowed down?

11 "A. Yes.

12 "Q. And at some point the officer said: Stop. Put your hands
13 against the wall?

14 "A. Yes.

15 "Q. Did you comply with their instructions to put your hands
16 against the wall?

17 "A. Yes.

18 "Q. Did you comply immediately?

19 "A. Yes.

20 "Q. How many times did the officers ask you to put your hands
21 against the wall?

22 "A. Once."

23 Do you recall being asked those questions and giving
24 those answers?

25 A. Yes.

D3j9flo4 Peart - cross

1 Q. But you later stated that you -- it was actually their
2 movement that suggested that they were coming for you, not
3 their verbal statement, correct?

4 MS. PATEL: Can I -- is there another cite?

5 MS. PUBLICKER: Page 65, line 7.

6 "Q. Did you actually hear them tell to you stop or you just
7 knew that, you sensed it based on the pace of their walking?

8 "A. I sensed it on the pace of their walking."

9 Also, page 63, line 20.

10 MS. PATEL: I'm sorry. What was the page?

11 MS. PUBLICKER: 63, line 20.

12 "Q. So did you hear the officers when they told you to stop?

13 "A. It was actually their movement that suggested they were
14 coming for me."

15 Do you recall being asked those questions and giving
16 those answers?

17 A. Yes.

18 Q. You didn't ask the officers why they were stopping you, did
19 you?

20 A. I don't recall.

21 Q. You didn't file a CCRB complaint about the stop?

22 THE COURT: We've had that at least three times.

23 We've had that question, did he file a CCRB.

24 MS. PUBLICKER: It's a different stop, however, your
25 Honor.

D3j9flo4 Peart - cross

1 THE COURT: I thought we covered that on this stop.

2 MS. PUBLICKER: No.

3 THE COURT: All right. I thought we did.

4 Did you file a CCRB on this stop?

5 THE WITNESS: No.

6 Q. The officers didn't say anything to you about your race
7 during the stop, did they?

8 A. No.

9 Q. But you believed that you were stopped because of your
10 race?

11 A. Yes.

12 Q. And you only think that because there were other people in
13 your neighborhood that you see wearing hoodies but you haven't
14 seen any of them getting stopped?

15 THE COURT: I'm sorry. I didn't understand that
16 question at all.

17 Q. The only reason you believe you were stopped on account of
18 your race is because there were other people, white people in
19 your neighborhood that you see wearing hoodies but you haven't
20 seen any of them get stopped?

21 MS. PATEL: Objection. It's a compound question and
22 it sounds like she's citing from something.

23 THE COURT: I think she's reading her own notes. I
24 understand it.

25 Did you understand the question or do you want to hear

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 it read back?

2 THE WITNESS: I would like to hear it read back.

3 THE COURT: One second. I'll ask the reporter to read
4 it back.

5 (Record read)

6 THE COURT: Isn't that correct?

7 THE WITNESS: Yes.

8 Q. The last stop we're here to talk about happened in
9 May 2011, right?

10 A. Yes.

11 Q. Or is it April of 2011?

12 A. Oh, it's April 2011.

13 Q. Now you signed a declaration in this case, correct?

14 A. Yes.

15 Q. In that declaration you stated that this stop happened in
16 May of 2011, correct?

17 A. Yes.

18 Q. And you gave a deposition in this case, correct?

19 A. Yes.

20 Q. And you stated that that stop happened in May of 2011,
21 right?

22 A. Yes.

23 Q. But today you testified that that stop actually happened in
24 April of 2011; is that correct?

25 A. Yes.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo4 Peart - cross

1 Q. And you knew that because you looked at your Facebook page
2 over the weekend, correct?

3 A. Yes.

4 Q. Now you've been involved in this lawsuit again since 2011,
5 right?

6 A. I don't recall how long.

7 Q. Well, you submitted a declaration in this case in 2011,
8 right?

9 A. Yes.

10 Q. And your attorneys at some point actually asked to get your
11 Facebook pages from you, correct?

12 A. Was it -- I'm not sure the exact year.

13 Q. Of what?

14 THE COURT: You first became involved in the lawsuit,
15 you're not sure which year?

16 THE WITNESS: Yeah, I'm not sure about the year.

17 Q. Well it was at least 2011, correct?

18 A. Yeah, at least.

19 Q. And at some point in this case you provided Facebook
20 printouts of your account to your attorneys, correct?

21 A. Yes.

22 Q. And that was a few months ago, right?

23 A. Yes.

24 Q. And in those Facebook printouts you provided to your
25 attorneys it talks about the stop on April 13, 2011, right?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 A. April 13? That's the date?

2 Q. On your Facebook page?

3 A. Okay. Yes.

4 Q. However, the first time that you're mentioning this is
5 today in court, right, that it happened in April, not May,
6 2011?

7 A. Yeah.

8 Q. So, talking about April 2011, the front door to your
9 building was replaced that month, right?

10 A. It wasn't replaced that month.

11 Q. You're sure that it was not replaced that month?

12 A. Yes, I am sure.

13 Q. And if I gave you your Facebook printout stating that the
14 front door to your building was replaced that would not refresh
15 your recollection?

16 A. That it was replaced in April?

17 Q. Yes.

18 A. It may have been around that time.

19 MS. PUBLICKER: Your Honor, if I may, this is
20 Defendants' Exhibit K-7.

21 MR. MOORE: What was the number? I'm sorry.

22 MS. PUBLICKER: K-7.

23 THE COURT: Somebody is putting it on the screen. Is
24 that what you wanted?

25 MS. PUBLICKER: I was just going to show the witness.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 THE COURT: You don't want it on the screen. She said
2 not to put it on the screen. Okay.

3 Q. Mr. Peart, I believe you're looking at page PL000643.
4 Please let me know when you've had a chance to review that
5 page.

6 A. Okay. I've reviewed it.

7 Q. Does that refresh your recollection about whether your
8 building's front door was replaced in April 2011?

9 A. It wasn't replaced in April. It was replaced a month
10 before.

11 Q. So the date on this posting says April 5, 2011, does it
12 not?

13 A. Yes.

14 Q. And you lived in the Frederick Samuel houses at the time?

15 A. Yes.

16 Q. And that's a NYCHA development, correct?

17 A. Yes.

18 Q. And when the front door to your building was replaced in
19 2011 you had to get a new front door key, right?

20 A. Yes.

21 Q. And when that happened you had to go through a whole
22 process to replace the key, right?

23 A. To replace it?

24 Q. Yes.

25 A. Yes.

D3j9flo4 Peart - cross

1 Q. You had to go to the police station and get a police
2 report?

3 A. Yes.

4 Q. And then you had to take that police report to the
5 management office?

6 A. Yes.

7 Q. And it took a lot of effort on your part, right?

8 A. Yes.

9 Q. And everyone who lived in your building would have had to
10 go through the same process to get a new key when that door was
11 replaced, right?

12 MS. PATEL: Objection. I don't understand the
13 relevancy and he can't testify to other people's --

14 THE COURT: I don't either but I assume you're leading
15 to something.

16 MS. PUBLICKER: Yes, your Honor.

17 THE COURT: I'll let her try.

18 Q. Again, Mr. Peart, everyone in your building would have had
19 to go get a new key for the new door, correct?

20 A. What --

21 THE COURT: Otherwise, you can't get in the building
22 so everybody needed a front door key, right?

23 THE WITNESS: Yes. Everybody needs a front door key
24 but --

25 THE COURT: But what?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3j9flo4 Peart - cross

1 THE WITNESS: But they don't have to get to the
2 precinct to do that.

3 THE COURT: How else do they get it?

4 THE WITNESS: They can go to the management office. I
5 had lost my key. That's why I went to the precinct.

6 Q. And those keys can't be duplicated, right?

7 A. No.

8 Q. So if somebody used to have a working key to the building
9 but could not prove that they lived there after the door was
10 replaced, it would be very difficult for them to enter the
11 building, right?

12 A. Repeat that question again.

13 Q. If somebody used to have a key to the old door, the door
14 was replaced --

15 MS. PATEL: Objection.

16 Q. They would only be able to get a new key once they proved
17 that they lived there, right?

18 MS. PATEL: Objection.

19 THE COURT: I'm going to allow it.

20 To get a new key you have to prove you live there,
21 right?

22 THE WITNESS: Yes.

23 THE COURT: All right.

24 Q. And the stop in this case happened on April 13, 2011,
25 right?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3j9flo4 Peart - cross

1 A. (No response).

2 Q. The stop that we're talking about, April 13, 2011?

3 A. Are you referring to the Facebook post?

4 Q. Yes.

5 A. Yes.

6 Q. And the Facebook post is accurate as to the date of the
7 stop?

8 A. Yes.

9 Q. There were two officers that stopped you that day, right?

10 A. Yes.

11 Q. And they were in uniform?

12 A. Yes.

13 Q. And they were male?

14 A. Yes.

15 Q. And today you testified that one of the officers was white,
16 short, with glasses. The other one was, I believe your words
17 was, not black, with salt and pepper hair; is that correct?

18 A. Yes.

19 THE COURT: All right. I think we'll take our
20 afternoon recess now. And we'll reconvene at 20 of 4 on that
21 clock.

22 (Recess)

23 (Continued on next page)

24

25

D3J8FLO5 Peart - cross

1 NICHOLAS PEART, resumed.

2 BY MS. PUBLICKER:

3 Q. Before we took the break I was about to point you to page
4 73, line 10.

5 At your deposition, were you asked the following
6 questions and did you give the following answers:

7 "Q. Can you describe the officers?

8 "A. They were male."

9 MS. PATEL: Can you hold on a second?

10 A. What page is it?

11 Q. 73.

12 A. OK.

13 Q. Line 10.

14 A. All right.

15 "Q. Can you describe the officers?

16 "A. They were male.

17 "Q. Race, skin color?

18 "A. One officer was white, and I don't know the race of the
19 other officer."

20 Were you asked those questions and did you give those
21 answers?

22 A. Yes.

23 Q. When you first saw the officers, they just took your cell
24 phone, right?

25 A. What stop are we talking about?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Peart - cross

1 Q. We are talking about your April 13, 2011 stop.

2 A. OK. All right.

3 Q. When you first saw the officers, they just came and took
4 your cell phone, right?

5 A. They were -- when I seen the officers, they were right in
6 front of me, and they took it.

7 Q. They just took it without saying anything first?

8 A. Yes.

9 Q. When you first saw the officers, you did not see them exit
10 a vehicle, did you?

11 A. No.

12 Q. One officer told you to put your hands against the wall?

13 A. It was one of them.

14 Q. Was that the white police officer or the non-white police
15 officer?

16 A. I don't recall.

17 Q. You put your hands against the wall?

18 A. Yes.

19 Q. The officers then took your wallet?

20 A. They took my wallet, yes. They took my wallet, yes.

21 Q. And they frisked you?

22 A. Yes.

23 Q. In sum and substance, they asked you if you had exited the
24 Frederick Samuel Houses, right?

25 MS. PATEL: Objection.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5

Peart - cross

1 MS. PUBLICKER: Objection to what?

2 THE COURT: That's what I am reading.

3 MS. PATEL: It's assuming facts not in evidence. Sum
4 and substance.

5 THE COURT: I will sustain it as to form.

6 Q. Did the officers ask you something?

7 A. Yes.

8 Q. What did they ask you?

9 A. I don't recall, as a matter of fact, I don't recall.

10 THE COURT: Did they ask you if you had just come out
11 of a certain building?

12 What was the name of the houses you mentioned, Ms.
13 Publicker?

14 MS. PUBLICKER: Frederick Samuel Houses.

15 THE COURT: Did they ask you if you had just come out
16 of the Frederick Samuel Houses?

17 THE WITNESS: I don't recall.

18 Q. I am going to point you to page 75, line 21.

19 "Q. Did the officer ask you any questions?

20 "A. Yes.

21 "Q. What did they ask you?

22 "A. I don't remember.

23 "Q. Did they ask you if you lived -- if you had just come out
24 of the Frederick Samuel Houses?

25 "A. Yes."

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5

Peart - cross

1 Does that refresh your recollection?

2 A. Not really.

3 Q. Do you recall being asked those questions and giving those
4 answers?

5 A. Yes.

6 MS. PATEL: Can we fill in the rest?

7 "Q. And what did you tell them?

8 "A. Yes."

9 BY MS. PATEL:

10 "A. They didn't say Frederick Samuel.

11 "Q. What did they say?

12 "A. I don't remember. I don't remember."

13 BY MS. PUBLICKER:

14 "Q. But you understood them to be asking if you were coming
15 out of Frederick Samuel.

16 "A. I don't remember. They asked me what building did I come
17 out of.

18 "Q. What did you tell them?

19 "A. My apartment building."

20 Do you recall being asked those questions and giving
21 those answers?

22 A. Yes.

23 Q. After frisking you the officers handcuffed you, is that
24 correct?

25 I will ask that you not read from your deposition

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Peart - cross

1 testimony at this time.

2 A. You said what?

3 Q. After frisking you, the officers handcuffed you?

4 A. Yes.

5 Q. The officers placed you in an unmarked black police
6 vehicle?

7 A. Yes.

8 Q. They took your keys?

9 A. Yes.

10 Q. And one of them entered your building with those keys?

11 A. Yes.

12 Q. And during that time the other officer removed your
13 sneakers?

14 A. Yes.

15 Q. And he searched your socks?

16 A. Patted over my socks.

17 Q. You never asked him why he was patting over your socks, did
18 you?

19 A. No.

20 Q. The officer then put your shoes back on you?

21 A. Yes.

22 Q. At some point, you did ask why you were stopped, right?

23 A. Yes.

24 Q. Today you said that you don't recall why you were
25 stopped -- why the officers told you you were stopped?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5

Peart - cross

1 MS. PATEL: I think that's mischaracterizing his
2 testimony.

3 MS. PUBLICKER: Ms. Patel, I believe you asked him, Do
4 you recall what they told you? And he said, No, I don't.

5 Q. So you were told, though, that you fit the description of
6 someone who was ringing doorbells at that apartment, correct?

7 A. You said doorbells?

8 Q. Yes.

9 A. It wasn't -- OK. Repeat that question again.

10 Q. You were told by the police officers that you fit the
11 description of somebody who was ringing doorbells at that
12 apartment?

13 A. Ringing a doorbell.

14 Q. Is that a yes?

15 THE COURT: No.

16 Q. A single doorbell? Yes?

17 A. Yes.

18 Q. You believe the officers stopped you because of your race
19 that day, right?

20 A. Yes.

21 Q. But you didn't file a CCRB complaint about this stop, did
22 you?

23 A. No.

24 Q. Even though you knew how to file such a complaint?

25 A. Yes.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5

Peart - cross

1 Q. And you stated before that because the CCRB did not
2 substantiate charges against the officers in connection with
3 your August 5, 2006 stop, that you did not file CCRB complaints
4 concerning these three other stops, is that correct?

5 A. Yes.

6 Q. But you did not give the CCRB a complete and truthful
7 statement in the August 5, 2006 stop, did you?

8 MS. PATEL: Objection. We have already gone over
9 this. This was asked and answered.

10 THE COURT: Are you going to cover some new ground?
11 Because I think we did go over the August 5 stop.

12 MS. PUBLICKER: One more question on this.

13 THE COURT: One that is new?

14 MS. PUBLICKER: A new one.

15 THE COURT: I won't let him answer this one. We have
16 been over this one. What is the new one?

17 Q. You have never filed a complaint with the CCRB where you
18 provided complete and truthful information, have you?

19 MS. PATEL: Objection. Argumentative.

20 THE COURT: It is argumentative. Sustained.

21 Q. You're participating in this lawsuit because you feel it's
22 unjust that you have been stopped for no apparent reason,
23 right?

24 A. Repeat that question.

25 Q. You're participating in this lawsuit because you believe it

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5

Peart - cross

1 is unjust that you have been stopped for no apparent reason,
2 right?

3 THE COURT: Is that why you're here today?

4 A. Yes.

5 Q. But in at least three of the stops you have described, the
6 officers told you the reason you were stopped, right?

7 MS. PATEL: Objection.

8 THE COURT: They may have told him. That's not
9 anything to do with the last question. If he believes it's
10 unjust, that's why he is here. It's his belief that you called
11 for in the previous question. So I don't see the relationship
12 of one question to the other.

13 MS. PUBLICKER: Do they need to be related?

14 THE COURT: I think so. You said, but in all three
15 cases they told you.

16 MS. PUBLICKER: I will remove the beginning then.

17 Q. In at least three of the stops --

18 THE COURT: What is at least? I thought there were
19 only three stops he testified to.

20 MS. PUBLICKER: Four stops, your Honor.

21 THE COURT: I have lost count. In at least three. Go
22 ahead.

23 Q. Of the stops the officers told you the reason that you were
24 stopped, correct?

25 A. No.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Peart - cross

1 Q. No, they did not?

2 THE COURT: In three of the stops, did they tell you
3 why they stopped you?

4 THE WITNESS: Not that I recall.

5 THE COURT: How many do you recall where they did tell
6 you why they stopped you?

7 THE WITNESS: Two.

8 Q. Which two?

9 A. The April 2011, the stop in Brooklyn.

10 Q. And what about your stop in August 2006?

11 A. August 2006 I filed a CCRB complaint.

12 THE COURT: But that's not what she is asking. Did
13 they tell you there -- they played the tape and it sounded like
14 the description?

15 A. 2006 they played back the --

16 THE COURT: The audiotape.

17 A. The audiotape.

18 Q. You don't believe that you live in a high-crime
19 neighborhood, do you?

20 MS. PATEL: Objection.

21 THE COURT: Do you think you live in a high-crime
22 neighborhood?

23 THE WITNESS: I don't know the statistics.

24 THE COURT: What is your own belief? Do you think
25 it's a high-crime neighborhood?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5

Peart - cross

1 THE WITNESS: There is crime all over.

2 THE COURT: Do you think your neighborhood is a
3 high-crime area?

4 THE WITNESS: I don't know.

5 THE COURT: OK.

6 Q. You witnessed two people being shot and murdered just a
7 block away from your apartment, right?

8 A. Yes.

9 Q. And you have heard about robberies in your neighborhood?

10 MS. PATEL: Hearsay.

11 THE COURT: I will allow that.

12 A. Yes.

13 Q. And rapes?

14 A. On the news.

15 Q. And drug activities?

16 A. Yes.

17 Q. You have actually seen drug activities in your building,
18 haven't you?

19 A. Yes.

20 Q. But you don't consider your neighborhood to be high crime?

21 A. High crime?

22 Q. Yes.

23 MS. PATEL: Objection. Asked and answered.

24 THE COURT: I am going to ask again. I realize it's
25 been asked before. Do you think your neighborhood is a

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Peart - cross

1 high-crime area?

2 THE WITNESS: I don't know. Compared to what?

3 Q. You have very strong opinions of police officers in your
4 neighborhood, don't you?

5 THE COURT: Do you have strong views about the police,
6 the way they act in your neighborhood?

7 THE WITNESS: Yes, some of them.

8 Q. You believe that police are in Harlem in order to protect
9 the rising property values from young tan, African, Latino
10 people, right?

11 A. Yes. That's the way I felt when I wrote that essay for
12 college.

13 Q. That's not how you feel today?

14 A. Partly.

15 THE COURT: You still partly feel that way?

16 THE WITNESS: Yes.

17 Q. You don't believe the police are there to protect your
18 community from crime, do you?

19 MS. PATEL: What is the relevance?

20 THE COURT: I will allow it.

21 A. Repeat that question again.

22 THE COURT: Do you think the police are there to
23 protect people in your community?

24 THE WITNESS: Honestly, not all of them.

25 THE COURT: So some yes, some no?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5

Peart - cross

1 THE WITNESS: I really don't know. Some, yeah.

2 Q. What was your final answer?

3 A. Some yes, some no.

4 Q. And you believe that the police presence in your community
5 is hostile, is that right?

6 A. Yes.

7 Q. The opinions that you hold of police officers impacts the
8 way that you recollect your encounters with them, doesn't it?

9 MS. PATEL: Objection.

10 THE COURT: It's bringing out bias. She is allowed to
11 try to do that.

12 Your view of the police officers, do you think that
13 affects the view of your stops, your experience being stopped?

14 THE WITNESS: My experiences being stopped, does it
15 affect my --

16 THE COURT: The other way around. Your view that
17 there is hostility between the community and the police, does
18 that affect your view of what happened when you were stopped?

19 THE WITNESS: It's not a direct view of how it
20 reflects.

21 MS. PUBLICKER: If I could have one minute, your
22 Honor?

23 Q. One more question to clarify. Earlier I had asked if in
24 three of the stops the officers told you the reason you were
25 stopped.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3J8FLO5 Peart - cross

1 THE COURT: Do you remember that question she asked a
2 couple of minutes ago?

3 A. Yes.

4 Q. So in at least three of the stops, were you told the reason
5 you were stopped?

6 A. Yes.

7 MS. PUBLICKER: Thank you.

8 THE COURT: Ms. Patel.

9 REDIRECT EXAMINATION
10 BY MS. PATEL:

11 Q. Mr. Peart, a moment ago you were asked by the city's
12 lawyers, there was a portion of your transcript that was read
13 on page 68.

14 A. Yeah.

15 Q. Line 9.

16 "Q. Do you recall the race or skin color of the officers that
17 stopped you?

18 "A. When?

19 "Q. This stop, the gym stop, September 2010.

20 "A. No. They weren't black."

21 Were you ever asked whether the officers who stopped
22 you were white?

23 A. I don't recall.

24 Q. Were you ever asked whether they were Hispanic?

25 A. No. No.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3J8FLO5 Peart - redirect

1 Q. On April 13, 2011, when you were stopped on your block, did
2 you have -- at that time, in general, did you own a key or had
3 you received a key to your building?

4 A. April 2011. Yeah. You said what?

5 Q. On the day that you were stopped, during that time on that
6 day, in general, around that time in April, did you have a key
7 to your building?

8 A. Yes.

9 Q. Do you remember a moment ago being asked about whether the
10 officers in your April 13, 2011 stop asked you about coming out
11 of your building? Do you recall being asked those questions a
12 moment ago?

13 A. Yes.

14 Q. Do you recall on that day that the officers questioned you
15 about coming out of a building?

16 A. Yes.

17 Q. Which building did they ask you whether you came out of?

18 A. 129.

19 Q. Which building do you live in?

20 A. 125.

21 Q. Did you tell that to the officers?

22 A. Yes.

23 Q. Did you explain that in your declaration for class
24 certification, if you recall?

25 A. Yes.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

D3J8FLO5 Peart - redirect

1 Q. On that day, April 13, 2011, was every person coming out of
2 your building getting stopped?

3 A. No.

4 Q. Nicholas, do you believe the reasons the officers gave you
5 for stopping you?

6 A. No.

7 MS. PATEL: One moment.

8 That's it, your Honor.

9 THE COURT: Thank you.

10 Any recross?

11 MS. PUBLICKER: No, your Honor.

12 THE COURT: OK. Thank you, Mr. Peart. You're done.

13 THE WITNESS: Thank you.

14 THE COURT: Who is your next witness?

15 MR. CHARNEY: Officer Polanco.

16 ADHYL POLANCO,

17 called as a witness by the plaintiffs,

18 having been duly sworn, testified as follows:

19 THE COURT: State your full name, first and last,
20 spelling both for the record.

21 THE WITNESS: Adhyl Polanco, A-D-H-Y-L, P-O-L-A-N-C-O.

22 DIRECT EXAMINATION

23 BY MR. CHARNEY:

24 Q. Good afternoon, Officer Polanco.

25 A. Good afternoon.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

- 1 Q. Officer Polanco, by whom are you currently employed?
2 A. New York City Police Department.
3 Q. How long have you worked for the NYPD?
4 A. About eight years.
5 Q. So what year did you start working for them?
6 A. 2005.
7 Q. What was your first assignment after you finished the
8 police academy?
9 A. I went to the 46th precinct in the Bronx.
10 Q. How long did you work there?
11 A. About six months. It was an impact assignment.
12 Q. Can you explain what an impact assignment is?
13 A. Impact is when they send officers straight out of the
14 academy to a high-crime area.
15 Q. How long did you work this impact assignment?
16 A. About five to six months.
17 Q. After those five to six months, did your assignment change?
18 A. Yes.
19 Q. How did it change?
20 A. I got permanently assigned to the 41st precinct in the
21 Bronx.
22 Q. When you were assigned to the 41st precinct in the Bronx,
23 did you work in a particular unit?
24 A. I was patrol most of the time.
25 Q. So you were a patrol officer in the 41st precinct for how

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 long?

2 A. From the beginning of 2006 to about December 2009.

3 Q. As a patrol officer, were you assigned to a particular
4 unit, or how would you describe the group of officers you
5 worked with?

6 A. It varies depending on the day. You don't get an
7 assigned -- a permanent assignment. Basically, when you're
8 new, you have the most busy sector they call it. But I was not
9 the only one new so some day I would have one sector, some day
10 I would have the other.

11 Q. Did you typically patrol with other officers or by
12 yourself?

13 A. With other officers.

14 Q. How many?

15 A. At least one.

16 Q. Did you work a particular tour of duty when you were in the
17 41st precinct?

18 A. It was called the 4 to 12. It's 3:00 by 11:35 p.m.

19 Q. How many tours of duty are there in a 24-hour period for
20 NYPD officers?

21 A. There's three main ones. There can be a bunch of them, but
22 the three main ones for patrol will be day tours, 4 to 12 and
23 midnight.

24 Q. If you can tell us to the best of your recollection, what
25 were your duties and responsibilities as a patrol officer in

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 the 41st precinct?

2 A. Basically, look out for the community, help with their
3 needs.

4 Q. How would you do that, if you can remember?

5 A. It's many ways to do it. When you're on patrol, every
6 radio run that come over brings something different. Sometime
7 you be called to assist somebody to go up the steps. Sometime
8 somebody is stabbed. Most of the time we are referees,
9 Somebody is fighting the daughter or the daughter is fighting
10 the mother, and we are in between basically.

11 Q. I want to show what has been marked as Plaintiffs' Exhibit
12 355. I am going to put it on the elmo.

13 MR. CHARNEY: Can I have a copy for the witness?

14 Can I show it to the witness or do you want me to move
15 it into evidence first?

16 THE COURT: Either way. Did you want to use it to
17 refresh his recollection?

18 MR. CHARNEY: I was going to ask him about some of the
19 information in the document.

20 THE COURT: Is there going to be objection to it? Is
21 anybody going to object to this exhibit?

22 MS. COOKE: It was not provided as one of the initial
23 exhibits so I need to pull a copy.

24 THE COURT: He has it for you. Then just tell me if
25 you're going to object to it. If it's from the patrol guide, I

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 wouldn't think there would be an objection.

2 MS. COOKE: I just can't tell if it's complete. No
3 objection.

4 MR. CHARNEY: This is what was produced to us as the
5 patrol guide section setting forth the duties and
6 responsibilities of a police officer.

7 THE COURT: Current?

8 MR. CHARNEY: This is the most current one we were
9 provided.

10 THE COURT: That is the most current one the
11 plaintiffs were given. I will take it for what it's worth.

12 What we are calling this?

13 MR. MOORE: 355.

14 THE COURT: 355 is received.

15 MR. CHARNEY: I am going to hand this to the witness.

16 MS. COOKE: We are going to need a minute to pull it.

17 I am going to make an objection. This is three-page
18 document. Mr. Charney has only provided one page.

19 THE COURT: If you have the whole three-page document,
20 I will substitute it.

21 MR. CHARNEY: The second page is a different patrol
22 guide section. We can put it in, but it's a completely
23 separate patrol guide section.

24 THE COURT: I think he only wants to offer this
25 section. It does say page 1 of 1.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5

Polanco - direct

1 MS. COOKE: For the record, 355 was provided on the
2 plaintiffs' exhibit list as a three-page document.

3 THE COURT: This says page 1 of 1 in the upper
4 right-hand corner, and this is the section of the patrol guide
5 he wishes to offer. So I will take this one page exhibit which
6 is this section.

7 Do you have a section number?

8 MR. CHARNEY: I believe it says 202-21.

9 THE COURT: So I am accepting 202-21, that's the
10 section, it's 1 of 1 page document, in evidence as 355.
11 Despite the fact that when you listed it on your exhibit list,
12 you called it a three-page document.

13 (Plaintiffs' Exhibit 355, Section 202-21, received in
14 evidence)

15 THE COURT: Now that we have got past that.

16 BY MR. CHARNEY:

17 Q. Officer Polanco, have you had a chance to review this
18 document, Exhibit 355?

19 A. Yes.

20 Q. Do you recognize this document?

21 A. Yes.

22 Q. Can you tell me what this document is based on your review?

23 A. It's on paper what we supposed to do in the streets, on
24 paper.

25 Q. When you say what you're supposed to do on the streets,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 what do you mean by that?

2 A. The police department have written policies and there's a
3 difference between written policies and what actually goes on
4 out there.

5 Q. Based on your review of this document, is it fair to say
6 that this document includes the duties and responsibilities of
7 a police officer at least as they exist on paper in the police
8 department?

9 A. Yes.

10 Q. I want to draw your attention to number 8 on this list. Do
11 you see number 8?

12 A. Yes, I do.

13 Q. Can you read for us what number 8 says?

14 A. "Render all necessary police service in assigned area and
15 as otherwise directed."

16 Q. What is your understanding of what "all necessary police
17 service in assigned area" includes?

18 A. It means helping people. It's the reason why I became a
19 cop. It doesn't necessarily mean to produce. I don't see the
20 word productivity here anywhere. It can be from helping
21 somebody, to giving advice to somebody, from preventing a
22 fight. It can go from various things.

23 Q. So does it include more than simply making arrests?

24 A. Of course.

25 Q. Does it include more than simply writing tickets?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5

Polanco - direct

1 A. Yes.

2 Q. Does it include more than simply conducting stop, question
3 and frisk?

4 A. Yes. Those are the easy part of the job.

5 Q. What other services -- you mentioned a couple. Are there
6 other services that, based on your training and experience,
7 police officers are supposed to perform as part of their job?

8 A. Sometime we have to sit on a dead body the whole day.

9 Sometime we have to bring a bad car accident to the hospital,
10 where people actually die on the way or die at the hospital.

11 Sometime we get rapes with minors, kids, rapes with female.

12 Sometime we get domestic dispute where sometime turn deadly.

13 It's very, very varied amount of police duty.

14 Q. When you were a patrol officer in the 41st precinct, did
15 you have a direct supervisor?

16 A. Yes, I did.

17 Q. Who was that person?

18 A. Sergeant Edgar Padilla.

19 Q. What was his rank?

20 A. He was a sergeant.

21 Q. Were there any other sergeants that supervised you while
22 you were a patrol officer in the 41st precinct?23 A. Yes. In the 4 to 12, it was Sergeant Padilla, Sergeant
24 Bennett, Sergeant Rodriguez, and occasionally we get one here
25 and there, but those were the three main sergeants.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 Q. Do you know who those sergeants reported to? Was there a
2 person in the precinct who was their direct supervisor?

3 A. They had a platoon commander. What time frame are we
4 speaking about?

5 Q. That's a good question. Let's focus on the year 2009.

6 A. Yes.

7 Q. During that year, who was the platoon commander that the
8 sergeants that supervised you reported to, if you know?

9 A. It was Lieutenant Andrew Valenzano.

10 Q. Can you spell the last name?

11 A. V-A-L-E-N-Z-A-N-O.

12 MR. CHARNEY: I want to show another exhibit. This is
13 marked as Plaintiffs' Exhibit 419.

14 THE COURT: Any objection to 419?

15 MS. COOKE: All 12 pages?

16 MR. CHARNEY: We were going to offer pages 2 through
17 12, but I have no objection to the whole thing coming in if
18 defendants think it needs to be complete.

19 MS. COOKE: For completeness, yes.

20 THE COURT: So now there is no objection?

21 MS. COOKE: No.

22 THE COURT: What is the exhibit number again?

23 MR. CHARNEY: 419.

24 THE COURT: 419 is received.

25 (Plaintiff's Exhibit 419 received in evidence)

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 MR. CHARNEY: May I show it to the witness?

2 THE COURT: Sure.

3 Q. Officer Polanco, I want to draw your attention to the
4 second page of Exhibit 419, which is marked NYC underscore
5 18924.

6 Do you recognize that document on the second page?

7 A. Yes.

8 Q. Can you tell me what that document is?

9 A. This is my monthly activity report for the month of January
10 2009.

11 Q. Can you tell me what a monthly activity report is?

12 A. It's where officers basically put down what they had done
13 for the month.

14 Q. Did you complete a monthly activity report for every month
15 that you worked in the 41st precinct?

16 A. I would say yes. Maybe when I was on patrol, yes.

17 Q. You said that officers on this form will write down what
18 they did during the month, is that right?

19 A. Yes.

20 Q. What kind of information did you typically include on this
21 form when you filled it out?

22 A. You supposed to include everything, basically, everything
23 that is there. You marked off whatever you did.

24 Q. What kinds of activities that you did in a month are
25 included in this form?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 A. Domestic incident, complaint reports, juvenile reports,
2 summonses, complaint reports, parking, radio runs, vertical
3 patrols.

4 Q. What about, for example, I think you gave an example
5 earlier of having to go to the hospital with an injured person.
6 Would that information be included on this form?

7 A. It will be included, yes.

8 Q. Where would you include that on this form?

9 A. If we did an aided card, what is called an aided card, it
10 will be included.

11 Q. What if you had to, as you mentioned, mediate like a
12 domestic dispute, would that be on this form?

13 A. If we took a domestic report, yes, we will mark that we
14 took a domestic report.

15 Q. Are there any activities amongst the ones you mentioned
16 earlier that a police officer would do that are not reflected
17 on this form?

18 A. Sometime you do job like missing. Basically, you start
19 doing your paperwork for missing. As you're doing your
20 paperwork, a couple of hours later you might run into the
21 person, and then the report will be destroyed. So, no, it
22 won't be listed anywhere.

23 Q. After you completed this form, did you typically give it to
24 somebody else in the police department?

25 A. The sergeant, your immediate supervisor will be the one to

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 collect it.

2 Q. Was it your practice when you were a patrol officer in the
3 41st precinct to hand this in once a month to your sergeant?

4 A. Yes.

5 Q. Did you typically discuss the information on the form with
6 your sergeant?

7 A. Not the whole thing. They will discuss it with us. We
8 wouldn't.

9 Q. Did your sergeant, in fact, discuss your monthly activity
10 reports with you?

11 A. Sometime, yes.

12 Q. Were there particular topics that your sergeant discussed
13 with you?

14 A. When it comes to activity, they only care about one thing,
15 and one thing only. It's how many arrests you had, how many
16 summons you wrote, and how many 250s you have for that night.
17 Basically, that's all they care for.

18 Q. You said for that night?

19 A. For that month. I'm sorry.

20 Q. Did your sergeant ever ask you about the number of radio
21 runs that were listed on your monthly activity report?

22 A. They don't care about that.

23 Q. Did they ever ask you about the number of domestic
24 incidents that you responded to in a month?

25 A. No. They don't care about that.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 Q. Did they ever ask you about the number of injured persons
2 that you assisted in a given month?

3 A. No. They don't care.

4 Q. So other than asking you about the number of arrests or
5 summonses or stops and frisks in a given month, did your
6 sergeant ever ask you about any of the other activity you
7 performed in a month?

8 A. No.

9 Q. What about your activity on a daily or weekly basis, did
10 your sergeant ever discuss that with you?

11 A. There came a point in time in 2009 where they came very
12 hard with the quotas. They call it productivity. It is what
13 it is. And they had a daily sheet. Every day, after we came
14 back from patrol, we had to see the platoon commander and
15 specifically tell him what we had done for that night. If I
16 explain myself, what we have done in terms of summonses, 250,
17 or arrests.

18 Q. You said this was something that was done every tour?

19 A. Yes. On a daily recap they call it.

20 Q. Was there a form you had to fill out at the end of the tour
21 with this information on it?

22 A. No. The platoon commander would fill it out according to
23 what we tell him or whatever he collects from us.

24 Q. So when you would come back at the end of the tour, did you
25 have to turn in any paperwork to the platoon commander?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5

Polanco - direct

1 A. He will be waiting for us one by one and he will ask us,
2 what have you got for me? Basically, how many summonses, how
3 many 250s, how many arrests you have got for me?

4 Q. Did you have to provide him with paperwork showing how many
5 arrests or summonses or 250s you did?

6 A. Sometime you will tell him verbally, but he will check
7 anyway; he will check the box at the end of the night. So it's
8 not like I can lie to him and say I got this, because at the
9 end of the night he going to go to the box and check it. So
10 sometime we don't give him the physical evidence right away.
11 Maybe we have to sign off on it or something like that, but we
12 will tell him what we did for the night, what we got for the
13 night.

14 Q. When you say platoon commander, are you referring to
15 Lieutenant Valenzano?

16 A. Yes.

17 Q. Other than Lieutenant Valenzano, did any of your other
18 supervisors ask you about your daily or weekly activity when
19 you were a patrol officer in the 41st precinct?

20 A. Yes.

21 Q. Who?

22 A. Our own unit delegates used to ask. The sergeant, Sergeant
23 Rodriguez used to ask. Sergeant Bennett. Inspector McHugh, he
24 was the commanding officer, he used to ask about activity very
25 often.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 Q. Now, when Lieutenant Valenzano asked for your daily
2 activity, did he ever ask you about whether or not an
3 individual arrest that you had done was based on probable
4 cause?

5 A. They will never question the quality. They will question
6 the quantity. They are not checking the 250. They are not
7 checking the summonses. They just want to make sure we have
8 them. How we got them, they don't really care about.

9 Q. So were you ever asked by Lieutenant Valenzano, after you
10 had finished a tour and done a UF-250, whether or not the stop
11 and frisk that you recorded was based on reasonable suspicion?

12 A. Never.

13 Q. Were you ever asked by Lieutenant Valenzano at the end of a
14 tour, when you handed in a summons, a criminal summons, whether
15 or not the summons was based on probable cause?

16 A. Never.

17 Q. Officer Polanco, did there come a point in time during your
18 assignment to the 41st precinct when one or more of your
19 supervisors communicated to you a specific number of arrests
20 that they said you were required to do in a single month?

21 A. Yes.

22 Q. When did that happen?

23 A. It happened several times. It started maybe in the summer
24 of 2009. I started recording it because I couldn't believe
25 what I was hearing, and I thought nobody will believe me unless

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 I record it. I started recording maybe late August to
2 November, early December 2009.

3 Q. We are going to get to those recordings in a little while.
4 I wanted to first find out from you, how many of your
5 supervisors communicated specific numbers of arrests that they
6 said you were required to do in a month?

7 A. Sergeant Bennett, Sergeant Rodriguez, Inspector McHugh,
8 Lieutenant Valenzano, PBA delegate -- all of them -- Mansi, PBA
9 delegate Herran, PBA delegate Fundaro.

10 Q. When you say PBA delegate, what do you mean by that?

11 A. The union representative for us.

12 Q. I think you may have already answered this, but Inspector
13 McHugh, what was his position in the 41st precinct?

14 A. He was a commanding officer.

15 Q. Do you know when he became the commanding officer?

16 A. I'm sorry?

17 Q. When did he become the commanding officer?

18 A. I believe it was late 2008, 2009. I'm not 100 percent sure
19 exactly when.

20 Q. Was he the commanding officer from either late 2008, early
21 2009 until you left the 41st precinct?

22 A. Yes, he was.

23 Q. And you left in December 2010?

24 A. Yes.

25 Q. So you mentioned that they did communicate -- your

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

- 1 supervisors communicated to you a specific number of arrests
2 they said you were required to do in a month. What was that
3 number?
4 A. They wanted 20 and one.
5 Q. What does 20 and one mean?
6 A. 20 summonses and one arrest per month, per officer, at
7 least.
8 Q. How did they communicate the to 20 and one requirement to
9 you?
10 A. They were very clear about it. They will say, it's either
11 you do it, it's non-negotiable, or you're going to become a
12 Pizza Hut delivery man.
13 Q. So it was communicated to you verbally?
14 A. Most of the time it was communicated as a group. The
15 recording later you're going to hear, they are addressing the
16 whole group, the whole roll call, not only one individual.
17 Q. The whole group at roll call you said?
18 A. Yes.
19 Q. What is a roll call?
20 A. Roll call is a platoon usually have about 14, 15 officer.
21 Five, ten minutes before tour everybody get together, get their
22 assignment, get their training, or whatever the department have
23 to say for that day, before you go out.
24 Q. Is it fair to say that you attended a roll call for every
25 tour you worked in the 41st precinct?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL05 Polanco - direct

1 A. It will be fair to say that. There might be sometime that
2 I missed it. Maybe I was in another precinct. But for the
3 most part, yes, I was there.

4 Q. Who typically attended roll calls in the 41st precinct?

5 A. Sometime the training officers will come by, the training
6 officer, the commanding officer, the XO, the platoon commander,
7 the sergeants in charge of each different platoon.

8 Q. Who typically addressed the officers at the roll calls that
9 you attended?

10 A. All of them. It could be any one of them on any given day.

11 Q. Were there particular topics that were commonly discussed
12 at these roll calls?

13 A. The quarter was a basic one. What we need to bring back at
14 the end of the month, that was the most they repeat it.

15 Q. Now, you mentioned the one and 20. Did there come a point
16 in time -- I'm sorry. The one and 20 refers to arrests and
17 summonses?

18 A. Yes.

19 Q. The one is one arrest per month?

20 A. Yes.

21 Q. The 20 was 20 summonses?

22 A. 20 summons, yes.

23 Q. Did there come a point in time during your assignment in
24 the 41st precinct when one or more of your supervisors
25 communicated to you a specific number of stop, question and

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 frisks that they expected you to conduct in a month?

2 A. Yes.

3 Q. When did that happen?

4 A. Throughout the roll call, different roll calls, they say
5 that they want at least five.

6 Q. Was that true the entire time you were in the 41st precinct
7 or only part of the time?

8 A. Part of it. I would say after 2009.

9 Q. Which supervisors do you recall communicated this numerical
10 requirement for the stop and frisk to you?

11 A. Captain McHugh at the time, Lieutenant Valenzano at the
12 time, Sergeant Rodriguez, Sergeant Bennett. They all used to
13 mention it.

14 Q. You said it was five?

15 A. At least five 250s a month.

16 Q. Per month?

17 A. Per month.

18 Q. Did there come a point in time when you worked in the 41st
19 precinct that one or more of your supervisors communicated to
20 you a specific number of arrests, summonses, or stop and frisks
21 that they expected you to conduct in a single tour?

22 A. They said -- sometimes they said we needed at least one.
23 That in order for us to be productive out there, we have to at
24 least show one for the day.

25 Q. One stop and frisk?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 A. One of either. Our job was not successful out there unless
2 we came back with one of the above.

3 Q. At any point during your work in the 41st precinct, did
4 your supervisors ever communicate to you a specific number of,
5 for example, radio runs they wanted you to answer?

6 A. No.

7 Q. Or domestic incidents they wanted you to mediate?

8 A. They don't care about those.

9 Q. So the answer is no?

10 A. No. I'm sorry.

11 Q. Or emotionally disturbed persons they wanted you to assist?

12 A. No.

13 Q. Or juvenile crime victims that they wanted you to assist?

14 A. No.

15 Q. When they communicated -- when I say "they," your
16 supervisors communicated these numerical requirements to you,
17 you said that was during roll call?

18 A. Yes. Sometime it will be individual, but most of the time
19 it was in the roll call.

20 Q. So when they communicated these requirements to you during
21 roll call, did they at any point tell you what the consequences
22 would be for not meeting these numerical requirements?

23 A. Absolutely, yes.

24 Q. What did they say those consequences would be?

25 A. They said, if we were willing to keep working with our

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 partners, we better come up with the numbers; that if we want
2 to ask for days off, we better come up with the numbers; that
3 if we wanted overtime, the chiefs control the overtime, and
4 that if we don't do our numbers, we are not going to get it.
5 We were told that it was non-negotiable, that they are going to
6 force us to do it if we didn't do it. One sergeant
7 particularly told us that unless we want to become a Pizza Hut
8 delivery man, we better do what they say.

9 Q. Which sergeant was that?

10 A. Sergeant Bennett.

11 Q. Were there any other consequences that they expressed to
12 you would occur if you didn't meet these numerical
13 requirements?

14 A. They will change different tour. If you have a family and
15 for some reason you were doing the tour, they will shift your
16 tour. They will give you low evaluations. They will put you
17 in performance monitoring. They can send you for retraining.
18 They can make your life very miserable.

19 Q. Were there any months in 2009 where you yourself did not
20 meet the numerical requirements that you described earlier?

21 A. There might have been a few. I don't know exactly how
22 many. There might have been a few.

23 Q. Did you suffer any consequences for not meeting those
24 numerical requirements?

25 A. Most of the time, if I didn't meet it, for example, in

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 January, in February I have to make sure or they will make sure
2 that I have the numbers.

3 Q. How did they make sure that you would have the numbers?

4 A. They will come and check on me every day, and if in fact I
5 don't have it, by the middle of the month, they will throw
6 something at me. What I mean when I say they will throw
7 something at me, they will go out there, stop anybody, anybody,
8 and call me over to the scene and either issue a summons or
9 arrest them.

10 Q. Let's break that down. You said they would call you over
11 to the scene. Who is "they"?

12 A. Most of the time it was Lieutenant Valenzano and Captain
13 McHugh.

14 Q. They would call you over to what scene?

15 A. Sometime it could be that they have male stops against the
16 wall. Sometimes they have male in handcuffs, and they will
17 call for us to -- obviously, we were not there -- to come
18 either issue the summons, issue the 250, or even arrest the
19 person.

20 Q. So they would ask you to write a summons for an incident
21 that you didn't observe?

22 A. All the time, yes.

23 Q. How many times did that happen in 2009?

24 A. Very often.

25 Q. More than ten?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 A. I say between ten.

2 Q. Did they ever ask you to write a UF-250 for a stop and
3 frisk that you did not conduct?

4 A. Yes.

5 Q. Did they ever ask you to write a UF-250 for a stop and
6 frisk where the underlying facts you didn't observe?

7 A. Yes.

8 Q. How many times did that happen?

9 A. Very often.

10 Q. More than ten?

11 A. More than 20 I would say.

12 Q. So other than that kind of activity -- when I say activity,
13 other than being required to write summonses and 250s for
14 things you didn't see, were there any other consequences that
15 you suffered when you didn't meet the monthly activity
16 requirements that we have talked about earlier?

17 A. Like I said, it's a lot. They can switch your tour, take
18 your partner away. They will deny you days off. They will
19 deny you overtime. They can even ship you out of command and
20 send to another precinct.

21 Q. Were you ever denied days off?

22 A. A few times.

23 Q. How many times?

24 A. I don't recall exactly. I wouldn't be able to come up with
25 an exact number.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5 Polanco - direct

1 Q. What year did this happen?

2 A. 2009.

3 Q. Were you ever denied overtime when you requested it because
4 you didn't meet the numerical requirements?

5 A. I wasn't too big on overtime.

6 Q. Are you familiar with the term driving a sergeant or
7 driving a supervisor?

8 A. Yes.

9 Q. What does that mean?

10 A. That means that whatever it seems like, it's going to be.
11 You have no discretion whatsoever. If you're driving the
12 supervisor, if you're driving the sergeant in the 41st precinct
13 at that time, that means that they are going to drive around
14 and they are going to stop people for you, or tell you to go
15 250 this guy, go summons this guy, go arrest this guy. You
16 have absolutely no discretion.

17 Q. Is it correct that driving a supervisor means what it
18 sounds like, in other words, that you're driving around with
19 one of your supervisors on patrol?

20 A. Yes.

21 Q. Is this something that you were ever required to do when
22 you worked as a patrol officer in the 41st precinct?

23 A. A few times.

24 Q. How many times?

25 A. Between three and five. I don't know the exact number of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FL05 Polanco - direct

1 times. Maybe more, maybe less.

2 Q. Were you ever told on those occasions when you did have to
3 drive with a supervisor why they were making you drive with a
4 supervisor?

5 A. Yes.

6 Q. What was the reason they gave you?

7 A. Because the prior month you did not have your numbers.

8 Q. When you say numbers, you mean the one and 20 we referred
9 to earlier?

10 A. Yes.

11 Q. Do you also mean the five stop and frisks that you referred
12 to earlier?

13 A. Yes.

14 THE COURT: It's 4:30. We are going to stop for the
15 day. Of course, that means you have to come back first thing
16 tomorrow morning to start at 10:00.

17 Everybody is excused for the day. Thank you.

18 MR. KUNZ: There was an outstanding issue with regard
19 to the Silverman data, the additional Silverman data. We can
20 address it first thing tomorrow.

21 THE COURT: I can try to be here. I suggest you make
22 it here at quarter of 10, but I can't promise I will.

23 MR. CHARNEY: On that issue, can I hand you a
24 declaration of Professor Silverman?

25 Defendants have a copy.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

D3J8FLO5

Polanco - direct

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. KUNZ: We can address it now.
THE COURT: No. I have got many matters.
(Adjourned to March 20, 2013, at 10:00 a.m.)

INDEX OF EXAMINATION		
1		
2	Examination of:	Page
3	DAVID FLOYD	
4	Cross By Mr. Kunz	221
5	Redirect By Ms. Patel	248
6	Recross By Mr. Kunz	262
7	DEON DENNIS	
8	Direct By Ms. Varner	262
9	Cross By Mr. Marutollo	278
10	Redirect By Ms. Varner	296
11	Recross By Mr. Marutollo	299
12	NICHOLAS PEART	
13	Direct By Ms. Patel	300
14	Cross By Ms. Publicker	347
15	Redirect By Ms. Patel	407
16	ADHYL POLANCO	
17	Direct By Mr. Charney	409
18	PLAINTIFF EXHIBITS	
19	Exhibit No.	Received
20	355, Section 202-21,	414
21	419	417
22	DEFENDANT EXHIBITS	
23	Exhibit No.	Received
24	Q-10	287
25	NYC_2_00025272	299
	SOUTHERN DISTRICT REPORTERS, P.C.	
	(212) 805-0300	

1 I-7 350
 2 Recording360

3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

SOUTHERN DISTRICT REPORTERS, P.C.
 (212) 805-0300

