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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 25, 2013
10:10 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

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APPEARANCES (Cont'd)

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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

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1 THE COURT: Good morning everyone. Please be seated.
2 Is this a new witness?

3 MS. BORCHETTA: Yes, your Honor. This will be
4 plaintiffs' first witness.

5 MR. CHARNEY: Your Honor, I apologize we actually -- I
6 e-mailed Mr. Brazeal last night about a matter we wanted to
7 raise with you before the witness. The problem is it's
8 relevant to these witnesses. It's a new exhibit that the
9 defendants produced at 9:45 last night, which we don't believe
10 should be permitted to be shown to the witnesses today. And so
11 we think it needs to be addressed before.

12 THE COURT: When we get to it we get to it.
13 Please state your full name for the record.

14 BRIAN DENNIS,
15 called as a witness by the Plaintiffs,
16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. BORCHETTA:

19 Q. Good morning, Officer Dennis.

20 A. Good morning.

21 Q. You are a member of the NYPD, correct?

22 A. Yes.

23 Q. And you know Devin Almonor, right?

24 A. Yes, I do.

25 Q. And on the night of March 20, 2010 you stopped Mr. Almonor?

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- 1 A. Yes, I did.
2 Q. When did you join the NYPD?
3 A. February of 1994.
4 Q. You graduated from the police academy, correct?
5 A. Yes.
6 Q. Where were you first assigned upon graduating from the
7 police academy?
8 A. The 30th precinct.
9 Q. And you're still a member of the NYPD, right?
10 A. Yes, I am.
11 Q. And you're still assigned to the 30th precinct, right?
12 A. Yes, I am.
13 Q. So it's fair to say you've been a member of the NYPD for
14 approximately 18 years, right?
15 A. I just started my 20th.
16 Q. 20th. All right. And you've been assigned to the 30th
17 precinct for that entire time, right?
18 A. Yes.
19 Q. What shift were you working the night that you stopped
20 Mr. Almonor?
21 A. 5:30 p.m. to 2:05 a.m.
22 Q. You were assigned that night to the anticrime unit,
23 correct?
24 A. Yes, I was.
25 Q. And that night you were driving the anticrime sergeant

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- 1 Jonathan Korabel, correct?
2 A. Yes, I was.
3 Q. Are you aware that Jonathan Korabel is now a lieutenant?
4 A. Yes, I am.
5 Q. I'll refer to him today as Lieutenant Korabel but will you
6 understand that I'm referring to the sergeant who was with you
7 during the stop of Mr. Almonor?
8 A. Yes.
9 Q. Lieutenant Korabel was a superior officer to you that
10 night, correct?
11 A. Yes, he was.
12 Q. He was your supervisor that night, correct?
13 A. Yes.
14 Q. And the two of you were driving an unmarked police vehicle;
15 isn't that right?
16 A. Yes.
17 Q. And you were also in plain clothes, correct?
18 A. Yes.
19 Q. Am I correct that before you stopped Mr. Almonor on the
20 night of March 20, 2010 you say you received information about
21 911 calls?
22 A. Yes.
23 Q. And at some point you say that in response to those calls
24 you went to the vicinity of Hamilton Place and 141st Street,
25 correct?

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- 1 A. Correct.
2 Q. Just to be clear though Mr. Almonor was not named in any of
3 the 911 calls to your knowledge, correct?
4 A. That is correct.
5 Q. We'll return to the 911 calls later. But it was on
6 Hamilton Place near 141st Street that you stopped Mr. Almonor,
7 right?
8 A. Approximately, yes.
9 Q. And at some point you saw him crossing Hamilton Place in
10 front of your vehicle, correct?
11 A. Correct.
12 Q. And you then stopped your police vehicle, correct?
13 A. Yes.
14 Q. And you exited the car?
15 A. Yes.
16 Q. And you approached Mr. Almonor on the sidewalk, right?
17 A. Yes.
18 Q. And you said to Mr. Almonor "Police" right?
19 A. Yes.
20 Q. And you asked Mr. Almonor to stop, correct?
21 A. Yes.
22 Q. And you asked to speak with him, right?
23 A. Yes.
24 Q. Now, you completed a UF 250 form related to the stop of
25 Mr. Almonor, correct?

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D3R9FLO1 Dennis - direct

1 A. Yes, I did.

2 Q. I'm going to show you a document which is Plaintiffs'
3 Exhibit 20.

4 Is that the UF 250 form that you completed for the
5 stop of Mr. Almonor?

6 A. Yes.

7 MS. BORCHETTA: I'd move to admit Plaintiffs' Exhibit
8 20.

9 MS. PUBLICKER: No objection.

10 THE COURT: Twenty received.

11 (Plaintiffs' Exhibit 20 received in evidence)

12 Q. Am I correct that this one page actually reflects the front
13 and back of a UF 250 form?

14 A. That's correct.

15 Q. And am I correct that the left side of the page is the
16 front?

17 A. Yes.

18 Q. And the right is the back, correct?

19 A. Yes.

20 Q. And on the back of this page it indicates that the reviewer
21 was Jonathan Korabel, correct?

22 A. Correct.

23 Q. And also on the back of the page it indicates "reported by"
24 and that's your name, right?

25 A. Yes.

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1 MS. BORCHETTA: Ms. Martini could you please switch it
2 to the ELMO.

3 Q. Now, there is a space on the UF 250 form that calls for the
4 felony or penal law misdemeanor suspected, correct?

5 A. Correct.

6 Q. And in that area on this form related to Mr. Almonor you
7 indicated CPW, correct?

8 A. Correct.

9 Q. Am I right that that means criminal possession of a weapon?

10 A. Yes.

11 Q. And you indicated criminal possession of a weapon there
12 because you had suspected Mr. Almonor of being in criminal
13 possession of a weapon that night, correct?

14 A. Yes.

15 Q. In the area of the 250 form there is a space that calls for
16 the circumstances which led to the stop, right?

17 A. Yes.

18 Q. And there are various boxes you can check there, right?

19 A. Yes.

20 Q. And for the stop of Mr. Almonor you checked two boxes,
21 right?

22 A. Correct.

23 Q. You checked "fits description"?

24 A. Correct.

25 Q. And you checked "furtive movements," right?

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1 A. Correct.

2 Q. And you in that section, when you completed this 250 form,
3 checked all boxes that you thought applied, right?

4 A. At the time, yes.

5 Q. And you didn't check any boxes other than "fits
6 description" or "furtive movements," right?

7 A. In that section, correct.

8 Q. There's a box in that section for suspicious bulge, right?

9 A. Yes.

10 Q. You didn't check that box, right?

11 A. That's correct.

12 Q. And the night that you saw Mr. Almonor you did not see a
13 suspicious bulge on him, correct?

14 A. I did not.

15 Q. Let's talk about the furtive movements.

16 Am I correct that you say that you saw Mr. Almonor
17 looking over his shoulder at one point?

18 A. Repeatedly, yes.

19 Q. One point that you say you saw him looking over his
20 shoulder was while he was crossing the street in front of your
21 car, correct?

22 A. That was one instance, yes.

23 Q. But it doesn't surprise you that he would be looking over
24 his shoulder while crossing the street in front of the path of
25 a moving vehicle, right?

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- 1 A. Not at that point, no.
2 Q. And, in fact, you would expect for him to look over his
3 shoulder while he's crossing the street, right?
4 A. Yes.
5 Q. And you also say that you saw Mr. Almonor walking on the
6 sidewalk further up Hamilton Place, right?
7 A. Correct.
8 Q. Before he crossed the street, correct?
9 A. Yes.
10 Q. And you testified -- I'm sorry. And you say that you saw
11 him looking over his shoulder at that point as well, right?
12 A. Correct.
13 Q. But at that point your car was coming down Hamilton Place
14 from behind him, right?
15 A. Yes.
16 Q. And your car was coming up behind him less than a block
17 away, right?
18 A. At what point?
19 Q. At the point when you say you saw him looking over his
20 shoulder further up Hamilton Place?
21 A. He looked over his shoulder repeatedly.
22 Q. But at the point that you say that he looked over his
23 shoulder while he was further up Hamilton Place, your car was
24 coming down the street behind him from less than a block away,
25 right?

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1 A. At one point.

2 Q. At that time point that you saw him looking over his
3 shoulder while he was further up Hamilton Place, your car was
4 coming down the street behind him from less than a block away,
5 right?

6 A. I'm sorry. You just keep repeating the same question.
7 It's at one point that you're referring to, yes.

8 Q. Do you recall that you gave a deposition in this matter?

9 A. Yes.

10 Q. And do you recall the date of that deposition was
11 December 19, 2012?

12 A. Yes.

13 Q. I've handed you a copy of the transcript of your deposition
14 from that day. I'll direct you to certain pages as we move
15 forward today and ask you to only look at the pages when I'm
16 directing you to them.

17 If you turn to page 57, please. If you look at line
18 22. Your car -- I'm sorry. Do you remember the following
19 questions and the following answers?

20 "Q. Your car was coming down Hamilton Place at the time,
21 right?

22 "A. Yes.

23 "Q. So your car was coming up behind them, right?

24 "A. A distance away, right.

25 "Q. Right. Well within one block, right?

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1 "A. Yes."

2 Do you recall giving those answers to those questions?

3 A. Yes.

4 Q. And you were under oath that day, right?

5 A. Correct.

6 Q. And you were being truthful that day, right?

7 A. Correct.

8 Q. Am I correct that you also say that you saw Mr. Almonor
9 making a movement or touching his waistband in some manner?

10 A. Correct.

11 Q. Now, again, you didn't see a suspicious bulge on

12 Mr. Almonor, right?

13 A. No, I did not.

14 Q. But you say, even though you saw no bulge, that the manner
15 Mr. Almonor touched his waistband was a factor contributing to
16 what you believed was suspicion that he had a weapon, right?

17 A. Possibly, yes.

18 Q. I want to focus on the movement that he was making around
19 his waistband.

20 First of all, you say that Mr. Almonor only touched
21 his waistband with his right hand, correct?

22 A. Correct.

23 Q. You didn't see his left hand by his waist at all, right?

24 A. No, I did not.

25 Q. And you say that you saw Mr. Almonor making this motion

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1 towards his waist when his left side was towards your car,
2 right?

3 A. Correct.

4 Q. So, Mr. Almonor's right side of his body was further away
5 from you when you saw this, right?

6 A. At one point, yes.

7 Q. Well when you first saw him making a motion toward his
8 waistband, it was with his right side when his right side was
9 further away from you, right?

10 A. Yes.

11 Q. It turned out that Mr. Almonor did not have a weapon him,
12 correct?

13 A. That's correct.

14 Q. I want to turn again to some of the paperwork completed for
15 the stop for the night of March 20, 2010.

16 And again, there's a space on the 250 form that you
17 completed for the circumstances which led to the stop where you
18 could have checked suspicious bulge, right?

19 A. Yes.

20 Q. But you didn't check that box, right?

21 A. That is correct.

22 Q. And some -- and you completed the 250 form shortly after
23 returning to the 20th precinct -- I'm sorry the 30th
24 precinct after the stop of Mr. Almonor, right?

25 A. Correct.

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1 Q. And at some period of time later you entered that
2 information into a computer, right?

3 A. Approximately fifteen -- 14 to 15 hours later, yes.

4 Q. You're aware that Mr. Almonor's parents were arrested at
5 the 30th precinct?

6 MS. PUBLICKER: Objection, your Honor.

7 THE COURT: You're not going into that, you know.

8 MS. BORCHETTA: I'm not going into that. But it's
9 relevant specifically to the documents that were prepared for
10 this case, whether they were prepared before or after that
11 arrest.

12 THE COURT: I don't know what that means.

13 I'm not going into the arrest of the parents. So I
14 won't allow that question. You'll have to do it some other
15 way.

16 MS. BORCHETTA: All right.

17 Q. Going to show you a document that's marked Plaintiffs'
18 Exhibit 21.

19 Is this -- am I correct that this is a printout of the
20 information that you entered into the computer from the 250?

21 A. Yes.

22 MS. BORCHETTA: Your Honor, I'd move to admit
23 Plaintiffs' Exhibit 21.

24 MS. PUBLICKER: Only one minor objection is that this
25 exhibit and the last one have Mr. Almonor's date of birth on it

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1 which I believe Federal Rule 5.1 prohibits. So I just want to
2 make that clear.

3 THE COURT: Can we redact the date of birth.

4 MS. BORCHETTA: We can redact the date of birth.

5 THE COURT: So the exhibit received in evidence will
6 have a redacted date of birth.

7 (Plaintiff's Exhibit 21 received in evidence)

8 Q. Officer Dennis, did you enter this information into the
9 computer before or after Mr. Almonor was released from the
10 30th precinct?

11 A. After.

12 MS. BORCHETTA: I'm sorry, Ms. Martini. I'm going to
13 go back to the ELMO.

14 Q. Do you see that there's an area on this form that calls for
15 circumstances leading to the stop.

16 Do you see that?

17 A. Yes.

18 Q. And do you see that it indicates "suspects actions" in that
19 section, right?

20 A. That's what's indicated, yes.

21 Q. And one of them is suspicious bulge, right?

22 A. Yes.

23 Q. But you didn't see a suspicious bulge, right?

24 A. No, I did not.

25 Q. You also completed, am I correct, a juvenile report

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1 worksheet related to the stop of Mr. Almonor?

2 A. Yes.

3 Q. I'm going to show you a document that's been marked
4 Plaintiffs' Exhibit 18.

5 Is this the juvenile report worksheet that you
6 completed for Mr. Almonor?

7 A. Yes.

8 MS. BORCHETTA: Your Honor, I'd move to admit
9 Plaintiffs' Exhibit 18.

10 MS. PUBLICKER: No objection.

11 THE COURT: Eighteen is received.

12 (Plaintiff's Exhibit 18 received in evidence)

13 MS. BORCHETTA: Ms. Martini, I'll stay with the ELMO.

14 Q. Did you complete this document before or after Mr. Almonor
15 was released from the 30th precinct that night?

16 A. Can you slide it down for a second so I can see the heading
17 on the top, please.

18 This was after.

19 Q. There is an area at the bottom of this form. It has a
20 narrative, right?

21 A. Yes.

22 Q. And do you -- you handwrote some documents into that
23 section, right?

24 A. Yes, I did.

25 Q. And you wrote, "Juvenile observed walking down the street

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1 with suspicious bulge," right?

2 A. Yes, I did.

3 Q. And in that narrative you don't indicate anywhere that you
4 observed Mr. Almonor looking over his shoulder, right?

5 A. That's correct.

6 Q. And turning to the second page of this juvenile report
7 worksheet. There's an area for statement made by juvenile
8 during the commission of the offense, right?

9 A. Yes.

10 Q. And you've indicated there "Leave me alone," right?

11 A. Yes.

12 Q. Mr. Almonor said that to you?

13 A. Yes, he did.

14 Q. During the stop?

15 A. Yes.

16 Q. And you also completed a complaint report worksheet related
17 to the stop of Mr. Almonor, correct?

18 A. The juvenile -- juvenile report.

19 Q. Well, I will show you a document that's been marked
20 Plaintiffs' Exhibit 17.

21 Do you recognize that document?

22 A. Yes.

23 Q. What is that document?

24 A. It's a complaint report/juvenile report. It's one form for
25 two purposes.

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1 Q. And you completed that for the stop -- related to the stop
2 of Mr. Almonor, correct?

3 A. Yes, I did.

4 MS. BORCHETTA: Your Honor, I'd move to admit
5 Plaintiffs' Exhibit 17.

6 MS. PUBLICKER: No objection.

7 THE COURT: Seventeen is received.

8 (Plaintiffs' Exhibit 17 received in evidence)

9 Q. There's an area on this form for report classification,
10 right?

11 A. Yes.

12 Q. And there you've indicated "resisting arrest," right?

13 A. Yes.

14 Q. According to you though Mr. Almonor was never arrested that
15 night, right?

16 A. That is correct.

17 Q. Also on this form there's an area for details, right?

18 A. Yes.

19 Q. And in this area you've handwritten some notes, right?

20 A. Yes.

21 Q. And nowhere in this area do you indicate that Mr. Almonor
22 was observed looking over his shoulder, right?

23 A. That's correct.

24 Q. I'd like to turn now to the 911 calls and the area of the
25 250 form where you checked "fits description."

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1 Again, you say that you went to the vicinity of
2 Hamilton Place where you stopped Mr. Almonor in response to 911
3 calls, right?

4 A. Correct.

5 Q. I'm going to show you another document. This has been
6 marked as Plaintiffs' Exhibit 22.

7 Do you recognize that as the Sprint records related
8 to -- that you say are related to the stop of Mr. Almonor that
9 night?

10 A. Yes.

11 MS. BORCHETTA: Your Honor I'd move to admit
12 Plaintiffs' Exhibit 22.

13 MS. PUBLICKER: No objection, your Honor.

14 THE COURT: Twenty-two is received.

15 (Plaintiffs' Exhibit 22 received in evidence)

16 Q. Is it accurate for me to describe Plaintiffs' Exhibit 22 as
17 a Sprint record?

18 A. Yes.

19 Q. And am I correct that a Sprint record documents, to your
20 knowledge, the information related to police units about 911
21 calls?

22 A. Correct.

23 Q. And the pages that I've shown you of Exhibit 22 are the
24 records related to the 911 calls that you say led you to
25 Hamilton Place the night you stopped Mr. Almonor, right?

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1 A. Yes.

2 Q. Am I correct that according to these records the time of
3 the last call that night was 2153, right?

4 A. I would have to look at the top of each document. I'm
5 sorry. There's several Sprints attached.

6 MS. BORCHETTA: I will give you the whole copy.

7 THE WITNESS: Thank you.

8 Q. Do you need the question again?

9 A. No. It's okay to look through them?

10 Q. Yes.

11 A. Okay. Thank you.

12 In response to your question, yes, the last time
13 indicated on the Sprint coming in is at 2153 which is 9:53 p.m.

14 Q. Thank you.

15 And you stopped Mr. Almonor at 10:10 p.m., correct?

16 A. (No response)

17 Q. I can show you the 250 form again.

18 A. Yes.

19 Q. And that indicates time of stop 2210, right?

20 A. Yes.

21 Q. And that's 10:10 p.m., right?

22 A. Yes, it is.

23 Q. So you stopped Mr. Almonor about 20 minutes after the last
24 911 call, right?

25 A. Seventeen to 20 minutes.

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1 Q. When you checked "Fits description" on the 250 form, am I
2 correct that you were referring to the descriptions that you
3 understood to come from the 911 calls that night?

4 A. From one other -- one of the radio transmission, yes.

5 Q. There was no description of any suspect's weight, right?

6 A. Correct.

7 Q. And there was no description of any suspect's height,
8 right?

9 A. Correct.

10 Q. And there was no description of any suspect's clothing,
11 right?

12 A. I believe that's correct, yes.

13 THE COURT: So what was the description? If it wasn't
14 height, weight and clothing?

15 MS. BORCHETTA: We'll get there, your Honor.

16 Q. Now if you take a look at the Sprint record that appears on
17 the page -- you can use your copy, yes. Stamped at the bottom
18 NYC_2_00022739?

19 A. Yes.

20 Q. A lot of documents in this case.

21 And if you look at this document there is an
22 indication MB and HF. Do you see that?

23 A. Yes.

24 Q. Am I correct that that means male black and Hispanic
25 female?

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1 A. Yes.

2 Q. So it's fair to say that there was no specific descriptions
3 beyond male black and female Hispanic provided, right?

4 A. Correct.

5 Q. And you still checked on the 250 as a circumstance leading
6 to the stop of Mr. Almonor that he fit the description, right?

7 A. Yes.

8 Q. You would agree with me also that the 911 calls as you
9 understood them that night recorded a large disorderly group,
10 right?

11 A. Yes.

12 Q. And if we look again at the Sprint records you see an
13 indication large brawl, right?

14 I'm sorry. On page NYC_2_00022740.

15 Do you see that page?

16 A. Yes, I do.

17 Q. And do you see that it says large brawl?

18 A. On that particular one, yes.

19 Q. And if turn to the next page, this one is stamped
20 NYC_2_00022741.

21 Are you on that page?

22 A. Yes, I am.

23 Q. And that indicates 40 males, right?

24 A. On one of the -- from one of the callers, yes.

25 Q. And large group of males, right?

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- 1 A. From another caller, yes.
2 Q. And another one, large group fighting, right?
3 A. Yes.
4 Q. When you saw Mr. Almonor, he was not in a group, right?
5 A. That's correct.
6 Q. According to you, you saw him with one person, right?
7 A. Yes.
8 Q. Not fifteen, right?
9 A. That's correct.
10 Q. Not 40, right?
11 A. No.
12 Q. So is it fair to say that you stopped Mr. Almonor because
13 he was a male black?
14 A. No.
15 Q. But you would agree with me that the only description of a
16 suspect from these forms related to a man was male black,
17 right?
18 A. As well as some references being made to youths and the
19 male black, yes.
20 Q. So the references to youths are to a group of youths
21 fighting, right?
22 A. That was one of the description -- one of the bits of
23 information given over the radio.
24 Q. It was a group of youths, right?
25 A. Again, one of the descriptive terms used.

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1 THE COURT: Was there another place where the word
2 youth was used.

3 THE WITNESS: Some of them were coming over as large
4 group of kids, youths, just a large group. There were a total
5 of nine calls coming altogether at approximately the same time,
6 your Honor, and the information was just being given out as the
7 additional calls were coming in.

8 THE COURT: So the most you would have is young male
9 black?

10 THE WITNESS: Yes, ma'am.

11 Q. Let's go back to the stop of Mr. Almonor. After exiting
12 your police vehicle and identifying yourself as an officer and
13 asking Mr. Almonor to stop, you grabbed his arm, right?

14 A. Yes.

15 Q. And you grabbed his arm pretty fast after exiting the
16 police vehicle, right?

17 A. Shortly after.

18 Q. Well would you agree with me that it was pretty fast after
19 you exited your police vehicle, only a matter of seconds?

20 A. Yes.

21 Q. And you then pushed Mr. Almonor onto the hood of the police
22 car, right?

23 A. Not initially, no.

24 Q. I'd ask you again to turn to your deposition transcript,
25 page 77. And line 24.

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D3R9FLO1 Dennis - direct

1 Do you remember the following questions and the
2 following answer?

3 "Q. Okay. After he pulled away from you, when you grabbed his
4 arm, what happened next?

5 "A. Because he was pulling away and I wasn't satisfied with
6 that fact, did not have something in his waist, I then pushed
7 him down by the hood of the police car."

8 Do you see that?

9 A. Yes.

10 Q. Do you remember giving those answers to those questions?

11 A. Absolutely.

12 Q. Okay. And you leaned him over the hood of the car, right?

13 A. Yes.

14 Q. And you handcuffed him, right?

15 A. Yes.

16 Q. And when you handcuffed him, you did not have probable
17 cause to arrest him, right?

18 A. He wasn't being handcuffed because he was placed under
19 arrest at that point.

20 Q. So at that point you did not have probable cause to arrest
21 him, right?

22 A. No, I did not.

23 Q. Let's go back again to the UF 250 form.

24 There is an area on this form that asks if physical
25 force was used, indicate type, right?

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D3R9FLO1 Dennis - direct

- 1 A. Yes.
2 Q. And one of the options that you can check in that area is
3 handcuffing suspect, right?
4 A. That's what -- yes.
5 Q. But you didn't check that box, right?
6 A. No, I did not.
7 Q. Now, Lieutenant Korabel signed off on this 250 form, right?
8 A. Yes, he did.
9 Q. But you don't recall Lieutenant Korabel ever saying to you
10 that the 250 form was not completed correctly, right?
11 A. I do not.
12 Q. And you don't recall Lieutenant Korabel ever saying to you
13 in sum or substance that the form was deficient, right?
14 A. No, I do not.
15 Q. You frisked Mr. Almonor, right?
16 A. Yes, I did.
17 Q. You felt the area of the waistband that he had been,
18 according to you, touching, right?
19 A. Yes.
20 Q. And you frisked him after he was in handcuffs, right?
21 A. Yes.
22 Q. And, in fact, you frisked him almost immediately after he
23 was handcuffed, right?
24 A. Yes.
25 Q. And during that frisk Mr. Almonor was saying to you: What

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D3R9FL01 Dennis - direct

- 1 are you doing? I'm going home. I'm a kid.
2 Right?
3 A. Yes.
4 Q. But he was not in your opinion yelling or screaming, right?
5 A. No.
6 Q. Am I correct that you say that at some point during the
7 stop Mr. Almonor was being verbally evasive?
8 A. From the initial stop and throughout the stop, yes.
9 Q. Because you didn't like the answers to the questions he was
10 giving you, right?
11 A. I wasn't satisfied with the answers.
12 Q. You asked him his name though and he gave you a name,
13 right?
14 A. Yes.
15 Q. And you asked him his age and he said he was 13, right?
16 A. Yes.
17 Q. And he was 13. You know that now, right?
18 A. I know that now, yes.
19 Q. And when you asked him where he was going, at some point he
20 said home, right?
21 A. Yes.
22 Q. And you asked him where he lived at some point and he said
23 139th and River, right?
24 A. Yes.
25 Q. And you understood River to mean Riverside Drive, right?

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D3R9FL01 Dennis - direct

1 A. Yes.

2 Q. Now, Officer Dennis, the first time you asked Mr. Almonor
3 his name was after you had handcuffed him, right?

4 A. Yes.

5 Q. And while you say he was, in your opinion, being verbally
6 evasive, according to you he didn't become verbally evasive
7 until after you handcuffed him, right?

8 A. Correct.

9 (Continued on next page)

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D3rWflo2 Dennis - direct

1 BY MS. BORCHETTA:

2 Q. Okay. Going back to the UF250 form, do you see on the back
3 of the 250 form there's an area for additional
4 circumstances/factors, right?

5 A. Yes.

6 Q. And it says "check all that apply," right?

7 A. Yes.

8 Q. And you see there's a space there for "evasive, false, or
9 inconsistent responses to officer's questions," right?

10 A. Yes.

11 Q. But you did not check that box, right?

12 A. That's correct.

13 Q. You also say that there was another person with Mr. Almonor
14 when you saw him that night, right?

15 A. Correct.

16 Q. And am I correct that that person refused, completely
17 refused, to answer any of your questions?

18 A. Correct.

19 Q. But he was not frisked, right?

20 A. Not to my knowledge.

21 Q. And he was not handcuffed, right?

22 A. No, he was not.

23 Q. That person was just let go, right?

24 A. Yes.

25 Q. In any event, after frisking Mr. Almonor, you found that he

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D3rWflo2 Dennis - direct

1 had nothing on him, right?

2 A. Correct.

3 Q. He didn't have a weapon, right?

4 A. No, he did not.

5 THE COURT: One moment. I'm sorry. Could you explain
6 why you did the frisk?

7 THE WITNESS: I'm sorry, your Honor?

8 THE COURT: Could you explain why you frisked him?

9 THE WITNESS: His actions as he was walking down the
10 street and as I continued to observe him by holding his waist,
11 I suspected that he may have had a weapon at that point, and
12 that's the area that I frisked.

13 THE COURT: Okay.

14 BY MS. BORCHETTA:

15 Q. Now, forgive me for my problems with numbers, but I believe
16 you said today that you've now been a member of the NYPD for 20
17 years?

18 A. I'm starting my, I'm in between my 19th and 20th right now.

19 Q. And in your time as a police officer, you've heard officers
20 saying things about other officers failing to do their jobs,
21 right?

22 A. Yes.

23 Q. And do you remember testifying at your deposition that
24 officers from your experience are always going after each other
25 for failing to do their jobs, right?

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D3rWflo2 Dennis - direct

1 MS. PUBLICKER: Objection, your Honor. This is
2 hearsay and irrelevant.

3 THE COURT: Yes. Sustained.

4 MS. BORCHETTA: Your Honor, I believe it goes to the
5 effect on him that I'm laying the foundation for future
6 questions.

7 THE COURT: I don't know what that means. Objection
8 sustained.

9 BY MS. BORCHETTA:

10 Q. You've said, am I correct, to another officer that you have
11 had a problem when that officer's failed to respond to a radio
12 run?

13 A. Yes.

14 Q. And the night that you stopped Devin Almonor, you went to
15 the vicinity of 141st and Hamilton Place in response to radio
16 runs, right?

17 A. Correct.

18 Q. And when you placed Mr. Almonor in handcuffs, you did not
19 have probable cause to believe that he committed a crime,
20 right?

21 A. Correct.

22 Q. And you say that you suspected Mr. Almonor of having a
23 weapon when you stopped him, right?

24 A. Correct.

25 Q. But you frisked him and found that he didn't have a weapon,

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D3rWflo2 Dennis - direct

1 right?

2 A. That's correct.

3 Q. And even though you had suspected him of having a weapon
4 and found definitively that he did not have a weapon, you still
5 put him in handcuffs into the back of your police vehicle,
6 right?

7 A. Yes.

8 Q. Even though, according to you, Mr. Almonor was not under
9 arrest that night, right?

10 A. At that point, no, he was not.

11 Q. Well, according to you, Mr. Almonor was never arrested that
12 night, right?

13 A. That's correct.

14 Q. And by the time you went to the vicinity of Hamilton Place
15 and 141st Street, you knew that unmarked police cars had
16 already responded to the 911 calls and found no suspects,
17 right?

18 A. You said unmarked. Do you mean marked?

19 Q. Oh, I'm so sorry. I'll try it again. Thank you.

20 By the time you went to the vicinity of Hamilton Place
21 and 141st Street, you knew that marked police vehicles had
22 already responded to calls and not found any suspects, right?

23 A. They had indicated that there were no suspects still there,
24 yes.

25 Q. And by the time you went to that area, it was about,

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D3rWflo2 Dennis - direct

1 approximately 17 to 20 minutes after the last 911 call, right?

2 A. I believe so.

3 Q. And, to your knowledge, no one had been arrested for
4 creating those disturbances, right?

5 A. That's correct.

6 Q. And you went to the scene to see whether you could find any
7 of the suspects, right?

8 A. Yes.

9 Q. And it's fair to say that you found out Mr. Almonor did not
10 have a weapon on him almost immediately after putting him in
11 handcuffs, right?

12 A. Correct.

13 Q. But you did not take the handcuffs off, right?

14 A. That's correct.

15 Q. And you put him in the back of the police vehicle and you
16 got in the back seat with him, right?

17 A. Correct.

18 Q. Mr. Almonor was crying at that point, right?

19 A. He began crying on the way to the precinct, yes.

20 Q. And you said to him, "Stop crying like a little girl,"
21 right?

22 A. Yes, I did.

23 Q. Now, you didn't say to him that he had been fighting like a
24 man, right?

25 A. That he had been fighting like a man? No, I did not.

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D3rWflo2 Dennis - direct

1 Q. And, in your opinion, Mr. Almonor did not physically fight
2 with you during this stop, right?

3 A. He didn't physically fight. There was a little bit of a
4 struggle, but it was not a physical fight.

5 Q. Lieutenant Korabel, when you got into the back seat with
6 Mr. Almonor, was in the driver's seat, right?

7 A. Yes.

8 Q. And he was sitting right in front of you, right?

9 A. Correct.

10 Q. And he was sitting right in front of you when you made the
11 comment to Mr. Almonor to stop crying like a little girl,
12 right?

13 A. Yes.

14 Q. And you didn't whisper that comment, right?

15 A. I don't recall whispering it, no.

16 Q. Lieutenant Korabel never discussed with you having made
17 that comment, right?

18 A. No, he did not.

19 Q. I'm going to show you a document that's been marked
20 Plaintiffs' Exhibit 15. Do you recognize that document?

21 A. Yes, I do.

22 Q. And what is this document?

23 A. It's a photo reproduction of the police officer's activity
24 reports that we were required to complete at the time.

25 Q. And am I correct that, and I can show you the document

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D3rWflo2 Dennis - direct

1 again if it helps you, this is from February, March, and April
2 of 2010, correct?

3 A. I'm satisfied with that, yes.

4 MS. BORCHETTA: Your Honor, I'd move to admit
5 Plaintiffs' Exhibit 15.

6 MS. PUBLICKER: No objection, your Honor.

7 THE COURT: 15 is received.

8 (Plaintiffs' Exhibit 15 received in evidence)

9 BY MS. BORCHETTA:

10 Q. And this monthly performance report, you indicate the
11 numerical amounts of certain activities that you've done,
12 correct?

13 A. Yes.

14 Q. And it's the activity that you've done for that month,
15 right?

16 A. Yes.

17 Q. And you hand this in to your supervisor, correct?

18 A. That's correct.

19 Q. Now, for the month of March, 2010, you completed an
20 activity report, correct?

21 A. Yes.

22 Q. And you gave that to Lieutenant Korabel, correct?

23 A. Yes.

24 Q. And there's an area for supervisor's quarterly review on
25 courtesy and respect. Do you see that?

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D3rWflo2 Dennis - direct

1 A. Yes.

2 Q. And Lieutenant Korabel entered some information there,
3 correct?

4 A. It appears that way, yes.

5 Q. And am I correct that he entered "PO Dennis is always
6 courteous and respectful when interacting with the public"? Do
7 you see that?

8 A. Yes, I do.

9 Q. Now, this activity report covers the time period for the
10 stop of Mr. Almonor, correct?

11 A. Yes, it does.

12 Q. I want to turn back to you some of the paperwork that you
13 complete when you conduct a stop. As a police officer, you
14 maintain a memo book, right?

15 A. Yes.

16 Q. And am I correct that sometimes a memo book is referred to
17 as an activity log?

18 A. Yes.

19 Q. And you understand that you are supposed to include
20 information in your activity log about stops that you
21 conducted, right?

22 A. Yes.

23 Q. Am I correct that your understanding is that you should
24 include time, date, location of the stop, name of the person
25 stopped, crime suspected, and that a 250 was prepared?

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D3rWflo2 Dennis - direct

1 A. Are you asking me if I'm aware of that as of today or at
2 the time?

3 Q. What was your understanding as of December 2012?

4 A. That the information has to be recorded and it should be
5 recorded.

6 Q. Well, your understanding as of December 2012 was that you
7 should include that information, but you don't always do it,
8 right?

9 A. Correct.

10 Q. So as of December 2012, your practice after --

11 A. 2010.

12 Q. 2000 -- no, no. I'm sorry. December 2012, your
13 understanding, right, was that while it was suggested that you
14 include all of that information, you didn't always have to,
15 right?

16 A. Correct.

17 Q. And you, in your practice of many years as a police
18 officer, did not always include that information in your memo
19 book about stops, right?

20 A. That's correct.

21 Q. And you're aware that your supervisors review your memo
22 books, right?

23 A. Yes.

24 Q. But as far as you can recall, no superior officer ever told
25 you, in sum or substance, that your activity log with respect

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D3rWflo2 Dennis - direct

1 to a stop and frisk was insufficient, right?

2 A. Correct.

3 Q. And as far as you can recall, no supervisor had ever
4 instructed you on why you need to include the details of a stop
5 in an activity log, right?

6 A. Correct.

7 Q. On the night of March 20, 2010, you were maintaining a memo
8 book, right?

9 A. Yes, I was.

10 Q. I'm going to show you what has been marked as Plaintiffs'
11 Exhibit 19. Am I correct that this is your memo book covering
12 March 20, 2010?

13 A. Yes.

14 MS. BORCHETTA: Your Honor, I'd move to admit
15 Plaintiffs' Exhibit 19.

16 MS. PUBLICKER: No objection, your Honor.

17 THE COURT: All right. 19 is received.

18 (Plaintiffs' Exhibit 19 received in evidence)

19 BY MS. BORCHETTA:

20 Q. Now, you did include an entry about the stop of Mr. Almonor
21 in your memo book, correct?

22 A. Yes.

23 Q. Am I correct that the notation here, "two males stopped,
24 one male refused, UF250," is that the entry related to Mr.
25 Almonor's stop?

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D3rWflo2 Dennis - direct

1 A. I believe it's the first part of the entry. I believe the
2 continuation is on the second page.

3 Q. Are you referring to this page?

4 A. Yes.

5 Q. And the continuation that you're referring to is "one under
6 to 30," right?

7 A. Yes.

8 Q. Am I correct that "one under to 30" means one under arrest
9 to the 30th Precinct?

10 A. It could be under arrest or being brought in for
11 investigation, but, yes.

12 Q. But that's the entry you're referring to as the rest of the
13 entry related to the stop of Mr. Almonor?

14 A. Yes.

15 Q. Okay. So the only information about the stop itself is
16 "two males stopped, one male refused, UF250," right?

17 A. Can we just go to the second page of that document, the
18 handwritten back? I just want to review what that says. No,
19 the one without the lines.

20 Thank you. Okay. No, that's -- that's fine. I'm
21 sorry. I just wanted to make sure that I didn't have any
22 entries concerning that. So in response to your question, yes,
23 that would be the only entry.

24 Q. Now, in that entry, you did not include the crime
25 suspected, right?

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D3rWflo2

Dennis - direct

1 A. No. I did not.

2 Q. You did not include that Mr. Almonor was, according to you,
3 being evasive, right?

4 A. No, I did not.

5 Q. You did not include that Mr. Almonor was, according to you,
6 looking over his shoulder, right?

7 A. Not with that entry, no.

8 Q. And you did not include that Mr. Almonor was, according to
9 you, touching his waistband, right?

10 A. I did not.

11 Q. And a superior officer never discussed this memo book entry
12 with you, right?

13 A. No.

14 Q. Now, I want to talk for a minute about your authority as a
15 police officer to temporarily detain a pedestrian. It's your
16 understanding that a police officer can temporarily detain a
17 person for questioning at any level of suspicion, right?

18 A. Not at any level.

19 Q. Well --

20 THE COURT: What do you think is the standard?

21 THE WITNESS: Reasonable suspicion.

22 THE COURT: Of what?

23 THE WITNESS: That either a crime is about to occur,
24 has occurred, or will occur. There are some other
25 circumstances that I might consider for probable cause.

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D3rWflo2 Dennis - direct

1 MR. MOORE: I can't hear, Judge.

2 THE COURT: The last thing he said was, "There are
3 some other circumstances that I might consider for probable
4 cause."

5 You heard the first part?

6 MR. MOORE: Yes.

7 THE COURT: Okay.

8 BY MS. BORCHETTA:

9 Q. Please turn to your deposition transcript at page 35, line
10 20, referring to patrol guide section:

11 "Q. Do you see the section entitled definitions?

12 "A. Yes.

13 "Q. Do you see that it defines stop as 'temporarily detain a
14 person for questioning'? Do you see that?

15 "A. Yes, I do.

16 "Q. Okay. From this point forward in the deposition, when I
17 use the term 'stop,' that's what I mean. Okay?

18 "A. Okay. Thank you.

19 "Q. So in order to conduct a stop of a pedestrian, what is
20 your understanding of the level of suspicion that you need?

21 "A. To stop a pedestrian, I would need, I can stop, I can
22 potentially stop a pedestrian at any level."

23 Did you give those answers to those questions?

24 MS. PUBLICKER: Objection, your Honor. I would
25 actually just point to page 33, a little earlier on when

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1 Ms. Borchetta asked on page 33, line 8:

2 "Q. Okay. What is your understanding of stop in the context
3 of a stop and frisk?

4 "A. A stop in connection with a stop and frisk, at a minimum,
5 I need reasonable suspicion."

6 THE COURT: All right. Anyway, you've testified to
7 both of those parts, the part one lawyer read and the part the
8 other lawyer read?

9 THE WITNESS: That's correct, your Honor.

10 BY MS. BORCHETTA:

11 Q. But it is your understanding that you can temporarily
12 detain a person for questioning for any reason, right?

13 A. Yes.

14 Q. And in the 18 or -- I'm sorry. The dates are changing on
15 me. I'm sorry. In the almost 20 years that you've been a
16 member of the NYPD, you have never been told by a superior
17 officer that you should not have conducted stop that you
18 conducted, right?

19 A. Not that I can remember.

20 MS. BORCHETTA: No further questions at this time,
21 your Honor.

22 THE COURT: Before we have the cross, what's this
23 issue, Mr. Charney? I've read the e-mail now, something about
24 you didn't get some document until, I don't know, 8:45 or 9:45
25 last night. I'm just summarizing. You didn't get a document

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D3rWflo2 Dennis - direct

1 until 8:45 or 9:45. You didn't get it until last night and
2 never got it in all the discovery and all the years that we
3 have had discovery in this case. And based on that you say
4 it's simply unfair to use it.

5 You realize one problem is I don't want to look at it.
6 It's a nonjury trial. I don't want to know what it is because
7 then I'll know what it is, so I can't look at it as I would in
8 a jury trial.

9 MR. CHARNEY: I can try to summarize it without going
10 into too much detail.

11 THE COURT: Maybe we can try to figure out why it was
12 given to you late and whether it could have been given to you
13 earlier.

14 MS. GROSSMAN: Your Honor.

15 MR. CHARNEY: Your Honor, let me finish.

16 THE COURT: You don't want to talk about that?

17 MS. GROSSMAN: You don't want to know why? Okay.

18 MR. CHARNEY: The memo was dated March 5, 2013. The
19 defendants produced documents on March 8. This was not
20 included in those productions.

21 THE COURT: Right.

22 MR. CHARNEY: That's all I wanted to mention before
23 Ms. Grossman explains why it wasn't produced.

24 MS. GROSSMAN: Your Honor, we didn't have possession
25 of it until yesterday, and, when we did have possession, we

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D3rWflo2 Dennis - direct

1 immediately sent it over to plaintiffs.

2 THE COURT: Yes, but it's one city, one entity. Why
3 didn't you have possession?

4 MS. GROSSMAN: It's the same reason the plaintiffs
5 didn't have the information regarding Serrano's tapes. They
6 had possession. Serrano had possession of his tapes and didn't
7 give it to plaintiffs' counsel. Plaintiffs' counsel gave it to
8 us when he had possession.

9 THE COURT: Hold on. Mr. Charney isn't Serrano's
10 lawyer.

11 MS. GROSSMAN: I think Mr. Moore is.

12 THE COURT: Maybe on an unrelated employment matter.

13 MR. CHARNEY: Your Honor, the other difference is that
14 we produced those tapes, I believe, what was it, at least a
15 week before Officer Serrano testified. They're producing this
16 document 12 hours before they want to use it with a witness.

17 THE COURT: I realize that. I don't know what it is.
18 I don't know why it was created on March 5. I don't know who
19 created it on March 5.

20 MR. CHARNEY: I can generally summarize, your Honor.
21 This document is a memo from the chief of patrol of the police
22 department.

23 THE COURT: To whom?

24 MR. CHARNEY: To all commanding officers announcing a
25 fairly significant change to the way that stop-and-frisk

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D3rWflo2 Dennis - direct

1 activity is supposed to be documented.

2 THE COURT: How could it be used in cross-examining
3 this witness?

4 MR. CHARNEY: They informed us they were going to use
5 it on the next witness, Lieutenant Korabel, to ask him about.

6 THE COURT: Who is the author of the memo?

7 MR. CHARNEY: James Hall, who is a witness that the
8 city's planning on calling later.

9 THE COURT: Why don't we wait until James Hall turns
10 up?

11 MR. CHARNEY: I don't have a problem with that, your
12 Honor.

13 THE COURT: I don't see how it can be used until then.

14 MS. GROSSMAN: Your Honor, it's just that you want us
15 to present evidence in our case in chief through these
16 witnesses so we don't recall a witness.

17 THE COURT: I don't see any way you can use that memo
18 with this witness. He can't authenticate it as an out-of-court
19 statement. I don't know what it has to do with him.

20 MS. GROSSMAN: There was a change in policy, your
21 Honor.

22 THE COURT: Not at that level. It's above his pay
23 grade. Wait for the appropriate witness. Just to make it
24 clear, I wouldn't allow him to be recalled based on that. When
25 you get to it with the appropriate witness, I'll deal with it.

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D3rWflo2 Dennis - direct

1 If it's a change in policy, it's a change in policy. It's not
2 about him.

3 MS. GROSSMAN: Your Honor, the only relevance then
4 would be that this witness received this memo, and so it would
5 be important to note for a case --

6 THE COURT: If he received it, then every police
7 officer received it.

8 MS. GROSSMAN: Yes.

9 THE COURT: Good. Hall will tell us that. Hall will
10 tell us every police officer received it.

11 MS. GROSSMAN: As long as nobody comes forward and
12 says, How does Chief Hall know that everybody received it
13 because knowing that an officer --

14 THE COURT: He can tell us where it was sent. If he
15 says he sent it to every officer, then it was sent to every
16 officer.

17 MS. GROSSMAN: If the inference is that when it's sent
18 everyone receives it and the Court will take notice of that,
19 that's fine.

20 THE COURT: That's the general mailing rule. That
21 which is mailed is presumed to be received.

22 MR. CHARNEY: We have no problem with that, your
23 Honor. We just then would like to make sure that the witnesses
24 today and any other witnesses besides Chief Hall not be asked
25 any questions related to this memo.

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D3rWflo2 Dennis - direct

1 THE COURT: Other than Chief Hall?

2 MR. CHARNEY: Other than Chief Hall will not be asked
3 about the policy changes announced in this memo.

4 THE COURT: I can't talk for all other witnesses. If
5 they're at the policy level and they worked on the creation of
6 it, or something like that.

7 MR. CHARNEY: Understand.

8 THE COURT: A police officer in a local precinct isn't
9 going to be asked about it.

10 MR. CHARNEY: We would then want to make sure as well
11 as his supervisors in terms of the people at the precinct
12 level.

13 THE COURT: I can't rule in the abstract. When I get
14 to that person, I don't know if it's a borough commander, that
15 may be a different level. You know, one by one.

16 MR. CHARNEY: That's fine, your Honor.

17 THE COURT: So we're ready for the cross.

18 Ms. Publicker.

19 CROSS-EXAMINATION

20 BY MS. PUBLICKER:

21 Q. Good morning, Officer Dennis.

22 A. Good morning.

23 Q. Where are you currently assigned?

24 A. The 30th Precinct.

25 Q. What area does the 30th Precinct cover?

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D3rWflo2 Dennis - cross

- 1 A. From the south end at 133rd Street up to the north end at
2 155th Street, from the west side to the water's edge by
3 Riverside Drive over to Amsterdam Avenue and further over to
4 Bradhurst Avenue.
5 Q. What is that area known as?
6 A. Now they're referring to it as Hamilton Heights.
7 Q. What is your current assignment within the 30th Precinct?
8 A. Patrol.
9 Q. Have you always been assigned to patrol?
10 A. No.
11 Q. What other assignments have you had within the 30th
12 Precinct?
13 A. Patrol, highway safety, and anticrime.
14 Q. What were the approximate dates that you were assigned to
15 the anticrime team within the 30th Precinct?
16 A. I believe it was mid-2008 to December 2000 -- 2010.
17 Q. What are the differences between patrol and anticrime?
18 A. Patrol, you're, perform duty in a marked car, usually.
19 You're in uniform. You're responsible for, usually responsible
20 for a specific sector within a precinct, which is a small
21 geographical area. You respond to radio assignments assigned
22 to you.
23 Anticrime duties usually performed in plain clothes,
24 unmarked police cars, and you're responsible for the entire
25 precinct.

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D3rWflo2 Dennis - cross

1 Q. Were you supervised any differently between anticrime and
2 patrol?

3 A. In anticrime, it's a lower ratio of supervision to officers
4 because of the fewer number of officers in anticrime.

5 Q. Can you stop an individual solely for fitting the
6 description that was provided by the radio runs on March 20,
7 2010?

8 A. No.

9 Q. Why not?

10 A. It's not enough. Sole description is not enough.

11 Q. Could you have stopped an individual solely for exhibiting
12 the furtive movements that you saw Mr. Almonor exhibiting that
13 evening?

14 A. No.

15 Q. Could you stop an individual solely for being in the area
16 of a crime condition that evening?

17 A. No.

18 Q. What was your assignment on March 20, 2010?

19 A. Performing anticrime duty, and I was the crime sergeant's
20 operator.

21 Q. Do you consider it to be a punishment to be the sergeant's
22 operator?

23 A. No.

24 Q. Who was the sergeant that evening?

25 A. Jonathan Korabel.

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D3rWflo2 Dennis - cross

- 1 Q. Was there a particular sector that you were patrolling
2 within the 30th Precinct?
3 A. That night, no. We were in the entire precinct.
4 Q. Were you in a department vehicle?
5 A. Yes.
6 Q. What kind of vehicle was it?
7 A. Unmarked Chevy Impala.
8 Q. Would an individual looking at that vehicle know that it
9 was a police vehicle?
10 A. In reality, yes.
11 Q. How would they know that?
12 A. The color, the vehicle is basically a marked police car
13 with no lights on the outside. It's painted -- that one is
14 painted black, has four Lo-Jack antennas on the top of the car,
15 two more antennas on the trunk of the car. If you're looking
16 through the windshield of the vehicle, you can see the
17 emergency lights that get illuminated when you turn it on.
18 It's mounted to the head panel of the vehicle, but it directly
19 looks out through the windshield. There's flashers in the
20 grille. Everybody knows it's a police car when we come down
21 the block.
22 Q. Were you in uniform that evening?
23 A. No.
24 Q. But would an individual looking at you know that you were a
25 police officer?

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D3rWflo2

Dennis - cross

- 1 A. Looking at me?
2 Q. Yes.
3 A. That night?
4 Q. Yes.
5 A. Yes.
6 Q. How would they know that?
7 A. Any time I exit the vehicle, I would have my shield out
8 around my neck. But that night I was wearing my vest carrier,
9 which I wear on the outside of my clothes. It has lettering on
10 the back. It says "police," embroidered. It says "police" on
11 the right side of it. It also says, has a copy of my shield
12 that's an embroidered patch that sticks to the, by Velcro, that
13 sticks to the outside of the vest carrier.
14 Q. When you say a vest carrier, what does that mean?
15 A. A vest carrier, excuse me, it's material that is sewn
16 around the shape of the bullet-resistant panels that go inside
17 the vest. I actually brought it with me in case anybody wanted
18 to see it. You slide the panel inside the carrier so that you
19 could wear it and you can take the panels out to wash the vest
20 carrier because you can't wash the panels.
21 Q. That was over your clothing that night?
22 A. Yes.
23 Q. As a member of the anticrime team, were you assigned radio
24 runs as part of your primary duties?
25 A. Certain radio runs, yes.

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D3rWflo2 Dennis - cross

1 Q. Which radio runs?

2 A. Violent radio runs getting assigned to the crime team.
3 Certain radio call types, certain crimes in progress we'll get
4 assigned to the crime team, and the crime team also has the
5 option of selecting which calls they want to go on based on the
6 information provided, the severity of the assignment given out,
7 and the advantage of having plain clothed officers respond.

8 Q. Did you respond to any radio runs on March 20, 2010?

9 A. Yes.

10 Q. What radio runs did you respond to?

11 A. A portion of my tour that evening included responding to
12 multiple radio runs that occurred that were coming in from a
13 specific location on Hamilton Place.

14 Q. How many radio runs were received that evening regarding
15 that condition?

16 A. I believe it was eight or nine.

17 Q. Did the calls discuss the type of crime that was ongoing?

18 A. Yes.

19 Q. What did they say?

20 A. It was described as -- taking the information from all the
21 calls and putting it together, it was described as large fight
22 going on, disorderly people throwing garbage cans into the
23 street, knocking on cars, setting off car alarms, fighting.
24 Some of the calls had indicated that there were possible
25 weapons involved. One of the calls indicated that the caller

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D3rWflo2 Dennis - cross

1 was running for cover because of the conditions going on.
2 These were various information given to us.

3 Q. Do you know over what period of time those calls were
4 received?

5 A. I believe from the first call to the last call, I believe
6 it was less than ten minutes or approximately ten minutes.

7 Q. Was there any mention of weapons in these calls?

8 A. Weapons were mentioned. No specific types of weapons other
9 than sticks, and I believe the terminology used in the caller
10 was canes.

11 Q. Why did you respond to that radio run or those series of
12 radio runs?

13 A. It had become obvious after the first couple of calls that
14 every time the marked units had pulled up, the disorderly
15 people were dispersing but then returning because of the
16 ongoing calls that were coming in. So it was obvious that it
17 was an ongoing problem that was going on.

18 Q. Did there come a time when you arrived at the location of
19 these calls?

20 A. Yes.

21 Q. At approximately what time did you arrive at that location?

22 A. Approximately ten. 10 p.m., approximately.

23 Q. What did you see when you arrived at the scene?

24 A. There were still garbage cans in the middle of the street.
25 A couple car alarms were going off. One or two of the store

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D3rWflo2 Dennis - cross

1 owners were closing up early, pulling down the metal gates
2 outside the store.

3 Q. What did you do when you first arrived at that location?

4 A. I began looking, because of the wide area given, I was
5 slowing down and looking along Hamilton Place and the
6 cross-streets to see if I could see what was going on.

7 Q. How quickly were you driving?

8 A. Very slow.

9 Q. Did there come a point in time when you saw someone you now
10 know to be Devin Almonor?

11 A. Yes.

12 Q. Were you familiar with him before that day?

13 A. No.

14 Q. Where did you first see him?

15 A. I was driving south on Hamilton Place, south of 143rd
16 Street.

17 Q. What made you notice him at that point?

18 A. I saw two individuals on the west side sidewalk, both
19 individuals at different times repeatedly are looking over
20 their shoulder at the direction in which I was coming from,
21 which was also the direction where the calls were originating
22 from.

23 Q. How many -- I'm sorry. Were you finished?

24 A. Yes.

25 Q. How many times did you see Devin Almonor look over his

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D3rWflo2 Dennis - cross

1 shoulder?

2 A. At least five.

3 Q. And do you believe that he was looking at your car when he
4 was looking over your shoulder?

5 MS. BORCHETTA: Objection.

6 BY MS. PUBLICKER:

7 Q. Was he looking at your car when he was looking over his
8 shoulder?

9 THE COURT: First of all, sustained as to the way it
10 was originally phrased. Now it seems fine.

11 Do you remember the question she just asked?

12 BY MS. PUBLICKER:

13 Q. Was he looking at your car when he looked over his
14 shoulder?

15 MS. BORCHETTA: Objection.

16 THE COURT: That's his perception.

17 Did you perceive that he was looking at your car?

18 THE WITNESS: Not -- not while we were on the

19 sidewalk.

20 BY MS. PUBLICKER:

21 Q. Did there come a time when you thought he was looking at
22 your car?

23 A. Yes.

24 Q. Was that when he was crossing the street?

25 A. Yes.

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D3rWflo2 Dennis - cross

1 Q. What happened next?

2 A. At what point? I'm sorry.

3 Q. Sorry. That was confusing.

4 You saw him looking over his shoulder, correct, walking
5 down the west side of the street?

6 A. Yes.

7 Q. What happened after you saw that?

8 A. They, the two individuals continued walking southbound on
9 the west side sidewalk, and at one point they crossed Hamilton
10 Place in the middle of the block.

11 Q. Did you notice anything about the way that they crossed the
12 street?

13 A. At that point, Devin had looked over his shoulder, but that
14 I didn't find suspicious at all because he's crossing the
15 street and I'm driving down the street. But I continued to see
16 him holding his waistband at that point.

17 Q. What was it about the way that he was holding his waistband
18 that made you notice him?

19 A. The fact that he had just stepped off the curb to cross the
20 street, the mannerism in which he was holding it. I hold my
21 waist that way when I'm carrying my gun in the holster in my
22 waist as well. It's a very common practice at times to support
23 your, your holster, your weapon, or to readjust it, depending
24 upon what you're doing at the time.

25 Q. Based on what you observed, what did you do next?

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D3rWflo2

Dennis - cross

1 A. I then exited. I continued to observe him cross the
2 street. I then exited the vehicle as I was asking him to stop.

3 Q. Did you identify yourself as a police officer?

4 A. Yes.

5 Q. How did you do that?

6 A. Well, verbally, and the manner in which I was dressed, I
7 was easily identified.

8 Q. Why were you approaching these individuals?

9 A. As I'm driving down Hamilton Place, there was a whole
10 thought process going on, the fact that they could possibly be
11 coming from where these calls were going, the fact that they
12 kept looking over their shoulder at me, the fact that after
13 Devin had stepped off the curb, the mannerism in which he was
14 holding his waist. Putting the whole thing together, I wanted
15 to speak to them.

16 Q. Did you believe you had reasonable suspicion to stop him at
17 that point?

18 A. At that point, possibly, yes.

19 Q. What Penal Law misdemeanor or felony do you believe he had
20 committed at that time, or may have been committing?

21 A. At the time that I stopped him, he had at least committed
22 disorderly conduct. At least. At that point, when I stopped
23 him? I don't -- I didn't understand the question.

24 Q. You testified that, just a minute ago, for reasonable
25 suspicion stop, you must have reasonable suspicion that

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D3rWflo2 Dennis - cross

- 1 somebody has, is, or is about to commit a penal misdemeanor or
2 felony. Correct?
3 A. I'm sorry. I suspected he had a weapon in his waistband.
4 Q. That was the crime you believe he had committed at the time
5 that you stopped him?
6 A. Yes.
7 Q. What happened when you tried to stop Devin Almonor?
8 A. As I exited the vehicle and approached him, he continued
9 holding his waist on the right side but moved his body further
10 away from me, the right side of his body further away from me.
11 Q. What did that signal to you?
12 A. That he may possibly be trying to, that he may possibly
13 have a weapon and trying to move it further away from my line
14 of sight.
15 Q. What did you do in response?
16 A. I grabbed his arm to control it.
17 Q. And then what happened?
18 A. He began pulling away from me trying to twist his body more
19 so, which was at that point that I leaned him against the car
20 and I handcuffed him.
21 Q. Why did you lean him against the car?
22 A. Proximate near to the car, just easier to lean him against
23 the car when I was holding one hand to handcuff him.
24 Q. Why were you handcuffing him?
25 A. For my safety.

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D3rWflo2 Dennis - cross

1 Q. Why did you believe your safety was in danger?

2 A. Because he may have a weapon.

3 Q. What happened after you handcuffed Devin?

4 A. I immediately frisked the area that he was holding.

5 Q. Did you ask him any questions after you placed him in
6 handcuffs?

7 A. I attempted to ask -- yes. I asked him his name, where he
8 was going, where he was coming from.

9 Q. Why didn't you believe him when he said that he was 13?

10 MS. BORCHETTA: Objection.

11 THE COURT: I'll allow that.

12 A. His size. He didn't appear to be 13 years old. My son was
13 13 at the time. So I could only base it on my knowledge. I
14 believed him to be at least 16 to 17 years old at the time.

15 Q. Why didn't you believe Devin when he said that he was
16 walking home?

17 A. He said he, when I asked him where he lived, prior to
18 giving me his full address, he indicated that he lived at one
19 three nine and river, which I assumed to be Riverside Drive.
20 He's initially walking on the west side sidewalk of Hamilton
21 Place. Riverside Drive is to the west of the sidewalk in which
22 he was walking on, two blocks away. It seemed a little weird
23 that he would cross the street to go further away from the
24 destination which he had indicated he was heading to.

25 Q. Did he tell you his name?

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D3rWflo2

Dennis - cross

- 1 A. Initially, when I asked him initially, he said, They call
2 me Al. Al Devin.
- 3 Q. Did you later learn that was not his name?
- 4 A. That's correct.
- 5 Q. Did Devin Almonor have identification on him?
- 6 A. No, he did not.
- 7 Q. Did it matter how old Devin Almonor was?
- 8 A. At that point, yes.
- 9 Q. Why did that matter?
- 10 A. If he was 16 or older, he could have been issued a summons.
11 If he was, in fact, 13 and I was satisfied that he was, after I
12 was satisfied that he was 13, he would then have to be released
13 to his parents.
- 14 Q. What summons would you have issued him?
- 15 A. Disorderly conduct.
- 16 Q. Did you ever learn the name of the other individual you
17 stopped that evening?
- 18 A. No, I did not.
- 19 Q. Did you ask him for his name?
- 20 A. Yes.
- 21 Q. Did he tell you his name?
- 22 A. No.
- 23 Q. What happened after Devin Almonor was handcuffed?
- 24 A. I placed him in the back seat of the police car to bring
25 him into the precinct.

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D3rWflo2

Dennis - cross

1 Q. And how were the three of you seated in the vehicle?

2 A. Sergeant Korabel, sergeant at the time, was the driver. I
3 was sitting behind him, and Devin was to my right in the back
4 seat.

5 Q. The plaintiffs' attorney here asked you whether you asked
6 Devin why he was crying like a girl in the vehicle. But that
7 wasn't your complete comment, was it?

8 A. No.

9 Q. What was your complete comment?

10 A. It was like, A little while ago you're struggling with me,
11 something along the lines of: A little while ago you're
12 struggling with me on the street. You don't want to give me
13 any information. You're not answering any questions. You have
14 an attitude with me, but now you're in the back seat of a
15 police car going to the precinct and your parents have to come
16 pick you up, and you're crying like a little girl.

17 Q. Do you believe that's an appropriate comment to make?

18 A. Looking back, no.

19 Q. Where was Devin Almonor taken following his detention on
20 the street?

21 A. He was brought into the precinct, and, because of the
22 possibility that he was in fact 13, I erred on the side of
23 caution and placed him in the juvenile room.

24 Q. Did you fill out paperwork in connection with his
25 detention?

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D3rWflo2

Dennis - cross

1 A. Yes, I did.

2 Q. What was the order in which you completed the paperwork you
3 were shown on cross?

4 A. The written 250, I believe, was done first. Then the
5 juvenile report. And then I believe the computer one was the
6 following morning. The computer-generated one, I entered the
7 information into the computer the following morning.

8 Q. You were shown two documents today, a juvenile report
9 system worksheet, in parentheses, pilot, that's Plaintiffs'
10 Exhibit 18, and also a complaint report worksheet juvenile
11 report, which was Plaintiffs' Exhibit 17. Do you recall which
12 one you completed first?

13 A. Yes. The complaint report/juvenile report was completed
14 first. The pilot worksheet was completed the following morning
15 as well, after I found out that there was a form that had to be
16 completed in addition to the juvenile report.

17 (Continued on next page)

18

19

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25

D3r9flo3

Dennis - cross

- 1 Q. So you had completed the original Plaintiffs' Exhibit 17,
2 the complaint report, juvenile report the night of the incident
3 and only completed the juvenile report system worksheet the
4 next day?
5 A. Yes.
6 Q. And why didn't you fill out that sheet the same day?
7 A. To be honest with you I didn't know that the pilot
8 worksheet existed until the youth sergeant had pointed it out
9 to me.
10 Q. And you said you completed a stop, question, frisk
11 worksheet with regard to this incident?
12 A. Yes.
13 Q. Do you acknowledge certain errors in the paperwork you
14 prepared?
15 A. Yes.
16 Q. What do you attribute those errors to?
17 A. A number of factors. I was trying to rush through the
18 paperwork. There were other circumstances going on at the
19 time. It turns out that he was a juvenile so I have to release
20 him as soon as I'm satisfied that he's a juvenile and his
21 parents are there to pick him up.
22 Q. Was Devin still at the precinct when you completed the
23 paperwork?
24 A. Which paperwork?
25 Q. Which of the documents was Devin in the precinct for your

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D3r9flo3 Dennis - cross

1 completion of -- there's too many prepositions.

2 Was Devin Almonor in the precinct when you completed
3 the complaint report worksheet, juvenile report?

4 A. I believe I had already released him.

5 Q. Do you recognize that there are some differences in the
6 hand printed 250 form for Devin Almonor and the computerized
7 stop and frisk report that you filled out the next day?

8 A. Definitely.

9 Q. And why are there differences between those two forms?

10 A. On the handwritten form, simple check boxes that you can
11 mark off.

12 On the computer-generated form, with my knowledge of
13 how to enter the information into the system, to get to certain
14 areas of the form it's like drop down boxes. So to get to
15 point B, sometimes have you to select point A to get to point B
16 to make the documentation appropriate for what you want to get
17 across.

18 Q. So to make sure I understand you. For the computerized
19 form there are check boxes, correct, that you would check off
20 for the additional circumstances, for example?

21 A. Yes.

22 Q. But not all of those check boxes have a narrative field?

23 A. Correct.

24 Q. And so in order for you to input additional narrative
25 information you would have to check off only certain boxes,

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D3r9flo3

Dennis - cross

1 right?

2 A. Correct.

3 Q. And so that is why your computerized stop and frisk report
4 is different from the handwritten 250 form?

5 A. Yes.

6 Q. Why didn't you indicate on the handwritten form that Devin
7 gave evasive, false or misleading answers to officers'
8 questions?9 A. Because I was satisfied that by marking off the box
10 "changing direction" was appropriate.11 Q. Going back quickly to the online computer system. What
12 additional information were you trying to input into the
13 computerized system for the narrative section?14 A. One of the areas that the other counsel had pointed out is
15 the fact that I marked off suspicious bulge. At no time did I
16 ever see a bulge. But to indicate that he was holding the
17 right side of his pants I had -- I chose to select the bulge to
18 get me to the three slashes later to indicate what area of his
19 pants he was holding that called my attention to it.20 Q. So suspicious bulge is one of the check box forms that will
21 lead to a narrative section?22 A. Yes. You could add to it as you go down the drop down menu
23 boxes.

24 Q. And you added to that section?

25 A. Yes. The last thing I added was right side of pants, I

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D3r9flo3 Dennis - cross

1 believe.

2 Q. You input information about the stop in your memo book,
3 right?

4 A. Yes.

5 Q. In retrospect do you think you should have written more
6 about the stop in there?

7 A. Yes.

8 Q. Do you understand that more detail is required by the New
9 York City Police Department in memo book entries?

10 A. Yes.

11 THE COURT: When did you come to that understanding?

12 THE WITNESS: In the police academy.

13 THE COURT: Okay. We'll take our morning recess now
14 for ten minutes and reconvene at quarter to twelve on that
15 clock.

16 (Recess)

17 MS. PUBLICKER: No further questions.

18 THE COURT: Any redirect?

19 MS. BORCHETTA: Yes, your Honor.

20 REDIRECT EXAMINATION

21 BY MS. BORCHETTA:

22 Q. Officer Dennis, you were trained as a member of the NYPD on
23 completing documents accurately, right?

24 A. Yes.

25 Q. And you were trained as a member of the NYPD to complete

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D3r9flo3 Dennis - redirect

1 250s accurately, right?

2 A. Yes.

3 Q. And you were also trained to be complete when you were
4 completing a 250, correct?

5 A. Yes.

6 Q. And you're aware that your supervisors review 250s in part
7 to look for completeness, right?

8 A. Yes.

9 Q. And you're aware that memo books are also reviewed by
10 supervisors, correct?

11 A. Yes.

12 Q. And you're trained as a member of the NYPD to complete your
13 memo books correctly, right?

14 A. Yes.

15 Q. And to be complete with your memo book entries, correct?

16 A. Yes.

17 Q. Do you recall being asked -- or do you recall testifying
18 that in your understanding you cannot as a police officer stop
19 someone solely based on fitting a description?

20 A. Solely. That's correct.

21 Q. And that based on your understanding you cannot stop
22 someone solely based on furtive movements?

23 A. Correct.

24 Q. But the two boxes that you checked on the 250 form were
25 only "fits description" and "furtive movements," right?

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D3r9flo3

Dennis - redirect

1 A. Correct.

2 Q. So you didn't check just one of those because you knew
3 you'd have to check both, right?

4 A. No.

5 Q. Well, you didn't check solely one of those because you knew
6 you had to check at least two?

7 A. That's not why I checked off both boxes.

8 Q. But you knew you couldn't just check one of those, right?

9 A. If that's -- if I'm completing the form and that's all I
10 wanted to mark off, that's all I'm going to mark off.

11 Q. So then you can stop someone based solely on a description?

12 MS. PUBLICKER: Objection. She has mischaracterized
13 his testimony on direct, which was not about fitting a
14 description. It was on the description provided in the radio
15 room.

16 THE COURT: Objection sustained -- that's really a
17 classic speaking objection. Be it as it may the objection -- I
18 meant to say overruled actually. You may answer that question.
19 If you want to rephrase it, please.

20 MS. BORCHETTA: I will try, your Honor.

21 Q. Is it your understanding that you could not have only
22 checked "fits description" on the 250 form?

23 THE COURT: That wouldn't have been sufficient to only
24 check "fits description," right?

25 (Pause)

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D3r9flo3 Dennis - redirect

1 THE COURT: Would that have been enough to just check
2 that one box?

3 THE WITNESS: Possibly.

4 THE COURT: Okay.

5 Q. But did you check two boxes because you believed you had to
6 check two boxes?

7 A. No. I checked the two boxes because I -- that was my
8 intentions.

9 THE COURT: Not because you had to but because both
10 those factors applied? Is that what you're saying?

11 THE WITNESS: That's correct.

12 THE COURT: Not because you had to?

13 THE WITNESS: Absolutely not.

14 THE COURT: One would have been enough?

15 THE WITNESS: Yes.

16 Q. But you that night checked all of the boxes that you
17 thought applied, right?

18 A. I did my best that I could, yes.

19 Q. And you also didn't -- I'm sorry.

20 You also, in addition to not checking suspicious
21 bulge, you didn't check actions indicative of engaging in a
22 violent crime, right?

23 A. No.

24 Q. Correct? And do you recall testifying just now that you
25 admit you made some errors in completing the forms related to

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D3r9flo3 Dennis - redirect

1 Mr. Almonor's stop, right?

2 A. Yes.

3 Q. And you're calling them errors, right?

4 A. Yes.

5 Q. But wouldn't you agree with me that they aren't just
6 errors. They, in fact, made Mr. Almonor's conduct leading to
7 the stop worse, right?

8 A. Absolutely not.

9 Q. Well, again, on the 250 form you didn't check suspicious
10 bulge, right?

11 A. I've never said from the beginning that I saw a bulge so I
12 would not check it off.

13 Q. And you didn't check actions indicative of engaging in
14 violent crime, correct?

15 A. That's correct.

16 Q. But then when we go to the computer information that you
17 entered on the 250 there we see actions indicative of engaging
18 in violent crime, right?

19 A. That's an end result of the computer generation -- computer
20 generated response, yes.

21 Q. You entered in that form actions indicative of engaging in
22 violent crime, right?

23 A. I don't know what the preceding box to get to that
24 narrative is off the top of my head.

25 Q. But according to the printout it says there actions

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D3r9flo3 Dennis - redirect

1 indicative of engaging in a violent crime, right?

2 A. Right. But the same printout also shows suspicious bulge,
3 which I have never testified to.

4 Q. And on the handwritten form where you're not relying on a
5 computer to prompt you, you wrote, "Juvenile observed walking
6 across the street with suspicious bulge," right?

7 A. Can we pull this one down so I can see the top heading,
8 please. I believe this is the pilot form that you you're
9 showing me.

10 This form was completed, like I said, 14 to 15 hours
11 later when I found out that it was required in addition to the
12 juvenile report that I had done the night before.

13 THE COURT: Be that as it may, it mentions suspicious
14 bulge? It's your handwriting where it says suspicious --

15 THE WITNESS: Yes.

16 THE COURT: So you wrote suspicious bulge?

17 THE WITNESS: I did write it, yes, your Honor.

18 THE COURT: Okay.

19 Q. You testified just now that Mr. Almonor, in your opinion,
20 fit the description because you heard calls about a disorderly
21 group, right?

22 A. That's not what I said.

23 Q. Well, you testified that you heard calls related to a
24 disorderly group, right?

25 A. Correct.

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D3r9flo3 Dennis - redirect

- 1 Q. But when you saw Mr. Almonor he wasn't being disorderly,
2 right?
3 A. No.
4 Q. And when you saw Mr. Almonor, he wasn't fighting, right?
5 A. Correct.
6 Q. And when you saw Mr. Almonor, he wasn't in a large group,
7 right?
8 A. Correct.
9 Q. You also testified that you have heard mention on the 911
10 calls of weapons, right?
11 A. Yes.
12 Q. But you didn't hear anything specifically about a gun,
13 right?
14 A. No.
15 Q. And you mentioned on testimony just now that you had heard
16 about a cane, right?
17 A. That was one of the descriptions provided.
18 Q. But Mr. Almonor didn't have a cane, right?
19 A. No, he did not.
20 Q. And you suspected him of having a gun, not a cane, right?
21 A. Correct.
22 Q. Now you also just testified about what you say Mr. Almonor
23 did after the stop began, right.
24 I'll rephrase it.
25 A. Thank you.

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D3r9flo3

Dennis - redirect

- 1 Q. You just testified about certain behaviors that you
2 observed from Mr. Almonor after you exited the police vehicle,
3 right?
4 A. Yes.
5 Q. After you announced yourself as a police officer, right?
6 A. Yes.
7 Q. And after you asked Mr. Almonor to stop, right?
8 A. Yes.
9 Q. And am I correct that you testified that he somehow moved
10 his body as you approached him?
11 A. Yes.
12 Q. And that you're saying the way he moved his body somehow
13 contributed to your suspicion about him, right?
14 A. Yes.
15 Q. But the way he moved his body was to turn towards you;
16 isn't that right?
17 A. No.
18 Q. Well, when you exited the police vehicle you were to
19 Mr. Almonor's left, right?
20 A. Yes.
21 Q. And he was standing at that point with his right side
22 further away from you, right?
23 A. Yes.
24 Q. But somehow it's the fact that his right side was further
25 away from you that you thought was suspicious, right?

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D3r9flo3 Dennis - redirect

1 A. Because he was holding his right side.

2 Q. He was keeping his right side where it was when you exited
3 the police vehicle, right?

4 A. No.

5 Q. But when you exited the police vehicle he was standing with
6 his right side further away from you, right?

7 A. He had just finished crossing the street, yes.

8 Q. And his right side was further away from you, right?

9 A. No. His right side would be closer to me now.

10 Q. Let's go to your deposition. Page 68.

11 A. Okay.

12 Q. Page 68, line. Beginning with line 15?

13 "A. But at this point he's stepping up onto the sidewalk. I'm
14 pulling in the car. I exit the car.

15 "Q. But you're still to his left, right?

16 "A. Yes."

17 Do you recall giving those answers to those questions?

18 A. Yes.

19 Q. And further down, line 21, still on page 68.

20 "Q. Okay. And so you're saying he turned -- so you're saying
21 the right side of his body was further away from you?

22 "A. Right."

23 Do you remember giving that answer to that question?

24 A. Can we finish reading.

25 MS. BORCHETTA: That's not the complete answer.

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D3r9flo3 Dennis - redirect

1 THE COURT: I'm sorry. Could you read.

2 MS. BORCHETTA:

3 "Q. And so you're saying he turned -- so you're saying the
4 right side of his body was further away from you," right -- I'm
5 sorry.

6 "...further away from you?

7 "A. Right. And he made it a point to keep it further away
8 from me."

9 A. Thank you.

10 Q. Is that your answer?

11 A. Yes.

12 Q. So his right side was already further away from you, right?

13 A. That's not what I'm saying.

14 Q. And either way Mr. Almonor turned towards you, correct?

15 A. Yes.

16 Q. And he turned towards you pretty fast after you exited the
17 police vehicle, right?

18 A. Yes.

19 Q. You testified that you didn't believe that Mr. Almonor was
20 only 13, right?

21 A. Correct.

22 Q. But there is no law in this city that requires a
23 13-year-old to prove to an officer his age, right?

24 A. Not that I know of.

25 Q. And you testified that somehow the direction he was walking

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D3r9flo3 Dennis - redirect

1 contributed to your suspicion, right?

2 A. Yes.

3 Q. But he was walking within a few blocks of his home, right?

4 A. Yes.

5 Q. And in any event any answers to the questions that you
6 found evasive he only gave to you after he was already in
7 handcuffs, right?

8 A. Yes.

9 Q. Now, I believe you also testified that when you were in the
10 car with Mr. Almonor on the way back to the 30th precinct
11 that you made some comment to him about fighting; is that
12 right?

13 A. Something along those lines, yes.

14 Q. But in your opinion he hadn't been fighting with you,
15 right?

16 A. He was pulling away from me.

17 Q. But in your opinion he hadn't been fighting, right?

18 A. In my opinion, based on my definition of fighting, no.

19 Q. And you didn't actually say anything to him about fighting;
20 isn't that right?

21 A. That's not right.

22 Q. Turn to your deposition. Page 101. Starting at line 6.

23 "Did you say anything.

24 "Q. Did you say anything to him on the way to the station?

25 "A. I had a conversation with him, yes.

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D3r9flo3 Dennis - redirect

1 "Q. What did you say to him?

2 "A. He began crying. And the conversation was along the lines
3 of: Stop acting like a little girl. If you would have told me
4 where you lived and your father was retired I would have just
5 brought you home. Something along those lines.

6 "Q. So you told him to stop crying like a little girl?

7 "A. Yeah."

8 Going further down the page to page 102, starting at
9 line 23.

10 "Q. Did you say anything else to him during the time that you
11 were -- that you and Sergeant Korabel were driving him to the
12 30th precinct?

13 "A. Not that I recall other than what I just said."

14 Do you recall giving those answers to those questions?

15 A. Yes.

16 Q. You testified, am I correct, that in the additional
17 circumstances slash factors section of the 250 form completed
18 for Mr. Almonor you had checked "changing direction at sight of
19 officer," right?

20 A. Yes.

21 Q. And that's referring to the movement Mr. Almonor made that
22 we just went over when you exited the police vehicle, right?

23 A. Yes.

24 Q. But that section says, "check all that apply," right?

25 A. Yes.

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D3r9flo3 Dennis - redirect

1 Q. And you didn't check "evasive, false or inconsistent
2 responses," right?

3 A. Correct.

4 Q. You also testified I believe that it's your understanding
5 you're required as a member of the NYPD to not release except
6 to a parent a juvenile that you handcuffed on the streets; is
7 that right?

8 A. I believe that to be the policy, yes.

9 Q. What patrol guide section provides that?

10 A. I would assume it's under juveniles. I don't know the
11 section off --

12 Q. But you can't identify the section sitting here today?

13 A. No, I can't.

14 Q. You gave some testimony just now about what you're required
15 as a member of the NYPD to include in your memo books, right?

16 A. Yes.

17 Q. And you testified that it is your understanding that you're
18 supposed to include more information than you included for the
19 stop of Mr. Almonor, right?

20 A. Yes.

21 Q. And even though it's your understanding that more
22 information was required, you in almost two decades of your
23 practice as a police officer didn't always include that
24 additional information, right?

25 A. Correct.

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D3r9flo3 Dennis - redirect

1 Q. And in that entire time no one in the NYPD ever told you
2 anything about your memo book entries with respect to stops and
3 frisks being insufficient, right?

4 A. Not that I recall.

5 MS. BORCHETTA: I believe I have no further questions,
6 your Honor, if I could have just one moment.

7 (Pause)

8 No further questions, your Honor.

9 THE COURT: Any recross?

10 MS. PUBLICKER: Yes, your Honor.

11 RECROSS EXAMINATION

12 BY MS. PUBLICKER:

13 Q. I believe earlier you testified that for the stop of
14 Mr. Almonor you did not have sufficient reasonable articulable
15 suspicion to stop him based solely on fitting the description
16 provided by the 911 callers; isn't that correct?

17 A. Correct.

18 Q. But is there a circumstance where an individual could be
19 stopped for fitting a description?

20 A. If there are other factors factored into it, yes.

21 Q. One of the --

22 THE COURT: I don't understand that question or
23 answer.

24 Q. So in this instance the description provided by the 911
25 callers was a group of young male blacks; is that correct?

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D3r9flo3

Dennis - recross

1 A. One of the callers indicated male black, yes.

2 Q. And that description alone is not sufficient to stop
3 someone, correct?

4 A. Correct.

5 Q. But there could be a circumstance where a description was
6 more detailed and would permit you to stop someone based solely
7 on that description?

8 A. Yes.

9 Q. In these 911 calls there was also a caller who indicated
10 that a knife was present; isn't that correct?

11 A. I believe so.

12 Q. And the plaintiffs' counsel asked you just now about Devin
13 Almonor keeping the right side of his body away from you; is
14 that correct?

15 A. Yes.

16 Q. What does it indicate to you that when someone keeps --
17 sorry. Strike that.

18 What does it indicate to you when an individual keeps
19 their body away from you in the manner in which Devin Almonor
20 did?

21 A. I can only rely on a term that I've been trained with as a
22 police officer. It's called blading. It's whenever you
23 interact with somebody, you're always conscious to keep your
24 firearm further away from whoever you're talking to. And the
25 way he kept turning -- keeping his right side away from me I

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D3r9flo3 Dennis - recross

1 felt as if he may be secreting a weapon.

2 MS. PUBLICKER: Nothing further, your Honor.

3 MS. BORCHETTA: Your Honor, I do have one further
4 question, maybe two.

5 (Pause)

6 REDIRECT EXAMINATION

7 BY MS. BORCHETTA:

8 Q. Just a few more questions, I think. Maybe only one,
9 Officer Dennis, or maybe two.

10 Is a person standing with his right side away from
11 you, with nothing more, suggestive to you, based on your
12 experience, that the person is engaging in criminal activity?

13 A. No.

14 MS. BORCHETTA: No further questions, your Honor.

15 THE COURT: All right. You think you're done with
16 this witness?

17 Thank you.

18 (Witness excused)

19 MS. BORCHETTA: Your Honor the plaintiff calls
20 Lieutenant Captain Korabel.

21 JONATHAN KORABEL,

22 called as a witness by the Plaintiffs,

23 having been duly sworn, testified as follows:

24 (Continued on next page)

25

D3r9flo3 Dennis - redirect

1 DIRECT EXAMINATION

2 BY MS. BORCHETTA:

3 Q. Good afternoon, Lieutenant Korabel.

4 A. Good afternoon.

5 Q. You are currently a member of the NYPD, correct?

6 A. Correct.

7 Q. And you joined the NYPD in July of 2002, correct?

8 A. Correct.

9 Q. You were at some point promoted to sergeant, right?

10 A. Correct.

11 Q. When was that?

12 A. That was in July of 2007.

13 Q. And you were then promoted to lieutenant in June of 2012,
14 correct?

15 A. Correct.

16 Q. You were present for the stop of Mr. Devin Almonor on
17 March 20, 2010, correct?

18 A. Correct.

19 Q. Your rank that night was sergeant, correct?

20 A. Correct.

21 (Continued on next page)

22

23

24

25

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D3rWflo4 Korabel - direct

1 BY MS. BORCHETTA:

2 Q. You were at the time a sergeant in the 30th Precinct,
3 correct?

4 A. Correct.

5 Q. And by that time, you had been a sergeant for almost three
6 years, right?

7 A. Correct.

8 Q. As a sergeant, you were, in part, responsible for
9 supervising police officers, right?

10 A. Correct.

11 Q. And as a sergeant, you were responsible at times for giving
12 guidance to police officers under your supervision about stop
13 and frisk, right?

14 A. Giving guidance to them about stop and frisk? That and
15 many other things, yes.

16 Q. But one thing that you were to give them guidance about was
17 stop and frisk, right?

18 A. Correct.

19 Q. The night of the stop of Mr. Almonor, you were the
20 supervisor of the anticrime unit, correct?

21 A. Correct.

22 Q. And the anticrime unit is designed to address violent
23 street crimes and burglaries, right?

24 A. Correct.

25 Q. As the anticrime unit supervisor, your responsibilities

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D3rWflo4 Korabel - direct

- 1 included supervising officers on the anticrime unit patrol that
2 night, right?
3 A. Correct.
4 Q. And that includes making sure that officers are performing
5 their duties as required, right?
6 A. Correct.
7 Q. At the time of the stop of Mr. Almonor, you were with
8 Police Officer Brian Dennis, correct?
9 A. Correct.
10 Q. And you were supervising Officer Dennis that night,
11 correct?
12 A. Correct.
13 Q. And that night, you had to, among other things, ensure that
14 Officer Dennis was complying with the Constitution, right?
15 A. Correct.
16 Q. And if you observed Officer Dennis violating the
17 Constitution, you would have to take actions to address that
18 behavior, right?
19 A. Correct.
20 Q. Just prior to the stop of Mr. Almonor, you were in a car
21 being driven by Officer Dennis, right?
22 A. Correct.
23 Q. And that was an unmarked car?
24 A. Correct.
25 Q. And the stop of Mr. Almonor occurred in the vicinity of

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D3rWflo4 Korabel - direct

1 141st Street and Hamilton Place, right?

2 A. In that area, correct.

3 Q. And you and Officer Dennis headed to that area, you say, in
4 response to 911 calls, right?

5 A. In part, yes.

6 Q. But it was about 15 or 20 minutes after you heard the 911
7 calls that you responded to the scene, right?

8 A. Approximately, yes.

9 Q. And by the time you went there, you understood or you
10 believed that marked cars had already gone to that area and
11 hadn't seen anything, right?

12 A. I believe so, yes.

13 Q. So you and Officer Dennis rode in the vehicle over to
14 Hamilton Place, right?

15 A. Correct.

16 Q. And then you and Officer Dennis began driving down Hamilton
17 Place, right?

18 A. Correct.

19 Q. At some point, you saw Mr. Almonor in front of your car,
20 right?

21 A. Correct.

22 Q. Do you remember testifying at deposition that it's possible
23 you saw him before that point?

24 A. Yes.

25 Q. But the first time you're sure you saw him was when he was

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D3rWflo4 Korabel - direct

1 in front of your car, right?

2 A. The first time I'm a hundred percent sure I saw him, yes,
3 was when he was in front of the car.

4 Q. So while it's possible that you saw him earlier, you don't
5 specifically remember seeing him before he was in front of your
6 car, right?

7 A. As I sit here now, yes, I don't recall seeing him. It's
8 possible I saw him before, but that's the time I'm a hundred
9 percent sure I first saw him.

10 Q. And the time you 100 percent recall seeing him was when he
11 was in front of your car, right?

12 A. Correct.

13 Q. At the time when you do 100 percent, for sure remember
14 seeing him, he was, according to you, walking from the west
15 side of Hamilton Place to the east side, is that right?

16 A. Correct.

17 Q. And Officer Dennis said something to you about Mr. Almonor
18 that made you look at Mr. Almonor, right?

19 A. Correct.

20 Q. And you don't specifically remember what Officer Dennis
21 said about that, right?

22 A. Correct.

23 Q. But although you don't specifically remember, you think he
24 said something like, Look at this kid, right?

25 A. It's possible, yes.

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D3rWflo4 Korabel - direct

1 Q. That's what you think he said something like, right? He
2 said something like, Look at this kid, right?

3 A. Correct.

4 Q. Now, you observed Mr. Almonor for a maximum of one minute
5 before the stop of Mr. Almonor, right?

6 A. Approximately, yes.

7 Q. And you didn't see a suspicious bulge on Mr. Almonor,
8 right?

9 A. Correct.

10 Q. And in that one minute of observation before the stop, you
11 say that you saw Mr. Almonor walking briskly, right?

12 A. Correct.

13 Q. But that, walking briskly, alone does not suggest to you
14 that he was engaging in crime, right?

15 A. That alone, no.

16 Q. And when you looked at Mr. Almonor in that maximum
17 one-minute period, you say that it appeared to you that he was
18 adjusting something under his clothes, right?

19 A. Yes. It was either his waist or his pocket. I don't
20 remember specifically.

21 Q. But any adjusting that he was doing was only for a matter
22 of seconds, right?

23 A. Correct.

24 Q. So after this maximum one-minute period that you observed
25 Mr. Almonor, Officer Dennis pulled up to the corner and stopped

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D3rWflo4 Korabel - direct

- 1 the car, right?
2 A. Correct.
3 Q. The car was stopped at the corner on Hamilton Place, right?
4 A. Correct.
5 Q. Do you recall the cross-street that you were at?
6 A. Not specifically, no.
7 Q. But it was at the corner, right?
8 A. Correct.
9 Q. And you arrived at that corner at the same time Mr. Almonor
10 did, right?
11 A. I believe so, yes.
12 Q. Now, you say that you observed Mr. Almonor violating New
13 York City traffic rules, right?
14 A. That in addition to other laws, yes.
15 Q. Let's stick for now with the violation of the New York City
16 traffic laws. Okay?
17 A. Okay.
18 Q. What you believe you observed him violating is the rule
19 that prohibits from people crossing anywhere other than in a
20 crosswalk, right?
21 A. Correct.
22 Q. In other words, you say you observed Mr. Almonor failing to
23 cross in a crosswalk, right?
24 A. In the middle of the block, yes.
25 Q. But your police car and Mr. Almonor arrived at the corner

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D3rWflo4 Korabel - direct

1 at the same time, right?

2 A. Well, yes, but that doesn't mean we were going the same
3 speed.

4 Q. Well, but your car and Mr. Almonor walking on the street
5 arrived at the corner at the same time, right?

6 A. Yes. However, a car and a person do not go the same speed.

7 Q. And you testified or you say that you had probable cause
8 when you stopped Mr. Almonor because he failed to cross in a
9 crosswalk, right?

10 A. Because he violated New York City traffic rules as well as
11 other laws, yes.

12 Q. Well, you keep saying other laws. What are the other laws
13 that you're saying?

14 A. Could be -- like I said, I stated in my deposition, New
15 York City traffic rules are also mirrored closely by the VTL.
16 I believe, Section 1152(a) of the VTL states that you have to
17 cross in a crosswalk, if it's marked in that street, as well as
18 New York State Penal Law 240.20(5), which states you cannot
19 obstruct vehicular or pedestrian traffic.

20 Q. So either way, the action that you're saying violated some
21 law or rule or ordinance is that he wasn't crossing in a
22 crosswalk, right?

23 A. Correct. He was walking in the middle of the street, not
24 at a crosswalk, not with the cross or don't cross signs.

25 Q. And you're saying he did that even though your driving

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D3rWflo4 Korabel - direct

1 police vehicle got to the corner at the same time as he did
2 walking, right?

3 A. Like I said before, a person can move at a different speed
4 than a motor vehicle with an engine.

5 Q. Do you arrest every New Yorker that you observe failing to
6 cross in a crosswalk?

7 A. No.

8 Q. And, in fact, you've never personally arrested someone for
9 violating that traffic law, right?

10 A. That's correct.

11 Q. And you would agree with me that in the City of New York,
12 it is common to see people failing to cross in crosswalks,
13 right?

14 A. That's correct. Doesn't make it right though.

15 Q. Doesn't make it right, but it doesn't make it suspicious,
16 does it?

17 A. It could add to suspicion.

18 Q. But that alone, failing to cross in a crosswalk, does not
19 suggest to you that someone is engaging in a crime, right?

20 A. It could.

21 THE COURT: Under what circumstances could it?

22 THE WITNESS: For example, if someone is trying to
23 move, leave an area quickly, they're not obviously going to
24 obey the law, so they're going to try to get away from that
25 area as quick as possible.

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D3rWflo4 Korabel - direct

1 THE COURT: If they're running or darting?

2 THE WITNESS: If they're walking or moving briskly or
3 trying to get away from a situation or maybe they're trying to
4 get out of sight of someone so they would do that so they could
5 just leave the area they're in.

6 THE COURT: So it might be the way they're doing it?

7 THE WITNESS: Correct.

8 BY MS. BORCHETTA:

9 Q. Right. But Mr. Almonor was in the vicinity of what the 911
10 calls had reported was a crime area, right?

11 A. He was in the vicinity of where there had been numerous 911
12 calls.

13 Q. So he wasn't running out of it, right?

14 A. He was walking through it.

15 Q. Right. So he wasn't running out of it, right?

16 A. He was in the area, attempting to leave that area.

17 THE COURT: Was he running?

18 THE WITNESS: He was walking briskly.

19 BY MS. BORCHETTA:

20 Q. So he was not running, right?

21 A. Not to my recollection, no.

22 Q. In any event, when you got out of the police car that night
23 and approached Mr. Almonor, it was not your intention to arrest
24 him for violating any traffic rule, right?

25 A. That's correct.

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D3rWflo4 Korabel - direct

- 1 Q. Let's look at the 250 that was completed for this stop.
2 This has already been admitted and is Plaintiffs' Exhibit 20.
3 Now, you signed off on this 250, right?
4 A. Correct.
5 Q. You signed off as the reviewer of this 250, right?
6 A. That's correct.
7 Q. And you did review this 250, right?
8 A. That's correct.
9 Q. In the area for what felony or Penal Law misdemeanor was
10 suspected, Officer Dennis wrote CPW, right?
11 A. Correct.
12 Q. I'm right that that means criminal possession of a weapon,
13 right?
14 A. Correct.
15 Q. And it doesn't say anything about a traffic violation,
16 right?
17 A. Correct, because that would be incorrect to list in that
18 section.
19 Q. And it would be incorrect to list it in that section
20 because a traffic violation is not a Penal Law felony or
21 misdemeanor, right?
22 A. That's correct.
23 Q. You understand that an officer cannot stop and frisk a
24 person merely for violation of a traffic rule, right?
25 A. That's correct.

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D3rWflo4 Korabel - direct

1 Q. Now, I'm going to show you what's already been admitted
2 into evidence as Plaintiffs' Exhibit 18. Lieutenant Korabel,
3 do you recognize this as the juvenile report worksheet
4 completed by Officer Dennis?

5 A. I can't see the bottom, who filled it out.

6 Yes.

7 Q. Okay. And you see an area where there are charges listed,
8 right?

9 A. Yes.

10 Q. And those are the offenses that are potentially observed,
11 right?

12 A. Correct.

13 Q. And there's no indication there of a traffic violation,
14 right?

15 A. Correct, but that's commonplace in the police department.

16 Q. But there's no indication there of a traffic violation,
17 right?

18 THE COURT: I'm sorry. What's commonplace?

19 THE WITNESS: Sometimes when there's multiple charges,
20 you won't list every individual charge. You don't want to get
21 petty dealing with the district attorney's office at a later
22 date.

23 THE COURT: What are the charges?

24 THE WITNESS: He has 240.20, looks like, disorderly
25 conduct, and Penal Law 205.30, which is resisting arrest.

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D3rWflo4 Korabel - direct

1 BY MS. BORCHETTA:

2 Q. But there are certainly additional spaces where he could
3 have listed additional violations, right?

4 A. He could have.

5 Q. And he didn't, right?

6 A. No, he did not.

7 Q. And do you see a narrative portion here?

8 A. I do.

9 Q. Now, Officer Dennis at least did not indicate here anywhere
10 that Mr. Almonor had been observed failing to cross in a
11 crosswalk, right?

12 A. No, he did not.

13 THE COURT: Do you know what the disorderly conduct
14 was?

15 THE WITNESS: In part, when we were taking him into
16 custody, he was fighting with us. He was also screaming,
17 causing public alarm and annoyance, in addition to --

18 THE COURT: He was what? I'm sorry. Doing what?

19 THE WITNESS: He was yelling, making a scene, which is
20 part of the section of disorderly conduct, creating public
21 alarm and annoyance.

22 THE COURT: Public alarm and annoyance?

23 THE WITNESS: In addition, into -- walking in the
24 middle of the street. It could also constitute disorderly
25 conduct because it's obstructing vehicular or pedestrian

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1 traffic.

2 MS. BORCHETTA: Your Honor, I do plan to get into each
3 of those, for the Court's information.

4 MR. MOORE: Could I have that answer read back, Judge?
5 Because he was talking to you, I didn't hear it.

6 THE COURT: Sure. "He was yelling, making a scene,
7 which is part of the section of disorderly conduct, creating
8 public alarm and annoyance. In addition, into -- walking in
9 the middle of the street. It could also constitute disorderly
10 conduct because it's obstructing vehicular or pedestrian
11 traffic."

12 MR. MOORE: I meant the first part of the answer.
13 Didn't he mention fighting?

14 THE COURT: Oh, yes. "He was fighting with us. He
15 was also screaming, causing alarm."

16 MR. MOORE: Right.

17 BY MS. BORCHETTA:

18 Q. I'm going to show you another document that's already been
19 admitted into evidence, and this is Plaintiffs' Exhibit 17. I
20 realize the print is small, Lieutenant Korabel; I can bring
21 this document up to you if it's necessary. Do you recognize
22 this as a complaint report worksheet completed by Officer
23 Dennis?

24 A. Actually, in this case, it would be a juvenile report.
25 It's part of the --

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D3rWflo4 Korabel - direct

- 1 Q. But you recognize this as a document that Officer Dennis
2 completed?
3 A. Correct.
4 Q. And it's related to the stop of Mr. Almonor, correct?
5 A. Correct.
6 Q. And there's another narrative section here, right?
7 A. Yes.
8 Q. Can you please tell us whether Officer Dennis mentioned
9 anything about Mr. Almonor failing to cross in a crosswalk?
10 A. You'd have to give me a minute to read it, please.
11 THE COURT: I'm sorry?
12 THE WITNESS: Give me a minute to read it.
13 THE COURT: Can you read it?
14 THE WITNESS: Yeah, I can read it.
15 BY MS. BORCHETTA:
16 Q. If you have trouble reading it, I can hand it to you.
17 A. Okay.
18 I'm sorry. What was your question?
19 Q. Whether anywhere in that narrative Officer Dennis mentioned
20 that Mr. Almonor allegedly failed to walk in a crosswalk.
21 A. No, he did not.
22 Q. Now, you believe that the purpose of a UF250 form is to
23 document a reasonable suspicion-based stop, right?
24 A. Do I believe that?
25 Q. Yes.

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D3rWflo4 Korabel - direct

1 A. That's what the purpose is, to document a reasonable
2 suspicion stop, yes.

3 Q. So this stop of Mr. Almonor was a reasonable
4 suspicion-based stop, not a probable cause stop, right?

5 A. You have both in this case. You have probable cause
6 because the person did commit a violation, actually, numerous
7 violations, as well as we had reasonable suspicion that he was
8 having, had a weapon on him.

9 THE COURT: Wait. I'm lost. There was probable cause
10 to stop him when he was stopped?

11 THE WITNESS: Correct.

12 THE COURT: And the probable cause was what?

13 THE WITNESS: That he violated New York City traffic
14 rules. He violated New York State Vehicle and Traffic Law, as
15 well as possibly New York State Penal Law.

16 THE COURT: What Penal Law?

17 THE WITNESS: The disorderly conduct falls under the
18 Penal Law.

19 THE COURT: And that's the same, the walking in the
20 street is the disorderly conduct?

21 THE WITNESS: Correct.

22 THE COURT: So that gave probable cause to stop him?

23 THE WITNESS: Correct, in addition to the other two
24 laws.

25 THE COURT: Right.

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D3rWflo4 Korabel - direct

1 BY MS. BORCHETTA:

2 Q. We'll get to your allegations about Mr. Almonor's conduct
3 being in violation of other laws. But you believe the purpose
4 of a 250 form is to document a reasonable suspicion-based stop,
5 right?

6 A. Correct.

7 Q. Not a probable cause stop, right?

8 A. Correct.

9 Q. So let's go back to the stop. After the car stopped, you
10 and Officer Dennis got out, right?

11 A. Correct.

12 Q. And then you saw Officer Dennis running his hands over Mr.
13 Almonor's outer garments, right?

14 A. He was attempting to.

15 Q. You saw him attempting to run his hands across Mr.
16 Almonor's outer garments, correct?

17 A. Specifically, his waist and pocket area, somewhere over
18 there.

19 Q. So the answer to the question is yes, right?

20 A. That's correct.

21 Q. Within a few seconds of when you got out of the car,
22 Officer Dennis was attempting to frisk Mr. Almonor, right?

23 A. That's correct.

24 Q. And you placed Mr. Almonor in handcuffs, right?

25 A. Did I personally place him in handcuffs? I don't remember

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D3rWflo4 Korabel - direct

1 if it was myself or Officer Dennis, but that was in struggling
2 and trying to check him, yes, he was placed in handcuffs.

3 Q. We can look at your deposition transcript where you say
4 that you did help put the handcuffs on Mr. Almonor. Do you
5 need to look at that deposition testimony?

6 A. I'm not disputing that. I'm disputing how you're, you're
7 saying that I did it.

8 THE COURT: You're just not sure who did it? It could
9 have been you; it could have been --

10 THE WITNESS: Oh, I assisted in putting the handcuffs,
11 I don't know who you actually pulled out the handcuffs.

12 THE COURT: But you assisted and it was two people
13 working together?

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 BY MS. BORCHETTA:

17 Q. You testified, if you recall, that you placed him in
18 handcuffs because his conduct rose to the level of disorderly
19 conduct, as you just explained to the Court, and could have
20 been obstruction of governmental administration, right?

21 A. That's correct.

22 Q. Those are the reasons you placed him in handcuffs, right?

23 A. Correct.

24 Q. Let's start with what could have been obstruction of
25 governmental administration. First of all, you admit that any

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1 obstruction of governmental administration was borderline,
2 right?

3 A. Correct.

4 Q. And the actions that Mr. Almonor was engaging in that you
5 believe could have been obstruction of governmental
6 administration was that Mr. Almonor, according to you, was
7 attempting to prevent a frisk, right?

8 A. He was preventing a frisk.

9 Q. Well, Officer Dennis successfully frisked him, right?

10 A. Not until we had placed him into handcuffs.

11 Q. But Officer Dennis did successfully frisk him, right?

12 A. After he was placed in handcuffs, yes.

13 Q. Lieutenant Korabel, I'll ask you to do your best in
14 responding to a yes-or-no question to please answer yes or no
15 to the question.

16 At the time that you say that Mr. Almonor was preventing
17 the frisk of Officer Dennis, the action he was doing, according
18 to you, was pushing Officer Dennis's hands away, right?

19 A. That's correct.

20 Q. And you agree that if you did not have reasonable suspicion
21 to be frisking Mr. Almonor in the first place, he could not be
22 arrested for obstruction of governmental administration in
23 trying to prevent that frisk, right?

24 A. Correct.

25 Q. And even if, as you say, Mr. Almonor was preventing Officer

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1 Dennis from frisking him, he wasn't doing that until after
2 Officer Dennis began attempting to frisk him, right?

3 A. I'm sorry. Can you repeat that?

4 Q. Even if, as you say, Mr. Almonor was attempting to prevent
5 Officer Dennis from frisking him, Mr. Almonor wasn't doing that
6 until Officer Dennis had already begun trying to frisk him,
7 right?

8 A. Yes. As Officer Dennis was trying to frisk him, he
9 prevented us or attempted to prevent us from frisking him.

10 Q. So the answer is yes, right?

11 A. Simple yes is a misleading answer. As we're attempting to
12 frisk him, he's preventing us from doing so, thus preventing us
13 from doing our official duties.

14 Q. But you can't arrest someone for obstruction of
15 governmental administration for preventing a frisk that isn't
16 lawful, right?

17 A. Well, it was a lawful frisk.

18 Q. That's not my question, Lieutenant Korabel. I'd ask you to
19 please, sir, answer the question I've posed to you.

20 A. I am answering the question you posed to me.

21 THE COURT: Let's hear the question again and then
22 I'll decide.

23 What's your question again?

24 BY MS. BORCHETTA:

25 Q. The question is that you agree that you cannot arrest

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D3rWflo4 Korabel - direct

1 someone for obstruction of governmental administration for
2 preventing a frisk if the frisk is unlawful, right?

3 THE COURT: Do you agree with that?

4 THE WITNESS: I'm sorry. Can you say that one more
5 time?

6 THE COURT: One more time.

7 BY MS. BORCHETTA:

8 Q. Do you agree that you cannot arrest someone for obstruction
9 of governmental administration for allegedly preventing a frisk
10 if the frisk is unlawful?

11 A. Correct.

12 Q. Thank you. Now let's turn to the alleged disorderly
13 conduct. Now, the actions that rose to the level of disorderly
14 conduct were, according to you, that Mr. Almonor was screaming
15 and fighting with you, right?

16 A. Correct.

17 Q. And you say he was fighting with you, but you did not see
18 Mr. Almonor punch Officer Dennis, right?

19 A. He did not.

20 Q. And he didn't punch you, right?

21 A. No.

22 Q. And you didn't see Mr. Almonor slap Officer Dennis, right?

23 A. Correct.

24 Q. And he didn't slap you, right?

25 A. Correct.

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D3rWflo4 Korabel - direct

1 Q. And you say you recall him screaming that night, right?

2 A. He was yelling, yes.

3 Q. And that yelling, according to you, could have constituted
4 disorderly conduct?

5 A. In addition to the fighting, yes.

6 Q. Well, the fighting that didn't include punching or
7 slapping, right?

8 A. To fight you don't have to punch or slap someone. You
9 could fight with people other ways.

10 Q. But he didn't punch or slap anyone, right?

11 A. Us, no. He did not punch or slap us.

12 Q. You didn't see him punch anyone, right?

13 A. He was fighting with us.

14 Q. You didn't see him punching or slapping anyone, right?

15 A. He didn't punch or slap us.

16 THE COURT: Did you see him punch or slap anyone?
17 That's her question.

18 THE WITNESS: No.

19 THE COURT: Okay.

20 BY MS. BORCHETTA:

21 Q. You recall that his tone was yelling or screaming, but you
22 don't recall what he was saying, right?

23 A. That's correct.

24 Q. Are you aware that, according to Officer Dennis, he was
25 saying, what are you doing, I'm a kid, I'm going home, leave me

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D3rWflo4 Korabel - direct

1 alone?

2 A. I'm sorry. What was the question?

3 Q. Are you aware that Officer Dennis says that Mr. Almonor at
4 that point was saying, What are you doing, I'm a kid, I'm going
5 home, leave me alone? Are you aware of that?

6 A. No, I'm not.

7 Q. And before Officer Dennis began attempting to frisk Mr.
8 Almonor, you did not observe Mr. Almonor engaging in any
9 behavior that would constitute disorderly conduct, right?

10 A. Other than walking in the middle of the street.

11 Q. Let's go to your deposition, Lieutenant Korabel. Do you
12 recall being deposed in this case?

13 A. I do.

14 Q. And do you recall that you were under oath when you gave
15 the testimony in that deposition?

16 A. I do.

17 Q. Do you recall the date of that deposition was December 14,
18 2012?

19 A. I don't recall the specific date.

20 Q. If you would please turn -- well, you said you didn't
21 remember the date, but do you see now that the date of this
22 deposition was December 14, 2012?

23 A. I do.

24 Q. Would you please turn to page 91. Do you recall the
25 following questions --

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D3rWflo4 Korabel - direct

1 MS. PUBLICKER: What line?

2 MS. BORCHETTA: The following questions and following
3 answers, starting at line 19.

4 MS. PUBLICKER: I'm sorry. This is improper
5 impeachment. It has nothing to do with the question you just
6 asked.

7 MS. BORCHETTA: It's exactly the question I just
8 asked.

9 THE COURT: I don't have it in front of me.

10 MS. PUBLICKER: I'm sorry. Could you repeat the
11 question then?

12 THE COURT: What was the question you just asked, do
13 you remember?

14 MS. BORCHETTA: The question I just asked is: Before
15 Officer Dennis began to frisk --

16 MS. PUBLICKER: I'm sorry. I have Officer Dennis's
17 copy. Sorry, your Honor.

18 THE COURT: Just a minute.

19 BY MS. BORCHETTA:

20 Q. Page 91, line 19:

21 "Q. Before Officer Dennis began to frisk Mr. Almonor, did you
22 observe Mr. Almonor engaging in any conduct that would
23 constitute disorderly?

24 "A. Not that I recall."

25 Do you recall giving that answer to that question?

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D3rWflo4 Korabel - direct

1 A. Do I recall specifically getting asked that question? No.
2 But as I see, as I sit here, I could read it now.

3 Q. Now, I want to talk about reviewing 250 forms. In your
4 practice as a supervisor, you reviewed UF250s completed by
5 subordinate officers, right?

6 A. Sometimes, yes.

7 Q. And in your practice as a sergeant, when you were reviewing
8 250 forms, you looked for completeness, right?

9 A. Correct.

10 Q. And when you looked for completeness, that in part meant
11 making sure that the form was filled out, right?

12 A. Correct.

13 Q. And you also looked at 250 forms for accuracy, right?

14 A. Correct.

15 Q. But accuracy, to you, meant things like seeing that the
16 correct misdemeanor was noted, right?

17 A. The correct crime, yes.

18 Q. And you reviewed the 250 that Officer Dennis completed for
19 the stop of Mr. Almonor, right?

20 A. Correct.

21 Q. I'm going to go back to the 250 form again. This is
22 Plaintiffs' Exhibit 20. Now, in the section of this form that
23 calls for the circumstances that led to the stop, Officer
24 Dennis checked "fits description," right?

25 A. Correct.

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D3rWflo4 Korabel - direct

1 Q. But you don't remember there being a description, right?

2 A. I said there was numerous radio runs that night. I don't
3 specifically remember a description as I sit here now.

4 Q. And, in your opinion, disorderly group is not a description
5 in the context of this section of the 250 form, right?

6 A. Correct. But, like I said, there was numerous calls. I'd
7 have to review those calls to know if there was more of a
8 description.

9 Q. But your memory is that there wasn't any description,
10 right?

11 A. Correct.

12 Q. And, in any event, disorderly group would not constitute a
13 description in the context of this UF250 form, right?

14 A. That's correct.

15 Q. But you didn't discuss with Officer Dennis that he had
16 checked that box, right?

17 A. Did I discuss that he checked that box? No, I did not.

18 Q. And in that same section of the UF250 form, Officer Dennis
19 could have checked a box for suspicious bulge, right?

20 A. If he saw one, yes, he could have checked one.

21 Q. And if his basis for the stop included that he saw a
22 suspicious bulge, he should have checked that box there, right?

23 A. That's correct.

24 Q. Now, on what's already been admitted as Plaintiffs' Exhibit
25 21, do you recognize this as a computer printout of UF250 form

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D3rWflo4

Korabel - direct

1 A. Correct.

2 Q. And based on your experience, it's hard to determine from
3 looking at an officer's activity log entries whether a stop or
4 frisk that officer conducted complied with the Constitution,
5 right?

6 A. Correct.

7 Q. And you don't remember whether you reviewed Officer
8 Dennis's memo book entry relating to the stop of Mr. Almonor,
9 right?

10 A. That's correct.

11 Q. I'm going to show you what's already been admitted into
12 evidence as Plaintiffs' Exhibit 19. Now, this is a copy of
13 Officer Dennis's activity log, right?

14 A. Correct.

15 Q. And if we go to the time of the stop of Mr. Almonor, do you
16 see that Officer Dennis wrote "two males stopped, one male
17 refused, UF250"? Right?

18 A. Correct.

19 Q. He did not include there any of the information on the
20 circumstances leading to the stop, right?

21 A. Correct.

22 Q. Or his reasons for believing that Mr. Almonor looked
23 suspicious, right?

24 A. Correct.

25 Q. I'm going to hand you what has been marked as plaintiffs'

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D3rWflo4 Korabel - direct

1 96. Do you recognize that document, Lieutenant Korabel?

2 A. It's an operations order 44, 2008.

3 Q. That's an operations order related to activity log entries,
4 correct?

5 A. Correct.

6 MS. BORCHETTA: Your Honor, I'll move to admit
7 Plaintiffs' Exhibit 96.

8 MS. PUBLICKER: No objection, your Honor.

9 THE COURT: All right. 96 is received.

10 (Plaintiffs' Exhibit 96 received in evidence)

11 BY MS. BORCHETTA:

12 Q. Okay. So this is an operations order, and the subject is
13 activity logs, right?

14 A. Correct.

15 Q. And it's dated September 11, 2008, right?

16 A. Correct.

17 Q. Is it fair to say that this operations order instructs
18 officers on making entries in activity logs? Is that right?

19 A. I'd have to read it.

20 Thank you.

21 Q. Just for the record, you don't know offhand whether that's
22 true; you have to read it in order to answer that question?

23 A. I want to make sure I answer your questions appropriately.

24 Q. But you can't tell us offhand, based on your experience as
25 a sergeant in the NYPD, what that operations order provides?

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D3rWflo4 Korabel - direct

1 A. Police department has many policies. I want to make sure
2 I'm aware of the ones they're outlining in this policy.

3 Q. Have you finished reviewing the document?

4 A. I have.

5 Q. Unfortunately, I have to take it back from you because I've
6 lost mine.

7 A. Okay.

8 Q. Thank you.

9 THE COURT: Is it a policy about filling out activity
10 logs?

11 THE WITNESS: Yes, ma'am.

12 BY MS. BORCHETTA:

13 Q. Now, am I correct that on the back of this operations
14 order, or the second page, I'm sorry, of this operations order,
15 it's referring to activity log entries, right?

16 A. Correct.

17 Q. And this here is an example of activity log entries, right?

18 A. What you just pointed to, or the whole page?

19 Q. The box in the middle is an example of an activity log
20 entry, right?

21 A. Correct.

22 Q. And there's an entry on this example related to a stop,
23 question, frisk, right?

24 A. Correct.

25 Q. And that provides information: "UF250 suspicious male

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D3rWflo4 Korabel - direct

- 1 randomly looking in apartment windows at an address." Right?
2 A. Correct.
3 Q. And then there's an instruction box relating to that entry,
4 right?
5 A. Correct.
6 Q. And that provides that "when a member of service has cause
7 to temporarily detain and frisk an individual, it is imperative
8 that a detailed entry be made as indicated." Right?
9 A. Correct.
10 Q. And at the time of the stop of Mr. Almonor, this operations
11 order was in effect, right?
12 A. Correct.
13 Q. But Officer Dennis didn't comply with that operations
14 order, right?
15 A. To the point, no. However, it does say that this is a
16 guide on the first page and on the top it says an example.
17 Q. Right. So you're saying that on the first page, this
18 indicates it's a guide, right?
19 A. Correct. I believe it's section three.
20 Q. This is a guide, right?
21 A. Correct.
22 Q. It's a guide, it's only a guide, right?
23 A. Is it only a guide?
24 Q. Right.
25 A. Correct.

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D3rWflo4 Korabel - direct

1 Q. Okay. So officers don't really have to include all of the
2 information that's included in that example, right?

3 A. They should include as much as they can, but, however, it
4 is a guide.

5 Q. But the guide doesn't require that they include that
6 information, right?

7 A. According to this order, as I read it, I don't believe so.

8 Q. And you agree that Officer Dennis did not comply with the
9 noted example, right?

10 A. With the noted example, correct.

11 Q. And you never gave Officer Dennis any instructions about
12 the way he documented the stop related to Mr. Almonor in his
13 activity log, right?

14 A. I didn't have occasion to review his book, I believe,
15 regarding this stop.

16 Q. And you would agree with me though, based on your
17 experience as a sergeant and in the police department, that
18 police officers are trained on this operations order, right?

19 A. Correct.

20 Q. And they're trained to comply with the example provided,
21 right?

22 A. Like I said, it's a guide. They're, they're supposed to
23 follow the example to the best of their ability.

24 Q. They're trained and they're supposed to follow the example
25 to the best of their ability, right?

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D3rWflo4 Korabel - direct

1 A. If they can, yes.

2 Q. I'm going to show you what has been previously admitted
3 into evidence, which is Plaintiffs' Exhibit 15. And,
4 Lieutenant Korabel, I actually have an extra of this one.

5 A. Thank you.

6 Q. So I can provide you a hard copy.

7 A. Thank you.

8 Q. Now, these are activity logs for Officer Dennis, right?

9 A. These are police officer monthly performance reports.

10 Q. I'm sorry. Thank you.

11 This is Officer Dennis's monthly activity report, right?

12 A. Correct.

13 Q. For three periods, right?

14 A. For -- what is it, three months? Let me take a look.
15 February, March, April. Yes, three months.

16 Q. And those months are February, March, and April of 2010,
17 right?

18 A. Correct.

19 Q. Now, this monthly activity report shows the number of
20 activities that officers have been completing, right?

21 A. Correct.

22 Q. And among the numbers that are reflected on this form are
23 the number of arrests, right?

24 A. Correct.

25 Q. The number of summonses, right?

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Korabel - direct

1 A. Correct.

2 Q. And the number of stop and frisks, right?

3 A. Correct.

4 Q. And on this form here, there's no substantive information
5 about those stops and frisks, arrests, or summonses, right?

6 A. On the front portion, no.

7 Q. As a sergeant, you reviewed monthly activity reports of
8 officers who were assigned to you, right?

9 A. Correct.

10 Q. And when you reviewed the monthly activity reports of your
11 subordinate officers as a sergeant, you looked to see whether
12 your subordinates were addressing command conditions, right?

13 A. Correct.

14 Q. And when you reviewed those officers' activity logs, you
15 looked to see whether -- I'm sorry. I'll get it right by the
16 end of the day.

17 When you looked to see, to review the monthly activity
18 reports, you in part were looking to see whether they conducted
19 any stops and frisks, right?

20 A. In addition to many other things, yes.

21 Q. But one of the things you looked at is whether they
22 conducted any stops and frisks, right?

23 A. Correct.

24 Q. And for the month of March 2010, which covers the stop of
25 Mr. Almonor, you made some notations on this form in the area

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D3rWflo4 Korabel - direct

1 for courtesy and respect, right?

2 A. Correct.

3 Q. You indicated there that "Police Officer Dennis is always
4 courteous and respectful when interacting with the public,"
5 right?

6 A. The public, other members of service, and supervisors.
7 Yes.

8 Q. You wrote that, right?

9 A. I did.

10 THE COURT: We're going to take our break now for
11 lunch, so let's reconvene at ten after two, on that clock.

12 (Luncheon recess)

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AFTERNOON SESSION

2:14 p.m.

THE COURT: Please be seated.

Ms. Borchetta.

DIRECT EXAMINATION CONTINUED

BY MS. BORCHETTA:

Q. Welcome back, Lieutenant Korabel.

A. Thank you.

Q. One reason that you as sergeant would review a UF 250 is to see whether officers are being proactive in addressing the crime and quality life conditions; is that right?

A. It's one of the ways, correct.

Q. And in your experience one way that officers can show his supervisors that he's being proactive is by documenting stops in 250s, right?

A. One way, yes.

Q. And officers on patrol are required to show that they're addressing the command's crime conditions and the quality of life conditions, correct?

A. Correct.

Q. And one way that an officer can show that he's addressing the command's crime and quality of life conditions is doing stop, question and frisks, right?

A. Correct.

Q. I'm going to show you what's been previously admitted into

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1 evidence, Plaintiffs' Exhibit 285. And I will give you a copy
2 of that.

3 You recognize this document, correct?

4 A. If I may have a moment.

5 (Pause)

6 Yes.

7 Q. You recognize this as Operations Order number 52, right?

8 A. Correct. Of 2011.

9 Q. So this came out October 17, 2011, right?

10 A. Correct.

11 Q. And when you were promoted to lieutenant, you were
12 instructed on this order, right?

13 A. Correct.

14 Q. And you see on this document where it says department
15 managers can and must set performance goals, right?

16 A. What paragraph?

17 Q. Do you see that?

18 A. I just asked what paragraph we're in.

19 Q. It's paragraph three.

20 Do you see that department managers can and must set
21 performance goals, right?

22 A. Yes.

23 Q. Now, it's your understanding that performance goals in
24 Operations Order 52 is a certain amount of activity in a
25 specific timeframe, right?

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1 A. Is that my understanding?

2 Q. Yes.

3 A. Activity, yes, it could be.

4 Q. Well, your understanding is --

5 THE COURT: Well, what do you think it means?

6 THE WITNESS: Well activity -- it's certain tasks or
7 activity that is performed in a set time. That's correct.

8 Q. And it's your understanding, as a lieutenant, of Operations
9 Order 52 that department managers can and must set a certain
10 amount of activity that officers under their supervision should
11 be conducting, right?

12 A. They should set performance goals.

13 Q. Well if you could please, Lieutenant, answer the question I
14 posed to you. I'll pose it again.

15 Is it your understanding, as a lieutenant, of
16 Operations Order 52 that department managers can and must set a
17 certain amount of activity that officers under their
18 supervision should be conducting?

19 A. According to this document it says they must set
20 performance goals.

21 Q. Well so the answer to that question is yes, right?

22 A. If you say performance goals, they must set performance
23 goals, then it would be correct.

24 Q. Well, okay. If you could -- I believe you have a copy of
25 your deposition transcript?

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1 A. Yes.

2 Q. If you could please turn to page 148. Are you there?

3 A. Give me a second. I'm sorry.

4 Okay.

5 Q. Page 148, line 3. Do you remember giving the answer to the
6 following question.

7 "Q. Your understanding of this operations order is that
8 department managers can and must set a certain amount of
9 activity that officers under their supervision should be
10 conducting, right?

11 "A. Yes."

12 Do you recall giving that answer to that question?

13 A. I see it here, yes.

14 Q. And under this operations order if an officer is not
15 conducting a certain amount of activity that may mean the
16 officer is not adequately addressing conditions, right?

17 A. That's correct.

18 Q. And you, as a lieutenant, were trained that you should
19 monitor the effectiveness of an officer in addressing the
20 command's crime and quality of life conditions, right?

21 A. That's correct.

22 Q. And one way you are required to monitor the police officers
23 under your supervision is to look at the amount of activity
24 they're conducting, right?

25 A. That's one of the ways, yes.

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1 Q. And activity includes stops and frisks, right?

2 A. Amongst other things, yes.

3 Q. But it includes stops and frisks, right?

4 A. Amongst other things, yes.

5 MS. BORCHETTA: No further questions at this time,
6 your Honor.

7 THE COURT: Ms. Publicker.

8 CROSS-EXAMINATION

9 BY MS. PUBLICKER:

10 Q. Good afternoon, Lieutenant Korabel.

11 A. Good afternoon.

12 Q. Where are you currently assigned?

13 A. To the 48th precinct.

14 Q. How long have you been assigned there?

15 A. Since mid July of 2012.

16 Q. What area does the 48th precinct cover?

17 A. It's the Central Bronx.

18 Q. What is your current assignment within the 48th precinct?

19 A. I am the third platoon commander.

20 Q. How many officers do you supervise as the third platoon
21 commander?

22 A. Approximately 41 police officers, four sergeants and one
23 civilian.

24 Q. What command were you assigned to before the 48th
25 precinct?

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Korabel - cross

- 1 A. I was assigned to the community affairs bureau juvenile
2 justice division.
- 3 Q. How long were you assigned to the community affairs
4 juvenile justice division?
- 5 A. Approximately six months.
- 6 Q. And what did that division do?
- 7 A. They monitor youth gangs and crews and assist in
8 investigations when possible.
- 9 Q. What is a youth crew?
- 10 A. A crew is similar to a gang however it's a little less
11 organized. They tend to be in like a -- a collection of
12 individuals from a certain block might compose a crew whereas a
13 gang can be people from a neighborhood, a more broad area.
- 14 Q. What command were you assigned to before the community
15 affairs bureau?
- 16 A. I was in the 30th precinct.
- 17 Q. How long were you assigned to the 30th precinct?
- 18 A. Approximately four-and-a-half years.
- 19 Q. What area does the 30th precinct cover?
- 20 A. West Harlem.
- 21 Q. Would you say that the 30th precinct was high crime
22 precinct?
- 23 A. Moderate. I wouldn't say it was high crime.
- 24 Q. What was your assignment within the 30th precinct?
- 25 A. Initially I was a midnight squad supervisor. And then I

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D3R9FLO5 Korabel - cross

1 became the anticrime supervisor.

2 Q. And were you the anticrime supervisor on March 20, 2010?

3 A. I was.

4 Q. What were your responsibilities as the anticrime
5 supervisor?

6 A. I was to supervise officers on anticrime patrol.

7 MR. MOORE: If he could speak up a little bit I'm
8 having a hard time. Get closer to the microphone. Thank you.

9 Q. How many officers would you supervise as the anticrime
10 supervisor?

11 A. I've had as little as two and as many as six.

12 Q. What were your duties as the anticrime supervisor?

13 A. I was to ensure that officers performing anticrime patrol
14 were doing their duty appropriately.

15 Q. What command were you assigned to before the 30th
16 precinct?

17 A. I was assigned to the 44th precinct.

18 Q. How long were you assigned there?

19 A. Approximately, three, three-and-a-half years.

20 Q. What was your position within the 44th precinct?

21 A. Initially I started on patrol. Then I was the quality of
22 life car. Then I was a member of the conditions team.

23 Q. While out on patrol do you have officers under your
24 supervision drive you?

25 A. As a supervisor?

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Korabel - cross

1 Q. Yes.

2 A. Yes. Generally.

3 Q. Why do you do that?

4 A. As a supervisor I have to monitor the radio, the -- lately
5 they've been able to pull up the dispatcher screen in the car
6 so I can monitor that as well as the officers tend to know the
7 precinct a little bit better than I do so they can get me
8 around quicker.9 Q. Do you ever discuss crime conditions with officers who act
10 as your driver?

11 A. Yes. And in addition to officers at roll call.

12 Q. What do you discuss with officers at roll call about crime
13 conditions?14 A. You make the officers aware of any crime conditions,
15 patterns or problems that are occurring in the precinct so that
16 they know what's going on in their area and they can address
17 it.

18 Q. How do you learn about these crime conditions?

19 A. You learn about it a number of ways. By reading complaint
20 reports. That's reports taken from crime victims. Also by
21 conferring with the CO, commanding officer, and members of
22 other units in the police department who also perform duties in
23 the precinct.24 Q. When you assign an officer to be your driver do you
25 consider that to be a punishment?

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Korabel - cross

- 1 A. No.
- 2 Q. Were you working on March 20, 2010?
- 3 A. I was.
- 4 Q. What command were you assigned to at that time?
- 5 A. The 30th precinct.
- 6 Q. And who were you working with that day?
- 7 A. Police Officer Brian Dennis.
- 8 Q. Was there a particular sector or post in the 30th
- 9 precinct that you were patrolling?
- 10 A. No. We cover the whole command.
- 11 Q. Were there any specific crime conditions that you were
- 12 addressing that day?
- 13 A. Specifically not that I can remember.
- 14 Q. As a member of the anticrime team was responding to radio
- 15 runs part of your primary duties?
- 16 A. It wasn't a primary duty but it was something that we would
- 17 do.
- 18 Q. And when would you choose to respond to radio runs?
- 19 A. If it was a serious call, a robbery, shooting, stabbing,
- 20 serious assault or if we were just in the area, and there was a
- 21 call, if we were right there, we'd probably handle it.
- 22 Q. Do you recall listening to the radio on March 20, 2010?
- 23 A. Yes.
- 24 Q. Do you recall responding to any radio runs that evening?
- 25 A. We -- I remember us going to the area of Hamilton Place in

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Korabel - cross

1 the ordinary.

2 Q. Did there come a time when you saw someone whom you now
3 know to be Devin Almonor?

4 A. Yes.

5 Q. Were you familiar with him before that day?

6 A. No.

7 Q. Where did you first see him?

8 A. I might have seen him further up on Hamilton Place but at
9 the time I'm first sure seeing him was when he was walking in
10 front of our car on Hamilton Place.

11 Q. Why did you notice him at that time?

12 A. Because he was walking from the west side of the street in
13 the middle of the block to the east side of the street and
14 while doing so he was -- appeared to me he was adjusting
15 something.

16 Q. What was he adjusting?

17 A. It was either his waist or his pocket, in the front area.
18 I don't specifically remember.

19 Q. Why did this individual adjusting his waist or pocket area
20 draw his attention to you?

21 A. One that he was walking briskly across the street in front
22 of our car; and two, it seemed that what he was doing was
23 taking longer than like just normally pulling up your pants or
24 something. It was action that I've, in the past, we've
25 recovered weapons from people doing something similar to that.

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Korabel - cross

1 Q. What happened after you saw Mr. Almonor cross the street?

2 A. Officer Dennis told me he'd like to speak to the young man.
3 So we -- like I said he was in the middle of the block so we
4 had to make our way to the corner. That's where we met up.
5 And at that point we exited our car. And we decided we were
6 going to frisk him.

7 Q. Why did you want to frisk Devin Almonor?

8 A. Because we believed that he was concealing a weapon.

9 Q. At the time that you exited your vehicle, did you believe
10 that you had reasonable suspicion to stop him?

11 A. Absolutely.

12 Q. What penal law felony or -- what penal law misdemeanor or
13 felony did you believe Devin Almonor had committed at that
14 point?

15 A. Criminal possession of a weapon.

16 Q. What happened --

17 THE COURT: Sorry. The basis for believing that was
18 what?

19 THE WITNESS: Based on the fact that he was making an
20 unnatural adjustment and off my training and experience as a
21 police officer seeing people who make a similar adjustment --

22 THE COURT: So it was just you observed tugging on the
23 pants.

24 THE WITNESS: There was that in addition to numerous
25 radio runs, him walking briskly across the street --

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Korabel - cross

1 THE COURT: Numerous radio -- what did that have to do
2 with the weapon?

3 THE WITNESS: There was numerous calls that evening of
4 a large violent disorderly group in that area. So we figured
5 he might be part of the problem in that area.

6 THE COURT: And might have a weapon him?

7 THE WITNESS: It's possible. Like I said, in addition
8 to his actions of adjusting for a prolonged period, normal than
9 someone pulling up their pants or fumbling with something, in
10 my experience as a police officer, we've recovered weapons off
11 people doing similar actions which led us to believe that.

12 Q. Lieutenant Korabel, do you carry a weapon?

13 A. I do.

14 Q. And do you carry that weapon differently when it's in a
15 holster and when it's not in a holster?

16 A. Well I always try to carry it in a holster. So I would
17 imagine I would carry it differently if I didn't use a holster.

18 Q. What happened when you exited your vehicle?

19 A. I believe Officer Dennis identified himself. I don't
20 remember if I specifically identified myself.

21 By the time I'm coming around the car I see that
22 Officer Dennis is having a hard time trying to check the area
23 where we saw him making the adjustment. He was being given
24 resistance by Mr. Almonor.

25 At that point we decided that for our safety because

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1 we're not able to check that area, in addition to the way he
2 was behaving, that we had to put him in handcuffs.

3 Q. So you handcuffed him because of fear of your personal
4 safety?

5 A. That's part of the reason, yes.

6 Q. Did you keep Devin Almonor handcuffed after that initial --

7 THE COURT: I'm sorry. Was the handcuffing after the
8 frisk?

9 THE WITNESS: We weren't able to complete the frisk.
10 We had just started. And there was a struggle, which also
11 indicates to us sometimes that when people don't -- refuse to
12 allow us to check that they might be having a weapon, they
13 might be trying go for it or something like that. So that was
14 part of the reason we began to handcuff him.

15 Q. So you were only able to confirm that Devin Almonor did not
16 have a weapon until after he was handcuffed; is that correct?

17 A. Correct.

18 Q. And he was still handcuffed when he was placed in the
19 vehicle?

20 A. Yes.

21 Q. Why did he remain handcuffed in your vehicle?

22 A. At that point when he was handcuffed and we had checked him
23 he was not free to leave. He was in our custody. And he was
24 being removed to the precinct.

25 THE COURT: I'm sorry. Wait. Wait. Was your

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1 question why did he remain handcuffed when he was in the
2 vehicle. And your answer was.

3 THE WITNESS: Because he was in our custody.

4 THE COURT: So, in other words, anybody in your
5 custody in the car must always be handcuffed? Is that what you
6 mean?

7 THE WITNESS: Yes.

8 THE COURT: Nobody rides without handcuffs?

9 THE WITNESS: If they're, obviously, a victim of a
10 crime, they don't get handcuffed. However, someone in our
11 custody will be handcuffed.

12 THE COURT: So that's standard practice?

13 THE WITNESS: Yes. The only time you will not
14 handcuff someone in police custody is if they surrender
15 themselves with an attorney at a police department facility.

16 THE COURT: Okay.

17 Q. What happened after you frisked Devin Almonor?

18 A. After we frisked him?

19 Q. Yes.

20 A. He was removed to the precinct station house.

21 Q. Do you recall if Mr. Almonor had identification on him?

22 A. I don't believe he did.

23 Q. If someone doesn't have identification on them can you
24 issue that person a summons?

25 A. No.

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1 Q. Can you issue a summons to an individual under the age of
2 16?

3 A. I know there is one exception with riding a bicycle and
4 it's an ECB summons and other than that, no.

5 Q. Did you believe that Mr. Almonor had committed the crime of
6 disorderly conduct?

7 A. Yes.

8 Q. And there were two separate sections of disorderly conduct
9 that you were questioned about on cross; is that right?

10 A. Correct.

11 Q. What are those two sections?

12 A. Actually three sections. It was fighting. We believed he
13 was fighting with us in the street. The initial one was
14 obstructing vehicular pedestrian traffic. And the other one
15 would be when he's yelling, as I remember it, that could also
16 be unreasonable noise.

17 Q. So before you stopped Devin you had only observed one of
18 those subsections; is that correct?

19 A. Correct.

20 Q. Which subsection had you observed before you stopped Devin
21 Almonor?

22 A. Obstructing vehicular and pedestrian traffic.

23 Q. At a later time after you had stopped Devin did you observe
24 him commit any other subsections of disorderly conduct?

25 A. I believe, yes, when he was fighting and obstructing us

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1 from checking him for a weapon. And also by him raising his
2 voice in the street causing public alarm.

3 Q. When Devin Almonor was placed in the vehicle where were you
4 seated?

5 A. I don't recall specifically.

6 Q. Do you recall if you were driving?

7 A. I wasn't driving in the beginning of the night. I might
8 have driven the car back to the precinct. I just don't
9 remember.

10 Q. Did you hear Officer Dennis ask Devin Almonor why he was
11 crying like a girl?

12 A. No, I did not.

13 Q. If you had heard him make that statement would you have
14 said something to him?

15 A. Most likely.

16 Q. Where was Devin taken to following his detention?

17 A. Following his detention? You mean in the street or --

18 Q. In the street. I'm sorry.

19 A. He was brought to the precinct.

20 Q. Is it the 30th precinct?

21 A. Yes.

22 Q. Did Devin Almonor give you his phone number?

23 A. He did.

24 Q. And how do you -- how can you be sure that he gave you his
25 phone number?

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1 A. Because I called his house.

2 Q. Did you speak to anyone when you called his house?

3 MS. BORCHETTA: Objection.

4 THE COURT: I'll take a yes or no.

5 THE WITNESS: I'm sorry.

6 THE COURT: Did someone answer?

7 THE WITNESS: No.

8 Q. Did you leave a message?

9 MS. BORCHETTA: Objection.

10 THE COURT: I'll all how that.

11 MS. BORCHETTA: Relevance.

12 THE COURT: Did you leave a message?

13 THE WITNESS: I did.

14 MS. PUBLICKER: Your Honor at this time we would like
15 to play Defendants' Exhibit Z7 track one. It's the voice mail
16 recording --

17 THE COURT: I don't need that. They're not
18 challenging it. He said he left a message, he left a message.

19 MS. PUBLICKER: Mr. Almonor did testify that he did
20 not provide a phone number to the officers. This does rebut
21 his statement.

22 THE COURT: I just had that. I had the rebuttal. He
23 said he did provide the phone number. He said he called the
24 phone number. He said he left a message.

25 Q. What was the name of the individual for whom you left the

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1 voice mail?

2 A. I don't recall specifically but I know -- I don't believe
3 it was the appropriate last name. I think it was --

4 THE COURT: You don't believe what?

5 THE WITNESS: I don't believe it was -- he gave me his
6 right name. I think he gave me a short version or something
7 like that of his -- nature of his last name.

8 THE COURT: What did that have to do with her
9 question? Did you know the person with whom you left the
10 message?

11 MS. PUBLICKER: The name of the person.

12 THE COURT: Do you know the name of the person with
13 whom you left the message; and if so, how do you know it?

14 THE WITNESS: Generally when I call -- in this case it
15 was a juvenile's parent, I will use the last name given to me
16 by the pedigree card. I don't remember him providing me the
17 parent's name. So that's why I used the last name that he
18 provided.

19 THE COURT: So that's the name of the person with whom
20 you left the message, the name he provided?

21 MS. PUBLICKER: Do you recall the name --

22 THE COURT: Wait a minute. Is that right?
23 Please. Is that right?

24 THE WITNESS: I'm sorry, your Honor.

25 THE COURT: You used the name he provided?

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1 THE WITNESS: I used that name that he provided.

2 THE COURT: Okay. Next question.

3 MS. PUBLICKER: Was that the correct name?

4 THE COURT: That requires information that came after
5 the fact. That's all we know that night is he used that name,
6 and you left a message. I'm not taking anymore about the
7 parents. You know that. Or the arrest or anything else at the
8 station house.

9 Excuse me one moment.

10 (Pause)

11 Go ahead.

12 Q. Was the name he gave you Devin Al?

13 A. It's possible.

14 Q. Was paperwork filled out in connection with the stop of
15 Devin Almonor?

16 A. Yes.

17 Q. Did you review any of that paperwork?

18 A. I did.

19 Q. What paperwork did you personally review?

20 A. I reviewed the stop, question and frisk report as well as
21 the pedigree card that was entered into the command log.

22 Q. Did you review the complaint report/juvenile report which
23 was Plaintiffs' Exhibit 17?

24 A. I did not.

25 Q. Why not?

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1 A. I just didn't have an opportunity to. Another supervisor
2 reviewed that.

3 Q. And did you review the juvenile pilot report which was
4 Plaintiffs' Exhibit 18?

5 A. I did not.

6 Q. Why not?

7 A. Another supervisor reviewed that.

8 Q. Did you review the computer-generated stop and frisk report
9 that was prepared?

10 A. I did not.

11 Q. Are you familiar with Operations Order 52?

12 A. Yes.

13 Q. What training, if any, did you receive regarding that
14 operations order?

15 A. When I was promoted to lieutenant it was discussed in the
16 classes.

17 There's also, when this program first came out, I
18 believe it was discussed in the command because there's a new
19 computer system or program that goes along with it.

20 Q. Do you understand performance goals to be a quota?

21 A. No.

22 Q. In Operations Order 52 it describes that department
23 managers can and must set performance goals.

24 What do you understand performance goals to be?

25 A. It means that you expect your police officers to do

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1 something to address the command's conditions.

2 Q. How do you know when your officers have done something to
3 address command conditions?

4 A. There's a variety of ways. They can do verticals,
5 directive patrols, community visits, arrests, summons, 250s.
6 There's a variety of ways they can do it.

7 The way you know it's been addressed is that the
8 problem goes away.

9 Q. Have you ever been told that the police department does not
10 permit quotas?

11 A. The police department does not permit quotas.

12 Q. Do you receive command -- crime condition reports?

13 A. I do.

14 Q. From whom do you receive them?

15 A. From the commanding officer.

16 Q. Do you review those command condition reports?

17 A. I do.

18 Q. And do you ever speak with your officers about the crime
19 conditions that are addressed therein?

20 A. Yes.

21 Q. How do you do that?

22 A. At roll call. Also sometimes the squad -- the squad
23 sergeants do give the officers a printed out version of those
24 command condition reports for their sector.

25 Q. Have you ever been -- have you ever transferred an officer

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1 under your command to a different precinct or assignment
2 because of low activity?

3 A. No.

4 Q. Have you ever denied an officer under your supervision
5 overtime because their activity was too low?

6 A. No.

7 Q. Have you ever denied an officer under your supervision
8 overtime because their activity was too low?

9 A. No.

10 MS. BORCHETTA: Objection to the extent these
11 questions are leading.

12 THE COURT: That's overruled. I'll allow it. Go
13 ahead.

14 Q. Have you ever placed an officer on performance monitoring
15 because they had low activity?

16 A. No.

17 Q. Have you ever felt pressure to make an unconstitutional
18 stop?

19 A. No.

20 Q. Earlier when you were asked about how you review 250 forms,
21 the stop and frisk reports, you answered that you review them
22 for completeness and accuracy; is that correct?

23 A. Correct.

24 Q. And I believe you stated that it's important to have the
25 correct crime listed; is that correct?

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1 A. Correct.

2 Q. Why is that important?

3 A. Because you can only stop -- you can only stop someone
4 based off a penal law misdemeanor or felony.5 Q. And so when you review it for accuracy in that manner what
6 are you reviewing for?7 A. To make sure there's an appropriate charge listed on that
8 section and that the stop was appropriate.9 Q. Do you know if the NYPD has a policy regarding racial
10 profiling?

11 A. It does.

12 Q. What do you understand that policy to be?

13 A. That you cannot use someone's race, religion, sexual
14 orientation, sex, or anything of that nature as a determinative
15 factor when dealing with that individual.16 Q. When did you first learn about the policy prohibiting
17 racial profiling?

18 A. In the police academy.

19 Q. Have you ever reviewed the NYPD's written policy
20 prohibiting racial profiling?

21 A. Yes.

22 Q. When?

23 A. They recently changed it.

24 Obviously, when you study for promotional exams it's
25 one of the things you have to know as well as they recently

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1 changed it, the type of order it is.

2 Q. And what do you mean by that?

3 A. I believe it went from a -- they made an interim order. I
4 think it was an operations order. I could be mistaken but I
5 know they made it an interim order.

6 Q. Have you been trained on policing in a multicultural
7 society by the police department?

8 A. When I was in the police academy they called it behavioral
9 science. But yes.

10 Q. And what were you trained on in that behavioral science
11 class?

12 A. You were trained that New York City is a very diverse city,
13 that there's many different cultures and ways of doing things
14 and that you have to be understanding of that and that you
15 should be -- be receptive to other cultures and ways of doing
16 things.

17 Q. Can you stop someone who violated a traffic rule to issue
18 that person a summons?

19 A. Yes.

20 Q. Could you have stopped an individual solely for fitting the
21 description provided by the radio runs on March 20, 2010?

22 A. No.

23 Q. Why not?

24 A. I believe most of those calls were anonymous and there
25 wasn't a very detailed description.

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D3R9FLO5 Korabel - cross

1 Q. Could you have stopped an individual solely for exhibiting
2 furtive movements?

3 A. No.

4 Q. Could you have stopped an individual solely for being in
5 the area of a crime condition?

6 A. No.

7 MS. PUBLICKER: Your Honor, if I could have one
8 moment?

9 (Pause)

10 Your Honor at this time I would just like to make an
11 offer of proof regarding the voice mail of Lieutenant Korabel.
12 We would like to play the tape to show the time of the call,
13 which puts the time of Devin Almonor's stop more firmly
14 embedded. It also establishes the name of the individual that
15 Mr. Korabel called -- that Lieutenant Korabel called, that it
16 was Ms. Al, not Almonor, based on the false name provided by
17 Devin Almonor.

18 THE COURT: I don't even follow most of what you've
19 just said. Who is Ms. Al?

20 MS. PUBLICKER: Lieutenant Korabel --

21 THE COURT: He thought he was calling a Ms. Al. He
22 said that. He said he used the name he was given. I got that
23 already.

24 As far as the time you should stipulate to it. What
25 time was the call made?

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D3R9FLO5 Korabel - cross

1 MS. PUBLICKER: The time on the voice mail, I believe,
2 is 10:17.

3 THE COURT: Check that.

4 MS. BORCHETTA: We'd be happy to stipulate to the time
5 of the call.

6 THE COURT: Fine. It was 10:17.

7 MS. BORCHETTA: But we don't believe that that embeds
8 anything about the time of the stop.

9 THE COURT: I don't know if it does or doesn't. It
10 was after. That much I know. The call was after.

11 MS. BORCHETTA: That's fine.

12 THE COURT: The call was made at 10:17. That's
13 stipulated to. And he used the name he was given when he made
14 the call. That's all I'm taking it for. Period.

15 BY MS. PUBLICKER:

16 Q. From where did you make that call?

17 THE COURT: Where were you when you made that call?

18 THE WITNESS: I was behind the desk in the 30th
19 precinct.

20 MS. PUBLICKER: Thank you, your Honor.

21 THE COURT: Anything further?

22 MS. BORCHETTA: Your Honor, I do have a few questions.

23 MS. PUBLICKER: I'm sorry. One moment.

24 (Pause)

25 No further questions.

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D3R9FLO5 Korabel - cross

1 REDIRECT EXAMINATION

2 BY MS. BORCHETTA:

3 Q. Lieutenant Korabel, you've just testified about various
4 employment actions that you hadn't taken against officers who
5 failed to show that they were meeting command conditions --
6 failed to show that they were doing activity to meet command
7 conditions, right?

8 A. I'm sorry. Are you saying that I failed to --

9 Q. I will try that again. You just testified to certain
10 employment actions that you didn't take when officers under
11 your supervision had low activity, right?

12 A. That's correct.

13 Q. But according to Operations Order 52, and paragraph 15,
14 supervisors are required to take certain actions when officers
15 under their supervision are failing to conduct sufficient
16 activity, right?

17 A. Give me a second to read it.

18 (Pause)

19 I'm sorry. Could you repeat the question.

20 Q. According to Operations Order 52, a supervisor -- an
21 officer whose activity is too low can be subjected to various
22 adverse employment actions, right?

23 A. They could be. If they failed.

24 Q. Here it says, for example, the officer can be placed on
25 performance monitoring, right?

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D3R9FLO5

Korabel - redirect

- 1 A. If they failed to address conditions, yes.
2 Q. If their activity is too low, right?
3 A. If they fail to address conditions.
4 Q. Well if they fail to meet the performance goals that have
5 been set by the department managers, right?
6 A. Correct.
7 Q. They can be transferred, right?
8 A. According to this, yes.
9 Q. They can be reassigned, right?
10 A. Correct.
11 Q. You just testified that you were responding to radio runs
12 and that in part those radio runs said that there was a large
13 fight in the street, right?
14 A. Something along those lines.
15 Q. But Mr. Almonor was not in a large fight when you saw him,
16 right?
17 A. When we saw him no, he was not.
18 Q. And you also said that your understanding, based on the
19 facts that marked cars had gone to the scene already and not
20 found anything, meant to you that the problem could be over,
21 right?
22 A. It could be.
23 Q. So it was equally possible that the problem could be over
24 or couldn't be over, right?
25 A. It's possible. But in my experience as a police officer

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D3R9FLO5

Korabel - redirect

1 sometimes fights tend to re-flare up.

2 Q. But in your experience as a police officer the problem
3 could have been over?

4 A. It could have been, yes.

5 Q. So when you got there it could have been that nothing was
6 going on anymore, right?

7 A. That's what I hoped that nothing was going on.

8 Q. But you also understood that that could have been the case,
9 right?

10 A. And there also could have been a continuing problem there
11 too.

12 Q. Lieutenant I would ask you to answer my question, please.

13 You understood when you went over there that the
14 problem could have been over, right?

15 A. Yes. That's possible.

16 Q. And you testified that the manner in which you say
17 Mr. Almonor touched his waistband was suspicious because it was
18 for a prolonged period, right?

19 A. Correct.

20 Q. But the amount of time that you observed Mr. Almonor
21 touching his waistband was a matter of seconds, right?

22 A. Correct.

23 Q. In fact, from the time that you first observed
24 Mr. Almonor -- I'm sorry. From the time that you first exited
25 the vehicle to the time that you observed Officer Dennis

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D3R9FLO5

Korabel - redirect

1 frisking Mr. Almonor, that was just a matter of seconds, right?

2 A. Correct.

3 Q. You also testified that Mr. Almonor remained in handcuffs
4 because he was in the police vehicle, right?

5 A. Because he was in custody, yes.

6 Q. Well, you testified that it was because when someone is in
7 the police vehicle you have to keep them in handcuffs, right?

8 A. That's not what I said. I said when someone is in custody
9 they have to remain in handcuffs.

10 Q. So at what point was he in your custody?

11 A. The second the handcuffs went on he was in our custody.

12 Q. So your testimony is you couldn't have handcuffed him on
13 the street once you realized he was not committing any crime?

14 A. I could have handcuffed him for the violation of the law
15 that he committed.

16 Q. And that violation is failing to cross in the crosswalk?

17 A. Correct.

18 Q. Can you arrest someone for failing to provide their
19 address?

20 A. For failing to provide their address? Well it depends.

21 Are they refusing to ID themselves in that --if you're driving
22 a car and you refuse to provide identification, then you can be
23 arrested for that.

24 Q. But Mr. Almonor wasn't driving a car, right?

25 A. No, he was not.

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D3R9FLO5

Korabel - redirect

1 Q. He was just walking on the street right?

2 A. He was cutting across the street, yes.

3 Q. Now, Ms. Publicker, when she was questioning you, was
4 referring to obstructing vehicular traffic as a crime, but
5 that's violation, right?

6 A. Correct. It's a violation.

7 Q. And when you were driving back to the 30th precinct you
8 were sitting in the front seat of the car, right?

9 A. Like I said, I don't recall where I was in the car.

10 Q. Well, you were -- you don't recall that you were driving?

11 A. I don't recall if I was -- I don't recall where I was
12 sitting in the car.

13 Q. But Officer Dennis wasn't driving, was he?

14 A. Like I said, I don't recall. I might have been driving. I
15 might not have been driving. I don't recall.

16 Q. You were in the car with him though, right?

17 A. Yes, I was.

18 Q. And you testified that you didn't review the documents
19 related to this stop other than the 250, right?

20 A. And the pedigree card, yes.

21 Q. Wouldn't you agree that as the supervisor who was present
22 for the stop it would have been helpful for you to review all
23 of the documentation related to the stop?

24 A. That paperwork was completed at a later time and I was
25 involved in other matters at the station house.

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D3R9FLO5

Korabel - redirect

- 1 Q. You wouldn't agree that that would at least be helpful for
2 the supervisor who is present at a stop to review all of the
3 documents related to that stop?
4 A. In a perfect world, it would be nice.
5 Q. So it would be helpful?
6 A. In a perfect world, yes.
7 Q. And you testified that you can stop someone for a violation
8 in order to give them a summons, right?
9 A. Correct.
10 Q. But you understand that if the only reason you're stopping
11 them is for a violation, your stop cannot go beyond what it
12 would take to issue them a summons, right?
13 A. I'm sorry. Can you rephrase that.
14 Q. I'll withdraw it.
15 You didn't summons Mr. Almonor, right?
16 A. No, we did not.
17 Q. And that night he wasn't charged with any crime, right?
18 A. A juvenile report was prepared which would list charges but
19 because of his age there is no formal charge.
20 Q. But he was not charged that night, right?
21 A. He did not go to family court for an offense.
22 MS. BORCHETTA: If I could have one moment, your
23 Honor.
24 (Pause)
25 Just a few more questions.

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D3R9FLO5

Korabel - redirect

1 Q. Lieutenant Korabel. I'm going to show you what's
2 previously been marked as Plaintiffs' Exhibit 22 which are the
3 records -- Sprint records related to the 911 calls that you say
4 you were responding to the night you stopped Mr. Almonor.

5 A. There's a copy up here.

6 Q. You would agree with me, wouldn't you, that the only
7 description of any kind of suspect in here is male black and
8 female Hispanic, right?

9 A. I'd have to read through the calls.

10 THE COURT: Counsel will stipulate. Are there any
11 other description beside male black and female --

12 MS. PUBLICKER: There were kids and youths.

13 THE WITNESS: I'm sorry. What was your question.

14 Q. You would agree with me that there is no description in
15 these records other than male black and female Hispanic?

16 A. No. There's also a thing that says kids.

17 Q. Okay. That's fair enough.

18 MS. BORCHETTA: No further questions, your Honor.

19 MS. PUBLICKER: Just one, your Honor.

20 RECROSS EXAMINATION

21 BY MS. PUBLICKER:

22 Q. How long did it take you to get back to the precinct after
23 you placed Devin in your car?

24 A. A few minutes, max.

25 MS. PUBLICKER: Thank you, your Honor.

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D3R9FLO5

Korabel - recross

1 THE COURT: We're done with this witness?

2 MS. BORCHETTA: Yes, we are, your Honor. If I may
3 just remove these documents.

4 THE COURT: Sure.

5 Thank you.

6 (Witness excused)

7 THE COURT: The next witness.

8 MS. HOFF VARNER: Plaintiffs call Flavio Rodriguez.

9 FLAVIO RODRIGUEZ,

10 called as a witness by the Plaintiffs,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. HOFF VARNER:

14 Q. Good afternoon, Officer Rodriguez.

15 A. Good afternoon.

16 Q. Before we get started I just want to ask you if you
17 recognize anyone here in the courtroom other than the
18 attorneys?

19 A. No.

20 Q. Do you see -- you don't see Officer Pichardo in the
21 courtroom, do you?

22 A. No.

23 Q. Officer Rodriguez --

24 A. Sergeant Rodriguez.

25 Q. Sergeant Rodriguez. Thank you.

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D3R9FLO5

Rodriguez - direct

1 Sergeant Rodriguez, you graduated from the police
2 academy in 2000; is that right?

3 A. That is correct.

4 Q. And you became a sergeant in March 2007?

5 A. That is correct.

6 Q. What was your next assignment after being promoted to
7 sergeant?

8 A. I was a patrol supervisor for a while. I also did SNEU and
9 I am currently the conditions supervisor.

10 Q. Were those all in the 28th precinct?

11 A. Yes, they were.

12 Q. And you've continued to be in the 28th precinct from 2007
13 to the present?

14 A. Yes.

15 Q. What was your current assignment?

16 A. I'm the conditions supervisor.

17 Q. When did you become the conditions supervisor?

18 A. I don't recall. It's been a couple of years now. I don't
19 recall exactly when.

20 Q. And as a sergeant you have supervisory responsibilities at
21 the precinct; isn't that right?

22 A. That is correct.

23 Q. I want you to recall as of February 2008. I believe that
24 you were a SNEU supervisor in 2008; is that right?

25 A. I don't recall offhand. There's a strong possibility that

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D3R9FLO5 Rodriguez - direct

1 I was a SNEU supervisor at that time.

2 Q. And as of February 2008 you directly supervised seven
3 individuals. Do you recall that?

4 A. Yes.

5 Q. And one of the officers that you directly supervised in
6 February 2008 was officer Angelica Salmeron; is that right?

7 A. That's correct.

8 Q. Did you every directly supervise Officer Luis Pichardo?

9 A. Not directly.

10 Q. But indirectly you had supervisory responsibilities?

11 A. I'm a supervisor. Indirectly I can supervise everybody in
12 the command. I might have supervised him under some type of
13 detail. Maybe I was covering his team for a while. But I --
14 he was not under my direct supervision at any time that I can
15 remember.

16 Q. Sergeant Rodriguez, you conducted an investigation of the
17 events surrounding the stop of Deon Dennis on January 12 of
18 2008; isn't that right?

19 A. Yes.

20 Q. And Lieutenant Rogers was the lieutenant who asked you to
21 investigate; isn't that right?

22 A. That is correct.

23 Q. He placed a complaint in your mail box, correct?

24 A. Yes.

25 Q. And the complaint had a due date?

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D3R9FLO5

Rodriguez - direct

1 A. Yes.

2 Q. And you had to investigate and report back by that due
3 date; isn't that right?

4 A. Yes.

5 Q. I'm going to show you what's been marked as Plaintiffs'
6 Exhibit 421. Go ahead and take a look at that.7 This is the disposition report prepared in connection
8 with the complaint surrounding the stop of Deon Dennis; isn't
9 that right?

10 A. Yes.

11 Q. And you'll see that portions of the complaint have been
12 blacked out, we call redacted.

13 Do you see that?

14 A. Yes.

15 Q. I'm going to give a copy of the redacted version to
16 counsel.17 MS. HOFF VARNER: Your Honor, I move to admit
18 Plaintiffs' Exhibit 421 as redacted into evidence.19 MR. MARUTOLLO: Your Honor, I do object to this.
20 First, in the original 421 there were no redactions to any
21 information listed particularly on page NYC 608 which is --

22 THE COURT: Who wants the redactions?

23 MS. HOFF VARNER: Your Honor, we entered the
24 redactions at what I understood was your order.25 THE COURT: That's what I thought you were going to
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D3R9FLO5

Rodriguez - direct

1 say.

2 MS. HOFF VARNER: On March 14.

3 THE COURT: So you're objecting to the redactions that
4 I ordered?

5 MR. MARUTOLLO: No, your Honor.

6 I think the redactions are not clear because first off
7 some of the things that are redacted are Sergeant Rodriguez's
8 own information that he inputted into this report. And I don't
9 think it necessarily goes into what you ordered. You ordered,
10 your Honor, that if they want to raise the adequacy of the
11 investigation then --12 THE COURT: So now we're saying it's over-redacted.
13 So why don't you just agree on the redactions and I'll take it
14 subject to your agreement. So I won't be looking at it now
15 but -- all you want to do is work out the redactions properly?

16 MR. MARUTOLLO: Yes.

17 And also, your Honor, just one other note in terms of
18 an objection. NYC 609, the initial complaint narrative, we
19 would object on the grounds of hearsay.20 MS. HOFF VARNER: Your Honor, you already ruled on
21 this and concluded that it wasn't hearsay because it's only
22 admitted to show what Sergeant Rodriguez reviewed when he was
23 making this investigation.24 THE COURT: Doesn't matter whether it's true or not.
25 It goes to his state of mind. He reviewed it. It could have

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D3R9FLO5

Rodriguez - direct

1 been entirely false, but he read it. That impacts his state of
2 mind. He made his decision. So why don't you just work out
3 the redactions.

4 So I'll take it subject to your agreement on
5 redactions.

6 MS. HOFF VARNER: Your Honor, with your permission I
7 have a few questions and then it might make sense for us to
8 take a break so we can work out the redactions.

9 THE COURT: No. No. No. Can't do that. It's not
10 breaktime.

11 MR. MARUTOLLO: Your Honor, may we give the witness
12 the unredacted copy?

13 THE COURT: Sure.

14 MS. HOFF VARNER: Your Honor we would be happy to
15 admit the unredacted copy.

16 THE COURT: I know you would.

17 Do you have a problem with that? I don't care.

18 MR. MARUTOLLO: May I have a moment, your Honor.

19 (Pause)

20 MR. MARUTOLLO: Yes, your Honor. The unredacted copy
21 is fine.

22 THE COURT: Let's do that then.

23 MS. HOFF VARNER: Let's go ahead and admit the
24 unredacted copy. If that's -- with your permission. So we'd
25 move that into evidence as Plaintiffs' Exhibit 421 unredacted.

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D3R9FLO5

Rodriguez - direct

- 1 THE COURT: That's fine.
2 (Plaintiff's Exhibit 421 received in evidence)
3 Q. So go ahead and look at the first page of this document.
4 This is the coversheet for your disposition report, isn't it?
5 A. Yes.
6 Q. And then go ahead and look at the third page of the
7 document. I'd note that this is Bates stamp NYC 609.
8 This is the complaint that Lieutenant Rogers provided
9 to you, correct?
10 A. That is correct.
11 Q. And according to this document the person who filed this
12 complaint was Kendra Edwards, correct?
13 A. Yes.
14 Q. Do you see where it says received date CCRB 1-14, 2008,
15 4:09 p.m.?
16 A. Yes.
17 Q. That indicates the complaint was received at CCRB on
18 January 14, 2008 at 4:09 p.m., correct?
19 A. It appears to have been received at CCRB at that date and
20 time.
21 Q. And the complaint also has a CCRB complaint number, doesn't
22 it?
23 A. Yes.
24 Q. But when you received the complaint, you didn't receive it
25 from the CCRB, did you?

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D3R9FLO5

Rodriguez - direct

1 A. No, I did not.

2 Q. In fact, it was sent to you by the office of the chief of
3 department; isn't that right?

4 A. Yes.

5 Q. Look back at 609. The initial complaint narrative says:
6 Ms. Edwards' boyfriend went outside and she came to the
7 building. Deon Dennis was sitting a stop with two uniformed
8 officers P.O. Salmeron and P.O. Pichardo. They claimed that he
9 was drinking and the cup was sitting on the ground.

10 MR. MARUTOLLO: Objection, your Honor.

11 Is the plaintiffs' counsel going to read the entire --

12 THE COURT: Would you like her to?

13 MR. MARUTOLLO: I don't think it's necessary.

14 THE COURT: Then she won't.

15 Q. Did I read those sentences correctly?

16 A. According to the document, yes, you did.

17 Q. And do you see where it says "reason for initial contact"
18 in the top half of the document?

19 Still on page 609.

20 A. Yes.

21 Q. And under that caption it states: PD suspected C/V of
22 violation/crime-street.

23 Did I read that correctly?

24 A. Yes, you did.

25 Q. Go ahead and turn to the very first page of this document.

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D3R9FLO5 Rodriguez - direct

1 It's Bates stamped NYC 607.

2 You were provided with this page as part of the
3 documents that you received, correct?

4 A. That is correct.

5 Q. And this page is the coversheet for the investigation?

6 A. Yes.

7 Q. And it has a due date, correct?

8 A. Yes.

9 Q. That due date was February 27, 2008?

10 A. Yes.

11 Q. And you were assigned to investigate this complaint?

12 A. That is correct.

13 Q. When you investigated this complaint, you spoke to Officer
14 Cousin Hayes, correct?

15 A. That is correct.

16 Q. And you spoke to Ms. Edwards, correct?

17 A. That is correct.

18 Q. You had one phone conversation with her; isn't that right?

19 A. I had one phone conversation with Mrs. Edwards and

20 Mr. Dennis.

21 Q. And so you spoke to Mr. Dennis as part of that phonecall,
22 correct?

23 A. That is correct.

24 Q. And you spoke to Mr. Dennis for no more than two minutes,
25 correct?

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D3R9FLO5

Rodriguez - direct

1 A. I don't recall how long I spoke to Mr. Dennis for.

2 Q. But it wasn't anymore than two minutes, was it?

3 A. It was a very brief conversation. That I do remember.

4 Q. I'm going to give you your deposition. Do you remember
5 being deposed in this case?

6 A. Yes, I do.

7 Q. And that deposition -- in that deposition you were under
8 oath, weren't you?

9 A. Yes.

10 Q. And you promised to tell the truth?

11 A. Yes.

12 Q. The deposition was taken on August 11, 2009, correct?

13 A. Yes.

14 Q. So I'd like you to turn your attention to page 71 of the
15 deposition. Lines 13 through 14.

16 A. Okay.

17 "Q. Was it more than two minutes?

18 "A. No."

19 Did I read that correctly?

20 A. Yes.

21 Q. So you actually spoke to Mr. Dennis for no more than two
22 minutes, correct?

23 A. That is correct.

24 Q. Turn your attention to page 608, the page that's been Bates
25 stamped 608 of this document.

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D3R9FLO5

Rodriguez - direct

1 Do you see it?

2 A. Yes.

3 Q. This is the disposition report for the complaint that we
4 just looked at, isn't it?

5 A. Yes.

6 Q. And you were responsible for filling this form out,
7 correct?

8 A. That is correct.

9 Q. Do you see the comment section at the bottom of the page?

10 A. Yes.

11 Q. You drafted those comments, correct?

12 A. Yes.

13 Q. Do you see the date 2-26-08 at the top right of the page?

14 A. Yes.

15 Q. That refers to the date when you finished and submitted
16 this disposition report to Lieutenant Rogers, correct?

17 A. Yes.

18 Q. And the disposition report reflects that you conducted an
19 investigation and interviewed PO Cousin Hayes, Mr. Dennis, and
20 Ms. Edwards, correct?

21 A. Yes.

22 Q. But you never interviewed Officer Salmeron about this
23 complaint, did you?

24 A. That is correct.

25 Q. And you never interviewed officer Pichardo about this

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D3R9FLO5

Rodriguez - direct

1 complaint?

2 A. Not that I remember.

3 Q. So in total for this investigation you interviewed Officer
4 Cousin Hayes and Ms. Edwards, correct?

5 A. Yes.

6 Q. And you spoke with Mr. Dennis for less than two minutes,
7 correct?

8 A. Yes.

9 Q. And then you didn't interview anyone else, did you?

10 A. That is correct.

11 Q. You're familiar as a sergeant, a supervisor in the NYPD,
12 with officer memo books, correct?

13 A. Yes.

14 Q. Officer memo books are supposed to include details of
15 officer activities; isn't that right?

16 A. Yes.

17 Q. And they should include summonses, arrests, stops and
18 frisks, correct?

19 A. Yes.

20 Q. Officer memo books are available to you when you're
21 conducting office of the chief of department investigations,
22 aren't they?

23 A. Memo books are available to me at any time upon my request.

24 Q. So to access them you just ask the officers to produce them
25 and then they give them to you?

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D3R9FLO5

Rodriguez - direct

1 A. Yes. That is correct.

2 Q. But you didn't review any memo books as part of your
3 investigation into this case, did you?

4 A. No, I did not. Because I found that by speaking to
5 Mr. Dennis Mrs. Edwards and Mr. Cousin Hayes, I found enough
6 information to conclude my investigation. And I did not
7 require to review memo books.

8 Q. In fact, you don't recall reviewing any documents other
9 than the complaint in this investigation; isn't that correct?

10 A. That is correct.

11 Q. The complaint, which we just looked at, NYC 609, said that
12 Officers Salmeron and Pichardo stopped Mr. Dennis; isn't that
13 right?

14 A. Yes.

15 Q. And when you reviewed the complaint you knew that Officer
16 Salmeron and Officer Pichardo had actually stopped Mr. Dennis,
17 correct?

18 A. That is correct.

19 Q. So now let's look back at your report which is NYC 608.
20 This disposition report that you drafted says that P.O. Cousin
21 Hayes stopped Mr. Dennis for consuming an alcoholic beverage in
22 a public place, doesn't it?

23 A. Yes, it does.

24 And I can easily explain that. It was just a simple
25 human error on my part.

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D3R9FLO5

Rodriguez - direct

1 Q. And it doesn't say that Officer Salmeron or Pichardo
2 stopped Mr. Dennis, does it?

3 A. No, it does not.

4 And like I said, it was a human error on my part.

5 Q. You said it was a simple human error in the disposition
6 report?

7 A. Not in the disposition report. I'm telling you now. I'm
8 telling you that's why in my disposition report I erroneously
9 stated that Cousin Hayes was the one who made the stop and that
10 was an error on my part. It should have been Salmeron and
11 Pichardo.

12 Q. And that was because -- you made the error because your
13 investigation wasn't focused on the stop, correct?

14 A. That's not true. I don't know why I make the errors.
15 Sometimes we do make errors. We don't know why we make them.
16 But I don't think it was because it was not focused on the
17 stop.

18 Q. Take a look at page 55 of your deposition. Line 16 through
19 56, line 2.

20 A. Can you repeat the page, please.

21 Q. Sure. It's page 55?

22 A. Lines?

23 Q. Line 16. Are you there?

24 A. Yes.

25 "Q. And in the comments field it says, according to P.O.

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D3R9FLO5

Rodriguez - direct

1 Cousin Hayes he stopped Mr. Dennis for consuming an alcoholic
2 beverage in a public place. My question to you is: Who do you
3 mean by the pronoun, in quotes, he?
4 "A. That was an error on my part. My investigation was not
5 focused on the stop. It was focused more on his discourtesy
6 and also why Mr. Dennis got arrested. Not the actual stop."
7 Did I read that correctly?
8 A. Yes.
9 Q. Does that help refresh your recollection that your
10 investigation was focused on Officer Cousin Hayes and not on
11 the stop?
12 A. Yes.
13 Q. And Officer Cousin Hayes was your main focus, correct?
14 A. My main focus was Officer Cousin Hayes' interaction with
15 Mrs. Dennis at the precinct and also why Mr. Dennis was
16 arrested on a warrant. That was the main focus of my
17 investigation.
18 Q. And you weren't investigating anything besides your main
19 focus, correct?
20 A. That is -- that is correct.
21 Q. And so you didn't investigate the stop, did you?
22 A. No. Because based on the complaint there was no --
23 Q. I understand.
24 A. -- need for me to investigate the stop. Based on my
25 interview with Mr. Dennis, Mrs. Edwards and Cousin Hayes, the

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Rodriguez - direct

1 stop was never an issue.

2 Q. Even though the complaint clearly states that Officers
3 Salmeron and Pichardo stopped Mr. Dennis; isn't that right?

4 A. Yes. But the complaint doesn't state that the stop was the
5 problem. Hence, I did not focus on investigating the stop
6 because based on the complaint and the witnesses the stop was
7 never an issue.

8 Q. And thus you never investigated the stop?

9 A. That is correct. Because --

10 Q. And so, in fact --

11 A. There was no need for me to investigate the stop because it
12 was --

13 THE COURT: You both are going over and over the same
14 ground. I don't need to hear it a fourth time. Neither of you
15 mention that again, please.

16 Q. Officer Salmeron was named in the complaint as one of the
17 stopping officers, wasn't she?

18 A. Yes.

19 Q. And you just testified earlier that Officer Salmeron at the
20 time of February 2008 was one of your direct reports; isn't
21 that right?

22 A. Yes.

23 Q. You didn't include Officer Salmeron's name in your comments
24 on the investigation, did you?

25 A. No.

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D3R9FLO5

Rodriguez - direct

1 Q. In fact, you said that Officer Cousin Hayes made the stop,
2 correct?

3 A. And like I clarified, that was a human error on my part.

4 THE COURT: Don't tell me that again. I know that.

5 You've told me that four times.

6 Q. Take look at the disposition section on NYC 608 in the
7 middle of the page. Do you see where I'm referring to?

8 A. Yes.

9 Q. You checked the box "unsubstantiated," correct?

10 A. That is correct.

11 Q. And that means there was no basis for the complaint,
12 correct?

13 A. No. That means that I couldn't prove or disprove that
14 Cousin Hayes was acting discourteous and rude to Mrs. Edwards.

15 Q. This incident regarding the stop of Mr. Dennis wasn't the
16 first time that you had investigated an OCD complaint that
17 named an officer you directly supervised, was it?

18 A. I don't recall.

19 Q. Isn't it true that at the time of your deposition you had
20 previously investigated two officers that you had directly
21 supervised?

22 A. If that's what I said in 2009, yes. But it's 2013 and I
23 don't recall what I said in 2009 or what happened six years
24 ago.

25 Q. So why don't you look at your deposition, page 97, lines 16

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Rodriguez - direct

1 through 24.

2 "Q. I had asked if there were other OCD complaints that you
3 investigated for an officer that you at any time had directly
4 supervised.

5 "A. Yes.

6 "And you said that it happened twice; is that correct?

7 "A. Well, two officers, which was that one incident that I
8 recall."

9 Did I read that correctly?

10 A. Yes.

11 Q. With respect to that complaint for those two officers, you
12 concluded that the complaint was not substantiated or partially
13 substantiated, correct?

14 A. That is correct.

15 Q. You've conducted many -- aside from the one you just talked
16 about, you've conducted other investigations for the office of
17 the chief of department; isn't that right?

18 A. Yes.

19 Q. Do you see on the disposition report NYC 608 that there's a
20 box that says "substantiated"?

21 A. Yes. I see that box.

22 Q. You've never checked that box, have you?

23 A. That is correct. I haven't checked that box as of yet.

24 Q. Do you see the box that says "partially substantiated"?

25 A. That is correct.

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D3R9FLO5

Rodriguez - direct

1 Q. You've never checked that box either, have you?

2 A. That I don't remember if I did or did not.

3 Q. So if you look at your deposition, page 87.

4 Actually let's look at page 88, line 6.

5 "Q. Do you see below that it says partially substantiated?

6 "A. Yes.

7 "Q. Have you ever checked that box?

8 "A. No."

9 Did I read that correctly?

10 MR. MARUTOLLO: Objection, your Honor.

11 Just to be clear is the question about at the time of
12 his deposition or in the present?

13 THE COURT: She said have you ever checked that box.

14 I assume she means to the present.

15 Have you ever checked that box?

16 THE WITNESS: No.

17 THE COURT: Okay.

18 Q. And to move on do you see where it says "exonerated"?

19 A. Yes.

20 Q. You've checked that box, haven't you?

21 A. I don't remember. I don't remember if I did or did not
22 check that box.

23 Q. Do you remember if you ever checked that box as of the time
24 of your deposition?

25 A. I don't remember.

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D3R9FLO5

Rodriguez - direct

- 1 Q. And do you see under the penalty section the box -- do you
2 see the penalty section? It's in a separate box.
3 A. Yes.
4 Q. And there, there is a box that says "no action taken"?
5 A. Yes.
6 Q. You've checked that box, haven't you?
7 A. Yes.
8 Q. In fact, that's the only box that you've ever checked in
9 the penalty section; isn't that right?
10 A. That is not true.
11 Q. When did you check the penalty box that said no action --
12 sorry. When have you checked a different box other than the no
13 action taken?
14 A. Most likely instructed. And warned and admonished.
15 Q. But as of 2009 you had never checked a box in the penalty
16 section other than no action taken; isn't that right?
17 A. I don't remember.
18 Q. So if you look at your deposition on page 89, line 3.
19 "Q. Which ones did you check in the penalty boxes?
20 "A. No action taken.
21 "Q. Have you checked any others in the penalty box?
22 "A. No."
23 Did I read that correctly?
24 A. That is correct.
25 THE COURT: Well I guess her question is: Is that

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D3R9FLO5 Rodriguez - direct

1 still true four years later?

2 THE WITNESS: Well as of my deposition, according to
3 my testimony, I haven't checked that box.

4 THE COURT: I know that was '09 you said. This is
5 '13.

6 THE WITNESS: So as of '13 yes, I have checked other
7 boxes.

8 Q. Do you remember when you checked those other boxes in the
9 penalty section?

10 A. No, I do not.

11 Q. Do you remember if you ever checked that box with respect
12 to a complaint that included allegations of an unconstitutional
13 stop and frisk?

14 A. No. And I don't receive many complaints regarding stops,
15 unlawful stops. This is one of the very few that I did
16 remember. And it's not even focused on the actual stop itself.

17 Q. We don't want to go back over that so let's go ahead and
18 move on to the next subject.

19 You would agree that the NYPD operates under a chain
20 of command, correct?

21 A. That is correct.

22 Q. Lieutenant Rogers assigned you to undertake this
23 investigation, correct?

24 A. Yes.

25 Q. But you never discussed this investigation with Lieutenant

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D3R9FLO5

Rodriguez - direct

1 Rogers, correct?

2 A. That is correct.

3 Q. And Lieutenant Rogers has assigned you to conduct other
4 office of the chief of department investigations, correct?

5 A. That is correct.

6 Q. But you don't recall ever discussing an office of the chief
7 of department complaint or investigation with Lieutenant
8 Rogers, do you?

9 A. Well, I actually have. Whenever there's a question or if
10 there's a problem in my investigation he usually reviews it.
11 It goes back to him for review. He reviews it and if there's a
12 problem he discusses it with me and I address that problem.

13 Q. So he has discussed them with you?

14 A. Yes.

15 Q. Go ahead and look at your deposition, page 115.

16 Lines 4 through 7.

17 "Q. Do you recall ever discussing an OCD complaint
18 investigation that you conducted with Lieutenant Rogers?

19 "A. I don't recall."

20 A. Okay. But after my deposition from 2009 on I do remember
21 discussing OCD investigations and complaints with Lieutenant
22 Rogers.

23 Q. Okay. Do you see -- if you look at page NYC 607 the first
24 page of this disposition report. Do you see the name P.O.
25 Glick?

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D3R9FLO5

Rodriguez - direct

1 A. Yes.

2 THE COURT: I don't. Where is that?

3 MS. HOFF VARNER: It's right next -- it's on the
4 right-hand side of the page about halfway down. It says to
5 P.O. Glick.

6 THE WITNESS: Okay.

7 Q. And at least in 2009 when you were deposed you didn't know
8 who P.O. Glick was, did you?

9 A. I don't know who P.O. Glick is, no.

10 Q. Even today you don't know who P.O. Glick is?

11 A. I don't know who that is.

12 Q. So you had obviously never discussed this complaint with
13 him?

14 A. No.

15 Q. And other than the conversations you had with Lieutenant
16 Rogers post-2009 you don't recall ever discussing an office of
17 the chief of department complaint investigation with another
18 supervisor, do you?

19 A. This is prior to 2009 or after 2009?

20 Q. Let's take it in steps. As of 2009, had you ever discussed
21 an OCD complaint investigation with another supervisor?

22 A. That I don't remember.

23 Q. And prior to your deposition in 2009 do you recall if a
24 supervisor ever asked you about an OCD complaint investigation
25 that you conducted?

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Rodriguez - direct

1 A. That I don't remember.

2 Q. And prior to 2009 you don't recall if a supervisor ever
3 asked you to conduct additional investigation into one of these
4 OCD complaint investigations?

5 A. Prior to 2009, I don't remember.

6 Q. If you look back at NYC 608. Your disposition report. It
7 says at the very top of the page in the from line that this is
8 from the commanding officer, 28th precinct, correct?

9 A. That is correct.

10 Q. Inspector Montgomery was the commanding officer of the
11 28th precinct at this time; isn't that right?

12 A. That is correct.

13 Q. But you never discussed this particular investigation with
14 Inspector Montgomery, did you?

15 A. No, I did not.

16 Q. And you don't know if Inspector Montgomery reviewed the
17 disposition form, do you?

18 A. That I'm not sure.

19 Q. You don't recall ever receiving training on how to conduct
20 OCD complaint investigations, do you?

21 A. Well I did receive numerous training regarding civilian
22 complaints investigation which encompasses OCD investigations.

23 Q. And when was that training?

24 A. This was -- I definitely remember receiving that training
25 during my sergeant's orientation course in 2007. And after

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D3R9FLO5

Rodriguez - direct

1 that seeing department memos, bulletins and through the
2 training sergeant, as well in the precinct.

3 Q. But isn't it true that as of 2009 you didn't recall ever
4 receiving training on OCD complaint investigations?

5 A. Well I refer that -- I refer to OCD complaints as civilian
6 complaints. I've always referred to it as civilian complaints.
7 So as of 2009 yes, I did receive numerous training in regard to
8 investigation and -- the investigation process of civilian
9 complaints. And civilian complaints do encompass OCD
10 investigations.

11 Q. I'd like you to look at your deposition, page 115, lines 21
12 to 23.

13 A. Okay.

14 "Q. Have you received any training on conducting OCD complaint
15 investigations?"

16 "A. I don't remember."

17 Did I read that correctly?

18 A. Yes.

19 Q. And isn't it true -- you can go ahead and close the
20 deposition -- isn't it true that you also, as of 2009, didn't
21 recall ever receiving instruction on conducting OCD complaint
22 investigations?

23 A. Well that is not true. And like I clarified later on in my
24 deposition, I was uncertain on the language. I always refer to
25 it as civilian complaints. When it's suppose -- another way of

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Rodriguez - direct

1 referring to it is OCD complaints. So I did receive training
2 on civilian complaints which encompasses OCD complaints. So
3 that is not an accurate statement.

4 Q. You know what an OCD complaint is, don't you?

5 A. I have always referred to it as a civilian complaint.

6 Q. I understand. But my question is -- let me rephrase.

7 You know what the office of the chief of department
8 is, correct?

9 A. Yes.

10 Q. And you've investigated numerous complaints that have been
11 referred to you by the office of the chief of department,
12 correct?

13 A. Yes.

14 Q. And sometimes the office of the chief of department is
15 referred to as OCD, correct?

16 A. Yes.

17 Q. And you know what a complaint is, correct?

18 A. Yes.

19 Q. So isn't it true that in 2009 you testified that you don't
20 ever recall receiving written guidance on how to conduct OCD
21 complaint investigations?

22 A. I testified that. But I was under the misimpression that
23 it wasn't a civilian complaint. It was a civilian complaint.

24 I was just never clear on the language. I always refer to it
25 as a civilian complaint. So technically no. But yes because I

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D3R9FLO5

Rodriguez - direct

- 1 did receive training on civilian complaints which encompasses
2 OCD complaints.
- 3 Q. You're familiar with UF 250s, aren't you?
4 A. Yes.
- 5 Q. And you were trained on UF 250s at the police academy?
6 A. Yes.
- 7 Q. Isn't it true that as of 2009 you testified that you didn't
8 recall any training on filling out UF 250s since you graduated
9 from the academy?
10 A. Yes.
- 11 Q. You've been a police sergeant since 2007, correct?
12 A. Yes.
- 13 Q. And as a sergeant one of your responsibilities is to
14 supervise officers in properly preparing UF 250s, correct?
15 A. Yes.
- 16 Q. And to do that you review their 250s, correct?
17 A. Yes.
- 18 Q. And you see if there are any captions that are left blank
19 or any incorrect boxes or information, correct?
20 A. Yes.
- 21 Q. And if there are, you would bring that to the officer's
22 attention and ask for an explanation, correct?
23 A. That is correct.
- 24 Q. And then you'd have them correct it, correct?
25 A. Yes.

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D3R9FLO5

Rodriguez - direct

- 1 Q. But you've never felt that an officer turning in a UF 250
2 to you had an insufficient basis to conduct a stop; isn't that
3 right?
4 A. Can you rephrase that question, please.
5 Q. Isn't it true that you've never felt that an officer who
6 gives you a UF 250 had an insufficient basis to conduct the
7 stop that was described in that UF 250?
8 A. I don't recall reviewing a 250 which had -- which was based
9 on a stop that was not based on reasonable suspicion.
10 Q. And as a police officer and a sergeant you're familiar with
11 memo books, right?
12 A. Yes.
13 Q. And officers must chronologically record all information
14 pertaining to assignments and information in their memo book;
15 isn't that right?
16 A. That is correct.
17 Q. And as sergeant you review memo books for your officers,
18 correct?
19 A. That is correct.
20 Q. But you've never actually compared a memo book with a
21 UF 250, have you?
22 A. That is correct.
23 Q. At your deposition --
24 A. Excuse me. I'm sorry. I've never matched up a physical
25 copy of a 250 to a memo book. That is correct.

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Rodriguez - direct

1 But when I do review memo books, if I know the officer
2 prepared a 250 that day I make sure -- I look that it's in
3 there. If it's not in there I always remind the officers make
4 sure he puts it in.

5 Q. Let me see if I understand.

6 So when you're reviewing a memo book and the officer
7 notes that they had a stop, then would you tell the officer to
8 be sure to fill out a UF 250, correct?

9 A. No. If I know that the officer prepared a 250 -- prepared
10 the actual physical document and I review their memo book, I
11 make sure that it's in there. If it's not, I instruct the
12 officer to put that information on the memo book.

13 Q. I see. So when they prepare the 250 you make sure that the
14 stop is also reflected in the memo book?

15 A. Only when I review the memo books and I'm aware that the
16 officer prepared a 250 for that day, I look to see if it's
17 there, in their actual memo books.

18 Q. So, other than making sure that there are two documents
19 when you know that there should be, both the entry in the memo
20 book and the UF 250, you've never actually compared the UF 250
21 with the memo book; isn't that right?

22 A. That is correct.

23 Q. And at your deposition in 2009 you testified that you did
24 not intend to do that in the future; isn't that correct?

25 A. That is correct.

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Rodriguez - direct

1 Q. And is it true that you have not done that since 2009?

2 A. That is true.

3 Q. You're also familiar with the patrol guide, aren't you?

4 A. Yes.

5 Q. I'm going to show you Plaintiffs' Exhibit 98 which has
6 already been moved into evidence.

7 This is the patrol guide section 212-11 with respect
8 to stop and frisk, correct?

9 A. Yes.

10 Q. And you recognize this document, correct?

11 A. Yes.

12 Q. This section of the patrol guide includes a section
13 discussing stop and frisk reports, doesn't it?

14 A. Yes.

15 Q. And you can't recall a single instance where you discussed
16 the patrol guide procedures on stop and frisk reports with
17 officers who were directly assigned to you; isn't that right?

18 A. Well, that is not true. I don't walk around with the
19 actual procedure lecturing them. But I do speak to them
20 regarding stop, question and frisk frequently. You know I'm
21 always with them when they conduct stops so I make sure that
22 they conduct stops on -- based on reasonable suspicion.

23 Q. Isn't it true that you can't recall a single instance where
24 there was an issue that conflicted with this procedure that you
25 spoke to an officer about?

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D3R9FLO5

Rodriguez - direct

1 A. If there was I can't remember of an incident that conflicts
2 with this procedure.

3 Q. So you can't remember a single incident that conflicted
4 with the procedure outlined in the patrol guide? That's your
5 testimony?

6 A. That is correct. I don't recall.

7 Q. And so as a result you've never had a conversation with
8 your officers about -- about the stop and frisk procedures?

9 A. That is not true. If it's improperly prepared, I do point
10 out the errors that they made and give it back to them so they
11 can address those errors.

12 Q. Right. Can you recall a time that you discussed a
13 completed UF 250 with your supervisors?

14 A. I can't give a specific time or date.

15 MS. HOFF VARNER: Just one minute, your Honor.

16 (Pause)

17 Nothing further at this time, your Honor.

18 THE COURT: We'll take our afternoon recess.

19 Reconvene at ten of four.

20 (Recess)

21 CROSS-EXAMINATION

22 BY MR. MARUTOLLO:

23 Q. Good afternoon, Sergeant Rodriguez.

24 A. Good afternoon.

25 Q. How long have you been employed by the New York City Police

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D3R9FLO5 Rodriguez - cross

- 1 Department?
2 A. Over 13-and-a-half years.
3 Q. And so when did you join the NYPD?
4 A. I got sworn in July 7, 1999.
5 Q. Where are you from originally?
6 A. I'm from the Dominican Republic.
7 Q. What's your educational background?
8 A. I have a bachelor of arts from University at Buffalo.
9 Q. Did you attend and graduate from the police academy?
10 A. Yes.
11 Q. When was that?
12 A. Approximately February 2000.
13 Q. And after leaving the police academy what was your title?
14 A. I was a police officer.
15 Q. And did there come a time when you were promoted to
16 sergeant?
17 A. Yes, there was.
18 Q. When did you receive that promotion?
19 A. March 2007.
20 Q. How did you receive that promotion?
21 A. I took the sergeant's exam.
22 Q. Did you receive any training upon being promoted to
23 sergeant?
24 A. Yes.
25 Q. What was that training?

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D3R9FLO5 Rodriguez - cross

- 1 A. I received specialized training at my sergeant's
2 orientation course in 2007.
- 3 Q. Upon being promoted to sergeant where were you first
4 assigned?
- 5 A. The 48 precinct.
- 6 Q. I'm sorry you said the 48?
- 7 A. The 48.
- 8 Q. And how long were you at the 48 precinct?
- 9 A. Approximately for eight years.
- 10 Q. And where are you currently assigned?
- 11 A. The 28.
- 12 Q. And what area does the 28 precinct cover?
- 13 A. It covers West 110th Street to West 127th Street from Fifth
14 Avenue to Morningside Avenue.
- 15 Q. You mentioned during your direct examination you're the
16 currently conditions sergeant?
- 17 A. That is correct.
- 18 Q. What are your duties and responsibilities in that position?
- 19 A. We try to address crime patterns and also quality of life
20 conditions throughout the precinct.
- 21 Q. How many officers do you currently supervise?
- 22 A. Three.
- 23 Q. With respect to your investigation into the Deon Dennis
24 incident, you indicated earlier that you spoke to Mr. Dennis;
25 is that right?

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D3R9FLO5

Rodriguez - cross

1 A. Yes, I did.

2 Q. What, if anything, did you learn from speaking to
3 Mr. Dennis?

4 A. When I called him, he was the first one who picked up the
5 phonecall. I introduced myself. I told him that I was
6 investigating a complaint that was made. And asked him about
7 the complaint itself. He just kept saying I don't know
8 numerous times, which led me to believe that he didn't know
9 much about the complaint and he wasn't making any other
10 allegations of any other misconduct from the police officers.

11 Q. So what did Mr. Dennis saying "I don't know" mean to you?

12 A. It meant that he -- since he wasn't -- he didn't know that
13 the complaint was made. And it also led me to believe that
14 since he was physically present for the actual stop that he
15 wasn't disputing the stop by the police officers.

16 Q. Did Mr. Dennis make any complaints over the phone relating
17 to there being an unlawful stop?

18 A. No, he did not at any time.

19 Q. You also indicated that you spoke to Ms. Edwards during
20 your investigation?

21 A. Yes.

22 Q. What did you learn, if anything, as a result of your
23 conversation with Ms. Edwards?

24 A. Well all Ms. Edwards kept reiterating is that Officer
25 Cousin Hayes --

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D3R9FLO5

Rodriguez - cross

1 MS. HOFF VARNER: Objection, your Honor. Hearsay.

2 THE COURT: Sustained.

3 Q. Did Ms. Edwards make any complaints over the phone to you
4 relating to an unlawful stop?

5 MS. HOFF VARNER: Objection. Calls for hearsay.

6 THE COURT: I'll take yes or no.

7 THE WITNESS: No, she did not.

8 Q. As a result -- I'm sorry. You indicated also that you
9 spoke to officer Cousin Hayes during your investigation?

10 A. Yes.

11 Q. What did you learn from Officer Cousin Hayes as a result of
12 your investigation?

13 A. I learned two things. Number one the reason why Mr. Dennis
14 was placed under arrest for the warrant. And the second thing
15 that I learned was his interaction with Ms. Edwards. According
16 to Officer Cousin Hayes he had been --

17 MS. HOFF VARNER: Objection. Hearsay.

18 THE COURT: All right. You didn't object initially
19 when the question was asked. But you object now to what Cousin
20 Hayes said.

21 MS. HOFF VARNER: Yes. To what he's saying directly.

22 MR. MARUTOLLO: Your Honor, I mean we've had other
23 officers who, based on prior rulings, that these statements
24 have come in as admissions of --

25 THE COURT: Yes, when they're offered by the adverse
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D3R9FLO5 Rodriguez - cross

1 party. You can't offer an admission. Plaintiffs can offer
2 admission of the city. The city can't offer a statement of the
3 city.

4 MR. MARUTOLLO: Also, your Honor, I guess just to
5 clarify. It's not offered for the truth of the matter
6 asserted. It's offered for the -- to clarify the investigation
7 that Sergeant Rodriguez conducted.

8 THE COURT: I don't think that's accurate. I think it
9 is offered for the truth. So objection is sustained.

10 Q. Sergeant Rodriguez, what was the result of your
11 investigation?

12 A. The -- the result of my investigation was that Cousin Hayes
13 did act properly in processing Mr. Dennis.

14 Q. On your direct examination I believe you stated that you
15 don't remember substantiating any allegations related to OCD
16 complaints?

17 A. That is correct.

18 Q. Why is that?

19 A. Well, based on my investigation I found that the officers
20 did act properly.

21 Also, other times the complainants could not provide a
22 contact number for me to obtain further information to conduct
23 a thorough investigation. And other times the complainants
24 were just not cooperative and would not answer any of my
25 questions.

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D3R9FLO5 Rodriguez - cross

1 Q. Since 2009, Sergeant Rodriguez, have you received any
2 training on stop, question and frisk or UF 250s?

3 A. I have received numerous training regarding stop, question
4 and frisks.

5 Q. What about UF 250s?

6 A. And 250s as well, yes.

7 Q. What kind of training have you received?

8 A. I received training from the training sergeant at the
9 precinct, department of bulletins. I have watched video
10 regarding stop, question and frisk. I received training at
11 Rodman's Neck regarding 250s and stop, question and frisk,
12 amongst other things.

13 Q. Now since your 2009 deposition have you spoken to any of
14 your officers about completing UF 250s?

15 A. Yes.

16 Q. And how do you ensure that officers under your supervision
17 are properly conducting stop, question and frisks?

18 A. Well I'm present with them the large majority of the time
19 they do stop people based on reasonable suspicion and most of
20 the time the stops are lawful.

21 Also I review their book, I reviewed their 250s and
22 if, for example, I have a driver assigned to me for the day, I
23 always discuss stopping people and tactics frequently
24 throughout the course of the tour.

25 Q. Did you ever speak with your officers about stops that

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D3R9FLO5 Rodriguez - cross

1 they've made?

2 A. Yes.

3 Q. How frequently is that?

4 A. Very frequently.

5 Q. With respect to the NYPD's policy regarding racial
6 profiling, are you aware if the NYPD has such a policy?

7 A. Yes. The NYPD does have a policy regarding racial
8 profiling.

9 Q. What's your understanding of what the policy is?

10 A. That we do not stop people based solely on race alone.

11 MR. MARUTOLLO: No further questions, your Honor.

12 THE COURT: All right. Any redirect?

13 MS. HOFF VARNER: Just one moment, your Honor.

14 REDIRECT EXAMINATION

15 BY MS. HOFF VARNER:

16 Q. You just testified about the racial profiling policy at the
17 NYPD, correct?

18 A. Yes.

19 Q. And you testified that you couldn't stop someone based on
20 their race alone. Is that generally what you said?

21 A. Yes.

22 Q. So you wouldn't stop someone just because they're a black
23 male, correct?

24 A. No. There has to be other factors involved.

25 Q. Okay. You also testified that you're present the majority

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D3R9FLO5 Rodriguez - redirect

1 of the time that you -- that your subordinate officers are
2 making stops, correct?

3 A. That is correct.

4 Q. And you testified that those stops are lawful most of the
5 time, correct?

6 A. Well I should have said all of the time. I haven't
7 encountered an unlawful stop yet.

8 Q. You've never encountered an unlawful stop?

9 A. As of yet, yes.

10 Q. In your -- I'm sorry. How many years have you been with
11 the NYPD?

12 A. I've been a supervisor for approximately six years.

13 Q. So in your six years as a supervisor your testimony is that
14 you have never encountered an unlawful stop?

15 A. That is correct, yes.

16 Q. And with respect to the stop of Mr. Dennis, you don't, in
17 fact, know if it was a lawful or unlawful stop, do you?

18 A. Well, based on the complaint, he was observed with an
19 alcoholic beverage. And if you stop somebody based on an
20 observed violation, that is a lawful stop.

21 Q. But you never actually investigated the stop as you
22 testified earlier; isn't that right?

23 A. That is correct because --

24 Q. You just reviewed the --

25 MR. MARUTOLLO: Objection, your Honor. He's still

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Rodriguez - redirect

1 answering.

2 THE COURT: Now there's three of us.

3 Go ahead. What are you saying, Ms. Hoff Varner?

4 MS. HOFF VARNER: I was just saying I think the

5 question was you only reviewed the complaint, correct?

6 THE WITNESS: Can you repeat the question again.

7 THE COURT: In deciding if the stop was a good stop,

8 you only reviewed the complaint?

9 THE WITNESS: Well I reviewed the complaint, your

10 Honor. But the complaint didn't dispute the actual stop

11 itself.

12 THE COURT: That's not the question.

13 Is that the only document you reviewed?

14 THE WITNESS: Yes.

15 THE COURT: Okay. Thank you.

16 Q. Because you didn't review the memo books, correct?

17 A. That is correct. I did not review the memo books.

18 Q. And you only spoke with Mr. Dennis for under two minutes,

19 correct?

20 A. Yes.

21 MR. MARUTOLLO: Objection. Asked and answered.

22 THE COURT: It is.

23 THE WITNESS: The only reason I spoke to Mr. Dennis

24 for only very briefly.

25 MS. HOFF VARNER: Objection, your Honor.

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Rodriguez - redirect

1 THE COURT: Is what. Go ahead. Finish your sentence.

2 THE WITNESS: Is because he didn't know a lot about
3 the incident. Also, he wasn't too -- he wasn't -- I don't
4 think he really wanted to speak to me. He just passed the
5 phone over to his wife or his girlfriend, Mrs. Edwards.

6 Q. This just for the record you said that upon being promoted
7 to sergeant -- isn't it true that upon being promoted to
8 sergeant you were assigned to the 28th precinct?

9 A. Upon promoted to sergeant, yes, I was assigned to the
10 28th precinct.

11 Q. Okay. And you've been at the 28th precinct ever since
12 your promotion to sergeant?

13 A. Yes.

14 MS. HOFF VARNER: That's all, your Honor.

15 THE COURT: Thank you. Anything more for this
16 witness?

17 MR. MARUTOLLO: No, your Honor.

18 THE COURT: Okay. Thank you, Sergeant Rodriguez.

19 (Witness excused)

20 MS. HOFF VARNER: Your Honor, plaintiffs call Officer
21 Luis Pichardo.

22 LUIS PICHARDO,

23 called as a witness by the Plaintiffs,
24 having been duly sworn, testified as follows:

25 (Continued on next page)

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D3R9FLO5 Rodriguez - redirect

1 DIRECT EXAMINATION

2 BY MS. HOFF VARNER:

3 Q. Good afternoon, Officer Pichardo.

4 A. Good afternoon.

5 Q. You graduated from high school in 2002, correct?

6 A. Yes, ma'am.

7 Q. And after high school you worked for the New York police
8 department as a police cadet; is that right?

9 A. Yes, ma'am.

10 Q. And after being a police cadet you entered the police
11 academy in 2005, correct?

12 A. Yes, ma'am.

13 Q. And you were first assigned to a command in the NYPD in
14 January 2006, correct?

15 A. Yes, ma'am.

16 Q. And that command was the 28th precinct, right?

17 A. Yes, ma'am.

18 Q. At the 28th precinct you were first assigned to operation
19 impact, correct?

20 A. Correct.

21 Q. And that was for approximately six months?

22 A. Yes.

23 Q. And then you were assigned to patrol in the 28th
24 precinct?

25 A. Yes.

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- 1 Q. From 2007 to approximately 2008 you were assigned to the
2 community police unit, correct?
3 A. Correct.
4 Q. That's sometimes called CPU?
5 A. Yes, ma'am.
6 Q. And then in 2008 you were assigned to the anticrime unit,
7 correct?
8 A. Correct.
9 Q. And you continued to work there -- at least through 2009,
10 correct?
11 A. Correct.
12 Q. And are you still assigned to the anticrime unit?
13 A. No.
14 Q. What is your current assignment?
15 A. SNEU, street narcotic unit.
16 Q. Who is your current supervisor?
17 A. Sergeant Payne.
18 Q. Spell that.
19 A. P-A-Y-N-E.
20 Q. And you've testified in court before, haven't you?
21 A. Yes, ma'am.
22 Q. In fact -- and that includes Manhattan criminal court?
23 A. Yes, ma'am.
24 Q. And you've testified more than ten times in Manhattan
25 criminal court, correct?

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1 A. Correct.

2 Q. Officer Pichardo, do you remember giving a deposition in
3 this case?

4 A. Yes, ma'am.

5 Q. And that was on June 3, 2009, correct?

6 A. Yes, ma'am.

7 Q. In that deposition you swore to tell the truth, correct?

8 A. Correct.

9 Q. And you did tell the truth, right?

10 A. Yes, ma'am.

11 Q. Prior to your deposition you spoke with your partner,
12 Officer Angelica Salmeron, correct?

13 A. Can you repeat the question.

14 Q. Prior to your deposition you spoke with Officer Angelica
15 Salmeron, correct?

16 A. About what?

17 Q. About this lawsuit.

18 A. I can't remember that.

19 Q. You don't remember speaking with Officer Salmeron two
20 months before your deposition?

21 THE COURT: About this case.

22 THE WITNESS: About this case probably we have -- I
23 told her I got notified for the case.

24 THE COURT: You told her what?

25 THE WITNESS: I was notified for this case. That's
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Pichardo - direct

1 it.

2 Q. And you may have discussed other things, correct?

3 A. Correct, yeah.

4 Q. And there was no one else in that conversation who was
5 present, correct? It was just you and Officer Salmeron?

6 A. Yes.

7 Q. Thinking back to your time at the police academy, you
8 received training at the academy on filling out a UF 250,
9 correct?

10 A. Correct.

11 Q. And you were trained that you have to fill out a UF 250 any
12 time you stop a person that has or is about to commit a felony
13 or misdemeanor; is that right?

14 A. Penal misdemeanor, yes.

15 Q. And you have to fill out the UF 250 even if you end up
16 arresting the person; isn't that right?

17 A. Can you repeat the question.

18 Q. At the conclusion of the stop, if you end up arresting the
19 person you still have to fill out a UF 250, correct?

20 A. Correct.

21 Q. But if you stop a person and end up writing a summons, you
22 don't have to fill out a UF 250, correct?

23 A. No. Correct.

24 Q. Even if the stop begins with reasonable suspicion?

25 A. Can you repeat -- can you go back. Sorry.

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1 Q. So -- let me rephrase.

2 If you stop a person for reasonable suspicion but end
3 up writing a summons, you don't have to fill out a UF 250,
4 correct?

5 A. Depends on the situation. If I gonna write a summons, I
6 have probable cause, that I will serve the violation, and then
7 I write a summons. If I don't see no violation, I just write
8 the 250.

9 Q. Okay. And you've received training on that UF 250 form,
10 correct?

11 A. Correct.

12 Q. And that includes training on what the different boxes
13 mean, right?

14 A. Yes.

15 Q. Some of the training on the UF 250 form included training
16 at roll call, correct?

17 A. Yes.

18 Q. And that included training on the meaning of a furtive
19 movement, correct?

20 A. Correct.

21 Q. And you were trained that if you see movement that the
22 person is making that catches your attention that he is about
23 to commit a crime or something, that would be a furtive
24 movement, correct?

25 A. Depend what kind of movement.

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D3R9FLO5 Pichardo - direct

1 Q. Well if it's movement that catches your attention?

2 A. Yeah, that caught my attention, yeah.

3 Q. Correct?

4 To your knowledge have you ever been investigated by
5 the office of the chief of department for an unlawful stop?

6 A. I don't remember right now. I cannot remember that.

7 Q. Do you remember ever being interviewed by an officer from
8 the office of the chief of department for an unlawful stop?

9 A. I can't remember that.

10 Q. Is that a I can't remember ever being interviewed?

11 A. I've been interviewed but I can't remember what -- what
12 kind of situation it was.

13 Q. So you don't recall ever being interviewed for an office of
14 the chief of department investigation for an unlawful stop,
15 correct?

16 A. Correct. I can't remember that.

17 Q. Okay. And you don't know of any complaints -- and you
18 don't know of any complaints that have been made against you
19 for unlawful stops, do you?

20 A. I learned that I got investigated for one.

21 Q. Do you remember what year that was?

22 A. I can't remember the year.

23 Q. But you don't remember ever being interviewed in connection
24 with that complaint, do you?

25 A. I can't remember that.

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1 Q. Okay. And your supervisor expected two felony arrests for
2 each month, correct?

3 A. Can you repeat the question.

4 Q. Your supervisor expected two felony arrests for each month,
5 correct?

6 A. Yeah. They were expecting that in 2009. Yes.

7 Q. And your supervisor also expected a certain number of
8 UF 250s, depending on the crime conditions each month, correct?

9 A. Correct. In 2009.

10 Q. So for example in May 2009 your supervisors expected you to
11 do more than two UF 250s, correct?

12 A. Can you repeat that question. Sorry.

13 Q. Sure. In May 2009 your supervisors expected you to do more
14 than two UF 250s, correct?

15 A. When I was in crime? They was expecting for something.
16 But I can't remember what was the number.

17 Q. But there was a number that they expected, correct?

18 A. Back in 2009.

19 Q. I'm going to show you a copy of your deposition -- actually
20 you have a copy of your deposition in front of you, right?

21 A. Yes.

22 MS. HOFF VARNER: I'm sorry. I thought you had one.
23 Let me just give it to you right now.

24 Sorry. That wasn't a trick question.

25 Q. So that's a copy of your deposition, correct?

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Pichardo - direct

1 A. Correct.

2 Q. I want you to turn to page 136 -- actually 138. I
3 apologize.

4 Do you see line 13, page 138?

5 A. Yes.

6 "Q. Earlier you said you -- I don't want to misspeak. Earlier
7 I asked, I said when you talked to your supervisor about how
8 many UF 250s you were supposed to do in a month, does he or she
9 ever talk to you about the number you were supposed to do? You
10 said they expect numbers. I'm having a hard time understanding
11 what you mean by they expect numbers.

12 "A. Like that -- like last month, the crime went a little bit
13 higher so they expect us to do at least more than two UF 250s."

14 Did I read that correctly?

15 A. Yes.

16 Q. And by last month -- the deposition was taken in June,
17 right?

18 A. Yes, ma'am.

19 Q. So by last month that would have meant May 2009, correct?

20 THE COURT: I'm sorry. Did you get -- you're
21 checking.

22 THE WITNESS: Yes, ma'am.

23 Yes.

24 Q. You also testified that you have to show that you're
25 working in a given area when you're on anticrime, correct?

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D3R9FLO5

Pichardo - direct

- 1 A. Correct.
- 2 Q. And you show your supervisors that you're working by doing
- 3 arrests and UF 250s, correct?
- 4 A. Correct.
- 5 Q. Every month your supervisor reviews your monthly activity,
- 6 correct?
- 7 A. Correct.
- 8 Q. And your supervisor didn't discuss the number of UF 250s
- 9 with you, did he?
- 10 A. No.
- 11 Q. And that's because you always do your job, correct?
- 12 A. Yes, ma'am.
- 13 Q. So your supervisor wasn't asking you for numbers, right?
- 14 A. He was asking for numbers. He was expecting for numbers
- 15 but I -- I'm a worker officer, so I --
- 16 Q. So you were meeting his expectations?
- 17 A. Yes.
- 18 Q. And by meeting his expectations you mean that you were
- 19 performing arrests and UF 250s, correct?
- 20 A. Correct.
- 21 Q. So let's go back to when you were in operation impact.
- 22 That was right after you graduated from the police academy,
- 23 correct?
- 24 A. Correct.
- 25 Q. That was for a period of about six months, right?

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Pichardo - direct

- 1 A. Yes.
- 2 Q. During operation impact you don't recall any training on
3 stop and frisk, correct?
- 4 A. I remember. I remember. I do remember.
- 5 Q. You do remember training on stop and frisk?
- 6 A. Yes.
- 7 Q. I'd like you to look at your deposition, page 114. I'll
8 represent that this is in the context of -- I'm sorry. Are you
9 at the right page?
- 10 A. Yes.
- 11 Q. So look at line 8. And I'll represent that this is in the
12 context of operation impact.
- 13 "Q. Was there ever training done on stops and frisk?
14 Mr. Hayes, an objection.
- 15 "A. I can't remember that.
- 16 "Q. Do you remember if the sergeants ever during a roll call
17 talked about stops and frisks?
- 18 "A. I can't remember that time."
19 Did I read that correctly?
- 20 A. Yes, ma'am.
- 21 Q. And so you actually don't remember if the sergeants during
22 a roll call stopped -- talked about stop and frisk, do you?
- 23 A. I remember now.
- 24 Q. You remember now?
- 25 A. Yes.

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D3R9FLO5 Pichardo - direct

- 1 Q. But you didn't remember in 2009, correct?
2 A. I couldn't remember. Yes.
3 Q. You did UF 250s more frequently when you were in operation
4 impact than you did on regular patrol, correct?
5 A. I cannot -- have to compare the numbers. I don't --
6 Q. You don't know?
7 A. I don't know what happened.
8 Q. So if you look at your deposition, page 144, lines 6
9 through 10.
10 "Q. What about comparing regular patrol to when you were in
11 operation impact? Did you do UF 250s more frequently when you
12 were in operation impact?
13 "A. Yes."
14 Did I read that correctly?
15 A. Yes.
16 Q. So at least in 2009 you knew that you did UF 250s more
17 frequently in operation impact than in regular patrol, correct?
18 A. Correct.
19 Q. You're also familiar with a program called impact overtime,
20 correct?
21 A. Correct.
22 Q. And that's different from operation impact, right?
23 A. Yes.
24 Q. So impact overtime is a special overtime tour, correct?
25 A. Correct.

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D3R9FLO5 Pichardo - direct

- 1 Q. And while on impact overtime you're also supervised by a
2 sergeant, correct?
3 A. Correct.
4 Q. Impact overtime tours are different from your regular
5 assignment, correct?
6 A. Correct.
7 Q. So you would have a different tour, different times,
8 different supervisor, correct?
9 A. Correct.
10 Q. On the night of January 12, 2008 you were assigned to an
11 impact overtime tour, correct?
12 A. Yes.
13 Q. And sergeant Julio Agron sometimes supervises you in impact
14 overtime, correct?
15 A. Correct.
16 Q. During the roll call for the impact overtime tour your
17 supervising sergeant asked you for numbers, didn't he?
18 A. I can't remember that but they always ask for numbers at --
19 but I can't remember that if he told me that.
20 Q. But in general --
21 A. Back in 2009.
22 Q. So as of 2009, in general, impact overtime sergeants always
23 asked you for numbers, correct?
24 A. They asked for numbers back in 2009, yes.
25 Q. And, in fact, they usually asked for five summonses,

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D3R9FLO5 Pichardo - direct

1 correct?

2 A. That's depending on the situation.

3 Q. But in general the number was five, right?

4 A. Approximately, yes.

5 Q. So when you were out on your impact overtime tour on
6 January 12, 2008 you were looking for summonses, correct?

7 A. Yes, ma'am.

8 Q. Specifically quality of life summonses?

9 A. Yes, ma'am.

10 Q. When you stopped Mr. Deon Dennis on the night of
11 January 12, 2008, correct?

12 A. Correct.

13 Q. You don't remember the time exactly, do you?

14 A. Approximately 11:00 p.m.

15 Q. And you were with Officer Salmeron, correct?

16 A. Yes.

17 Q. And it was on 7th Avenue, correct?

18 A. Correct.

19 Q. And you were at least two car lengths away from Mr. Dennis
20 when you saw him, correct?

21 A. Approximately, yes.

22 Q. You don't recall whether there was a parked car on the
23 street in front of where Mr. Dennis was standing, do you?

24 A. My vision was clear. I can't remember nothing like
25 blocking my vision. I can't recall any cars. I can see the

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D3R9FLO5 Pichardo - direct

1 defendant.

2 Q. Mr. Dennis was standing on the sidewalk, correct?

3 A. Correct.

4 Q. And according to you he was approximately two feet or less
5 away from the door of the building, correct?

6 A. Approximately, yes.

7 Q. And Mr. Dennis was kind of leaning or standing against a
8 wall, correct?

9 A. Correct.

10 Q. You don't recall who actually asked Mr. Dennis for his
11 identification, do you?

12 A. I can't recall that.

13 Q. But you do remember that Mr. Dennis provided you with his
14 driver's license, correct?

15 A. Correct.

16 Q. And he did that by reaching into his pocket, correct?

17 A. I can't remember if his wallet, I can't remember that, but
18 he produced an ID.

19 Q. Mr. Dennis wasn't free to leave during his encounter with
20 you, was he?

21 A. No.

22 Q. You didn't have any basis to believe that Mr. Dennis had a
23 weapon, did you?

24 A. No.

25 Q. At some point Mr. Dennis' girlfriend arrived on the scene,

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D3R9FLO5 Pichardo - direct

1 correct?

2 A. Correct.

3 Q. But you don't remember where she came from, do you?

4 A. I think she came out from the building.

5 Q. But you don't remember, correct?

6 MR. MARUTOLLO: Objection. He just answered.

7 THE COURT: You're -- you think -- you said: I think
8 she came out of the building. Do you remember for certain?

9 THE WITNESS: Yeah. She came out from the building.

10 Q. Okay. So if you look at page 229 of your deposition.
11 Are you on page 229?

12 A. Yes, ma'am.

13 Q. Lines 13 through 16.

14 "Q. Did she come from inside the building?

15 "A. I can't remember but I remember she came."

16 THE COURT: But I remember she came?

17 MS. HOFF VARNER: Yes.

18 Q. Did I read that correctly?

19 A. Yes, ma'am.

20 THE COURT: But now you're sure she came from the
21 building?

22 THE WITNESS: Yes.

23 THE COURT: So you weren't sure then.

24 Okay. All right.

25 Q. You just testified that while on impact overtime your

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D3R9FLO5 Pichardo - direct

- 1 supervisor generally asked you for five summonses, correct?
2 A. Approximately, yes, correct.
3 Q. And on the night of January 12 you were planning to give
4 Mr. Dennis a summons for open container, correct?
5 A. Correct.
6 Q. But you didn't give him a summons, did you?
7 A. No. Because the defendant, he has an open -- an active
8 warrant.
9 Q. So instead of giving him a summons you arrested him,
10 correct?
11 A. Yes, ma'am.
12 Q. You don't know of any New York police department procedure
13 or regulation that prevents someone from both getting a summons
14 and being arrested, correct?
15 A. Can you repeat that question.
16 Q. You don't know of any New York police department procedure
17 or regulation that prevents someone from getting a summons and
18 being arrested, correct?
19 A. Correct, yeah.
20 Q. The charge for which you arrested Mr. Dennis was open
21 container, correct?
22 A. And for the active warrant.
23 Q. Ordinarily when you arrest someone for a crime that
24 involves alcohol you would voucher the alcohol, right?
25 A. Yes, ma'am.

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D3R9FLO5 Pichardo - direct

1 Q. You saw Mr. Dennis holding a cup, correct?

2 A. A plastic cup, yes.

3 Q. But you didn't take the cup from Mr. Dennis at any point,
4 did you?

5 A. I remember that I smelled the cup. I smelled liquor.

6 Q. But you didn't take the cup with you, did you?

7 A. I can't remember that. I know I smelled the alcohol, the
8 cup.

9 Q. Right. But that's not my question.

10 My question is after you arrested Mr. Dennis, you
11 didn't take the cup with you?

12 A. As evidence?

13 THE COURT: Right.

14 THE WITNESS: No.

15 Q. And you testified that there was a bottle on the ground
16 next to Mr. Dennis, correct?

17 A. Correct.

18 Q. You didn't take that bottle with you, did you?

19 A. No.

20 Q. You didn't put it in an evidence bag?

21 A. No.

22 Q. You didn't voucher it?

23 A. No.

24 Q. And you never went back afterwards to retrieve the bottle,
25 did you?

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Pichardo - direct

1 A. No.

2 Q. You never went back afterwards to retrieve the cup, did
3 you?

4 A. No.

5 Q. Isn't it true that ordinarily when you make an arrest you
6 have to speak with the assistant district attorney?

7 A. Yes, ma'am.

8 Q. And that's to fill out a criminal complaint, correct?

9 A. Yes, ma'am.

10 Q. You were never contacted by the district attorney's office
11 to do a criminal complaint against Mr. Dennis, were you?

12 A. I was not the arresting officer at the time.

13 Q. Even though you were the one who actually took him into
14 custody?

15 A. Yes.

16 Q. And you actually never spoke to the district attorney with
17 respect to the charges against Mr. Dennis did you?18 MR. MARUTOLLO: Objection, your Honor. This goes
19 beyond the scope of the stop.20 MS. HOFF VARNER: Your Honor, I think it impeaches the
21 basis for the stop. They've argued that they stopped him
22 because they wanted to give him a summons or arrest him for
23 open container.24 THE COURT: The latter, not the warrant. They didn't
25 know anything about the summons then.

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1 MS. HOFF VARNER: Well they intended to give him a
2 summons.

3 THE COURT: They didn't know anything about the
4 warrant.

5 MS. HOFF VARNER: You're right. They didn't know
6 anything about the warrant.

7 THE COURT: So where are we?

8 MS. HOFF VARNER: So I'm just establishing that
9 Officer Pichardo never spoke with the ADA and that he was never
10 involved in a criminal complaint against Mr. Dennis.

11 THE COURT: I don't see the relevance at all. What
12 does that have to do with the stop?

13 MS. HOFF VARNER: The arrest was for open container.
14 Officer Pichardo never spoke with the ADA to actually prosecute
15 the charges for open container.

16 THE COURT: So what.

17 MS. HOFF VARNER: Which impeaches the basis for
18 probable cause to arrest.

19 THE COURT: No, it doesn't. No.

20 How much more is his direct?

21 MS. HOFF VARNER: Probably another 20 minutes.

22 THE COURT: Oh, gosh. All right. We'll have to
23 reconvene tomorrow. I thought we'd finish the direct today but
24 apparently not. So we'll have to start again tomorrow at
25 10:00. We're finished for the day. See you tomorrow.

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1 on that. Half a day.
2 MR. MOORE: I'll be here on Friday.
3 (Adjourned to March 28, 2013 at 10:00a.m.)
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