

# **EXHIBIT D**

**CORRECTIONS TO SUMMARIES OF CASES LISTED IN GROSSMAN DECLARATION (DKT # 180), EX A.<sup>1</sup>**

Cases Listed on pp. 1-5 of Grossman Decl. Ex. A In Which Defendants Claim Courts Determined that Officers Stopped a Defendant With Reasonable Suspicion Based Only On One “Conditionally Justified” Circumstance Listed on Page One of NYPD UF-250

| CASE  | Carrying Objects in Plain View Used in Commission of Crime | Fits Description | Actions Indicative of Acting as a Lookout | Suspicious Bulge / Object | Furtive Movements | Clothes / Disguise Commonly Used in Crime | Stop Factors Present in Case But Omitted from Grossman Decl. Ex A. |
|---|--|------------------|---|---------------------------|-------------------|---|--|
| <p><b>People v. Jenkins, 209 A.D.2d 164 (N.Y. App. Div. 1994)</b> Court affirmed that defendant was stopped based on reasonable suspicion when plainclothes officers on patrol directed defendant to stop and to show his hands after the officers had made eye contact with defendant and, in response, defendant had turned away, began to behave nervously, reached into his waistband and removed a dark object and tossed it into a pile of trash bags.<br/> <b>Correction: the court ruled that the furtive movement by itself, gave officers founded suspicion of criminal activity, which is a lower standard than reasonable suspicion, and which only permitted the officers to conduct a common law right of inquiry, not a stop-and-frisk. Only after the officers observed the suspect pull a suspicious</b></p> |  |                  |   |                           | X                 |   | Suspicious Object (dark object in suspect's waistband)             |

<sup>1</sup> The Grossman Caselaw Chart addresses 43 cases, which fall into four groups: (1) cases that are irrelevant because they concern stop category combinations (one or more conditional CS plus High Crime Area), which Fagan classified as Justified; (2) cases that are irrelevant because they concern combinations of two or more conditional CSs that, with the correction of the coding error (see Pl. Mem. at 9-10), Fagan classifies as Justified; (3) cases cited in Fagan's Appendix D; and (4) all the other cases. Cases in Groups (1) and (2) -- which concern stops classified as Justified -- need not be addressed at all. Cases in Group (3) are addressed in Plaintiff's accompanying memorandum of law. This chart addresses and corrects only the 13 cases in Group (4).

| CASE  | Carrying Objects in Plain View Used in Commission of Crime | Fits Description | Actions Indicative of Acting as a Lookout | Suspicious Bulge / Object | Furtive Movements | Clothes / Disguise Commonly Used in Crime | Stop Factors Present in Case But Omitted from Grossman Decl. Ex A.   |
|---|--|------------------|---|---------------------------|-------------------|---|--|
| <p>object from his waistband did the officers have the requisite reasonable suspicion to conduct a stop-and-frisk.</p>  |  |                  |   |                           |                   |   |  |
| <p><u>People v. Peques, 208 A.D.2d 773 (N.Y. App. Div. 1994)</u> Court affirmed that officers had reasonable suspicion to stop and frisk defendant when defendant, who was observed driving erratically before pulling into a parking spot, was unwilling to exit the automobile when approached by officers and instead reached under the seat.</p>  |  |                  |   | X                         |                   |   | <p>“Other” Stop Factors (erratic driving and refusal to comply with officer’s directive to exit vehicle)</p> |
| <p><u>People v. Arps, 293 A.D.2d 260 (N.Y. App. Div. 2002)</u> Court affirmed that an officer had reasonable suspicion to stop defendant when officer observed a bulge in defendant’s waistband, as well as what appeared to be the protruding handle of a gun.</p>   |  |                  |   | X                         |                   |   | <p>Carrying object in plain view used in commission of a crime (protruding handle of a gun)</p>              |
| <p><u>People v. Goings, 41 N.Y.2d 759 (1977)</u> Court reversed and remanded, finding that officer’s observations of defendant with a bulge in his right-hand jacket pocket which struck the officer as having the configuration and outline of a gun warranted the officer’s belief that defendant was carrying a gun and ensuing frisk.<br/> <b>ADDITIONAL FACTS:</b> Stop was made by an NYPD Street Crimes Unit Officer patrolling in what was at the time (mid-1970’s)</p> |  |                  |   | X                         |                   |   | <p>High Crime Area</p>   |

| CASE  | Carrying Objects in Plain View Used in Commission of Crime | Fits Description | Actions Indicative of Acting as a Lookout | Suspicious Bulge / Object | Furtive Movements | Clothes / Disguise Commonly Used in Crime | Stop Factors Present in Case But Omitted from Grossman Decl. Ex A.  |
|---|--|------------------|---|---------------------------|-------------------|---|---|
| <p>a high-crime area of New York City. See also Charney Decl (Dkt # 132) Ex. 86 at 8, Ex. 117 at vii, 59-61, 107-109</p>  |  |                  |   |                           |                   |   |   |
| <p><b>People v Fernandez, 16 N.Y.3d 596 (2011)</b> Court affirmed finding that officer had reasonable suspicion to believe that defendant possessed an illegal weapon, and therefore was authorized to conduct a stop and frisk, when officer observed, in plain view, the "head" of a knife clipped to and sticking out of defendant's pocket from ten to fifteen feet away, because the officer testified that based on his experience, gravity knives are commonly carried in a person's pocket, attached with a clip, with the "head" protruding.</p> | X  |                  |   |                           |                   |   |   |
| <p><b>People v Harris, 57 A.D.3d 1427 (N.Y. App. Div. 2008)</b><br/>Court affirmed that the police had reasonable suspicion to stop defendant when they encountered the suspects abandon their car and flee on foot, there were no other pedestrians in the area, there was minimal vehicular traffic, and defendant was dressed inappropriately for the extremely cold weather.</p>  |  |                  |   |                           | X                 |   | <p>"Other" stop factors (defendant's proximity to location where police observed suspects abandon their car and flee on foot)</p> |

Cases Listed on pp. 10-14 of Grossman Decl. Ex. A In Which Defendants Claim Courts Determined that Officers Stopped a Defendant With Reasonable Suspicion Based Only On One or More "Additional Circumstances" Listed on Page Two of NYPD UF-250

| CASE   | Report From Victim / Witness | Area has High Incidence of Rept'd Offense of Type Under Investig. | Time of Day, Day of Week, Season Corresponding to Reports of Criminal Activity | Suspect is Associating w/ Persons Known for Their CrimActiv. | Proximity to Crime Location | Evasive False or Inconsistent Responses to Officer's Questions | Changing Direction at Sight of Officer / Flight | Ongoing Investig | Sights & Sounds of Crim. Activ. | Stop Circumstances From P. 1 of UF250 That Were Present In Case But Omitted from Grossman Decl., Ex. A |
|--|------------------------------|---|--|--|-----------------------------|--|---|------------------|---------------------------------|--|
| <p><b>People v. Johnson, 22 A.D.3d 371 (N.Y. App. Div. 2005)</b> See also Johnson v. Artus, 2009 U.S. Dist. LEXIS 26534 (S.D.N.Y. Feb. 20, 2009) (report and recommendation of magistrate, denying habeas, adopted by <i>Johnson v. Artus</i>, 2009 U.S. Dist. LEXIS 44839 (SAS) (S.D.N.Y. May 28, 2009), for additional discussion of facts. Court affirmed holding that officers had reasonable suspicion upon which to stop and frisk defendant when defendant was in a high crime area and his clothing and physical characteristics fit an armed robber's description that was sufficiently specific, given the temporal and spatial factors.</p> | X                            | X   | X  |  | X                           |  |   | X                |                                 | Fit Suspect Description  |

| CASE   | Report From Victim / Witness | Area has High Incidence of Rept'd Offense of Type Under Investig. | Time of Day, Day of Week, Season Corresponding to Reports of Criminal Activity | Suspect is Associating w/ Persons Known for Their CrimActiv. | Proximity to Crime Location | Evasive False or Inconsistent Responses to Officer's Questions | Changing Direction at Sight of Officer / Flight | Ongoing Investig | Sights & Sounds of Crim. Activ. | Stop Circumstances From P. 1 of UF250 That Were Present In Case But Omitted from Grossman Decl., Ex. A |
|--|------------------------------|---|--|--|-----------------------------|--|---|------------------|---------------------------------|--|
| <p><b>United States v. Simmons, 560 F.3d 98 (2d Cir. 2009)</b> Court affirmed that officers had reasonable suspicion to stop defendant when responding to an anonymous 911 call of an assault in progress, possibly involving a weapon, and the officers own observations corroborated that <b>defendant matched the description of the suspect</b> and was present at the specified location along with a gathering of people, late night, and in a high-crime area, and when defendants behavior – walking towards officers with his hands in his pocket and non-compliance with the first order to stop – reinforced the officers' determination that he may have been involved in criminal activity.</p> | X                            | X   | X  |  | X                           |  |   |                  | X                               | Fit Suspect Description and furtive movement   |

| CASE   | Report From Victim / Witness | Area has High Incidence of Rept'd Offense of Type Under Investig. | Time of Day, Day of Week, Season Corresponding to Reports of Criminal Activity | Suspect is Associating w/ Persons Known for Their CrimActiv. | Proximity to Crime Location | Evasive False or Inconsistent Responses to Officer's Questions | Changing Direction at Sight of Officer / Flight | Ongoing Investig | Sights & Sounds of Crim. Activ. | Stop Circumstances From P. 1 of UF250 That Were Present in Case But Omitted from Grossman Decl., Ex. A |
|--|------------------------------|---|--|--|-----------------------------|--|---|------------------|---------------------------------|--|
| <p><b>United States v. Freeman, 2011 U.S. Dist. LEXIS 129257 (S.D.N.Y. Nov. 8, 2011)</b> Court held that officers had reasonable suspicion to stop defendant when police received late night anonymous 911 calls that were sufficiently reliable – caller called twice and the physical description (including clothing) provided was accurate, as was the report of defendants movements – of a man with a gun in a high crime area arguing with a woman, and when the defendant was the only person in the area matching the caller's description and his evasive behavior in response to statements by the police corroborated the anonymous tip that the suspect may have a gun.</p> | X                            | X   | X  |  | X                           |  | X   |                  |                                 | Fit Suspect Description  |

| CASE  | Report From Victim / Witness | Area has High Incidence of Rept'd Offense of Type Under Investig. | Time of Day, Day of Week, Season Corresponding to Reports of Criminal Activity | Suspect is Associating w/ Persons Known for Their CrimActiv. | Proximity to Crime Location | Evasive False or Inconsistent Responses to Officer's Questions | Changing Direction at Sight of Officer / Flight | Ongoing Investig | Sights & Sounds of Crim. Activ. | Stop Circumstances From P. 1 of UF250 That Were Present In Case But Omitted from Grossman Decl., Ex. A |
|---|------------------------------|---|--|--|-----------------------------|--|---|------------------|---------------------------------|--|
| <p><b>United States v. McCargo, 464 F.3d 192 (2d Cir. 2006)</b> Court affirmed that officers had reasonable suspicion that defendant was involved in criminal activity and therefore the stop of defendant was constitutional when officers responding to a 911 call for an attempted burglary (but that did not provide a suspect description) observed defendant walking alone in a high crime area at approximately 1:00 a.m., 200 feet from the crime scene. <b>ADDITIONAL FACT:</b> Suspect was staring so intently at the police cruiser at the scene of the crime that he did not notice the officers' cruiser as it approached him.</p> | <p>X</p>                     | <p>X</p>  | <p>X</p>   |  | <p>X</p>                    |  |   |                  |                                 | <p>Furtive movement</p>  |



| CASE  | Report From Victim / Witness | Area has High Incidence of Rept'd Offense of Type Under Investig. | Time of Day, Day of Week, Season Corresponding to Reports of Criminal Activity | Suspect is Associating w/ Persons Known for Their CrimActiv. | Proximity to Crime Location | Evasive False or Inconsistent Responses to Officer's Questions | Changing Direction at Sight of Officer / Flight | Ongoing Investig | Sights & Sounds of Crim. Activ. | Stop Circumstances From P. 1 of UF250 That Were Present In Case But Omitted from Grossman Decl., Ex. A |
|---|------------------------------|---|--|--|-----------------------------|--|---|------------------|---------------------------------|--|
| <p><b>United States v. Muhammad, 463 F.3d 115 (2d Cir. 2006)</b> Court held that officers had stopped defendant on the basis of reasonable suspicion and properly seized a rifle from defendant when a 911 caller provided a detailed description of the suspect and his attire, riding a bicycle at a certain location, that the suspect was carrying the gun out in the open, a negligible amount of time elapsed between the call and the officers' response, no one else was in the vicinity, the neighborhood had a high incidence of crime, and the suspect attempted to flee when the officers indicated their desire to speak with him.</p> | X                            | X   |  |  | X                           |  | X   |                  |                                 | Fit Suspect Description  |

| Stop Circumstances From P. 1 of UF250 That Were Present In Case But Omitted from Grossman Decl., Ex. A  | Sights & Sounds of Crim. Activ. | Ongoing Investig | Changing Direction at Sight of Officer / Flight | Evasive False or Inconsistent Responses to Officer's Questions | Proximity to Crime Location | Suspect is Associating w/ Persons Known for Their CrimActiv. | Time of Day, Day of Week, Season Corresponding to Reports of Criminal Activity | Area has High Incidence of Rept'd Offense of Type Under Investig. | Report From Victim / Witness | Stop Circumstances From P. 1 of UF250 That Were Present In Case But Omitted from Grossman Decl., Ex. A |
|---|---------------------------------|------------------|---|--|-----------------------------|--|--|---|------------------------------|--|
| <b>CASE</b><br><u>Sutton v. Duguid, 2007 U.S. Dist. LEXIS 35853 (E.D.N.Y. May 16, 2007)</u><br>Court held that defendants had reasonable suspicion to stop plaintiff based on the observed narcotics activity in a high crime area, plaintiff's proximity to the individual identified as involved in the sale of narcotics, and plaintiff's effort to walk away from the commotion as soon as it broke out.                  |                                 |                  | X   |  | X                           |  |  | X   |                              | Furtive movement   |
| <u>People v. Sierra, 83 N.Y.2d 928 (1994)</u> Court affirmed that officers were justified in stopping defendant on the belief that he was committing or about to commit a drug-related crime when defendant was observed in a high crime area calling "over here, over here" to a man exiting a parked vehicle with New Jersey license plates and promptly walk away upon spotting the police, refused to approach the police |                                 |                  | X   |  |                             |  |  | X   |                              | "Other" stop factor or Action indicative of engaging in a drug transaction                             |

| <p><b>CASE</b></p>   | <p>Report From Victim / Witness</p> | <p>Area has High Incidence of Rept'd Offense of Type Under Investig.</p> | <p>Time of Day, Day of Week, Season Corresponding to Reports of Criminal Activity</p> | <p>Suspect is Associating w/ Persons Known for Their CrimActiv.</p> | <p>Proximity to Crime Location</p> | <p>Evasive False or Inconsistent Responses to Officer's Questions</p> | <p>Changing Direction at Sight of Officer / Flight</p> | <p>Ongoing Investig</p> | <p>Sights &amp; Sounds of Crim. Activ.</p> | <p>Stop Circumstances From P. 1 of UF250 That Were Present In Case But Omitted from Grossman Decl., Ex. A</p> |
|--|-------------------------------------|--|---|---|------------------------------------|---|--|-------------------------|--|---|
| <p>vehicle and subsequently fled.<br/> <b>ADDITIONAL FACT:</b><br/>                     Neighborhood of New York City known as a "narcotics supermarket" for New Jersey residents.</p> |                                     |  |   |   |                                    |   |  |                         |  |   |