

ADMITTED TO PRACTICE IN:
NEW YORK; NEW JERSEY;
UNITED STATES SUPREME COURT;
U.S. COURTS OF APPEALS FOR THE
SECOND AND THIRD CIRCUITS;
U.S. DISTRICT COURTS FOR THE
DISTRICT OF CONNECTICUT,
NORTHERN DISTRICT OF FLORIDA,
NORTHERN DISTRICT OF ILLINOIS,
DISTRICT OF NEW JERSEY, AND
NORTHERN, SOUTHERN & EASTERN
DISTRICTS OF NEW YORK; U.S.
COURT OF INTERNATIONAL TRADE;
U.S. COURT OF FEDERAL CLAIMS.

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October 1, 2013

The Honorable Pamela K. Chen
United States District Judge
United States District Court, E.D.N.Y
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Maloney v. Rice*, CV-03-0786
FILED VIA ECF

Dear Judge Chen:

I am the *pro se* plaintiff in the above-captioned matter, in which I have sought, thus far unsuccessfully but nonetheless diligently and at huge personal expense and effort over the past eleven years, a declaration that New York's *per se* ban of the martial arts weapon known as the nunchaku is unconstitutional to the extent that it defines and punishes as a crime the simple possession of nunchaku *within one's home* for martial arts practice and/or home defense. That the ban as enacted (and as it remains) may infringe the rights of martial artists was recognized by New York's own Division of Criminal Justice Services on the eve of its enactment, as evidenced by the memorandum to the office of the Governor in 1974, which comprises Exhibit 1 to the second amended complaint (Document 116-1 herein) and which pointed out that nunchaku have legitimate uses in karate and other martial-arts training, and opined that "in view of the current interest and participation in these activities by many members of the public, it appears unreasonable--and perhaps even unconstitutional--to prohibit those who have a legitimate reason for possessing chuka sticks [i.e., 'nunchaku' as linguistically altered by the legislature] from doing so." This case, however, is the only federal constitutional challenge that has ever been brought against New York's complete and unconditional ban of nunchaku in the nearly four decades that have passed since that memorandum (which urged veto of the ban) was submitted.

But in recent years I and other New Yorkers have been prosecuted for the simple possession of "chuka sticks" in our homes absent any allegation whatsoever of intent to use the instrument to harm or threaten anyone.¹

¹ Indeed, in one such prosecution, which was initiated in or about January 2003, the nunchaku were found in a closet after Suffolk County police executed a surprise search on a home where drug traffic had been suspected because of frequent comings and goings by members

The long procedural history of this case, which includes its having reached the United States Supreme Court and there been reinstated and remanded, will be omitted here, except to note that following remand the undersigned sought to add causes of action arising out of an unlawful and injurious disclosure made at page 6 of Defendant RICE's Appellee's Brief dated October 24, 2007, and filed on October 25, 2007, in the United States Court of Appeals for the Second Circuit, which disclosed that "Plaintiff was listed on the New York State Child Abuse and Maltreatment Register." A true copy of that entire brief was annexed as Exhibit 1 to Plaintiff's declaration in support of the motion to amend. See Document 102-1, particularly page 6 (pdf 11 of 30).

Although I had repeatedly petitioned RICE to withdraw the brief, and specifically the disclosure that "Plaintiff was listed on the New York State Child Abuse and Maltreatment Register," and although I informed her that such disclosure was illegal under subdivision 12 of § 422 of the Social Services Law and subdivision 1 of § 195.00 of the Penal Code, RICE permitted it to stand, even after my listing on the New York State Child Abuse and Maltreatment Register was expunged in September 2008 following an administrative hearing and RICE was advised of this fact. In or about May 2009, RICE's brief became available to the public via Westlaw®, making it widely available to the public.

I have made diligent efforts to conduct discovery relevant to the new cause of action, but have not been permitted to depose RICE. See Documents 120 through 125 herein.

Attached hereto as Exhibit 3 is the last communication I sent to the Defendant's counsel in this matter, which was sent by Certified Mail and to which I have never received any response whatsoever.

But for the new cause of action, this matter would have proceeded much more swiftly. However, I am at a loss as to how to proceed if I cannot even depose the Defendant and if no one else with knowledge (if indeed any such person other than RICE herself does have such knowledge) is proffered.

I would welcome a conference with the Court, and indeed respectfully request one before this matter is dismissed after the many hours of effort that I have put into the case solely on the constitutional issue, for which, as a *pro se* litigant, I will obviously never be compensated.

of the public. Although no drugs were found (the frequent comings and goings being the consequence of an Avon business run from the home), the nunchaku provided a basis to prosecute the head of that household for some three years. See Exhibit 1 attached hereto (true copy of federal pleading setting forth above-described facts). In the most recent such prosecution, the nunchaku were seen by police officers on display on a "display shelf" in the defendant's home when they appeared with a warrant to arrest him on a criminal contempt charge. Although that defendant was acquitted of the criminal contempt charges, he was convicted of the misdemeanor of possession of "chuka sticks." See Exhibit 2 attached hereto (true copy of state-court trial transcript), particularly pages 34 and 115.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X Case No. CV 06 0320
MARITZA SOSTRE for herself and as (LDW)(ETB)
mother and natural guardian of
ASHLEY SOSTRE, ARAMIS JAMES SOSTRE
and MIRANDA SOSTRE; MARGARITA CINTRON,
ARAMIS SOSTRE,

Plaintiffs

-against-

COUNTY OF SUFFOLK, DETECTIVE MIKE
O'CONNOR, "JOHN DOE #1" (being chubby
mustached detective with Detective
O'Connor on 1/25/03), DETECTIVE JOHN
A. NEWTON, Shield #1096, "JOHN DOE #2"
(being another detective who was with
Detective O'Connor on 1/25/03), "JOHN
DOE #3" (being another detective who
was with Detective O'Connor on 1/25/03);
"JOHN DOE #4 through #8 (being members
of the Emergency Response Team who
responded to plaintiffs' home on
1/25/03; "JANE DOE", being a female
officer of the K-9 Unit who responded
to plaintiffs' home on 1/25/03,

Defendants

-----X AMENDED COMPLAINT

Plaintiffs, by their attorney, K.C. OKOLI, ESQ., complaining
of the defendants herein, state and allege upon information and
belief as follows:

JURISDICTION AND VENUE

1. Jurisdiction is founded upon the existence of a Federal

Question.

2. This action is brought pursuant to the Civil Rights Acts, 42 U.S.C. §1983 and 42 U.S.C. §1985. The jurisdiction of the Court is invoked to secure the protection, and redress the deprivation of rights guaranteed to persons by the Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States.

3. The jurisdiction of the Court over these claims is founded on 28 U.S.C. §§1331 and 1343.

4. Venue is proper in this district, based upon the fact that the events or omissions giving rise to the claims asserted herein occurred within the district.

5. At all times herein mentioned, the individual police defendants were acting under color of law, and were acting within the scope of their employment as agents and employees of the County of Suffolk.

SUPPLEMENTAL JURISDICTION

6. This court has supplemental jurisdiction over the state causes of action pleaded herein.

8. A Notice of Claim was duly served on behalf of Aramis Sostre on May 23, 2006, within 90 days of the accrual of his claim.

9. More than 30 days have elapsed since service of the

Notice of Claim and the defendants have not adjusted or settled the claim.

10. Plaintiffs also seek to recover damages for the wrongful conduct of the defendants described herein.

PARTIES

11. At all times herein mentioned, plaintiff MARITZA SOSTRE ("SOSTRE"), who is Hispanic, was a resident of the County of Suffolk, State of New York.

12. SOSTRE is the mother and natural guardian of ASHLEY, ARAMIS JAMES and MIRANDA, and claims both for herself and on their behalf.

13. At all times herein mentioned, ASHLEY, ARAMIS JAMES and MIRANDA, were minor children residing in the County of Suffolk, State of New York.

14. At all times herein mentioned, plaintiff MARGARITA CINTRON ("CINTRON"), who is Hispanic, was a resident of the County of Suffolk, State of New York.

15. At all times herein mentioned, plaintiff ARAMIS SOSTRE ("ARAMIS"), who is Hispanic, was a resident of the County of Suffolk, State of New York.

16. At all times herein mentioned, all the plaintiffs resided at 40 Doolittle Street, Town of Brentwood, County of Suffolk, State of New York.

17. The County of Suffolk ("COUNTY", "SUFFOLK" or "Suffolk County") is a municipality organized under and by virtue of the laws of the State of New York.

18. Upon information and belief, at all times mentioned herein, DETECTIVE MIKE O'CONNOR ("O'CONNOR") was a police detective employed by Suffolk County.

19. Upon information and belief, at all times mentioned herein, DETECTIVE JOHN A. NEWTON ("NEWTON") was a police detective employed by Suffolk County.

20. Upon information and belief, at all times mentioned herein, JOHN DOE #1 was a police detective employed by Suffolk County.

21. Upon information and belief, at all times mentioned herein, JOHN DOE #2 was a police detective employed by Suffolk County.

22. Upon information and belief, at all times mentioned herein, JOHN DOE #3 was a police detective employed by Suffolk County.

23. Upon information and belief, at all times mentioned herein, JOHN DOE #s4-8 were members of the police emergency response team, and agents of Suffolk County.

24. Upon information and belief, at all times mentioned herein, JANE DOE was a female police officer employed by the K-9 Unit of Suffolk County Police Department, and an agent of Suffolk

County.

FACTUAL BACKGROUND

25. On January 25, 2003, at about 8:45 P.M., plaintiffs were lawfully in their home at 40 Doolittle Street aforesaid.

26. SOSTRE, who had just undergone eye surgery, was sitting in her living room with her husband, ARAMIS, having a conversation as they watched television.

27. At the aforementioned time, CINTRON was in her basement apartment at 40 Doolittle Street, aforesaid.

28. At said time, the minor plaintiffs, ASHLEY SOSTRE, ARAMIS JAMES SOSTRE and MIRANDA SOSTRE, were upstairs having their shower in readiness to turn in for the night.

29. Without any warning at all, O'CONNOR, NEWTON and some of the JOHN DOES, broke through the front door of the plaintiffs' home into the family living room where SOSTRE and ARAMIS were.

30. As the startled SOSTRE and ARAMIS jumped up from their sofa and asked, "What's going on?", some of said defendants, who were fully armed, began to run upstairs while some ran down into the basement, where CINTRON's apartment was located.

31. As some of the defendants ran to other parts of the house, the others who remained in the family living room barked out orders to SOSTRE and ARAMIS, like "Sit down and shut up!", etc.

32. Meanwhile, the heavily armed defendants who ran upstairs had confronted the minor plaintiffs who were in various

stages of undress.

33. As a result of being caught literally with their "pants down", the minor plaintiffs hurriedly grabbed whatever they could lay their hands on to cover their nakedness.

34. The defendants who went down to the basement confronted plaintiff CINTRON and put the muzzle of their gun to her chest in a threatening manner.

35. CINTRON was terrified and confused by the actions of the defendants who did not tell her why they were in her apartment, or why they put an apparently loaded gun to her chest.

36. When it dawned upon SOSTRE and ARAMIS that these defendants were law enforcement officers, and not criminals, and that they were going to search the house, SOSTRE asked them for their search warrant which they never produced.

37. The defendants then began searching the plaintiffs' home for drugs.

38. Not long after, defendants brought the minor plaintiffs and CINTRON to join SOSTRE and ARAMIS in the family living room. Defendants then confined all the plaintiffs to the small living room space.

39. By this time, the defendants were cursing and screaming obscenities and profanities in the presence of the minor plaintiffs, and SOSTRE mildly told the defendants that her family did not use that kind of language, and appealed to the defendants to refrain from using foul language for the sake of her minor children. Defendants ignored SOSTRE and carried on.

40. At about this time, one of the detectives began playing with old chuka sticks which he found in one of the closets, stating to another, "Oh remember these?". When said detective got tired of playing with the chuka sticks, he returned them to the closet shelf where he found them.

41. O'CONNOR made many insulting and patronizing remarks about the plaintiffs including, "Your house is too neat, its too nice".

42. Plaintiffs overheard one of the defendants in their kitchen say to another, "Are they citizens?", and that other responded, "I don't know".

43. Another defendant took ARAMIS to the kitchen and asked him, "Aramis where were you born?", and ARAMIS responded, "Chicago, Illinois, American Hospital, 4:00 A.M.". Despite the obvious fact that Chicago, Illinois, is in the United States, the same detective went on: "Are you a citizen?"

44. SOSTRE was becoming irritated by the questions and actions of the defendants, and showed this by her body language even though she did not disrespect the defendants.

45. A detective told ARAMIS, "Tell me the truth, tell me where all the stuff that you have in this house is or we are going to start breaking down your sheet rock". The clear suggestion, from this detective's look and tone of voice and look, was that plaintiffs were hiding drugs in their home.

46. ARAMIS responded: "If you want to break the house, go ahead and do so. The only drugs we have in this house is Avon

products. You'll see empty boxes of Avon all over the house".

47. At all times herein mentioned, SOSTRE sold Avon products from her home at 40 Doolittle Street, and her numerous customers came there to make their purchases.

48. SOSTRE told the defendants that they had the wrong house, and that they were making a big mistake. O'CONNOR retorted that he had been watching plaintiffs' home (40 Doolittle Street) for sometime, and had done his homework well to know that plaintiffs were dealing drugs in the house.

49. Plaintiffs never sold and still do not sell any kind of drugs from their home at 40 Doolittle Street, Brentwood, New York.

50. The defendants searched the entire house, breaking down doors and closets, searching clothes, deliberately throwing clothing on the floor and stepping on same. They brought in a K-9 dog which they made go through the entire house for about two (2) hours.

51. As JOHN DOE#3 was searching a jacket in the living room closet, ARAMIS' coat fell on the floor and ARAMIS said to him: "Excuse me, you're stepping on my coat. I just got the coat for Christmas". JOHN DOE #3 looked down where he was standing on ARAMIS' coat and did not move or express any regrets.

52. The defendants were taunting plaintiffs and making fun many of the things which they found in the plaintiffs' home. The defendants were very rude and disrespectful to the plaintiffs.

53. At the end of their search, the defendants did not find

any drugs. They asked if there was a weapon in the house, and ARAMIS told them that there was a gun and where to find the gun in the house. The detectives retrieved the gun, and called in the serial number. It came back licensed, clean and not stolen.

54. SOSTRE and ARAMIS began to ask, to none of the defendants in particular, who was going to repair all the damage which the defendants had done to their home. Who was going to clean up the mess which they made.

55. At that point in time another detective stated, "We are going to take him [ARAMIS] in for possession of chucks", and they went to retrieve the old chuka sticks which they had earlier found in the closet. ARAMIS said something to the effect, "You gotta be kidding me. I've had those things since I was 15 years old. I don't even know how to use them. I just keep them for memory".

56. The defendants said it was illegal to possess those old chuka sticks. They arrested ARAMIS without an arrest warrant, and took him to the station house on account of old chuck sticks which had no connection with the search for drugs which they conducted in plaintiffs' home.

57. ARAMIS believes that the defendants arrested him and seized the old chuka stick which they found in his closet to intimidate him and silence him for questioning their conduct while conducting a search of his home.

58. Defendants did not repair any of the doors and property which they deliberately damaged on that day, neither did they

apologize to the plaintiffs for the trouble which they put them through.

59. At all times herein mentioned, the defendants were acting in concert with one another, and appeared to be acting at the direction of O'CONNOR.

60. The defendants, who unlawfully seized ARAMIS, caused him to be arraigned on February 1, 2003, on charges of criminal possession of a weapon (chuka stick) in the Fourth degree.

61. ARAMIS was released on the condition that he must continue to appear in court during the pendency of the charge against him, and would travel outside the jurisdictional reach of the court without permission. Failure to appear on any scheduled court date would result in ARAMIS' immediate arrest and incarceration.

COUNT I: 42 U.S.C. §1983 UNLAWFUL SEARCH & SEIZURE

62. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "61" as if fully set forth herein.

63. Upon information and belief, in order to secure the issuance of a search warrant for the home of the plaintiffs, without any reasonable or probable cause, the defendants falsely represented to a judge that drugs were being sold out of the plaintiffs' home.

64. Based upon the defendants' false representation regarding the sale of drugs, the court issued a search warrant to search plaintiffs' home for drugs and objects related to drug dealing. At no time did the court issue a warrant for the seizure of any item which was unrelated to plaintiffs' alleged drug activities, or the arrest or seizure of ARAMIS.

65. Specifically, the defendants did not seek a search warrant to enter plaintiffs' home on the suspicion that plaintiffs had chuka sticks in their home, or based upon a reasonable or probable cause that plaintiffs had unlawful possession of said chuka sticks. The seized chuka sticks were not described in either the application for the search warrant or in the search warrant issued.

66. The defendants had ample time and opportunity to seek a warrant to seize the chuka sticks which they found in plaintiffs' closet, but failed to do so.

67. It was not immediately apparent that the seized chuka sticks had anything to do with drug activities and they were not in "plain view" as that term is defined under New York or federal law.

68. By removing the old chuka sticks found in ARAMIS' home as they did, and seizing his person without an arrest warrant, the defendants violated ARAMIS' right under the Fourth Amendment to the U.S. Constitution.

69. Defendants further violated ARAMIS' Fourth Amendment rights by causing a criminal prosecution to be initiated and continued against him for the chuka sticks. Said violation continued until March 17, 2006, when ARAMIS was his case was adjourned in contemplation of dismissal.

70. Defendants further violated plaintiffs' civil and constitutional rights by confining them to their living room and restricting their movement for more than three hours, while the search was taking place.

71. By reason of the foregoing, plaintiffs have suffered loss and damage.

COUNT II: 42 U.S.C. §1983 EXCESSIVE FORCE

72. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "71" as if fully set forth herein.

73. Defendants deliberately damaged the home of the defendants, and used excessive and unnecessary force in conducting the search of defendants' home, including but not limited to breaking doors and property, and putting a loaded gun to the chest of CINTRON who was not resisting them, and did not pose any threat to the defendants.

74. By reason of the foregoing, plaintiffs have suffered loss and damage.

COUNT III: 42 U.S.C. 1983: ABUSE OF PROCESS

75. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "74" as if fully set forth herein.

76. On or about February 1, 2003, the defendants caused a criminal prosecution to be initiated against ARAMIS for criminal possession of a weapon in the Fourth Degree, based upon the old chuka sticks which were found in his home on or about January 25, 2003.

77. The aforesaid criminal prosecution was commenced because the plaintiffs took offense at the conduct of the defendants in their home, especially after the plaintiffs showed displeasure at the deliberate damage which was done to their property and the demeaning comments and questions from the defendants.

78. ARAMIS believes that the defendants, who came looking for drugs and found none, only arrested him because of plaintiffs' show of displeasure at the outrageous conduct of the defendants in plaintiffs' home.

79. The defendants initiated and continued the criminal prosecution of ARAMIS in the First District Court, Central Islip, from January 25, 2003 until March 17, 2006, when the prosecution was resolved by an adjournment in contemplation of dismissal.

80. ARAMIS made numerous court appearances in response to the aforesaid criminal prosecution by the defendants.

81. The defendants' purpose in prosecuting ARAMIS was

not to secure any criminal conviction, but to intimidate plaintiffs into silence for the defendants' aforesaid conduct in plaintiffs' home, and to prevent plaintiffs from pursuing the vindication of their civil and constitutional rights which were violated by the defendants.

82. The defendants did not seize the chuka sticks when they first discovered them, and did not indicate that they would arrest or file a criminal charge against ARAMIS for their presence in his home until plaintiffs showed their displeasure at the defendants' conduct.

83. The criminal abuse of process alleged by ARAMIS includes the initiation and continued pursuit of ARAMIS' prosecution for improper purposes until March 17, 2006.

84. By reason of the foregoing, plaintiff ARAMIS has suffered loss and damage.

COUNT IV: 42 U.S.C. §§1985(3),1983 & 1981

85. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "84" as if fully set forth herein.

86. Defendants conspired with one another, while on the plaintiffs' premises, to deprive plaintiffs of the equal protection of the laws, by unlawfully seizing chuka sticks from their home in violation of the State constitution.

87. In furtherance of said conspiracy, the defendants made

racially insensitive remarks in plaintiffs' home, and arrested ARAMIS for possession of said chuka sticks, on January 25, 2003, in violation of his Fourth Amendment rights.

88. As a further overt act of the conspiracy, defendants arrested ARAMIS because plaintiffs took exception to the deliberate stepping on ARAMIS' new coat. One of the defendants had played with the chuka sticks and placed same back where he got same, and only decided to charge ARAMIS with criminal possession of same after ARAMIS expressed his displeasure at said defendant deliberately stepping on his new coat.

89. Defendants further violated the plaintiffs' equal protection rights by unlawfully profiling them on the basis of their Hispanic origin and heritage.

90. By reason of the foregoing, plaintiffs have suffered loss an damage.

COUNT V: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

91. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "90" as if fully set forth herein.

92. The totality of defendants' aforementioned conduct including, their racially offensive remarks, total disrespect for plaintiffs in their own home, and insistence that plaintiffs' were dealing drugs from their home, without any probable cause to

so conclude, destruction of doors and other property, ransacking plaintiffs' apartment, attracting the attention of neighbors with the heavy presence of armed law enforcement personnel which gave the impression that plaintiffs were involved in serious criminal enterprise, was outrageous.

93. Said conduct went beyond all bounds of human decency, and is intolerable in any civilized society.

94. By reason of the foregoing, plaintiffs have suffered loss and damage.

95. Plaintiff demands trial by jury of all issues triable by jury.

WHEREFORE, plaintiffs pray for judgment against the defendants as follows:

- a) On Count I, Compensatory damages in the sum of Five Million Dollars (\$5,000,000.00), together with interest;
- b) On Count II, Compensatory damages in the sum of Five Million Dollars (\$5,000,000.00), together with interest;
- c) On Count III, Compensatory damages in the sum of Five Million Dollars (\$5,000,000.00), together with interest;
- d) On Count IV, Compensatory damages in the sum of Five Million Dollars (\$5,000,000.00), together with interest;
- e) On Count V, Compensatory damages in the sum of Five Million Dollars (\$5,000,000.00), together with interest;

- f) Punitive damages of Two Million Dollars (\$2,000,000.00);
- g) Reasonable Attorney's fees;
- h) Costs and disbursement of this action;
- i) Such further or other relief as the court may deem just and equitable.

Dated: New York, New York
July 14, 2006

/s/ K.C. Okoli

K.C. OKOLI, ESQ.
(KO 7222)
Attorney for Plaintiffs
330 Seventh Avenue
15th Floor
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(212) 564-8152

CHRISTINE MALAFI
SUFFOLK COUNTY ATTORNEY
Attorney for Defendants
By: Arlene S. Zwilling
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, New York 11788

CERTIFICATE OF SERVICE

This is to certify that on July 14, 2006, I served the foregoing AMENDED COMPLAINT by filing same via ECF which provides notification to ARLENE S. ZWILLING, Deputy County Attorney, Attorney for the defendants herein.

Dated: New York, New York
July 14, 2006

/s/ K.C. Okoli

K.C. OKOLI (KO-7222)

STATE OF NEW YORK
COUNTY COURT

COUNTY OF ST. LAWRENCE

THE PEOPLE OF THE STATE OF NEW YORK : Indictment
 : No. 2012-282
 - against - :
 :
 STEPHEN P. NUCCIO, :
 Defendant. :

ST. LAWRENCE COUNTY COURT
48 Court Street
Canton, New York 13617
June 25, 2013
JURY TRIAL

BEFORE:

HONORABLE KATHLEEN M. ROGERS

APPEARANCES:

FOR THE PEOPLE:
NICOLE DUVE', ESQ. District Attorney,
St. Lawrence County
BY: SLAVA MAREYEV, ESQ.
Assistant District Attorney

FOR THE DEFENDANT:
PETER A. DUMAS, ESQ.
455 East Main Street
Malone, New York 12953
(518) 483-8800

ALSO APPEARING:

TINA MARTINEAU, Court Assistant

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1 (Proceedings continued after untranscribed
2 jury selection and Court's opening jury colloquy.)

3 THE COURT: Then I will ask the Assistant
4 District Attorney to step up and be prepared to start
5 his statement as soon as they have their paper.

6 MR. MAREYEV: I have a gun and I'm going to
7 shoot you. Those are the words that this man, Stephen
8 Nuccio, the defendant, told Terry Johnson, May 5, 2012,
9 here in St. Lawrence County.

10 During the course of this trial, you are going
11 to hear from Terry Johnson, who is going to tell you
12 that on May 5, 2012, he was at his home, when he saw
13 the defendant. That they had a conversation and during
14 that conversation, defendant threatened to shoot Terry
15 Johnson.

16 You are also going to hear from Lisa Proven
17 and she is going to -- I anticipate she is going to
18 testify that she, on August 24, 2011, issued a no
19 contact Order of Protection directing this man to stay
20 away from Terry Johnson. That, in fact, defendant was
21 aware of that Order of Protection because he was
22 present in court when such order was issued.

23 And, on May 5, 2012, the defendant
24 intentionally violated that Order of Protection by
25 threatening to shoot Terry Johnson.

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1 Later, during this trial, you are going to
2 hear from members of the New York State police. I
3 anticipate you are going to hear that when they were
4 executing a warrant, in defendant's home, in St.
5 Lawrence County, the defendant was home and what they
6 found in his home was chuka sticks, also known as
7 nunchucks.

8 At the end of this trial, I will have an
9 opportunity to address you one more time. And during
10 that time, after hearing all of the evidence and seeing
11 all of the exhibits, I'm going to ask you to return a
12 verdict of guilty on two counts of first count being
13 Criminal Contempt, in the First Degree, and, the second
14 count being Criminal Possession of a Weapon, in the
15 Fourth Degree.

16 Thank you.

17 MR. DUMAS: Beyond a reasonable doubt. That
18 is the standard of proof here. Okay. We talked about
19 it yesterday. In fact, you all promised me that that
20 is the standard you would use. That is the standard
21 that you would hold the People to. Why? Because we
22 don't have the burden of proof. The defense, we don't
23 have to prove anything. It is their burden. They have
24 to prove it to you and not only do they have to prove
25 it to you, but it has to be of such a weight, such

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1 quality that it is beyond a reasonable doubt.

2 In other words, they have got to take that
3 evidence and they have got to pile it on that scale and
4 they have got to tip that scale, not just a little bit,
5 but beyond a reasonable doubt, that weight, that
6 quality of evidence.

7 What I want you to do is I want you to watch
8 these witnesses. You told me that you could test
9 someone's credibility. Well, they are going to be
10 right up here. Watch them. Do more than just watch.
11 See them. Listen to them. But do more than just
12 listen. Hear them.

13 I always used to get reprimanded in school,
14 when I was younger, you may be watching and you may be
15 listening, but you are not seeing and you are not
16 hearing, Peter Dumas.

17 Well, I am asking you to do just that. Listen
18 to it. Ask yourself, does anyone who gets on that
19 stand have a motive against Stephen to get Steve Nuccio
20 into trouble? Ask yourself that.

21 It is not going to be a long trial. Witness
22 lists are short. You are not going to hear from a lot
23 of people. But, at the end of this, I want you to ask
24 yourself, have they provided that weight, that quality
25 of evidence that proves this case beyond a reasonable

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1 doubt to you? Have they proven that he violated an
2 Order of Protection?

3 And, remember, these are two separate charges.
4 That Criminal Possession of a Weapon charge, that has
5 nothing do with a violation of an Order of Protection.
6 It is on another day altogether. They are going to
7 tell you, the Order of Protection happens first,
8 Criminal Possession of a Weapon charge happens later.

9 So, you are going to have to actually weigh
10 two charges separately. And remember what I asked you,
11 even if a charge has 99 elements or 100 elements to it,
12 each and every element has to be proven, beyond a
13 reasonable doubt.

14 So, I am going to ask you to be very focused
15 on that. And I'm going to ask you to take each element
16 of these crimes and the Judge is going to tell you what
17 the elements are. In fact, I think that the
18 instructions to you may be longer than most of the
19 witness testimony. But listen carefully to them
20 because this is a serious matter. We are talking about
21 a felony charge here and misdemeanor charge here. And
22 we have to have you taking this seriously, which I know
23 you will. You gave us the truthful answers yesterday,
24 you were the people out of that room that we choose.
25 You're a perfect jury for this case, like I was talking

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1 about. Why? Because we believe that you can listen to
2 the evidence. And we believe that you can follow the
3 law. And we believe that you are going to hold the
4 People to that high standard, beyond a reasonable
5 doubt. You are not going to speculate. You are not
6 going to guess. Probably isn't going to be good enough
7 for you. That proof is going to be beyond a reasonable
8 doubt. And if it is not, which we submit to you, it is
9 not going to be, we are going to ask you to come back
10 and find Stephen Nuccio not guilty.

11 Thank you.

12 THE COURT: Call your first witness.

13 Could I see counsel briefly at the bench.

14 (Bench conference held on the record with
15 counsel and defendant present.)

16 THE COURT: I am the only Judge in the
17 courtroom. She is Ms. Proven.

18 Thank you.

19 (Bench conference concluded.)

20 WHEREUPON, LISA PROVEN, called as a witness by
21 the People, having been first duly sworn, was examined
22 and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MAREYEV:

25 Q Good morning. Would you please state your full

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9

1 name for the record.

2 A Lisa Proven.

3 Q And Ms. Proven, where do you live?

4 A I live in Hammond, New York.

5 Q And are you employed?

6 A Yes.

7 Q And what do you do for a living?

8 A I have two jobs, I am a full-time attorney and
9 part-time town justice in Hammond, New York.

10 Q Let's talk about your justice job in Hammond, New
11 York. How long have you been doing that?

12 A This is my 24th year.

13 Q And would you please describe to the members of the
14 jury what does a town justice do?

15 A As town justice, we are the trier of fact, which
16 means we decide the vehicle and traffic cases, and we also
17 have town law cases that we decide. We arraign felony
18 cases. And we preside over jury trials in misdemeanor
19 cases.

20 Q Are you in your employment every day as a town
21 justice?

22 A No, we hold court one day a week. There are two
23 town justices and we alternate. So, I serve in court
24 alternate Thursdays.

25 Q Okay. I'm going to now direct your attention to

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1 August 24 of 2011.

2 A Yes.

3 Q Were you serving as town justice on that day?

4 A Yes.

5 Q And would you please describe to the jurors what
6 were you doing?

7 A On that day, we had some sentencings, some cases
8 that were on for sentencing. And there were some vehicle
9 and traffic cases.

10 Q Ms. Proven, do you know somebody by the name of
11 Stephen Nuccio?

12 A I have met him. We are not acquaintances -- I
13 guess we would be acquaintances and not friends.

14 Q And do you see Mr. Nuccio in the courtroom today?

15 A Yes, he is here.

16 Q Would you please point him out and describe him by
17 an article of clothing that he is wearing?

18 A He is at the defense table. He is wearing a
19 greenish shirt and blue jeans.

20 THE COURT: Let the record show she has
21 identified the defendant.

22 MR. MAREYEV: Your Honor, may I approach the
23 witness?

24 THE COURT: You may.

25 BY MR. MAREYEV:

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1 Q Ms. Proven, I am handing you over what has been
2 premarked for purposes of identification as People's Exhibit
3 One. Do you recognize what people's Exhibit One is?

4 A Yes, I do.

5 Q And would you please tell the members of the jury
6 what people's Exhibit One is?

7 A Exhibit One is an Order of Protection that I issued
8 on August 24, 2011.

9 Q Now, is this the original or a copy?

10 A This is a certified copy of the original.

11 Q Is this a true and accurate copy of the Order of
12 Protection that you issued on August 24 of 2011?

13 A Yes, there are some alterations. There is holes in
14 the top for it to be affixed to a file. And it is stamped
15 that it has been received by the St. Lawrence County
16 District Attorney's Office. Other than that, it would be an
17 accurate copy of what I have in my file in the Court.

18 MR. MAREYEV: Your Honor, at this time, People
19 move People's Exhibit One into evidence.

20 MR. DUMAS: Objection. Hearsay, your Honor.
21 I don't believe the proper foundation has been laid.

22 MR. MAREYEV: Your Honor, I disagree with Mr.
23 Dumas's objection. Ms. Proven testified that is a true
24 and accurate copy of the Order of Protection that she
25 issued and there is a certification.

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1 THE COURT: It is not being offered for the
2 truth of the statements in it, and, therefore, I
3 overrule the objection.

4 MR. MAREYEV: Thank you, your Honor.

5 (People's Exhibit Number One was received into
6 evidence.)

7 BY MR. MAREYEV:

8 Q Ms. Proven, is there a defendant's name on the
9 Order of Protection?

10 A Yes.

11 Q And would you please tell the members of the jury
12 what the name is?

13 A Stephen P. Nuccio.

14 Q And Ms. Proven, are there provisions in the Order
15 of Protection that direct defendant to do or not to do
16 something?

17 A Yes.

18 Q And would you please tell the members of the jury
19 what those provisions are?

20 A The Order of Protection is set up with a checklist
21 and some blanks. So, the first item that is checked is that
22 the defendant, Mr. Nuccio, is to stay away from Terry M.
23 Johnson, the home of Terry M. Johnson, the school of Terry
24 M. Johnson, the business of Terry M. Johnson, the place of
25 employment of Terry M. Johnson. The order also requires him

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1 to refrain from communication or any other contact by mail,
2 telephone, e-mails, voice mail, or other electronic or any
3 other means with Terry M. Johnson.

4 Q Now, Ms. Proven, did you sign the Order of
5 Protection?

6 A I did.

7 Q And Ms. Proven, do you remember if the defendant
8 was present in the courtroom when such order -- this order,
9 People's Exhibit One, was issued?

10 A He was.

11 Q And did you explain the terms of the Order of
12 Protection to the defendant on that day?

13 A I don't recall.

14 Q Is there a signature -- did defendant sign the
15 Order of Protection?

16 A Defendant signed and he was represented by an
17 attorney and I always have the attorney review the document
18 with the defendant. I don't recall personally explaining it
19 to him.

20 Q Okay.

21 MR. MAREYEV: I don't have any other questions
22 for this witness.

23 CROSS EXAMINATION

24 BY MR. DUMAS:

25 Q If I could take a look at that, please. May I

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14

1 approach, your Honor?

2 THE COURT: You may.

3 BY MR. DUMAS:

4 Q So, Ms. Proven, you don't actually recall
5 explaining this to Mr. Nuccio, correct?

6 A Correct. I don't recall much about what happened
7 that day.

8 Q Okay. Do you know what attorney he was represented
9 by at that point in time?

10 A No, not certain.

11 Q Okay. And you are saying that you had Stephen
12 Nuccio sign this, right?

13 A Yes, sir.

14 Q But, you are not aware of the attorney that was
15 with him, right?

16 A I'm not certain.

17 Q Okay. And you said that you always have an
18 attorney sit down with them and review the document, right?

19 A Yes.

20 Q With the person that is getting the Order of
21 Protection?

22 A That is correct.

23 Q Okay. But that is what you always do. But you
24 don't -- you are not aware if that happened in this case,
25 right?

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15

1 A I have never not done it, so, I am aware that it
2 has happened.

3 Q Okay. What I am asking is you weren't present when
4 this was explained to Mr. Nuccio?

5 A I was.

6 Q You were?

7 A It would have happened in the courtroom in front of
8 me.

9 Q I'm not asking what would have happened. I -- I am
10 asking if you remember if it did happen specifically in this
11 case, not generally, but specifically in this case?

12 A I don't know how to answer your question. I have
13 never done it a different way.

14 Q Okay.

15 A But I couldn't tell you what the weather was that
16 night. I can't specifically recall.

17 Q So, you can't specifically recall if someone did go
18 over this with him?

19 A I don't specifically recall that night. All I can
20 say is what I do each time.

21 Q For example, you don't remember who the attorney
22 is, right? Is that right?

23 A I could tell you who I believe it is, I don't
24 specifically remember.

25 Q Okay. And you don't specifically recall that

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1 attorney going over this Order of Protection with him?

2 Right?

3 A Right.

4 Q And you didn't explain this Order of Protection to
5 him, correct?

6 A I don't recall.

7 Q In fact, there is a box at the bottom of Exhibit
8 One that says defendant advised in court of issuance and
9 contents of order, isn't there?

10 A Yes.

11 Q And that box isn't checked on here, is it?

12 A No, it is not checked.

13 Q But the other boxes that are pertinent were
14 checked, correct?

15 A Some of them.

16 Q Just the ones that were pertinent to this Order of
17 Protection?

18 A Yes.

19 MR. DUMAS: No further questions, your Honor.

20 Thank you.

21 THE COURT: Any redirect?

22 MR. MAREYEV: Very briefly, your Honor.

23 REDIRECT EXAMINATION

24 BY MR. MAREYEV:

25 Q Ms. Proven, would you please describe to members of

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17

1 the jury the courtroom in Hammond?

2 A We don't have a courtroom in Hammond.

3 Q So, where do you hold court?

4 A So, if there are -- if there is a jury, or, many
5 people are expected, we hold court in the Hammond library.
6 If not, we hold court in the court clerk's office. In that
7 office, there is a table that has a computer on it up
8 against the wall. There is a single desk that I sit at.
9 And there are three or four chairs. So, it is a very small
10 room.

11 Q Now, on August 24, 2011, do you remember if you
12 had one of those larger sessions that you had to use the
13 library?

14 MR. DUMAS: I'm going to object as beyond
15 cross, your Honor.

16 THE COURT: Overruled.

17 A My recollection is that we used the clerk's office
18 where we would normally hold court.

19 BY MR. MAREYEV:

20 Q And Ms. Proven, how large is this clerk's office,
21 if you had to estimate the square footage?

22 A Desk, I would have to do it by the size of the
23 desk. And the desk is four feet wide and it might be three
24 feet on the other side. So, maybe eight feet by ten feet,
25 maybe.

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18

1 Q So, is it a large or small room?

2 A Very small.

3 Q Now, Ms. Proven, you testified on cross examination
4 about what you do all the time and you have never done it
5 any other way. I believe you talked about that you have
6 attorneys to go over the terms of the Order of Protection.
7 Was there a departure from your standard practice on August
8 24, 2011?

9 MR. DUMAS: I am going to object, your Honor,
10 to the form of the question. It is confusing, I
11 believe, and possibly prejudicial.

12 THE COURT: I don't think it is confusing, but
13 I would caution the jury that any statements by the
14 attorney when they summarize evidence, if your
15 recollection is different, your recollection will
16 control.

17 Overrule the objection.

18 Can you answer the question?

19 THE WITNESS: I do not recall the question.

20 BY MR. MAREYEV:

21 Q Did you do anything differently on August 24, 2011,
22 other than your standard practice?

23 A No.

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

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19

1 MR. DUMAS: If I may.

2 THE COURT: You may.

3 RECROSS EXAMINATION

4 BY MR. DUMAS:

5 Q You testified that you didn't do anything
6 differently on August 24, 2011. Is it your practice to
7 always have the attorneys speak to their clients in front of
8 you or do they go outside of the office to talk to them
9 sometimes?

10 A They go outside of the office to talk to them,
11 except when I am signing an order, before I make copies and
12 have it certified, I make sure that the attorney for the
13 defendant has reviewed it and it says exactly what I have
14 said that I am going to order. We hold court in the
15 evening, and sometimes mistakes are made and I try to make
16 sure that I have an order checked over by whatever attorneys
17 are there to make sure that I am signing what I say I'm
18 signing.

19 Q Okay. And you said that you didn't do anything
20 different to your recollection in this case, right?

21 A That's correct.

22 Q But that is just to your recollection of that day?

23 A That's correct.

24 Q For example, you told us you don't recall the
25 attorney who was with him, right?

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20

1 A That's correct.

2 Q You even said you didn't recall the weather that
3 day, right?

4 A Right.

5 Q And can you recall what other defendants may have
6 been there that night?

7 A I don't.

8 Q Do you recall what other attorneys may have been
9 there that night?

10 A No.

11 Q And, as you said, there is a box on here that says
12 the defendant advised in court of issuance and contents of
13 orders, right, and that wasn't checked that night, right?

14 A That's correct.

15 MR. DUMAS: No further questions.

16 THE COURT: Any further questions?

17 MR. MAREYEV: No, your Honor.

18 THE COURT: Thank you very much. You are free
19 to go.

20 THE WITNESS: Thank you.

21 WHEREUPON, TERRY M. JOHNSON, called as a
22 witness by the People, having been first duly sworn,
23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MAREYEV:

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21

1 Q Good morning. Would you please state your full
2 name for the record.

3 A Terry M. Johnson.

4 Q And Mr. Johnson, where do you live?

5 A Town of Macomb, Pleasant Lake.

6 Q And do you know the county where the Town of Macomb
7 is located?

8 A St. Lawrence County.

9 Q And do you know the state?

10 A State of New York.

11 Q Mr. Johnson, and how long have you lived at that
12 residence?

13 A About eight years.

14 Q I'm sorry?

15 A Eight years.

16 Q And who do you live with?

17 A Myself.

18 Q Mr. Johnson, I'm going to direct your attention to
19 May 5 of 2012. Do you remember that day?

20 A I do.

21 Q And what were you doing on that date?

22 A Well, I was going over next door to my brother's
23 camp, getting ready to put a little addition on it. I was
24 going to help him do a little work on it. He is not very
25 good with his hands or tools and stuff, so, I am a carpenter

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22

1 by trade, so, I offered to give him a little help during the
2 day.

3 Q And what else, if anything, do you remember about
4 that day?

5 A Well, we were over there getting ready to start on
6 the deck, on the front of the porch, and there was -- Mr.
7 Nuccio was working in the adjoining lot next door.

8 Q Okay. And when you say Mr. Nuccio, who is that?

9 A That is the young gentleman right here.

10 Q Would you please describe him by article of
11 clothing that he is wearing?

12 A Green shirt, dark hair.

13 THE COURT: He has identified the defendant.

14 BY MR. MAREYEV:

15 Q And what happened after you saw the defendant?

16 A Well, I noticed he was on the other side of the
17 lot. And I didn't really pay a lot of attention to him. He
18 looked like he was doing some raking and stuff. I really
19 didn't pay much attention and we started doing some layout
20 on the work that I was preparing to do. And then, I noticed
21 that Steve had moved from the other side of the lot, over to
22 the side of the lot adjoining my brother's property. And at
23 which time, I got a little bit nervous and -- because we do
24 have an Order of Protection. He is aware, I am aware. And
25 rather than be worried about what Mr. Nuccio was doing that

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1 day, I did ask him to leave the area because I was going to
2 be working here all day. And I really wanted to be thinking
3 about what I was doing and not worrying about what he was
4 doing. So, at the time, I just really said, Steve, you
5 know, you have got an Order of Protection, maybe you should
6 just turn around and go home. He lives like three doors
7 down. And I told him I didn't want a hassle about this
8 deal, let's just be over and done with. Just go home. Do
9 your thing. Let me do mine here today and you can do
10 whatever afterwards.

11 Q And what did the defendant do, if anything? Not
12 said, but what did he do?

13 A Well, he started jumping up and down and stomping
14 his feet and, you know, why don't you leave me alone. Why
15 don't -- you know, I have got permission to be here from the
16 homeowner. I can be here. I have got permission. And why
17 don't you leave me alone. Why don't you leave Jennifer
18 alone. And again, I have got permission to be here. And,
19 actually, I told him, I don't care if you have the
20 homeowner's permission or not. I don't care if God gave you
21 permission. The State of New York says you are not to be
22 near me. I don't want to hassle with you. I don't want to
23 fight with you. Just, please, go home.

24 Q Now, Mr. Johnson, say -- did the defendant say
25 anything else?

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24

1 A Well, at that time, he turned around and looked at
2 me and basically said I have got a new gun and I will shoot
3 you this time.

4 Q Now, Mr. Johnson, when the defendant said those
5 words, how far away was he from you?

6 A 25, 30 feet.

7 Q Were you able to hear him clearly, what he said?

8 A Absolutely. There was no doubt what he said.

9 Q And, Mr. Johnson, just a point of clarification,
10 you said you were at your brother's camp?

11 A Yes, sir.

12 Q In which county is that located?

13 A That is also in St. Lawrence County in the State of
14 New York. Address there is 408 North Star Road, which is
15 basically adjoining my property.

16 Q Okay.

17 MR. MAREYEV: I don't believe I have any other
18 questions for this witness.

19 CROSS EXAMINATION

20 BY MR. DUMAS:

21 Q Do you -- you said that he told you -- he asked you
22 to leave him alone, right?

23 A After I told him to leave, he said, why don't you
24 just leave me alone, which I was more than willing to do, if
25 he had just left.

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1 Q Yeah, but, he wasn't on your property at that
2 point?

3 A He was on the adjoining property, within a set
4 amount of distance that the Order of Protection says.

5 Q Is there a set amount of distance?

6 A I believe it is two hundred yards on the Order of
7 Protection. I don't have it with me.

8 Q So, he was working at someone else's camp, right?

9 A Basically, doing some raking and stuff.

10 Q He wasn't bothering you, right? Didn't say
11 anything to you at first. You are the one who approached
12 him?

13 A Well, he was on the other side of the lot. I
14 didn't say a word. But he came over and strutted in front
15 of me. That is when I asked him to leave.

16 Q He strutted? He, actually, strutted?

17 A I guess that is what you would say. He did not, at
18 that point, have any rake, any shovel, anything in his hand.
19 He walked between the property line, down to the road,
20 turned around, strutted back up, glared at me. And that is
21 when I told him to leave because I did not feel comfortable.

22 Q But he didn't say anything to you at that point,
23 right?

24 A No.

25 Q You addressed him first, right?

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1 A I did.

2 Q And you, actually, told him in your choice of
3 words?

4 A I didn't tell him, I asked him to leave.

5 Q Well, you said the State of New York says that you
6 have got to get away from me, right?

7 A After I asked him to leave and he told me I could
8 be here, I have got permission from the homeowner and I
9 said, I don't care if the homeowner gave you permission.
10 You have an Order of Protection. You have got to leave.

11 Q All right. And you are saying that he said leave
12 me alone, leave Jennifer alone?

13 A After I asked him to leave, he did state that.

14 Q Who is Jennifer?

15 A It is his part-time girlfriend, my full-time niece.

16 Q And you don't like the fact that he dates her,
17 right?

18 A It is really irrelevant to me.

19 Q It is irrelevant to you. Haven't you voiced your
20 opinion about them dating before though?

21 A I think he is a waste of her time, yes, but.

22 MR. MAREYEV: Your Honor, I -- I'm going to
23 object. That is outside of the scope.

24 THE COURT: Overruled. It goes to
25 credibility.

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1 BY MR. DUMAS:

2 Q You think he is a waste of her time?

3 A I do, but that is personal opinion.

4 Q Sure. And you don't want him around her, right?

5 A I never tried to stop it.

6 Q She is your full-time niece though, right?

7 A She is.

8 Q And you care about her?

9 A Of course, I do.

10 Q And you don't like Stephen, that is for sure,
11 right?

12 A No, I don't.

13 Q So, he is on the adjoining property, working. And
14 then, you said he struts in front of you and you are the one
15 who addresses him and tells him to go away, right?

16 A I did not tell him anything. I asked him.

17 Q Okay. You asked him to go away?

18 A I did.

19 Q And, at that point, he just said, leave me alone,
20 right?

21 A Well, it was a little more than that. He went off
22 into a little tirade, F-ing this, F-ing that, you know. I
23 don't remember exactly what he said. He was just ranting.
24 The one part I did catch out of it was to leave me and
25 Jennifer alone.

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1 Q Okay. And what I am saying is there is certain
2 parts of this that you quite clearly say you remember,
3 right?

4 A I do.

5 Q But now, you are saying that there is parts of that
6 you don't remember?

7 A Well, there is parts of it that I don't really care
8 to repeat here. I mean, you know, because of the language
9 and so on.

10 Q So, you are actually changing what was said?

11 A I'm just not doing the F bombs and so on.

12 Q Well, I think we're all adults here.

13 THE COURT: If you are asked to repeat the
14 words exactly, you have permission to repeat them on
15 that basis. You don't have permission to use them in
16 your own speech.

17 Go ahead.

18 A "I have got fucking permission to be here. Why
19 don't you leave me the fuck alone. Leave me and Jennifer
20 the fuck alone. I will do whatever the hell I want," and so
21 on.

22 BY MR. DUMAS:

23 Q And you wrote a statement to the police, right?

24 A I did.

25 Q Do you recall writing that statement?

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1 A I did. I do.

2 Q Do you recall signing it back on May 5, 2012?

3 A I do.

4 Q You didn't tell the police that he said those
5 things, did you?

6 A I did.

7 Q Did you put that in your statement?

8 A I signed the statement that the police wrote up. I
9 am not a lawyer. I am not a police officer. I -- you know,
10 whatever he put there, that is what I thought it was legal
11 jargon and so on.

12 Q Okay. So, what you are saying is that this
13 statement is not complete, correct?

14 A Apparently, not.

15 MR. DUMAS: If I could just have a moment,
16 your Honor.

17 THE COURT: You may.

18 MR. DUMAS: No further questions, your Honor.

19 THE COURT: Any redirect?

20 MR. MAREYEV: No, Judge.

21 THE COURT: Thank you very much, Mr. Johnson.
22 You are free to go.

23 Call your next witness.

24 WHEREUPON, RACHELLE L. FOSTER, called as a
25 witness by the People, having been first duly sworn,

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1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MAREYEV:

4 Q Good morning. Would you please state your full
5 name for the record.

6 A Rachelle Foster.

7 Q And Ms. Foster, are you employed?

8 A I am employed with the New York State police.

9 Q And in what capacity?

10 A I am an investigator.

11 Q And how long have you been with the state police?

12 A I have been on the state police almost 19 years. I
13 have been an investigator for twelve.

14 Q And did you undergo any specialized training as a
15 police officer and investigator?

16 A Yes, six months at the state police academy.

17 Q And did you graduate that academy?

18 A Yes, I did.

19 Q Okay. And what is your duty station? Where do you
20 work out of?

21 A I am assigned on paper to SP Canton, which
22 basically means that is where my headquarters is. I cover
23 Gouverneur area.

24 Q Do you cover any other towns?

25 A Any? Excuse me.

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1 Q Any other towns in that area?

2 A Yeah, all the towns in the Gouverneur area, the
3 station covers Macomb, Gouverneur, Antwerp, Fowler, DeKalb,
4 Pitcairn, various towns throughout the County.

5 Q Investigator Foster, I am going to direct your
6 attention to May 8 of 2012. Do you remember that day?

7 A Yes, I do.

8 Q And what do you remember about that day?

9 A I came into work and was advised of a new
10 investigation that we had.

11 Q And what was that investigation?

12 A The investigation was a Criminal Contempt, First,
13 which is a BCI case, which is a case I would adopt.

14 Q Ms. Foster, can you tell the members of the jury
15 what BCI means?

16 A Bureau of Criminal Investigations. There are
17 certain cases that I take over from the troopers, mainly
18 felonies, sex abuse, burglaries, any more serious --
19 criminal contempt, first, is one of those cases. So,
20 whenever they make an arrest for criminal contempt or any
21 other of the cases, it becomes my case at that point.

22 Q Okay. And what did you do in relation to that
23 investigation?

24 A One of the first things I did is I adopted the case
25 on the computer, which is an administrative duty. And I

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1 looked over the paperwork associated with that case.

2 Q Okay. Did you go anywhere on May 8 of 2012?

3 A Yes.

4 Q And where did you go?

5 A To a residence in Macomb, Stephen Nuccio residence,
6 North Shore Road, Macomb.

7 Q And what happened when you arrived at that
8 residence?

9 A I went to that residence with other members of the
10 state police, troopers that were working that day. And we
11 -- do you want me to explain why we were going there?

12 Q No.

13 A Okay. I knocked on the door and Stephen Nuccio, at
14 the table there, answered the door.

15 Q Now, when you say Stephen Nuccio, at the table
16 there, would you please describe him by an article of
17 clothing?

18 A The one holding his shoulder right now.

19 THE COURT: Let the record indicate she has
20 identified the defendant.

21 BY MR. MAREYEV:

22 Q Ms. Foster, Mr. Nuccio's residence, you testified,
23 is in the Town of Macomb?

24 A Correct.

25 Q Do you know the county where it is located?

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1 A St. Lawrence County.

2 Q And how about the state?

3 A State of New York.

4 Q What happened when you got to the residence?

5 A I knocked on the door. And Mr. Nuccio opened the
6 door. I stated I was with the state police and we were
7 there because the Judge wanted him brought back in. The
8 Judge had issued a bench warrant. At that point, he started
9 to shut the door, basically, on me because I had somewhat
10 stepped kind of into the doorway. At that point, we placed
11 -- told him he was under arrest on aforementioned bench
12 warrant.

13 Q And what happened after that?

14 A We -- he, basically, sat down. I don't remember
15 which trooper was next to me, because we had four troopers
16 there. I believe it was Trooper Loveland. He sat down in a
17 chair and asked us to get -- he was in his underwear at the
18 time he answered the door. And he said he needed his jeans
19 and sneakers.

20 Q And did the defendant direct you where his jeans
21 and sneakers were?

22 A I asked him directly where his jeans were and he
23 told me upstairs in his bedroom.

24 Q Did you go do anything after that?

25 A I told him I would go get his jeans.

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1 Q And?

2 A And I proceeded upstairs and into his bedroom and
3 to get his jeans.

4 Q And were you able to retrieve his jeans from
5 upstairs?

6 A Yes, I did.

7 Q On your way upstairs, did you observe anything?

8 A Yes, I did.

9 Q And would you please tell the members of the jury
10 what you observed?

11 A As I walked up the stairs, and turned the stairs to
12 the right, on the wall, right outside the entranceway to the
13 bedroom, there was a display shelf, so to speak. And it had
14 five pairs of chuka sticks displayed on the shelf. Chuka
15 sticks are an illegal weapon. They are illegal to possess
16 in the State of New York.

17 Q Now, is there another name for chuka sticks, a
18 common name?

19 A Nunchucks, I believe. I'm -- there are probably
20 other words, too, but that is the only one I can think of at
21 the time.

22 Q Investigator Foster, when you were at that
23 residence, did you observe anybody else at that residence
24 except the defendant?

25 A No, I did not.

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1 Q And Investigator Foster, did you secure the chuka
2 sticks into evidence?

3 A I did not, no.

4 Q Do you know who did?

5 A Trooper Patrick Loveland.

6 MR. MAREYEV: I don't have any other questions
7 for this witness.

8 CROSS EXAMINATION

9 BY MR. DUMAS:

10 Q So, when you arrived at the residence, he was
11 cooperative with you, correct?

12 A After shutting the door on me, I guess, after that,
13 yes.

14 Q In other words, he didn't want to let you into his
15 residence?

16 A No, he didn't want to be arrested, I believe when I
17 said I had a bench warrant for your arrest, the Judge would
18 like to see you, that is why he went --.

19 Q You are female, right?

20 A Pretty obvious.

21 THE COURT: Well, let the record show.

22 BY MR. DUMAS:

23 Q Stephen is male and you showed up at his door while
24 he was in his underwear, right?

25 A Yeah.

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1 Q He was a little embarrassed about that?

2 A His underwear -- there was nothing revealing. It
3 was -- looked like someone's shorts. They were boxers.
4 There wasn't anything that he should have -- a grown man
5 would be embarrassed about.

6 Q Sure. But, you are a woman?

7 A Yes, I am.

8 Q He is a man?

9 A Correct.

10 Q He was in his underwear at the door?

11 A Didn't bother him standing in the doorway until I
12 told him I had the warrant for him and then he said, oh,
13 excuse me.

14 Q And you went into his house afterwards, right?

15 A Yes, I did.

16 Q And five other people or four other people?

17 A Four.

18 Q So, there is five troopers that go into his house?

19 A Yup, every other time we have dealt with him, he is
20 extremely --.

21 MR. DUMAS: Objection.

22 THE COURT: Sustained. Strike.

23 MR. DUMAS: Not responsive.

24 Thank you, your Honor.

25 BY MR. DUMAS:

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1 Q So, but at this point, you go into his house, after
2 he shuts his door, when he is in his underwear, you go into
3 his house, and he does not fight with you at that point,
4 right? Sits in a chair, in fact?

5 A We had him sit in the chair, the trooper did.

6 Q Okay.

7 A Asked him to sit down and placed him --.

8 Q And he did?

9 A Yes.

10 Q And that is when he said, I am in my underwear,
11 right?

12 A Not until we said we were leaving and he said, I
13 need jeans.

14 Q Okay. You didn't let him go get his jeans though,
15 right?

16 A No. When someone is under arrest, we don't let
17 them go wandering around the house. They could obtain a
18 weapon. People have been injured for that.

19 Q So, you had him sit right there and you went into
20 his household?

21 A We were already in his house.

22 Q But you didn't have a search warrant at that point,
23 right?

24 A No, we had a bench warrant for his arrest, which
25 allows us to enter the residence.

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1 Q And there was four other troopers standing around
2 him in the chair, right?

3 A I don't know. I can't testify as to what they did
4 when I went upstairs to get the jeans. But they were there
5 with me assisting with the arrest.

6 Q And you said that what he was wearing was not
7 revealing at all, right?

8 A It was boxers.

9 Q And so, it is something that you could have taken
10 him in, correct?

11 A Yeah.

12 Q And it wouldn't have been embarrassing for him,
13 from your point of view?

14 A Out of respect, he asked for his jeans. And,
15 common courtesy, when we arrest someone and they ask for
16 further clothes, we usually get it for them.

17 Q But you could have taken him like that?

18 A Absolutely.

19 Q You didn't have a search warrant?

20 A He had to sign a Consent to Search and, like I
21 said, we had a bench warrant for the subject.

22 Q But that Consent to Search was later on, right?

23 A It was while we were at his house.

24 Q But it was after you had already gone upstairs?

25 A Once I saw contraband, I talked to him and had him

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1 sign the Consent to Search.

2 Q The four troopers standing around him?

3 A They weren't all standing around him. A couple
4 went outside.

5 Q They were all there, right?

6 A They were at --.

7 Q His property.

8 A Yeah, at Macomb, at his property.

9 Q What were they doing outside?

10 A How can I testify to what they were doing when I'm
11 inside?

12 Q Did you direct them to search outside?

13 A No, they didn't search outside. I believe they
14 waited.

15 Q So, at that point, you didn't feel you needed four
16 troopers with you?

17 A I didn't say that.

18 Q I'm asking?

19 A No, I actually felt as though I needed four
20 troopers with me.

21 Q Okay.

22 A Because we had a neighbor to interview, not just to
23 obtain him into custody, but if you would like to elaborate,
24 we had a neighbor to interview in regards to this and I
25 believe Trooper Bos would have went to speak with the

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1 neighbor. Based on our prior dealings with him, I didn't
2 want to be --.

3 Q You answered my question.

4 A Okay. Thought so.

5 THE COURT: Ma'am, slow it down and stick with
6 the questions. Okay?

7 THE WITNESS: I tend to speak fast. I'm very
8 sorry.

9 THE COURT: I know. Slow it down.

10 THE WITNESS: Okay.

11 MR. DUMAS: No further questions, your Honor.

12 MR. MAREYEV: I don't have anything on
13 redirect.

14 THE COURT: Thank you. You are free to go.
15 Who is your next witness?

16 MR. MAREYEV: Trooper Loveland.

17 THE COURT: Is he ready?

18 MR. MAREYEV: I believe he is sitting
19 downstairs.

20 THE COURT: Perhaps this investigator would
21 send him up. Send him up, please.

22 WHEREUPON, PATRICK LOVELAND, called as a
23 witness by the People, having been first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

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1 BY MR. MAREYEV:

2 Q Good morning.

3 A Good morning.

4 Q Would you please state your full name for the
5 record.

6 A Trooper Patrick Loveland.

7 Q Now, Mr. Loveland, you indicate you are a trooper.
8 Who do you work for?

9 A I work for the New York State Police.

10 Q And how long have you been a trooper with the New
11 York State Police?

12 A With the state police, ten years. A little over
13 ten years.

14 Q Do you have prior law enforcement experience
15 before?

16 A I do.

17 Q And what is that?

18 A I worked for the City of Atlanta, Atlanta, Georgia,
19 back in '96.

20 Q For how long?

21 A About five years.

22 Q Now, did you go -- undergo any specialized training
23 to become a New York State Trooper?

24 A Yes.

25 Q And would you tell the members of the jury what

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1 that training consisted of?

2 A It is a six-month residential academy down in
3 Albany, where you live and work, Monday through Friday. And
4 it is approximately six months. And then we have ten-week
5 field training, out in the field, particularly somewhere
6 around where you are going to be stationed.

7 Q And did you graduate that academy?

8 A I did.

9 Q Now, what is your duty station?

10 A I work out of SP Gouverneur.

11 Q Trooper Loveland, I am going to direct your
12 attention to May 8 of 2012. Do you remember that day?

13 A Yes.

14 Q And what do you remember about that day?

15 A I was out to Hammond, the Town of Hammond, to issue
16 an arrest warrant for a subject.

17 Q And do you know who that subject was?

18 A It was Stephen Nuccio.

19 Q And Trooper Loveland, do you see Mr. Nuccio in the
20 courtroom today?

21 A I do.

22 Q And would you please point him out and describe him
23 by an article of clothing that he is wearing?

24 A He is wearing a gray, long-sleeved shirt, black
25 hair with a pair of jeans next to the gentleman with an

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1 orange tie.

2 THE COURT: He has identified the defendant.

3 BY MR. MAREYEV:

4 Q Trooper Loveland, when you were at the residence,
5 what did you do?

6 A Well, I assisted the other troopers and the
7 investigator in executing the arrest warrant for Mr. Nuccio.

8 Q Did you brought (sic) anything back from the
9 residence?

10 A Yes, I did.

11 Q And was it evidence?

12 A Yes.

13 Q And did you secure that evidence?

14 A Yes, I photographed and secured the evidence, which
15 was at the residence at the time.

16 MR. MAREYEV: Your Honor, may I approach the
17 witness?

18 THE COURT: You may.

19 BY MR. MAREYEV:

20 Q Trooper Loveland, I am going to hand you what has
21 been premarked for purposes of identification as People's
22 Exhibit Two. Is there a label on People's Exhibit Two?

23 A Yes, it is a -- well, there is two, three labels
24 now.

25 THE COURT: He means the label with the

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1 writing on it in white.

2 A Yes, this is the New York State police evidence
3 tag.

4 BY MR. MAREYEV:

5 Q Now, Trooper Loveland, would you please, what is
6 People's Exhibit Two for the record?

7 A Exhibit Two is a -- five pairs of chuka sticks,
8 also known as nunchucks or nunja chucks, martial arts
9 weapons.

10 Q Now, Trooper Loveland, would you please open
11 People's Exhibit Two.

12 A It is sealed for the record.

13 Q And Trooper Loveland, would you please take the
14 contents of People's Exhibit Two out.

15 A (Witness complying with request.)

16 Q Now, Trooper Loveland, would you please describe to
17 the members of the jury what did you take out of People's
18 Exhibit Two?

19 A There were five pairs of -- well, four of them are
20 wooden handled, with either linked by a chain or a rope,
21 chuka sticks, I guess.

22 Q And Trooper Loveland, is this the evidence that you
23 recovered from the defendant's home on May 8 of 2012?

24 A Yes, it is.

25 Q Now, Trooper Loveland, would you, based on your

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1 training as a New York State trooper, would you please
2 describe what the chuka sticks are to the members of jury.

3 A They are a form of martial arts weapon, from my
4 understanding, that you would swing them around, and use in
5 a martial arts type of setting or an offensive weapon. It
6 is an offensive weapon, I would consider that.

7 MR. DUMAS: Objection as to what the trooper
8 would consider.

9 THE COURT: Sustained.

10 BY MR. MAREYEV:

11 Q Trooper, is there anything left in the People's
12 Exhibit two? Is there anything left in the bag?

13 A No. It is empty.

14 MR. MAREYEV: Your Honor, at this time, People
15 move People's Exhibit Two and contents into evidence.

16 MR. DUMAS: No objection, your Honor.

17 THE COURT: They are received.

18 (People's Exhibit Number Two was received into
19 evidence.)

20 MR. MAREYEV: Your Honor, I don't have any
21 other questions for this witness.

22 THE COURT: Let's do cross.

23 CROSS EXAMINATION

24 BY MR. DUMAS:

25 Q Trooper Loveland, you were at Stephen Nuccio's

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1 residence that day when those were taken, correct?

2 A Yes.

3 Q And what was Stephen wearing that day when you got
4 there?

5 MR. MAREYEV: Your Honor, I'm going to object.
6 Outside of the scope of my direct examination.

7 THE COURT: Overruled.

8 BY MR. DUMAS:

9 Q What was he wearing when you got there that day?

10 A From my understanding, he was in -- if I remember,
11 he was in T-shirt and pair of underwear, boxers, I believe.

12 Q And who was the first person to the door?

13 A Investigator Foster. And maybe I might have been
14 second, close to it.

15 Q And you were led into the residence at some point
16 in time, right?

17 A Yes.

18 Q And was he in a state you would describe as
19 indecent?

20 A Yes.

21 Q Okay. So, the underwear was indecent?

22 A Yes.

23 Q Was -- did you -- you saw him, correct?

24 A Yes.

25 Q Did he look embarrassed to you?

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1 MR. MAREYEV: Your Honor, I don't think there
2 was a proper foundation to be laid, what embarrassed
3 is.

4 THE COURT: I think that is within a layman's
5 ability to testify if there was an appearance of
6 embarrassment. Overruled.

7 BY MR. DUMAS:

8 Q Did he look embarrassed to you?

9 A I don't know.

10 Q Okay. How many people were in his house at that
11 point in time?

12 A Including the police?

13 Q Yes. Well, actually, just how many police were
14 there, if you could tell me?

15 A Approximately four uniformed members and an
16 investigator.

17 Q All right. And, at any point in time, did some of
18 those police go outside of the residence?

19 A I don't know.

20 Q Did you ever search the residence?

21 A Did I search the residence?

22 Q Yes.

23 A Prior or before his custody?

24 Q Either?

25 A I didn't do any searching prior to him being taken

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1 into custody.

2 Q Okay. And now, he was taken in custody right when
3 you went into the house, correct?

4 A Yes, yes.

5 Q So, after he was taken into custody, did you do
6 some searching?

7 A Yes.

8 Q Where did you search?

9 MR. MAREYEV: Your Honor, may counsel
10 approach?

11 THE COURT: Yes.

12 (Bench conference held on the record with
13 counsel present.)

14 MR. MAREYEV: They are wandering from the
15 house, is that what you are saying?

16 MR. DUMAS: Yeah.

17 THE COURT: Was more stuff found?

18 MR. MAREYEV: Judge, I think we had a
19 suppression hearing on this issue and I think Mr. Dumas
20 is trying to re-live the suppression issue, I believe,
21 Judge, chuka sticks recovered. Judge Richards ruled
22 they were in plain view.

23 THE COURT: I know that and the jury does not
24 get to make that decision when you use the word search,
25 the clarification is whether it was room to room or he

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1 was directed to go to the wall.

2 MR. DUMAS: I'm going to get there.

3 THE COURT: Well, you are searching around.

4 MR. DUMAS: Yeah.

5 MR. MAREYEV: That is my concern. I don't
6 want to be --.

7 THE COURT: You can be concerned. You can
8 clear it up with redirect.

9 (Bench conference concluded.)

10 BY MR. DUMAS:

11 Q Were you directed to search anywhere, Trooper?

12 A Yes.

13 Q Where were you directed to search?

14 A The upstairs, where these were found.

15 Q So, you were actually told to go upstairs by
16 somebody?

17 A Yes.

18 Q And who told you to go upstairs?

19 A Investigator Foster.

20 Q And at the same time, was she telling other people
21 to search other places?

22 A I don't believe so.

23 Q Were you in the presence of all of the other
24 troopers at all times?

25 A No.

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1 MR. DUMAS: No further questions, your Honor.

2 THE COURT: Redirect?

3 MR. MAREYEV: Nothing on redirect, Judge.

4 THE COURT: The witness is free to leave.

5 Put those back in the bag and hand them right
6 over to the officer here, please.

7 I'm going to send the jury back. Please take
8 twenty minutes and I will see you again.

9 (Jurors escorted from the courtroom.)

10 THE COURT: You are about to rest in front of
11 the jury, right?

12 MR. MAREYEV: Yes.

13 THE COURT: And what -- have you two decided
14 where we go next? Are you calling Jennifer or not?

15 MR. DUMAS: I believe we may be, Judge. I
16 have got to talk to Stephen about that.

17 THE COURT: And --.

18 MR. DUMAS: I also wanted to make a motion and
19 I want just a few minutes to prep for it.

20 THE COURT: You will do the motion after.

21 MR. DUMAS: I wanted a few minutes to prep for
22 the motion, if I could.

23 THE COURT: I will -- I will be sure it is not
24 in front of the jury. Let's do it in here.

25 MR. DUMAS: Sure. Sure.

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1 THE COURT: And then you will tell me whether
2 or not you are offering witnesses.

3 All right. And then, we have the problem, one
4 way or another, of about 11 o'clock, being done.

5 MR. DUMAS: I expected this to be a lot
6 longer.

7 THE COURT: Knew this would be fast. Now,
8 have you got any things that, assuming, just so I have
9 something to think about while you are gone, do you
10 have any request to charge or any strange things in the
11 -- I'm setting up the Criminal Contempt, First, and the
12 other, and you show me that -- why I shouldn't charge
13 those two charges.

14 MR. DUMAS: I looked at the charges on the
15 website. The charges for the Criminal Contempt, in the
16 First, and this section, and Criminal Possession of a
17 Weapon, in the Fourth, are -- I mean, how am I going to
18 argue with --.

19 THE COURT: Criminal Contempt, First, is when
20 there is an order, it is violated. It is the E felony.

21 MR. DUMAS: Pretty much.

22 MR. MAREYEV: Judge, one thing I was looking
23 at and I had somebody from my office actually research,
24 but I have not had opportunity to speak to them is
25 Criminal Contempt, Second, is lesser included of

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1 Criminal Contempt, First. The research is there. I
2 just want to --.

3 THE COURT: So, we will think about that. We
4 are going to do a charge conference at eleven, whenever
5 the evidence is ready. And I am going to give it to
6 the jury today.

7 Thank you.

8 (A recess was taken.)

9 THE COURT: The Court is back in session.
10 People?

11 MR. MAREYEV: People rest, your Honor.

12 THE COURT: Motions?

13 MR. DUMAS: Your Honor, make motion for trial
14 order of dismissal. The People have not proven a
15 legally sufficient case in regards to Criminal
16 Possession of a Weapon, in the Fourth Degree. It is
17 the defense's standpoint that the People haven't shown
18 exclusive possession and control or even dominion over
19 the chuka sticks in a sufficient manner to even take
20 them, the evidence, in the light most favorable to the
21 People, to prove a legally sufficient case with regards
22 to that charge.

23 Further, your Honor, with regards to the
24 charge of Criminal Contempt, in the First Degree, it is
25 our position that the elements haven't been met in a

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1 legally sufficient fashion. Namely, that knowing
2 service upon Stephen of that Order of Protection, Lisa
3 Proven testified that she couldn't specifically
4 recollect that it was explained to him, that he knew
5 what he was getting. She does testify that his
6 signature was on the paper. However, even the boxes
7 weren't checked showing that it had been discussed with
8 him and served on him at that point. The only thing
9 that we have is the signature on the paper. We don't
10 have any testimony that it was his signature. We don't
11 have any testimony that she recalls him signing it in
12 front of her. As far as the defense is concerned, that
13 hasn't been proven in a legally sufficient manner, your
14 Honor.

15 THE COURT: People.

16 MR. MAREYEV: Your Honor, People request that
17 the motion to dismiss be denied. The standard is in a
18 light most favorable to the People. In regards to the
19 misdemeanor count of Criminal Possession of a Weapon,
20 in the Fourth Degree, I believe that Investigator
21 Foster did testify that nobody else was at the house.
22 She did testify that the residence was defendant's
23 residence. And I think the issue is for the jury to
24 consider whether defendant was in possession of the
25 weapons.

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1 As far as the charge of Criminal Contempt, in
2 the First Degree, again, that motion should also be
3 denied for the reason that all of the elements are
4 established. There are some issues that Mr. Dumas
5 brought up in his motion in regards to whether
6 defendant's signature, whether, you know, that he was
7 explained the terms of an Order of Protection. Again,
8 I think this goes to the weight of evidence and not to
9 legal sufficiency of the elements that the People have
10 met.

11 So, we ask that the motion be denied.

12 THE COURT: The Court determines that the
13 testimony was that Ms. Proven recalled issuing the
14 warrant or issuing the Order of Protection on an
15 evening when the defendant was present, she recalled
16 his presence, his signature with his name on it is on
17 this Order of Protection. The Order, itself, is plain.
18 Her procedure is the same from time to time. And she
19 indicated she does not waiver and that she did recall
20 he was present with counsel. And that her procedure is
21 to have counsel explain it to him. There is no
22 requirement that it be explained. The requirement is
23 that it be issued and the defendant is present when it
24 is issued and he received a copy.

25 Therefore, the Court would look at the

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1 evidence in the light most favorable to the People,
2 the elements of Criminal Contempt, First, have been
3 met.

4 With respect to the weapon, the testimony was
5 that the troopers went to his residence. He is the
6 person who answered the door. They saw no other adult
7 present and that places him in exclusive possession of
8 illegal weapons.

9 The Court denies the motion at this time.

10 So, I am going to bring the jury back in. I
11 am going to --.

12 MR. MAREYEV: Your Honor, if I may, I do have
13 all of my witnesses downstairs. If I could have a
14 quick minute, I just want to let them go because they
15 have other things. It will just take, literally, 30
16 seconds.

17 THE COURT: I'm going to bring the jury in
18 when you go down to say good-bye. Otherwise, you can
19 call someone and tell them to do it.

20 For the record, any further witnesses?

21 MR. MAREYEV: No, your Honor. People rest.

22 THE COURT: Defense, do you wish to call
23 witnesses?

24 MR. DUMAS: Yes, your Honor. But, as I
25 discussed, could we have that moment?

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1 THE COURT: If he would just step out for a
2 moment.

3 (A brief recess was taken.)

4 (Jurors escorted into the courtroom.)

5 THE COURT: Okay. Step up and be sworn,
6 please.

7 WHEREUPON, STEPHEN NUCCIO, called as a
8 witness, on behalf of the defense, having been first
9 duly sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. DUMAS:

12 Q Good morning, Steve. Let me take you back to May
13 5, 2012. Do you remember that day?

14 A Yes.

15 Q Okay. What were you doing that day?

16 A I was working for a neighbor of mine who lives two
17 doors away from me, asked me to do the spring clean up.

18 Q Okay. Now, I know you get nervous up there. Just
19 let me know if you need a little break. Okay?

20 A Sure thing.

21 Q So, who is this neighbor of yours?

22 A Brian Melrose.

23 Q And when you say he was a neighbor of yours, where
24 is he in relation to your house?

25 A He is two doors away, approximately 75 feet, I

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1 would say.

2 Q All right. And what were you doing for him that
3 day?

4 A I was out picking up sticks, getting the yard ready
5 to mow.

6 Q All right. How long were you at his house?

7 A I was at his house for about, I would say, 45
8 minutes to maybe over an hour until Mr. Johnson pursued me.

9 Q All right.

10 MR. MAREYEV: Your Honor, I'm going to object
11 as to --.

12 THE COURT: Sustained as to pursued.

13 BY MR. DUMAS:

14 Q Let me ask you, was there a point in time where you
15 encountered Terry Johnson that day?

16 A No.

17 THE COURT: By that, he means did he see him
18 or observe him at some point in the day?

19 A Not until he came up behind me.

20 BY MR. DUMAS:

21 Q Why don't you describe that for us.

22 A Yes, I was at the back of the neighbor's house.
23 And both homes are, you know, juxtaposed to one another. I
24 came out from the back of the house, and was bending over.
25 I had, just like Terry said, no implement on me. I was

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1 picking up sticks and clearing the property of all the
2 branches and the sticks so I can mow. And, all of a sudden,
3 I hear a shout behind me and it is Terry Johnson.

4 Q How close to you was he at that point?

5 A Closer than you are to me right now.

6 Q Okay. So, within twenty feet? Is that accurate?

7 A Yeah.

8 Q Okay. When you said you heard a shout, what shout
9 did you hear?

10 A I heard somebody yelling behind me.

11 Q Okay. And what did you hear them yell?

12 MR. MAREYEV: Your Honor, I'm going to object.

13 Hearsay.

14 THE COURT: Overruled, not for the truth.

15 A What did I hear him yelling?

16 BY MR. DUMAS:

17 Q Yes.

18 A I can't recall exactly.

19 Q Okay. When you say he was yelling, his voice was
20 raised?

21 A Yes, in anger.

22 Q Well, and when you say his voice was raised in
23 anger, how do you know it was in anger?

24 A The tone.

25 Q Okay. And you have heard people angry before,

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1 right?

2 A Yes.

3 Q In fact, you have heard Terry Johnson angry before,
4 right?

5 A Yes, very much so.

6 MR. MAREYEV: Your Honor, may counsel
7 approach?

8 (Bench conference held on the record with
9 counsel present.)

10 THE COURT: You are not getting into any other
11 --?

12 MR. DUMAS: No, I'm not, your Honor.

13 MR. MAREYEV: Withdrawn.

14 MR. DUMAS: Just laying a subsequent
15 foundation for how he knew.

16 BY MR. DUMAS:

17 Q So, you said that he approached you. What happened
18 after that?

19 A Once again, he startled me. Was yelling at me to
20 leave, that I didn't have a right to be there with the
21 derogatories and the angry tone. And even before I turned
22 around and realized it was Johnson, I was, like, I don't
23 know exactly what I said at that point because it was so
24 sudden. But I said, get away from me. All right. He came
25 out of nowhere. And he is not a person I want to be around,

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1 all right, because of previous occasions. I --.

2 Q All right.

3 A I am afraid of Mr. Johnson and I do not want to be
4 around him. So, I was at a point of fear at that point.
5 And I told him get away from me and stay away from Jennifer
6 and I because Jennifer was planning to come up and help me
7 finish the property in a couple hours.

8 Q So, where did you go at that time?

9 A I went to call Jennifer immediately.

10 Q When you said you went to go call Jennifer
11 immediately, where did you go to do that?

12 A I walked back to my house.

13 Q Did you have to walk by Mr. Johnson?

14 A No.

15 Q So, you walked away from him?

16 A Yes, or I more than walked. But I headed straight
17 back. Actually, I didn't even go out to the main road. I
18 just went right to -- through the woods to my house.

19 Q So, you were in the courtroom for Mr. Johnson's
20 testimony and you did just say that you don't remember
21 everything he said when he walked up to you. Let me ask you
22 this though. Did you ever say anything about a gun?

23 A No.

24 Q Did you ever threaten to shoot him that day?

25 A No.

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1 Q So, the sum and substance of what you said is,
2 basically, what you have told us here today?

3 A Yes.

4 Q And how long were you there, knowing that Mr.
5 Johnson was there?

6 A When I turned around and realized it was Mr.
7 Johnson.

8 Q Okay. How long after that did you more than walk
9 away?

10 A I mean, you know, it happens so fast. It couldn't
11 have been more than 30 seconds, if even that.

12 Q Okay. What did you do with the sticks you had?

13 A I can't remember. I know I was stacking them up in
14 the corner of the yard to be disposed in the future.
15 Actually, the homeowner uses them in the fireplace, so, yes.
16 So, they were being put in the corner of the yard. I don't
17 know if I had sticks in my hand at the point when he
18 accosted me. But, I was picking up sticks to clear the yard
19 at that point.

20 Q Who is Jennifer?

21 A Jennifer is a very good friend of mine and my
22 former fiancée of seven plus years. We started dating, but
23 we were friends before that, we started dating on May 30 of
24 2007. And we have been friends at least a year before that.

25 Q Let me ask you this: You heard Mr. Johnson

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1 describe Jennifer as your part-time girlfriend. Is that how
2 you describe it?

3 A That is exactly what he sat here and said.

4 Q Is that how you would describe her?

5 A Absolutely not.

6 Q How would you describe her?

7 A As the most important person to me in the world,
8 besides my mother.

9 MR. DUMAS: No further questions. Thank you.

10 MR. MAREYEV: Your Honor, may counsel
11 approach?

12 (Bench conference held on the record with
13 counsel present.)

14 MR. DUMAS: I know what is coming, your Honor,
15 and we would object and disagree.

16 MR. MAREYEV: I want to renew my motion for
17 defendant to testify on direct examination about the
18 previous occasions, I believe I have a right to cross
19 examine him about the previous occasion. The door is
20 open.

21 MR. DUMAS: I don't believe we have opened
22 that door, your Honor.

23 THE COURT: I believe you have because he
24 indicated on previous occasions.

25 MR. DUMAS: I don't think that that opens the

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1 door to the previous set of facts, your Honor. I think
2 that that would be far more prejudicial than probative
3 and he didn't testify that he was cut off, he said he
4 more than walked away, that he ran away, that he was
5 very surprised and shocked and that he didn't know any
6 other way around it.

7 Very different from the other situation in
8 that, in this situation, there is an Order of
9 Protection there and that is significant in his
10 thought.

11 I think that the previous --.

12 THE COURT: I sustain his objection.

13 MR. DUMAS: Thank you, your Honor.

14 (Bench conference concluded.)

15 CROSS EXAMINATION

16 BY MR. MAREYEV:

17 Q Mr. Nuccio, good morning.

18 A Good morning.

19 Q My name is Slava Mareyev and I'm going to ask you
20 some questions, just to follow up on a little bit what your
21 attorney has asked you. So, you are not at your home on May
22 5, 2012. Is that correct?

23 A In my home?

24 Q Were you in your house? You were not there, is
25 that correct?

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1 A On May 5, yes.

2 Q Did you testify on direct examination that you were
3 helping a neighbor or friend?

4 A Well, I was in my house, I woke up. I -- you know,
5 I got ready. I went out and started to clear Brian
6 Melrose's yard.

7 Q So, you were at somebody else's home, is that
8 correct?

9 A Yes, Brian Melrose.

10 Q Do you remember what time that was?

11 A Approximately, not exactly.

12 Q I mean, was it daylight hours?

13 A Sometime between nine and eleven p.m. in the
14 morning.

15 Q Eleven p.m.?

16 A In the a.m. In the morning.

17 Q So, anywhere between nine and eleven, is that
18 correct?

19 A Nine and eleven, yup.

20 Q And you said you were working in the yard, is that
21 correct?

22 A In the yard, yes.

23 Q Okay. And then, you testified on direct
24 examination that you heard a scream behind you. Is that
25 correct?

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1 A (Nodded head affirmatively.)

2 Q And you actually didn't see who was screaming at
3 you, is that correct?

4 A No, not until I turned around and registered it,
5 yes.

6 Q Well, let me pause it for a second, because I'm
7 just going off my notes. And you said it was Terry Johnson
8 who was screaming at you. Is that your testimony?

9 A Yes, when I turned around and finally realized it
10 was Terry Johnson.

11 Q Let me ask you questions. You testified that you
12 heard a scream and you had your back faced towards the
13 person who was screaming, but you had testified --.

14 A I didn't use the word "scream." I used the word,
15 "shout" or --.

16 Q Well, we can -- are you sure you used the word,
17 "shout?"

18 A Or "yell." I don't believe I used the word,
19 "scream," but --.

20 Q So, you didn't use the word, "scream." Okay.

21 A The guy had his voice raised considerably is --.

22 Q So, who was that guy?

23 A Terry Johnson.

24 Q And you know that how?

25 A When I turned around, I identified that it was Mr.

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1 Johnson.

2 Q Okay. Well, I am just trying to get the clear
3 picture up here. You said you knew it was Terry Johnson,
4 but not until you turned around?

5 A That's right.

6 Q So, did the scream come before you turned around or
7 after you turned around?

8 A Before I turned around.

9 Q So, you wasn't really sure it was Terry Johnson,
10 right? It could have been anybody else screaming, is that
11 correct?

12 A We have already established that.

13 THE COURT: Okay. You two, please, don't
14 argue with one another. You have to wait for him to
15 ask the question and then answer it.

16 And you have to wait for his answer or ask to
17 have it stricken, if you feel it is not responsive.

18 MR. MAREYEV: Okay. Your Honor, if I can have
19 People's Exhibit One.

20 Your Honor, may I approach the witness?

21 THE COURT: Yes.

22 BY MR. MAREYEV:

23 Q Now, Mr. Nuccio, I'm going to show you what has
24 been in evidence as People's Exhibit One.

25 THE COURT: Hand it to him and step back.

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1 BY MR. MAREYEV:

2 Q Are you familiar with this piece of paper?

3 A Yes, it is an Order of Protection I signed under
4 Lisa Proven, Justice.

5 Q And were you in the courtroom when this Order of
6 Protection was signed?

7 A Yes, I was. I signed it.

8 Q Okay. And there are provisions there directing you
9 to refrain from certain type of conduct. Is that correct?

10 MR. DUMAS: I'm going to object as beyond the
11 scope of the direct.

12 THE COURT: Overruled.

13 Go ahead and answer.

14 BY MR. MAREYEV:

15 Q Are there provisions refraining you from certain
16 type of conduct in that Order of Protection?

17 A Yes, there are.

18 Q And is one of the provisions in there that you are
19 not to have any kind of communication with Mr. Johnson? Is
20 that correct?

21 A I don't know.

22 Q Do you mind taking a moment and taking a look at
23 the Order of Protection and let me know if that clears it up
24 for you.

25 A I didn't -- I went over the Order of Protection at

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1 the time, okay, when I went home that night. But I was --
2 it was never reviewed with me. I didn't know the specifics.
3 I live a few doors down from Mr. Johnson, so, there wasn't a
4 proximity clause in the Order of Protection, I don't
5 believe. I didn't know the specifics of the Order of
6 Protection. I didn't know what no contact meant. Nothing
7 was explained to me.

8 Q Okay. But you had signed the Order of Protection,
9 right?

10 A Yes, I did.

11 Q So, you just signed a blank piece of paper without
12 reading it?

13 A I read it through, but under the circumstances of
14 the Court, where they are trying to get work done and
15 pushing people through, it is a very long piece of paper to
16 read including --.

17 Q But, didn't --.

18 THE COURT: Talking over him is not going to
19 make an answer or proof. I'm striking what was said
20 and you will start over.

21 (The reporter read the last question.)

22 A I read it through to the best of my ability in the
23 short amount of time I was given, given the pressure of the
24 Court and the movement of the Court.

25 BY MR. MAREYEV:

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1 Q Now, Mr. Nuccio, let me ask you about the pressure
2 of the Court. What do you mean by pressure of the Court?

3 A The Court has other cases that have to be heard and
4 you only have so much amount of time. And at that point in
5 my mind, I just wanted to leave there. Mr. Johnson was
6 sitting there. And I just wanted to get out of the
7 building.

8 Q Now, Mr. Nuccio, did Judge Proven ask you that you
9 have to hurry up when you were signing that Order of
10 Protection? Were you given a specific time frame when you
11 had to sign the Order of Protection?

12 A How can I recall something like --?

13 MR. DUMAS: Objection.

14 THE COURT: Sustained. Strike the question.

15 It was three questions.

16 BY MR. MAREYEV:

17 Q Were you given a specific time line to sign the
18 Order of Protection?

19 A Not that I recall.

20 Q Was somebody standing over your shoulder when you
21 were reading the Order of Protection?

22 A Yes.

23 Q And who was that person?

24 A Well, Lisa Proven was right there and Stephen
25 Ballan, representative, St. Lawrence County.

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1 Q Now, Stephen Ballan representative of St. Lawrence
2 County. Was he your attorney?

3 A Yes, sir.

4 Q So, you had two people standing over you when you
5 were signing the Order of Protection?

6 A They were present as well as the court clerk, I am
7 sure was there. And everybody else in the court who wanted
8 to get to their business was present.

9 Q Well, you just testified, on my cross examination,
10 that you had people standing over you. So, who were those
11 people that were standing over you?

12 A If I recall correct, when I signed the Order of
13 Protection, I was sitting right before Lisa Proven, Judge
14 Proven, and my attorney, who was at my side. I am sure the
15 court clerk was there and then everybody else in the court.

16 Q So, there wasn't anybody standing over you. You
17 just testified that Lisa Proven was sitting in front of you?

18 A I don't understand what you mean by standing over
19 me.

20 THE COURT: Well, you are the one who said it.
21 So, he is asking you, was someone, literally, standing
22 beside you, right at your shoulder?

23 A Lisa Proven was in front of me, the Judge was in
24 front of me, okay, and higher up. And then, my attorney was
25 right next to me. I can't recall if he was standing over

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1 me, but I was pressured, and I just wanted to sign the
2 document and leave.

3 BY MR. MAREYEV:

4 Q Okay. So, Lisa Proven was sitting in front of you.
5 Is that correct?

6 A Yes, I believe so.

7 Q And you just said that you were pressured. Who was
8 the person who was applying the pressure?

9 A No particular person. I wanted, at that point, the
10 case to be over and done with.

11 Q So, if no particular person was applying the
12 pressure, then where are you getting the pressure from?

13 A The Court itself. I didn't want to hold up the
14 Court. I wasn't going to take fifteen minutes to examine,
15 you know, the fine legal mumbo-jumbo in this document. And
16 it wasn't presented to me in any other fashion, except sign
17 here.

18 Q Okay. So, let's talk a little about the legal
19 mumbo-jumbo, and, I'm using your words, that you just talked
20 about. Would you mind picking up People's Exhibit One.
21 Let's look at some of that legal mumbo-jumbo. Isn't that
22 Order of Protection directing you from any sort of
23 communication with Terry Johnson?

24 A Yes, that is the -- the first line, yes.

25 Q Thank you. Doesn't that Order of Protection

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1 indicate that you are to stay away from Terry Johnson. Is
2 that correct?

3 A Yes.

4 Q Okay. Now, is there provision in that Order of
5 Protection that you see that directs Terry Johnson to stay
6 away from you?

7 A Not that I know of, but I would just assume.

8 Q Well, let's not assume. Let's talk about People's
9 Exhibit One. Do you see anything on People's Exhibit One
10 that directs Mr. Terry Johnson to stay away from you?

11 A No, not seeing that. There is nothing in here that
12 legally keeps him away from me.

13 Q So, it is not there. It is not there. Now, Mr.
14 Nuccio, what does it mean not to have any communication with
15 somebody? What does it mean, in your mind?

16 MR. DUMAS: Objection, your Honor. Well,
17 withdraw. Actually, that is fine.

18 THE COURT: Okay.

19 A I live --

20 BY MR. MAREYEV:

21 Q Mr. Nuccio --.

22 THE COURT: He is explaining it.

23 A -- within a hundred feet of Mr. Johnson. Okay. He
24 is my neighbor. We used to be friends. Okay. I see him.
25 I drive by him. I walk by him. He does the same. We do

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1 other things around each other. We're neighbors.

2 BY MR. MAREYEV:

3 Q But let me ask my question one more time: What
4 does it mean to you not to have any communication with
5 somebody?

6 A Okay. It is hard not to have eye contact with an
7 individual you live a hundred feet from.

8 Q Let me pause you here for a second. Is eye contact
9 a communication?

10 A Yes, it is a form of communication.

11 Q Okay. So, we have one, right, eye contact. Let's
12 talk about maybe second one, what else does mean to you to
13 communicate with somebody? Well, let me help you out a
14 little bit. Is talking to somebody a form of communication?

15 A Yes.

16 Q Now, People's Exhibit One directs you not to
17 communicate with Mr. Johnson. Is that correct? Just yes or
18 no.

19 A Yes, but if you were startled and somebody snuck up
20 behind you, what would you do, sir?

21 Q Mr. Nuccio, I just ask you to answer yes or no to
22 my question.

23 A Please ask the question again.

24 Q Does People's Exhibit One direct you to not have
25 any communication with Mr. Terry Johnson? Yes or no.

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1 A Yes, but it wasn't explained to me. It is not --

2 Q Mr. Nuccio --.

3 A -- it is not explained to me what any communication
4 is.

5 Q Mr. Nuccio, please just answer my questions that
6 I'm asking you.

7 A I don't even think eye contact is on here. So, I
8 don't know what your definition of communication is then,
9 when it comes to this document.

10 Q Mr. Nuccio, I don't have any definitions because I
11 am not on trial here.

12 THE COURT: Excuse me. And you are not having
13 a conversation with this witness either. You can
14 strike -- move to strike. And you can ask questions.
15 That is what you can do.

16 MR. MAREYEV: My apologies, your Honor.
17 Please strike my previous question.

18 THE COURT: Okay. Thank you.

19 BY MR. MAREYEV:

20 Q Mr. Nuccio, yes or no answer, please. Does
21 People's Exhibit One direct you to have -- not to have any
22 communication with Terry Johnson?

23 A Yes.

24 Q On May 5 of 2012, did you have communication with
25 Mr. Johnson? Yes or no.

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1 A Yes, by force.

2 MR. MAREYEV: No other questions. Thank you.

3 REDIRECT EXAMINATION

4 BY MR. DUMAS:

5 Q Stephen, Terry Johnson startled you that day,
6 didn't he?

7 A Yes.

8 Q You didn't know he was there, did you?

9 A No.

10 Q And when he approached you and yelled at you, what
11 was your reaction?

12 A To look at him to make contact to communicate,
13 right.

14 MR. MAREYEV: Your Honor, I'm going to object.

15 I think this answer has already -- this question has
16 already been asked and answered on direct examination
17 by the counsel. So, I do not see the point where why
18 this question is being asked over and over again.

19 THE COURT: Overrule the objection.

20 BY MR. DUMAS:

21 Q So, when he startled you like that, was it your
22 intent to have a conversation with him?

23 A No, absolutely not.

24 Q And, in fact, when you left, what did you do? Did
25 you walk?

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1 A I more than walked. I went quickly. I didn't flat
2 out run, but I went quickly through the woods. I didn't
3 even go out to the main road and I called Jennifer.

4 Q Was it you that approached Terry Johnson that day?

5 A No.

6 Q Was there anything in that piece of paper, the
7 Order of Protection, Exhibit One, that tells you to stay two
8 hundred yards away from him?

9 A No, it couldn't be because we live less than a
10 hundred fifty feet from one another.

11 MR. MAREYEV: Your Honor, I believe the
12 witness is non-responsive to the question.

13 THE COURT: Overruled.

14 BY MR. DUMAS:

15 Q And with regards to that Order of Protection, that
16 night when you were in court, you said there were other
17 people in the room, right?

18 A Yes, in Judge Proven's court.

19 Q Other people other than Judge Proven and Steve
20 Ballan?

21 A Yes, the Court was very congested that night.

22 Q In fact, you mentioned that Terry Johnson was there
23 that night?

24 A Yes.

25 Q How did you feel having Terry Johnson in the room

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1 with you that night?

2 A A lot of trepidation.

3 Q Did you want to be there that night?

4 A Absolutely not.

5 Q Did you try and get out of there quickly that
6 night?

7 A Yes, I did.

8 Q Did you feel pressure to get out of there quickly
9 that night?

10 A Yes.

11 MR. DUMAS: Thank you.

12 THE COURT: Any further questions?

13 MR. MAREYEV: No, Judge.

14 THE COURT: The witness may step down.

15 Do you have other witnesses?

16 MR. DUMAS: If I could just talk to Stephen,
17 into the hall briefly.

18 THE COURT: Yes.

19 (A brief recess was taken.)

20 MR. DUMAS: Your Honor, the defense rests.

21 THE COURT: Any rebuttal witnesses?

22 MR. MAREYEV: No, your Honor.

23 THE COURT: Okay. I am going to caution the
24 jury again. Do not converse either among yourselves or
25 with anyone else about anything related to the case.

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1 Do not, at any time, request, accept, agree to accept
2 or discuss with anyone receiving or accepting any
3 payment or benefit in return for supplying any
4 information concerning the trial. Promptly report to
5 me any incident involving anyone trying to influence
6 you or any member of the jury improperly. Don't visit
7 or view any premises where the incidents were alleged
8 to have occurred. That includes using no internet
9 maps, Google Earth, et cetera. Do not read, view or
10 listen to any accounts by the media. Do not research
11 any fact, issue or law related to this case, whether by
12 discussion with others, research in a library, or on
13 the internet. Do not communicate with anyone by any
14 means, including telephone, text, e-mail, internet
15 chatrooms, blogs, social media, Facebook, MySpace,
16 Twitter. Do not provide any information to anyone
17 whatsoever. Don't converse with the attorneys or the
18 Court or witnesses in or out of the courtroom.

19 I am going to release you for 90 minutes, at
20 the end of which time, I'm going to have you back in
21 the jury room. It is five of eleven, so, we are
22 talking about 12:30. So, get lunch. You may leave the
23 building. And then, when you come back, only then will
24 I give you the closing arguments of the attorneys and
25 my charge to you explaining the law that you are

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1 supposed to decide. And then, I will send you back to
2 the jury room to do your deliberations and make your
3 decision.

4 So, it is way too early to start thinking
5 about the case. Enjoy your lunch. And we'll see you
6 at 12:30.

7 (Jurors escorted from the courtroom.)

8 THE COURT: Motions now.

9 MR. DUMAS: We renew our motion for trial
10 order dismissal, your Honor.

11 THE COURT: The Court determines that, after
12 reviewing the charge and the law, with respect to the
13 indictment, that the People have put sufficient
14 evidence before the jury that, if believed by the jury,
15 they would -- a reasonable person could return a
16 verdict of guilty. They have presented evidence as to
17 each and every element of the crime. I have given you
18 the jury instructions. I will be using the canned jury
19 instructions. Obviously, deleting anything about the
20 defendant not testifying since he testified. And I
21 will be using the charge as I have just given you a
22 copy, which again, is right from the Pattern Jury
23 Instructions.

24 Do you have anything in addition?

25 MR. DUMAS: Just the question of the lesser

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1 included of Criminal Contempt, in the Second Degree. I
2 believe there is one section, the violation of the
3 lawful order of the Court section to that statute that
4 might fit here. The Court could --.

5 THE COURT: If that one always fit, then there
6 would be no Criminal Contempt, First, because an Order
7 of Protection is the extra element that was issued and
8 the defendant had extra knowledge. There would be no
9 order of which he could be aware, other than this Order
10 of Protection, therefore, they would have to determine
11 all of the elements of Criminal Contempt, First, in
12 order to decide Criminal Contempt, Second. And all
13 they would be doing is trying to do the defendant a
14 favor if they were to find that they believed the
15 harassment, et cetera --

16 MR. DUMAS: I only thought the one difference
17 would be they might not believe the threat, but they
18 might believe communication. In other words, they
19 could say, well, yeah, he communicated with him, but we
20 don't think he threatened him. That was the only spot
21 I thought it might be different.

22 THE COURT: So, you think the threat is --.

23 MR. DUMAS: I thought, but, you know, I am no
24 --.

25 MR. MAREYEV: Your Honor, if I may, my office

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1 actually came through on a case and I do have it still
2 on counsel's table up there, which I think indicates
3 the crime of Criminal Contempt, Second, could be the
4 lesser included.

5 THE COURT: So, you have no objection to the
6 Court giving them Criminal Contempt, Second, is that
7 correct?

8 MR. MAREYEV: I would leave it in discretion
9 of the Court, but since Mr. Dumas brought it up and I
10 want to --.

11 MR. DUMAS: I just wanted to explain it to
12 Stephen for a moment.

13 THE COURT: So, that is your request.

14 MR. DUMAS: If I could just let him know what
15 we are asking the Court to do is not only charge --
16 they have to charge the crimes in the indictment,
17 Criminal Contempt in the First Degree and Criminal
18 Possession of a Weapon in the Fourth Degree, what we
19 are asking the Court to do is to also charge, in the
20 alternative, Criminal Contempt in the Second Degree, so
21 -- to tell the jury that, okay, we have haven't found
22 -- if you haven't found enough evidence to convict him
23 of Criminal Contempt, in the First Degree, you are then
24 to consider whether or not he could be guilty of
25 Criminal Contempt, in the Second Degree, as a lesser

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1 included offense.

2 THE DEFENDANT: Okay. That is based on the
3 forced communication.

4 MR. DUMAS: Well, yeah, communication, that is
5 what my thoughts were. Is that something that is okay
6 with you?

7 THE DEFENDANT: It is a lesser charge?

8 MR. DUMAS: It is a misdemeanor.

9 THE DEFENDANT: Yeah, I can't see why not.
10 You know.

11 MR. DUMAS: I'm your dog on a leash.

12 THE COURT: So, you are asking the Court to do
13 that and the Court will include the lesser included.

14 So, you have 90 minutes.

15 MR. MAREYEV: Your Honor, just wanted to bring
16 up and I know defense counsel talked about the search
17 in terms like that and I just want to make sure that it
18 is part of a general instructions to the jury, that
19 your Honor is the sole determinative on the law and
20 they are determining the facts.

21 THE COURT: Well, I say that.

22 MR. MAREYEV: I just want to make sure.

23 THE COURT: But I am not going to say it
24 specifically about the search.

25 MR. DUMAS: And I don't foresee me arguing the

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1 search anyway.

2 THE COURT: I foresee me stopping you.

3 MR. MAREYEV: I foresee me objecting.

4 THE COURT: Thank you.

5 (A recess was taken.)

6 THE COURT: Thank you. You may be seated.

7 Members of the Jury, the proof having been
8 closed, we have reached the point where you are about
9 to hear the summations of counsel. After they have
10 summed up, the Court will charge you, that is, instruct
11 you as to the laws, rules and principles of law that
12 will guide you during deliberations and in reaching
13 your final verdict or verdicts.

14 It is our law that defendant's counsel will
15 make closing argument or sum up first. And the
16 assistant district attorney will sum up last.

17 In making summations, counsel will review the
18 evidence you have heard and seen during the course of
19 the trial and will suggest to you certain inferences or
20 conclusions which they, in their opinion, believe may
21 be properly drawn from the evidence. That is the
22 purpose of such summations. If you find that a
23 particular attorney's analysis of the evidence is
24 correct, that the evidence as summed up and analyzed by
25 that attorney is accurate, and if you find that the

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1 inferences and conclusions which you are being asked to
2 draw from the evidence are logical and sensible, then
3 you are at liberty to adopt such inferences and
4 conclusions, either in whole or in part.

5 On the other hand, if you believe that either
6 counsel's analysis of the facts or of the inferences or
7 conclusions which you are being asked to draw are
8 illogical or not warranted by the evidence, then you
9 may disregard it, either in whole or in part, and draw
10 your own conclusions from the evidence which you
11 believe to be truthful.

12 Please bear in mind, Members of the Jury, that
13 nothing that counsel may say in their summations is
14 evidence in the case. Nothing that I will say in my
15 final instructions will be evidence in the case. You
16 have heard the evidence and you, and you, alone, are
17 the sole and exclusive judges of the facts of the case.

18 We will turn to summations.

19 Counsel.

20 MR. DUMAS: Thank you, your Honor. Beyond a
21 reasonable doubt. I think I was just telling you about
22 this a couple hours ago. Certainly, didn't expect to
23 be back up here this quickly. Here we are.

24 Beyond a reasonable doubt. The Judge is going
25 to tell you that, in this case, that beyond a

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1 reasonable doubt -- now, I want you to listen carefully
2 to her when she tells you -- is proof that leaves you
3 so firmly convinced. That is important. Okay. That
4 is that level of convincing that you have to have. You
5 have to be so firmly convinced of Stephen's guilt that
6 you have no reasonable doubt.

7 I ask you to listen to the weight of the
8 evidence. We had a couple of witnesses get on the
9 stand. Criminal Contempt, in the First Degree. Two
10 witnesses testified about the substance of what
11 happened that day. And, as you heard, they were
12 diametrically opposed. What you did hear was Terry
13 Johnson does not like Stephen Nuccio. Even more so, he
14 described him as -- well, no, he described Jennifer,
15 his niece, as his full-time niece and his part-time
16 girlfriend. That is why he didn't like Stephen Nuccio.

17 He took that Order of Protection, Exhibit
18 Number One, you are going to get it in the jury room,
19 if you want to look at it. Take a look at it. He took
20 that shield, that thing that courts put in place in
21 order to protect somebody, and he turned that shield
22 into a sword, and that is what he is doing here. He
23 knows that if Stephen violates an Order of Protection,
24 he is going to get into trouble. That is what this is
25 about.

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1 Ask yourself, that short period of testimony
2 that you heard, is that something that is going to
3 leave you so firmly convinced of Stephen Nuccio's guilt
4 that it is beyond a reasonable doubt?

5 What did Stephen tell you? He got up there on
6 the stand. The Judge is going to tell you he is an
7 interested witness. He has a lot to lose here. He got
8 up on the stand and he told you that he got startled by
9 Terry Johnson. He told you, up on the stand, he is a
10 nervous guy. He was out on the yard, picking up
11 sticks. Terry Johnson came up behind him, shouted. He
12 got startled, turned around. What did he say? He said
13 -- he said get away from me, stay away from me and
14 Jennifer. And what did he do? He said he walked away.
15 He said he walked toward Terry Johnson? No. He said
16 he turned around and he walked quickly away. He got
17 away from him.

18 Did he intend to violate an Order of
19 Protection? That is one of the elements. That is one
20 of the things that the Judge is going to tell you they
21 have to prove, beyond a reasonable doubt. At that
22 point, when he was startled, and jumped back and said
23 the first thing that came to his mind, did he intend to
24 violate that Order of Protection? Did he intend to
25 make some sort of communication with him, or, did he

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1 just want to get away? Did he just want him to stay
2 away from Stephen? Did he want Terry to stay away from
3 him? Ask yourself, is it proof beyond a reasonable
4 doubt?

5 Remember, defense doesn't have any proof.
6 Doesn't have any burden. It is their job, to leave
7 you, at the end of this case, so firmly convinced that
8 he broke the law, that it is beyond a reasonable doubt.

9 I am asking you with regards to Criminal
10 Contempt, in the First Degree, when you go back there,
11 sit back and ask yourself that question, was that short
12 period of testimony, that is it -- he said and then he
13 said -- is that enough to turn you to the point of
14 beyond a reasonable doubt? Or, ask yourself, is it
15 reasonable that it might have happened the way that
16 Stephen told you? Is that reasonable that could have
17 happened that way? And, I tell you, if you believe
18 that that is reasonable, and if you believe that it
19 wasn't intentional communication, then I ask you to
20 find him not guilty because that is a reasonable doubt.

21 Criminal Possession of a Weapon, in the Fourth
22 Degree. You heard the testimony. You heard how they
23 approached Stephen that day. You heard about that. It
24 is in evidence. Exhibit Number Two. We would just ask
25 you, because you are going to get instructed on the

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1 law, keep the Second Amendment in mind. He had a right
2 to bear arms.

3 MR. MAREYEV: Your Honor, I'm going to object.

4 THE COURT: You have been clearly asked
5 whether you will decide what the laws are. You have
6 all taken an oath to follow the law as I give it to
7 you. I will give you the law with respect to weapons
8 and you must follow that law. And not whatever other
9 beliefs you may have come to that would be about what
10 the law should be.

11 Go ahead.

12 MR. DUMAS: And that is my request, follow the
13 law. Listen to the Judge as the Judge gives you the
14 law and follow the law, especially Criminal Contempt,
15 in the First Degree. Follow it. Please.

16 At the end of this case, I ask you to watch, I
17 ask you to listen, I ask you to see and hear. More
18 importantly, you have seen the witnesses, what little
19 there was. This could be quite honestly the fastest
20 trial I have ever had, and, I have had a number. But
21 it is your job, most important job here to weigh the
22 evidence. Go back in that room. Put it on those
23 metaphorical scales, weigh it. And you tell me. You
24 tell the Court. You tell the District Attorney's
25 office. And more importantly, you tell Stephen, at the

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1 end of this case, if that weight of the evidence is
2 such that it tips those scales that far, is such that
3 it is beyond a reasonable doubt. You are going to get
4 sick of that phrase after today, I can guarantee it,
5 you are going to go home and you are not going to watch
6 one of those cop shows for weeks -- maybe days. I
7 don't know. But, I joke around a little bit. But
8 please, don't let me convince you that this isn't a
9 serious case. Don't think that this isn't a big
10 responsibility, even though we have only been here a
11 short amount of time today, because it is.

12 Thank you, Folks.

13 THE COURT: Thank you.

14 MR. MAREYEV: I have a new gun and I'm going
15 to shoot you. That is what this case is about.

16 Now, Mr. Dumas is correct, this is a very
17 short trial and you didn't have a lot of witnesses that
18 testified, but I submit to you, the witnesses that
19 testified in front of you proved this case beyond a
20 reasonable doubt.

21 Let's talk about the elements and the Judge
22 will instruct you on the law. But I want to discuss
23 some of the testimony that came through this witness.
24 First, we have Lisa Proven testified, who has been a
25 justice in a Hammond town court for twenty plus years

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1 and she testified that, in fact, on August 24, 2011,
2 she issued an Order of Protection. That the Order of
3 Protection directed the defendant to stay away from
4 Terry Johnson. It also directed the defendant not to
5 have any communication with Mr. Johnson.

6 Ms. Proven testified that the defendant was
7 present in the court and that he signed an Order of
8 Protection.

9 Then, we have Mr. Johnson who testified. And
10 Mr. Johnson talked about several things. He talked, at
11 some point, him, and the defendant were friends. He
12 also did testify that there was an Order of Protection
13 in place and that he was aware of that. Mr. Johnson
14 talked like he was working outside and then he saw this
15 man approach him and started talking. And during that
16 conversation, when Mr. Johnson asked the defendant to
17 leave, the defendant told him that he has a new gun and
18 he is going to shoot him.

19 Now, let's talk a little bit about the
20 credibility of Mr. Johnson. He is up here today, and I
21 submit to you he has no motivation to lie. Now --.

22 MR. DUMAS: Object, your Honor. I believe
23 that he is vouching for the credibility of a witness.

24 THE COURT: He said he submitted. It is his
25 opinion and I caution the jury that they may accept or

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1 reject his opinion.

2 Go ahead.

3 MR. MAREYEV: Now, Mr. Dumas, on cross
4 examination, asked about the niece. And again, your
5 recollection of the testimony controls here and you can
6 ask the stenographer to read it back, but, Mr. Johnson
7 testified that he stayed out of it. It is not his
8 business. But he wanted nothing to do with that.

9 We also heard the defendant testify. He
10 talked that he was pressured when he was signing the
11 Order of Protection, yet, didn't really answer who was
12 the person pressuring him. He did testify that he
13 understood what to communicate is and one of his
14 responses was that to talk to a person. And he also
15 indicated and testified that Mr. Johnson was not under
16 any obligation to refrain from any communication. That
17 was the defendant's responsibility and he was ordered
18 not to have any communication with Mr. Johnson. And
19 the defendant did admit that he did have communication
20 with Mr. Johnson on May 5 of 2012. Defendant did also
21 testify that he did not threaten Mr. Johnson, that he
22 did not say, I have a new gun and I'm going to shoot
23 you. But I submit to you that he is on trial. It is a
24 self-serving statement, that he has everything to lose
25 to be less than honest here.

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1 Now, the second count, the Criminal Possession
2 of a Weapon, in the Fourth Degree. We heard from
3 Investigator Foster, who testified, said that herself
4 and four other troopers responded to defendant's
5 residence and when they entered and defendant requested
6 her to go upstairs, as a courtesy, and to obtain his
7 clothing so he can go to transport, she did testify
8 that during her walk upstairs, she observed several
9 pairs of chuka sticks. And again, they are in evidence
10 as People's Exhibit Two. They are for you to examine
11 and look at that. And the Judge will give you
12 instructions what those chuka sticks are. They were in
13 the defendant's residence. Defendant possessed them.

14 In the beginning of my voir dire questions, I
15 asked you to follow the law. And you made a promise to
16 me to follow the law as the Judge instructs you. Now,
17 I submit to you that the People proved the case, beyond
18 a reasonable doubt. The People proved that the Judge
19 ordered -- issued the Order of Protection on May 24,
20 2011, and it has been established by testimony of Lisa
21 Proven, that the defendant was aware of that Order of
22 Protection as he was present in court. That on May 5
23 of 2012, defendant violated that Order of Protection by
24 starting a communication with Mr. Johnson. Continued
25 the communication, even though he was aware that he was

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1 not to say any words, not to communicate in any shape
2 or form with Mr. Johnson, yet he admitted to you that
3 he did violate that Order of Protection. And I submit
4 to you that during that conversation, he did threaten
5 Mr. Johnson. He did say I have a new gun and I will
6 shoot you. I also submit to you the defendant was
7 found in the possession of the nunchucks at his
8 residence on May 8 of 2012 here in St. Lawrence County.

9 I want you to go back to that room, I want you
10 to deliberate. I submit to you that the case has been
11 proven beyond a reasonable doubt. I want to thank you
12 for your service. And ask you to find defendant guilty
13 of all of the crimes charged in the indictment.

14 Thank you.

15 THE COURT: Members of the jury, I will now
16 charge you on the law you are to apply in this case.
17 The law provides that the first juror drawn and sworn
18 will be the foreperson of the jury, that person is
19 Samantha Silsby, who will preside over your
20 deliberations. Your main duty is when it is time to
21 bring back a verdict, I will instruct you on how to do
22 that.

23 The fundamental duty of a jury is to determine
24 the facts and the law provides that the jury is the
25 exclusive judge of the facts. The law provides that

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1 the Court is the sole judge of the law which you are to
2 employ in a case. And, therefore, I charge you that
3 under your oath as jurors, you are bound to accept and
4 apply the law which is given to you by the Court. You
5 should first determine what the facts are in this case.
6 Then you must apply to your findings the law charged by
7 the Court. The verdict which results from this
8 procedure must be unanimous. All twelve jurors must
9 agree to the verdict on each count, whether it is
10 guilty or not guilty.

11 The attorneys made objections during the
12 trial. You must not be influenced by objections nor by
13 my rulings on them. I further charge you that
14 arguments, remarks and closing summations do not
15 constitute evidence. When you judge the facts of the
16 case, you are to consider only the evidence which is
17 the testimony of the witnesses, and the two exhibits
18 that were received in evidence.

19 Testimony which was stricken from the record
20 or to which an objection was sustained must be
21 disregarded by you. Exhibits that were received in
22 evidence will be available for inspection and
23 consideration. You are prohibited by law from
24 considering matters which are not evidence, such as any
25 sympathy you hold for the alleged victim, for a person

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1 who appeared as a witness, or, for the defendant.

2 You should not be concerned with any sentence
3 which might be imposed if the defendant were to be
4 convicted, nor should you be affected by what the
5 public reaction may be to your verdict. Your decision
6 is to be reached solely upon the competent evidence
7 which has been presented.

8 As judges of the facts, you alone determine
9 the truthfulness and accuracy of the testimony of each
10 witness. You must decide whether a witness told the
11 truth and was accurate or, instead, testified falsely
12 or was mistaken. You must also decide what importance
13 to give to the testimony you accept as truthful and
14 accurate. It is the quality of the evidence that
15 controls, not the number of witnesses.

16 If you find that any witness has intentionally
17 testified falsely as to any material fact, you may
18 disregard that witness's entire testimony. Or, you may
19 disregard so much of it as you find was untruthful and
20 accept so much of it as you find to have been
21 truthfully and accurately given. There is no
22 particular format for evaluating the truthfulness and
23 accuracy of another person's statements or testimony.
24 You bring to this process all your varied experiences.
25 In life, you frequently decide truthfulness and

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1 accuracy of statements made you to you by people. The
2 same factors used to make those decisions should be
3 used in this case when evaluating the testimony.

4 Some factors you may wish to consider are as
5 follows: Did the witness have an opportunity to see or
6 hear the events about which he or she testified? Did
7 the witness have the ability to recall those events
8 accurately? Was the testimony of the witness plausible
9 and likely to be true, or, was it implausible and not
10 likely to be true? Was the testimony of the witness
11 consistent or inconsistent with other testimony or
12 evidence in the case? Did the manner in which the
13 witness testified reflect upon the truthfulness of that
14 witness's testimony? To what extent, if any, did the
15 witness' background, training, education or experience
16 affect the believability of the witness' testimony?
17 Did the witness have a bias, hostility, or some other
18 attitude that affected the truthfulness of the witness'
19 testimony? You may consider whether a witness had or
20 did not have a motive to lie. If a witness had a
21 motive to lie, you may consider whether and to what
22 extent, if any, that motive affected the truthfulness
23 of that witness's testimony. If a witness did not have
24 a motive to lie, you may consider that as well in
25 evaluating the witness' testimony.

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1 You may consider the interest of the witness
2 in the outcome of the trial. A witness is an
3 interested witness when, by reason of relationship,
4 friendship, antagonism or prejudice in favor or against
5 a party, the witness' testimony in your judgment is, in
6 fact, biased or likely to be biased. If you find that
7 any witness is an interested witness, you should
8 consider such interest in determining the credibility
9 of the testimony and the weight to be given to it. A
10 disinterested witness, on the other hand, is one who
11 has no interest in the outcome of the trial. A factor
12 you may wish to consider in determining the credibility
13 and weight to be given to the testimony of the witness.

14 Finally, you should not reject the testimony
15 of an interested witness merely because of such
16 interest, nor should you accept the testimony of a
17 disinterested witness merely because of disinterest. A
18 defendant who testified is a person who is interested
19 in the outcome of the case. You are not required,
20 however, to reject the testimony of that interested
21 witness or to accept it, if the witness has no interest
22 in the outcome. You may, however, consider whether an
23 interest in the outcome or the lack of such interest
24 affects the truthfulness of the witness' testimony.
25 You may consider whether a witness' testimony is

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1 consistent with the testimony of other witnesses or
2 with other evidence in the case.

3 In this case, you have heard the testimony of
4 police officers. As I have said several times over the
5 course of the trial, the testimony of a witness should
6 not be believed solely and simply because the witness
7 is a police officer. At the same time, the testimony
8 should not be disbelieved solely and simply because the
9 witness is a police officer. You evaluate that
10 person's testimony in the same way you would evaluate
11 the testimony of any other witness.

12 A fundamental legal principle which applies in
13 every criminal case known as presumption of innocence.
14 The law provides that the defendant starts a trial with
15 the presumption in his favor. And that he is innocent
16 of the charge. This presumption of innocence follows
17 the defendant throughout the entire trial and remains
18 with the defendant until it is overcome by proof of
19 guilt beyond a reasonable doubt and until such time as
20 you, by your verdict, find the defendant guilty beyond
21 a reasonable doubt or not guilty. If you find the
22 defendant not guilty, then the presumption of innocence
23 with which the defendant started the trial has ripened
24 into an established fact. If, on the other hand, you
25 find the defendant guilty, then the presumption of

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1 innocence has been overcome or destroyed by the
2 evidence presented. The presumption of innocence is
3 one of the basic principles of criminal law which is
4 well known and recognized by all citizens. It is more
5 simply expressed in the fact that any person accused of
6 a crime is presumed to be innocent until proven guilty
7 in a proper court of law. The mere fact that an
8 indictment was returned against the defendant creates
9 no presumption of guilt. It is not proof of anything.

10 Our statutes require that an indictment shall
11 be filed in this Court before an accused is brought to
12 trial. A jury must never infer anything from the
13 filing of an indictment against a defendant. Our law
14 provides that before a defendant may be convicted of a
15 crime by verdict of a jury, the evidence must
16 establish, to the jury's satisfaction, beyond a
17 reasonable doubt, each and every element of the crime
18 and that the defendant committed the crime. The
19 standards apply in every criminal case. You must
20 employ this standard in the following manner:

21 If, after a careful and honest review and
22 consideration of all of the evidence or lack of
23 evidence in this case, you are not satisfied as to the
24 defendant's guilt, and you have a reasonable doubt in
25 that regard, you must, by law, give the defendant the

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1 benefit of that doubt and find him not guilty.

2 If, on the other hand, you are satisfied as to
3 the defendant's guilt, and you have no reasonable doubt
4 in that regard, that is, you are convinced of the
5 defendant's guilt, beyond a reasonable doubt, you are
6 justified in returning a verdict of guilty.

7 The phrase "beyond a reasonable doubt" does
8 not mean beyond all doubt or beyond all possibility of
9 doubt or beyond a shadow of a doubt. Nor is a
10 reasonable doubt one based upon a guess, speculation, a
11 hunch, suspicion, sympathy, or anything of that nature
12 which is unrelated to the evidence in this case. The
13 term "reasonable doubt" means a doubt based upon
14 reason. A doubt that a reasonable person would
15 entertain after giving a careful and honest review and
16 consideration of all of the evidence. A doubt which a
17 reasonable person could express or articulate if called
18 upon during deliberations to do so. A reasonable doubt
19 means a doubt which arises from conscientious
20 consideration of the evidence or the lack of evidence.
21 An actual doubt of which you are conscious, in your own
22 mind. When, after consideration of all of the evidence
23 in the case, you are uncertain in your mind and not
24 satisfied as to the defendant's guilt, and your doubt
25 seems reasonable to you, that is what the law means by

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1 the term "reasonable doubt."

2 Another principle of law which you must apply
3 in your determination of what the fact are in this case
4 are a defendant is entitled to every inference in his
5 favor which can reasonably be drawn from the evidence.
6 Thus, where two inferences may be drawn from the same
7 facts, one which is consistent with guilt and the other
8 with innocence, a defendant is entitled to that
9 inference which is consistent with that of innocence.

10 I will now proceed with instructions which
11 pertain to the offenses which we will be submitting to
12 you. The Grand Jury, of the County of St. Lawrence, by
13 indictment, charge the defendant with the crime of
14 Criminal Contempt in the First Degree.

15 The defendant, it is alleged as follows: The
16 defendant in the Town of Macomb, County of St.
17 Lawrence, and State of New York, on or about the 5th
18 day of May, 2012, did, in violation of a duly served
19 Order of Protection or such order of which the
20 defendant had actual knowledge, because he was present
21 in court when such order was issued, and with intent to
22 harass, annoy, threaten or alarm a person for whose
23 protection such order was issued, he struck, shoved,
24 kicked or otherwise subjected such other person to
25 physical contact, or, attempted or threatened to do the

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1 same. To wit: At the aforesaid date, time and place,
2 in violation of an Order of Protection issued in favor
3 of Terry Johnson, issued by the Honorable Lisa A.
4 Proven, on August 24, 2011, of which the defendant had
5 actual knowledge, because he was present in Court when
6 such order was issued, defendant, with intent to
7 harass, annoy, threaten or alarm Terry Johnson,
8 threatened to shoot Terry Johnson.

9 Under our law, a person is guilty of Criminal
10 Contempt, in the First Degree, when, in violation of a
11 duly-served Order of Protection, or such order of which
12 the defendant has actual knowledge, because he or she
13 was present in court when such order was issued, he,
14 with intent to harass, annoy, threaten or alarm a
15 person for whose protection such order was issued,
16 strikes, shoves, kicks, or otherwise subjects such
17 other person to physical contact, or attempts, or
18 threatens to do so.

19 The term "intent" used in this definition has
20 its own special meaning in our law. Intent means
21 conscious objective or purpose. Thus, a defendant acts
22 with intent to harass, annoy, threaten or alarm a
23 person for whose protection such order was issued when
24 that defendant's conscious objective or purpose is to
25 do so.

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1 In order for you to find the defendant guilty
2 of this crime, the People are required to prove, from
3 all of the evidence in the case, beyond a reasonable
4 doubt, each of the following four elements:

5 One, that on or about August 24, 2011, the
6 Honorable Lisa A. Proven of the Town of Hammond,
7 Justice Court, issued an Order of Protection that was
8 duly served or such order of which the defendant had
9 actual knowledge because he was present in court when
10 such order was issued.

11 Two, that the order was issued for the
12 protection of Terry Johnson.

13 Three, that on or about May 5, 2012, in the
14 County of St. Lawrence, the defendant, Stephen Nuccio,
15 in violation of that order, harassed, annoyed,
16 threatened or alarmed Terry Johnson by striking,
17 shoving, kicking, or otherwise subjecting him to
18 physical contact or attempting or threatening to do the
19 same.

20 And four, that the defendant did so
21 intentionally.

22 Therefore, if you find that the People have
23 proven, beyond a reasonable doubt, each of those
24 elements, you must find the defendant guilty of the
25 crime of Criminal Contempt, in the First Degree, as

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1 charged in the first count.

2 On the other hand, if you find that the People
3 have not proven, beyond a reasonable doubt, any one or
4 more of those elements, you must find the defendant not
5 guilty of Criminal Contempt in the first degree as
6 charged in the first count.

7 I am submitting for your consideration the
8 offense of Criminal Contempt, in the Second Degree,
9 which was not mentioned prior to this point. That
10 crime is called a lesser included offense of Criminal
11 Contempt in the First Degree. As a result, our law
12 requires that the jury consider Criminal Contempt in
13 the First Degree and Criminal Contempt in the Second
14 Degree. You can find the defendant not guilty of both
15 charges, or guilty of one of the two charges. But not
16 guilty of both charges.

17 Thus, you will consider the charge of Criminal
18 Contempt, in the First Degree, and render a verdict of
19 guilty or not guilty. If your verdict is guilty of
20 Criminal Contempt, in the First Degree, you will not
21 consider Criminal Contempt, in the Second Degree.

22 If your verdict is not guilty, then you will
23 consider the charge of Criminal Contempt, in the Second
24 Degree.

25 Under our law a person is guilty of Criminal

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1 Contempt, in the Second Degree, when he engages in the
2 following conduct:

3 Intentional disobedience or resistance to the
4 lawful process or other mandate of a Court. Some of
5 these terms have their own special meaning in our law.
6 "Lawful process or other mandate of a Court" includes
7 an Order of Protection. A person engages in the
8 intentional disobedience to the lawful process or other
9 mandate of a Court, when, with knowledge of such
10 process or mandate, he or she disobeys or resists such
11 process or mandate and his or her conscious objective
12 or purpose is to do so.

13 In order for you to find defendant guilty of
14 this crime, the People are required to prove, from all
15 of the evidence in the case, beyond a reasonable doubt,
16 the following two elements:

17 One, that on or about August 24, 2011, the
18 Honorable Lisa Proven, of the Town of Hammond, Justice
19 Court, issued a lawful process or mandate, namely an
20 Order of Protection.

21 Two, that on or about May 5, 2012, in the
22 County of St. Lawrence, the defendant, Stephen Nuccio,
23 with knowledge of such process or mandate, engaged in
24 intentional disobedience or resistance to it.

25 If you find that the People have proven,

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1 beyond a reasonable doubt both of those elements, you
2 must find the defendant guilty of the crime of Criminal
3 Contempt, in the Second Degree.

4 On the other hand, if you find that the People
5 have not proven, beyond a reasonable doubt, either or
6 both of these elements, you must find the defendant not
7 guilty of the crime of Criminal Contempt, in the Second
8 Degree.

9 The second count of the indictment states the
10 Grand Jury, of the County of St. Lawrence, accuses the
11 above defendant of the crime of Criminal Possession of
12 a Weapon, in the Fourth Degree, committed as follows:

13 The defendant in the Town of Macomb, County of
14 St. Lawrence, and State of New York, on or about the
15 5th day of the May, 2012, did knowingly possess any
16 chuka stick in violation of Penal Law to which the
17 aforesaid date, time and place the defendant possessed
18 multiple chuka sticks.

19 The second count is Criminal Possession of a
20 Weapon, in the Fourth Degree. And under our law, the
21 person is guilty of Criminal Possession of a Weapon, in
22 the Fourth Degree, when that person knowingly possesses
23 any chuka stick. Some of the terms have their own
24 definition. A chuka stick means any device designed
25 primarily as a weapon consisting of two or more lengths

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1 of a rigid material joined together by a thong, rope or
2 chain in such a manner as to allow free movement of a
3 portion of the device while held in the hand and
4 capable of being rotated in such manner as to inflict
5 serious injury upon a person by striking or choking.
6 These devices are also known as nunchakas and
7 centrifugal force sticks.

8 "Possess" means to have physical possession or
9 otherwise to exercise dominion or control over the
10 property. A person knowingly possesses a chuka stick
11 when that person is aware that he is in possession of
12 such chuka stick.

13 In order for you to find the defendant guilty
14 of this crime, the People are required to prove, beyond
15 a reasonable doubt, from all of the evidence in the
16 case, the following two elements -- both of them:

17 One, that on or about May 8, 2012, in the
18 County of St. Lawrence, the defendant, Stephen Nuccio,
19 possessed a chuka stick.

20 And two, that the defendant did so knowingly.

21 If you find that the People have proven,
22 beyond a reasonable doubt, both of those elements, you
23 must find the defendant guilty of the crime of
24 Possession of a Weapon, in the Fourth Degree, as
25 charged in the second count.

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1 On the other hand, if you find that the People
2 have not proven, beyond a reasonable doubt, either one
3 or both of those elements, you must find the defendant
4 not guilty of the crime of Criminal Possession of a
5 Weapon, in the Fourth Degree, as charged in the second
6 count.

7 I will not review the testimony in the case.
8 You must remember it is your recollection of evidence
9 that controls, not that of the lawyers, nor that of the
10 Court. It is the law the jury takes its own
11 independent recollection as to what the testimony of a
12 witness was, or what a piece of evidence was in the
13 case. It the jurors collective recollection that is
14 controlling, not that of the lawyers or even that of
15 the Judge.

16 If, during your deliberations, there is
17 disagreement concerning a witness' testimony, you may
18 apply to the Court, in writing, through your
19 foreperson, for the testimony of that particular
20 witness. And the Court will permit a portion or all of
21 the testimony of that witness to be read to you.

22 Furthermore, if you find that it is not clear
23 in your minds what the Court said is the law, upon any
24 given point, then upon written application, the Court
25 will repeat the instructions or give you further

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1 instructions on the law. Please be advised that if you
2 should request the testimony, it will take time for the
3 stenographer to prepare that testimony and review.
4 Please be as specific as possible regarding the
5 particular portion of the testimony which you wish read
6 back to you. Please continue to deliberate if you can,
7 on that, or other points until we're ready to return
8 you to the courtroom.

9 Members of the jury, the object of our jury
10 system is to bring twelve persons together to focus
11 their united intelligence upon the facts in a given
12 case. You jurors are the sole and exclusive judges of
13 the facts. And it is for you, alone, to determine and
14 decide what the facts are. Your discussions should be
15 dignified, unemotional and intelligently based upon the
16 evidence and the law, the evidence, as you interpret
17 it, and the law, as I have defined it.

18 Upon retiring to the jury room, every effort
19 should be made to harmonize the various views to make
20 every endeavor to come to an agreement, which agreement
21 will speak the truth. You are further instructed that,
22 in the last instance, it is each juror's mind that must
23 be convinced, beyond a reasonable doubt, before a
24 verdict convicting the defendant may be returned. Each
25 juror, although you should listen to each other, each

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1 juror must cast your vote according to the dictates of
2 your own mind. If you find a reasonable doubt as to
3 the defendant's guilt, you must vote for acquittal.

4 I have endeavored to preside over this trial
5 with total impartiality. I have no feelings one way or
6 the other as to the outcome. I do, however, have very
7 strong feelings about ensuring the trial is properly
8 conducted. If, at any time, I unconsciously gave you
9 an indication of some personal feeling, you must
10 disregard it. I try to make people comfortable in the
11 courtroom and I think sometimes lack of seriousness of
12 manner may be interpreted as lack of seriousness of
13 purpose, but that is simply not true.

14 Your verdict must be unanimous and all twelve
15 of your members must agree to any verdict, whether it
16 is guilty or not guilty. The verdict will be announced
17 by your foreperson upon questioning by the court clerk.
18 What you do is you write a note that says we have a
19 verdict, but don't say what it is. There are
20 envelopes. You seal it in the envelope and give it to
21 the court attendant. He brings it to me. I get
22 everyone back together in the room, tell them there is
23 a note. Tell them it is a verdict, if there is a
24 verdict. Then I bring you back. I ask you, do you
25 have a verdict. You say yes or no, and, then, the

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1 clerk asks you what it is. Okay. I'm trying to keep
2 you from blurting it out or writing it on a piece of
3 paper.

4 I'm going to provide with you a verdict sheet,
5 which, very simply, reminds you that you consider the
6 first count and come to a decision, before you even
7 consider Criminal Contempt, in the Second Degree. And
8 then, you may consider the Criminal Possession of a
9 Weapon, in the Fourth Degree, at any time first, or
10 second. But only with Criminal Contempt, in the First
11 Degree, and, Criminal Contempt, in the Second, must you
12 consider the first degree before you consider second
13 degree.

14 During deliberations, you do not communicate
15 with anyone outside the jury room or permit anyone to
16 do so. That includes cell phones. You must turn them
17 off. The sole exception is if your foreperson has an
18 application to the Court or to advise the Court that
19 you have concluded your deliberations and you have
20 reached a verdict.

21 Some of you took notes during the trial. All
22 jurors should be given equal attention during
23 deliberations, regardless of the notes. They are used
24 only to refresh the individual's memory during
25 deliberations. They may not be used as authority to

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1 persuade other jurors. For that, we have the
2 transcript.

3 Do you have any exceptions or requests?

4 MR. DUMAS: No, your Honor.

5 MR. MAREYEV: No, your Honor.

6 THE COURT: At this point, and before you have
7 done your job, I want to thank you very much. Because
8 when you come out and give me the verdict, I want you
9 to understand that, whatever verdict you give, we thank
10 you for your service as jurors. Whatever verdict you
11 give is the appropriate one and I will expect to
12 receive that from you.

13 With that, what I would like to do, with the
14 chuka sticks, those objects, is to take that Exhibit,
15 if you will put what is in that Exhibit on that table.
16 Spread them out. I'm going to give you Exhibit One.
17 And I would ask that the jurors come out, past Exhibit
18 Two. Take your opportunity to look at this Exhibit and
19 the papers closely. Take a moment. I would prefer to
20 keep them in the courtroom.

21 MR. DUMAS: Your Honor, Slava brought up a
22 good point about the alternate.

23 THE COURT: Let's -- I would like her to look
24 at those and then, you didn't leave anything jury room,
25 did you?

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1 THE ALTERNATE: I did not.

2 THE COURT: You just stay here after you step
3 by those and sit in the first row and then we will
4 decide what happens next.

5 So, if you would step out and start the line.

6 (Jurors complying with Court's request.)

7 THE COURT: At this point in time, do you have
8 any requests? Shall I sequester the alternate at this
9 time?

10 MR. DUMAS: We would be comfortable with
11 releasing her, your Honor.

12 THE COURT: Okay. And the defendant
13 understands that, should the jury not be able to reach
14 a decision, or should someone get sick, I would have to
15 declare a mistrial?

16 THE DEFENDANT: (Nodded head affirmatively.)

17 THE COURT: I don't anticipate that, but after
18 talking to counsel, you are willing to thank her and
19 release her?

20 THE DEFENDANT: Absolutely.

21 THE COURT: Your job is done. You are
22 permitted to talk to anyone you wish to about it now.
23 You are no longer bound by the rules. And there is a
24 good chance that the attorneys might wish to ask you
25 how they did or what you thought. And they are welcome

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1 to do so, but you don't have to talk to anyone about it
2 if you don't want to. Thank you.

3 (Alternate juror excused from the courtroom.)

4 THE COURT: Any other questions?

5 MR. DUMAS: No.

6 MR. MAREYEV: Thank you.

7 (Deliberations)

8 THE COURT: Mr. Nuccio, I'm bringing the jury
9 back in. The jury has indicated, in a note, that they
10 have a verdict. And I will ask to you rise and then
11 whatever their verdict is, we will deal with it
12 afterwards. Okay.

13 If you will bring them in. I have marked the
14 note Court's Exhibit One.

15 (Jurors escorted into the courtroom.)

16 THE COURT: Would the foreperson please rise.
17 You have indicated by a note, through the foreperson,
18 that you have reached a verdict. And I would ask that
19 you listen very carefully to the Court clerk and she
20 will ask you certain questions. Okay.

21 THE CLERK: Has the jury agreed upon a
22 verdict?

23 THE FOREPERSON: Yes.

24 THE CLERK: With respect to the first count of
25 the indictment, charging the defendant with the crime

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1 of Criminal Contempt, in the First Degree, do you find
2 the defendant guilty or not guilty?

3 THE FOREPERSON: Not guilty.

4 THE CLERK: With respect to the indictment
5 charging the defendant with the lesser included crime
6 of Criminal Contempt, in the Second Degree, do you find
7 the defendant guilty or not guilty?

8 THE FOREPERSON: Not guilty.

9 THE COURT: With respect to the second count
10 of the indictment, charging the defendant with the
11 crime of Criminal Possession of a Weapon, in the Fourth
12 Degree, do you find the defendant guilty or not guilty?

13 THE FOREPERSON: Guilty.

14 THE COURT: Court accepts the verdict and asks
15 that it be spread upon the record.

16 You may be seated.

17 THE CLERK: Members of the Jury, listen to
18 your verdict as it stands recorded. Each juror has
19 said, through the foreperson of your jury, that with
20 respect to the first count of the indictment charging
21 the defendant with crime of Criminal Contempt, in the
22 First Degree, you find the defendant not guilty; that
23 with respect to the indictment charging the defendant
24 with the lesser included crime of Criminal Contempt, in
25 the Second Degree, you find the defendant not guilty;

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1 that with respect to the second count of the
2 indictment, charging the defendant with the crime of
3 Criminal Possession of a Weapon, in the Fourth Degree,
4 you find the defendant guilty. Now, collectively, are
5 those your verdicts?

6 THE JURORS: Yes.

7 THE COURT: Do you wish them polled?

8 MR. DUMAS: No, your Honor. Thank you.

9 MR. MAREYEV: No, Judge.

10 THE COURT: Thank you. You may be seated.

11 Thank you very much with the giving of your verdict,
12 your service to the state is complete. You are free to
13 go and to talk or remain silent about your time in the
14 jury room. You are not required to not talk about it
15 any more. You are free to say whatever you wish. Just
16 keep it in mind that you may not wish to speak to
17 anyone. The district attorney is the only one who can
18 compel you to speak regarding this or a court order.

19 So, thank you very much.

20 (Jurors escorted from the courtroom.)

21 THE COURT: Jury having found the defendant
22 guilty of the misdemeanor of Criminal Possession of a
23 Weapon, the Court will direct that he cooperate with --
24 why don't I speak off the record to counsel at the
25 bench briefly.

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1 (Discussion held off the record.)

2 THE COURT: The defendant having been found
3 guilty of the misdemeanor of Criminal Possession of a
4 Weapon, in the Fourth Degree, the Court intends to
5 impose sentence that will not include incarceration
6 and, therefore, the Court will not be asking for a
7 presentence investigation.

8 Do the People have anything to state prior to
9 sentencing?

10 MR. MAREYEV: No, Judge. The People request
11 that the Court impose an appropriate sentence.

12 THE COURT: Thank you.

13 Anything on your behalf, Mr. Dumas, on your
14 client's behalf?

15 MR. DUMAS: Nothing further than what you have
16 heard today.

17 THE COURT: You don't have to say anything,
18 but this is your opportunity to speak at your own
19 sentencing should you so choose. You don't have to,
20 but you have the opportunity.

21 THE DEFENDANT: I have nothing further, your
22 Honor.

23 THE COURT: Nothing further?

24 THE DEFENDANT: Nothing further.

25 THE COURT: Okay. For the Criminal Possession

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1 of a Weapon, Fourth Degree, the Court will impose a
2 fine of \$500. The surcharge is \$170 -- \$175,
3 surcharge, and a \$25 crime victim's assistance fee for
4 a total of \$700.

5 You have posted bail, but I assume that was
6 not your bail. Is that correct?

7 THE DEFENDANT: That is correct, it is my
8 mother's.

9 THE COURT: It goes back to the defendant.
10 Would you be willing to -- Mr. Nuccio, you would be
11 willing to have us take your fine and surcharge from
12 the bail, return the remainder to you from the County
13 Treasurer, is that correct?

14 THE DEFENDANT: Yes.

15 THE COURT: As soon as they can issue the
16 check, give this lady your mailing address for that
17 check.

18 And you do have the right to appeal. You have
19 thirty days from today's date to file a Notice of
20 Appeal and appeal from this matter. You have the right
21 to have an attorney to assist you on the appeal from a
22 criminal conviction, and, to have one assigned if you
23 can't afford one.

24 Do you understand that right, the rights to
25 appeal?

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1 THE DEFENDANT: Yes, I do.

2 THE CLERK: Okay. I am not asking it rudely,
3 I just am making a record.

4 THE DEFENDANT: No, absolutely. It is in the
5 cards.

6 THE COURT: There is a \$50 DNA fee required as
7 well. And the defendant will be required to present a
8 DNA sample.

9 We're trying to get you DNA sampled before you
10 leave, because it is required as part of the sentence
11 and then, you won't have to come back or make special
12 arrangements.

13 Thank you.

14 She is making the arraignments for the DNA,
15 so, if you would wait a little bit longer for this
16 aspect.

17 MR. DUMAS: Thank you, Judge.

18 MR. MAREYEV: Thank you.

19 THE COURT: You are free to go. Thank you.

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June 25, 2013

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C-E-R-T-I-F-I-C-A-T-E

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BETH B. BARRETT
County Court Reporter

ADMITTED TO PRACTICE IN:
NEW YORK; NEW JERSEY;
UNITED STATES SUPREME COURT;
U.S. COURTS OF APPEALS FOR THE
SECOND AND THIRD CIRCUITS;
U.S. DISTRICT COURTS FOR THE
DISTRICT OF CONNECTICUT;
DISTRICT OF NEW JERSEY;
NORTHERN DISTRICT OF ILLINOIS;
EASTERN, NORTHERN & SOUTHERN
DISTRICTS OF NEW YORK; U.S.
COURT OF INTERNATIONAL TRADE;
U.S. COURT OF FEDERAL CLAIMS.

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February 27, 2012

Liora M. Ben-Sorek, Esq.
Deputy Bureau Chief
Nassau County Attorney's Office
One West Street
Mineola, New York 11501

(by Priority Mail with Delivery Confirmation, No. 0303 1290 0000 3656 4547)
Re: *Maloney v. Rice*, Docket No. CV- 03-786 (E.D.N.Y.)

Dear Deputy Bureau Chief Ben-Sorek:

More than six months have passed since you wrote, via email and in prompt response to my letter to you dated August 22, 2011 (true copy annexed hereto as Exhibit 1), the following:

Dear Mr. Maloney:

Reference is made to your letter of today's date wherein you requested depositions of three additional persons in the above matter. Please be informed that all non-party witnesses must be subpoenaed. However, I will consider your letter as being a courtesy request to schedule same before you issue subpoenas.

My liaison at the District Attorney's Office is out of the office this week and *I will not be able to follow up on your requests until next week*. Not only does that mean that I will not be able to learn of any proposed witnesses' availability, it also means that I will not have an opportunity to speak with those individuals to learn whether or not they have relevant information for this action.

As soon as I have more information on these issues, I will communicate with you.

Very truly yours,

Liora Ben-Sorek

Email dated August 22, 2011 (emphasis added above) (true copy annexed hereto as Exhibit 2).

Since then, I have followed up regularly, and indeed persistently, by means of, among other things, three emails over the course of four months, all in an attempt to urge you to fulfill your August 22, 2011, promise, as follows:

Date of email	Content of email	Response (if any)
October 25, 2011	"Anything yet?" (above copy of your email of August 22, 2011)	"I will contact them and find out."
November 16, 2011	"And, so, what have you found out?" (above copy of your emails of October 25, 2011, and August 22, 2011)	none, but receipt acknowledged
January 23, 2012	"Please follow up on this ASAP. I have sent numerous follow-up requests. Thanks." (above copy of your email of August 22, 2011)	none, but receipt acknowledged

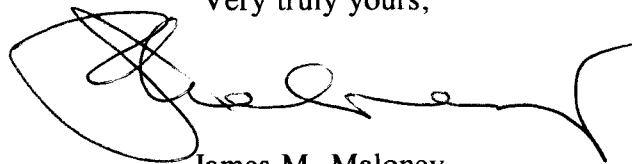
True copies of the above emails and receipt acknowledgments are annexed hereto in chronological order as Exhibit 3.

Additionally, I recall having reminded you about this orally once or twice while on the telephone with you in another matter. Your response was that you would seek the requested information from the District Attorney's Office.

At this point, more than six months having elapsed despite regular reminders from me, and no information having been provided by you, it reasonably appears to me that you have no intention of providing the requested information that you volunteered to provide on August 22, 2011, which, had it been provided, would have facilitated more efficient discovery. If my current understanding is incorrect, please advise me of your intentions immediately, and please provide a date certain by which such information may be expected from you.

Thank you for your courtesy and cooperation.

Very truly yours,



James M. Maloney
Plaintiff *pro se*

EXHIBIT 1

ADMITTED TO PRACTICE IN:
NEW YORK; NEW JERSEY;
UNITED STATES SUPREME COURT;
U.S. COURTS OF APPEALS FOR THE
SECOND AND THIRD CIRCUITS;
U.S. DISTRICT COURTS FOR THE
DISTRICT OF CONNECTICUT;
DISTRICT OF NEW JERSEY;
NORTHERN DISTRICT OF ILLINOIS;
EASTERN, NORTHERN & SOUTHERN
DISTRICTS OF NEW YORK; U.S.
COURT OF INTERNATIONAL TRADE;
U.S. COURT OF FEDERAL CLAIMS.

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E-MAIL ADDRESS:
maritimelaw@nyu.edu

August 22, 2011

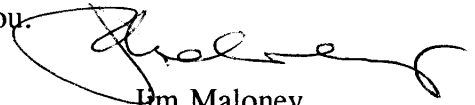
Liora M. Ben-Sorek, Esq.
Deputy County Attorney
One West Street
Mineola, New York 11501

(by regular mail and by email to lben-sorek@nassaucountyny.gov)
Re: *Maloney v. Rice*, Docket No. CV- 03-786 (E.D.N.Y.)

Dear Ms. Ben-Sorek:

I have reviewed the recent Order (DE # 125) denying me an opportunity to depose the sole Defendant in the above-captioned case. At this juncture, I have little choice but to try alternative approaches to discovery notwithstanding the delay, expense, and possible futility of same. I shall begin with a familiar reference to the Mancuso transcript. At 32:11-13, the witness opined: "It would be logical to ask that question [who determines what mail Ms. Rice sees] of people who operate at the executive level at my office." I will follow that logic.

Please identify a person "who operate[s] at the executive level" in the District Attorney's office who **does** have such knowledge but who **does not** have the "immunity" from deposition that the Defendant currently¹ has. In addition to that person, I also wish to depose **Cheryl Rice** and **Tammy Smiley**, the latter of whom (according to Mr. Mancuso's testimony, see pages 27-29) had a conversation with Mr. Mancuso on or about June 24, 2011, at which time she relayed relevant information to him which he stated he believed came from Cheryl Rice. I do not expect these depositions to take very long, and we might well be able to do all three² in one day. Please let me have some available dates for all these witnesses and yourself once you have identified the "executive level" witness. Thank you.



Jim Maloney

¹ See *Sanstrom v. Rosa*, 1996 U.S. Dist. LEXIS 11923, *11-13 (S.D.N.Y. Aug. 16, 1996). Of course, I reserve the right to depose the Defendant, who is named in her personal capacity, when and if she leaves office.

² If the person you identify as the "executive level" witness is one of the two named witnesses, that would of course reduce the total number of witnesses to be deposed at that time to two.

EXHIBIT 2

James M. Maloney

From: "Ben-Sorek, Liora M" <lben-sorek@nassaucountyny.gov>
To: "James M. Maloney" <maritimelaw@nyu.edu>
Cc: "Jim Maloney" <nunchakulaw@gmail.com>
Sent: Monday, August 22, 2011 9:10 AM
Subject: RE: Maloney v. Rice, 03-786 (EDNY)

Dear Mr. Maloney:

Reference is made to your letter of today's date wherein you requested depositions of three additional persons in the above matter. Please be informed that all non-party witnesses must be subpoenaed. However, I will consider your letter as being a courtesy request to schedule same before you issue subpoenas.

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As soon as I have more information on these issues, I will communicate with you.

Very truly yours,

Liora Ben-Sorek

Liora M. Ben-Sorek

Deputy Bureau Chief
General Litigation Bureau
Nassau County Attorney's Office
One West Street
Mineola, New York
Phone (516) 571-3014
Fax (516) 571-3058

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From: James M. Maloney [mailto:jmm257@nyu.edu]
Sent: Monday, August 22, 2011 10:11 AM
To: Ben-Sorek, Liora M
Cc: Jim Maloney
Subject: Maloney v. Rice, 03-786 (EDNY)

Please see attached one-page letter.

James M. Maloney
P.O. Box 551
Port Washington, NY 11050

(516) 767-1395
maritimelaw@nyu.edu

EXHIBIT 3

James M. Maloney

From: "James M. Maloney" <jmm257@nyu.edu>
To: "Ben-Sorek, Liora M" <lben-sorek@nassaucountyny.gov>
Sent: Tuesday, October 25, 2011 9:22 AM
Subject: Re: Maloney v. Rice, 03-786 (EDNY)

Anything yet?

JMM

James M. Maloney
P.O. Box 551
Port Washington, NY 11050
(516) 767-1395
maritimelaw@nyu.edu

----- Original Message -----

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To: "James M. Maloney" <maritimelaw@nyu.edu>
Sent: Tuesday, October 25, 2011 9:12 AM
Subject: RE: Maloney v. Rice, 03-786 (EDNY)

I will contact them and find out.

Liora M. Ben-Sorek

Deputy Bureau Chief
 General Litigation Bureau
 Nassau County Attorney's Office
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James M. Maloney

From: "James M. Maloney" <jmm257@nyu.edu>
To: "Ben-Sorek, Liora M" <lben-sorek@nassaucountyny.gov>
Sent: Wednesday, November 16, 2011 9:19 PM
Subject: Re: Maloney v. Rice, 03-786 (EDNY)

And so, what have you found out?

[See below.]

James M. Maloney
P.O. Box 551
Port Washington, NY 11050
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From: "Ben-Sorek, Liora M" <lben-sorek@nassaucountyny.gov>
To: "James M. Maloney" <jmm257@nyu.edu>
Sent: Wednesday, November 16, 2011 10:38 PM
Attach: ATT2266985.txt
Subject: Read: Re: Maloney v. Rice, 03-786 (EDNY)

Your message

To: Ben-Sorek, Liora M
Subject: Re: Maloney v. Rice, 03-786 (EDNY)
Sent: Wed, 16 Nov 2011 21:19:41 -0500

was read on Wed, 16 Nov 2011 22:38:58 -0500

James M. Maloney

From: "James M Maloney" <maritimelaw@nyu.edu>
To: "Ben-Sorek, Liora M" <lben-sorek@nassaucountyny.gov>
Sent: Monday, January 23, 2012 10:06 AM
Subject: Re: Maloney v. Rice, 03-786 (EDNY)

Please follow up on this ASAP. I have sent numerous follow-up requests. Thanks.

Jim Maloney

On Mon, Aug 22, 2011 at 10:10 AM, Ben-Sorek, Liora M <lben-sorek@nassaucountyny.gov> wrote:

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--

Jim Maloney
SUNY Maritime Class of 1980
Fordham Law Class of 1995
NYU Law (LL.M.) Class of 2004
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