

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK PART CT10

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PEOPLE OF THE STATE OF NEW YORK, :
 : Indictment No.:
 - against - : 1800-2012
MICHAEL GRASING, : (EXCERPT)
 :
 DEFENDANT. :

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210 Center Drive
Riverhead, New York 11901
November 18, 2014

B E F O R E:

HONORABLE MARK D. COHEN
Acting Supreme Court Justice

A P P E A R A N C E S:

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KRISTINE O'DEA
Senior Court Reporter

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* * AFTERNOON SESSION * *

THE COURT: May we have Mr. Swope now, please? Thank you.

Thanks, Sergeant.

THE SERGEANT: No problem.

(Whereupon, the witness resumed the witness stand.)

COURT OFFICER: You can have a seat right there.

THE COURT: All right. Mr. Swope is now taking the stand. Thank you.

Both sides ready for the jury?

MS. NEWCOMBE: Yes, your Honor.

MR. KEAHON: Yes.

THE COURT: Thank you. Let's have our jury, please.

COURT OFFICER: Jury entering.

THE COURT: Yes. Thank you.

(Whereupon, the jurors were escorted into the courtroom by the Court Officer.)

THE CLERK: Case on trial, People versus Grasing. Jury and all parties are present.

Counsel, waive the roll?

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MS. NEWCOMBE: Yes.

MR. KEAHON: Yes.

THE CLERK: Thank you.

Mr. Swope, I remind you you're testifying under oath.

THE WITNESS: Yes, sir.

THE COURT: Good afternoon, Ladies and Gentlemen. Let me thank you again for your prompt return and your patience. We are now prepared to continue with the continued recross-examination of Mr. Swope.

MS. NEWCOMBE: Thank you, your Honor.

THE COURT: Ms. Newcombe.

RECROSS-EXAMINATION

BY MS. NEWCOMBE:

Q. Mr. Swope, I asked you before lunch about People's Number 193. And have you had an opportunity to review this?

A. I did.

Q. And is it your testimony here today that the Rick Swope, the deputy sheriff who was questioned in this document, by Sergeant Ronald Wright was not you?

A. I don't know. There are variations.

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I've seen that document before.

In other words, when you look at it, there is all kinds of answers that I didn't give. There is times and dates and individuals on there that I didn't give. That's not my statement, no.

Q. So you are not the Rick Swope who was questioned in this document; is that right?

A. I don't -- there are various pages in there that have nothing to do with me. It is not a correct statement. Some of the questions appear to be something I answered, but the rest of it isn't. In other words, the attorney is not correct, the date is not correct.

Q. So when they're talking about Rick Swope, are they referring to you?

A. In some of the document, it appears that some of the questions are. But what I'm trying to tell you is there is different forms of that document that I've seen over the years.

Q. Now --

A. That is not a correct document.

Q. But you were questioned, then, by the deputy -- by the sheriffs of Broward County, correct?

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2 A. No, I was not questioned. I provided a
3 statement for the state attorney's office on the
4 issue of the search warrants. I was not
5 questioned.

6 Q. I thought there was no investigation?

7 A. There was not an investigation. The
8 state attorney's office asked me some questions
9 because they were worried about the repercussions
10 there could be with the state attorney asking me
11 to do something when I'm on duty.

12 Q. Now, just to be clear, this isn't the
13 state attorney questioning you, right, this
14 document, People's Number 193, that you reviewed?

15 A. No, and I don't know who it is.

16 Q. Well, this is questions from a Sergeant
17 Ronald Wright?

18 A. I don't know Ronald Wright.

19 Q. You don't. So you were never
20 questioned by Ronald Wright?

21 A. I don't recall 24 years ago being
22 questioned by Mr. Wright. What I told you is
23 that statement has all kinds of variations in it
24 that does not come to me.

25 Q. I understand that, sir. That's not my

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question. My question is --

MR. KEAHON: Judge --

Q. Did you enter into a meeting with Sergeant Ronald Wright, did you raise your right hand, swear to tell the truth, and then answer questions from him on July 27, 1990, at 12:31 in the morning -- in the morning -- in the afternoon?

A. In the morning or afternoon?

Q. Well, did you meet with him on July 27, 1990?

A. No. And I have a paper to indicate where I was at the sheriff's office the entire day.

Q. Okay. So this document is false is your position (Indicating)?

A. My position --

THE COURT: Holding up People's 139 for

I.D.

A. My position is absolutely, it is not a correct statement whatsoever.

Q. And you are not the Rick Swope in here that is referred to in this document then?

MR. MANLEY: Judge, I'm going to object

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at this point, asked and answered.

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THE COURT: If there is anything

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further, I'll allow you to inquire, but I

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think we've covered this ground.

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Q. And what is a CCN? Is that a specific

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number?

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A. Yes, it's a badge number.

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Q. That's your badge number?

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A. Correct.

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Q. What was your badge number?

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A. 3880.

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Q. So the Rick Swope referred to in this

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document with badge number 3880 is not you?

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A. That's my badge number, that's correct.

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MS. NEWCOMBE: Your Honor, I ask --

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A. But the answers in there are not

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correct. It is not my statement.

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MS. NEWCOMBE: I ask that this be

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admitted into evidence at this time.

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THE COURT: Show it to Mr. Manley and

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Mr. Keahon.

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COURT OFFICER: (Handing).

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MR. MANLEY: Can we have a sidebar,

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Judge?

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THE COURT: Yes.

(Whereupon, the following discussion was held outside the presence of the jury at sidebar:)

MR. MANLEY: Judge, I will object, so I'll start there. I'll object.

THE COURT: What is your ground?

MR. MANLEY: My ground is it's not impeachment because he said that this is not his statement, that portions of this are correct and portions of it are fraudulent. The document isn't being used to impeach him because he said that portions were correct and portions of it are fraudulent.

Secondarily --

THE COURT: Keep your voice down.

MR. MANLEY: This is not a certified transcript.

THE COURT: It doesn't have to be certified if it is for impeachment purposes.

We'll hear in a minute what it's for next.

MR. KEAHON: I'll start with it's not for impeachment purposes at this point because he is not being impeached with the document.

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THE COURT: Okay. And your ground?

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MS. NEWCOMBE: There has been answers all over the place with regard to this document. First, he denied it in its entirety. Then, he admitted to certain portions of it, specifically, that he was involved with the case where he was a deputy sheriff, People of Florida versus Gilberto Estevez I believe was the name, and, then, his private company was hired out. Yet, then he said he wasn't being investigated by the sheriff, by Internal Affairs, as regarding the conflict of interest. So there were statements all over the place.

And, your Honor, this is a sworn statement that he gave and its of Rick Swope, and it contains his same badge number.

MR. MANLEY: Judge, respectfully, the only questions that should be considered are the questions that the district attorney's office asked after they asked, "Review the document. Review the whole document." He said -- since that time, he said some of the questions in here are correct but there are

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2 major portions of the document that are
3 fraudulent, as in, forged, not correct.
4 It's not for impeachment purposes. That's
5 his answer, parts of it is correct, parts of
6 it is fraudulent. It would be extremely
7 prejudicial to let a document --

8 THE COURT: That's not the point.
9 Whether it's extremely prejudicial is not
10 the point. The only question is is there an
11 appropriate foundation for this document.

12 MR. MANLEY: And my objection has been
13 that there is not.

14 THE COURT: All right. I'm sustaining
15 the objection at this time. If you wish to
16 inquire further as to what portions in it
17 are his, to demonstrate it's his -- because
18 this witness has been, you're right, all
19 over the place. I'm not sure what he is
20 saying at this point. If you want to do
21 that, go right ahead.

22 MR. KEAHON: I didn't hear.

23 THE COURT: Excuse me?

24 MR. KEAHON: I'll speak to John.

25 (Whereupon, an off-the-record

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discussion was held between the defense attorneys.)

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MR. MANLEY: Judge, if the prosecutor begins going through the document line by line, she will essentially be reading a document into evidence while it is not in evidence.

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THE COURT: Mr. Manley, do you persist in your objection?

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MR. MANLEY: Yes.

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THE COURT: That's my ruling.

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Thank you.

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(Whereupon, the following took place in open court in the presence of the jury:)

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THE COURT: The objection is sustained.

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And Ms. Newcombe will proceed at the Court's direction.

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MS. NEWCOMBE: Thank you.

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Q. Mr. Swope, you indicated that parts of this document are true and parts are false; is that right?

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A. It appears to be, yes.

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Q. Can you please tell us what is true and what's false in this document?

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MR. MANLEY: Objection, Judge.

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THE COURT: Overruled, consistent with

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the Court's ruling.

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A. Number one is the date. That would be

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incorrect. I already told you --

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Q. What is the correct date, sir?

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A. Because I had already given you a

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paper -- I have a paper of where I was.

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Q. You haven't given me anything, sir.

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A. I have a paper if you want to look at

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it as to where I was.

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Q. When did you acquire that paper?

14

A. Last night.

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Q. Okay. Now, what date was it that you

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met then with the sheriff?

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A. I did not meet with the sheriff to my

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knowledge. I met with the state attorney to my

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knowledge, Susan Bailey (ph).

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Q. What parts in that document are true?

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A. Well, the name, that's true. I could

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put your name on my form. So that doesn't mean

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that the document is true. The name is correct.

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Q. Okay. What else is true?

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A. Well, my badge number is true.

2 Q. That's the 3880, right?

3 A. That's right.

4 The questioning about the Estevez case is not
5 correct. I never testified about that. I never gave a
6 statement on that. I was not a witness in that case.
7 That's incorrect.

8 THE COURT: Sir, are there any things
9 in this document that are true other than
10 your name and your badge number, please?
11 And just answer yes or no.

12 THE WITNESS: No.

13 THE COURT: Nothing else is true?

14 THE WITNESS: No --

15 THE COURT: Next question.

16 THE WITNESS: -- to my knowledge, no.

17 Q. And you stated that nothing else in
18 that document is true, that you never testified
19 as to the Estevez case?

20 A. Never.

21 Q. Okay. Yet, yesterday you said you did
22 remember the defense attorney's name, Mr. Maldof,
23 right?

24 A. I did, absolutely.

25 Q. And he was the defense attorney in the

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Estevez case, correct?

A. Yes, because my partner handled the case, absolutely.

Q. And you stated yesterday that your partner did work for the defense on that case, correct?

A. He did, yes.

Q. And in that case you were on the People's witness list, as well, correct?

A. Yes.

Q. And you admitted that would be a conflict of interest?

A. Absolutely, yes, ma'am.

Q. So it's your position that everything that's contained in this document regarding that is incorrect?

A. That's correct.

MS. NEWCOMBE: Your Honor, I ask that this be admitted into evidence at this time.

THE COURT: Same application?

MR. MANLEY: Yes, Judge.

THE COURT: Sustained.

Q. Just one further question on that. It's your position that that was a conflict

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2 of interest but you were never investigated for a
3 conflict of interest by the sheriffs; is that correct?

4 A. Correct.

5 MS. NEWCOMBE: Now, I'm showing
6 People's Number 202 in evidence.

7 (Whereupon, People's Exhibit Number 202 in
8 evidence was displayed to the jury on the
9 presenter.)

10 Q. Mr. Swope, you testified that this is
11 the only document that lists that figure that you
12 opined to the jury, that the defendant was going
13 65 to 70 miles per hour, correct?

14 A. Correct, that's the only document I
15 have, yes.

16 Q. And you stated that this was a
17 preliminary document that you had prepared,
18 correct?

19 A. I don't recall if I said preliminary on
20 that. I know my notes were preliminary.

21 Q. And when you're saying notes, are you
22 referring to the main portion of this?

23 A. Yes.

24 Q. Okay.

25 A. I don't know when I wrote the one on

2 the left.

3 Q. Do you know when you wrote the notes?

4 A. No.

5 Q. You don't have a date of this?

6 A. Is there a date on the top? Maybe, if
7 there would be a date on the top, I put a date.
8 If not, there isn't.

9 MS. NEWCOMBE: The top isn't in
10 evidence, your Honor, so I can't --

11 THE COURT: That's true. It will be
12 struck.

13 Q. Now, so you can't tell us when you
14 wrote this note; is that right?

15 A. That's correct.

16 Q. Nevertheless, it says, "Nissan driver,
17 our guy"?

18 A. Right.

19 Q. And what does it say underneath that?

20 THE WITNESS: I have to step down,
21 Judge, unless you want to move that.

22 Q. Just one moment.

23 You provided a typed translation of this
24 note, correct?

25 A. Yes.

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Q. Does that say "speed estimate accident on video?"

A. I can read "speed estimate." What was the last part?

Q. "Accident on video."

A. Yes, correct.

Q. And it says, "one view of --"

A. "Accident."

Q. "Accident?"

A. Yes.

Q. "Two when he drives on sidewalk?"

A. Okay.

Q. "When he drives on sidewalk," is that what it says?

A. Yes, ma'am.

Q. So, are these notes that you're taking when you're talking with Mr. Manley?

A. No, I'm looking at the video.

Q. And you're saying Nissan driver is our guy?

A. Right.

Q. Okay. Now --

A. I was identifying the vehicles.

Q. And these are notes that you took early

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on, right?

A. I don't know when I took them. I took --

Q. You don't have a date?

A. Right.

Q. But you took subsequent notes, right?

A. Sure.

Q. And how many pages of subsequent notes did you take?

A. I don't know. I probably gave you eight, ten, six, something like that. I'm not sure.

Q. So these appear early on in that?

A. When I investigated the case, yes, probably October. I think I told you yesterday somewhere in there.

Q. Is there anywhere in any of your notes where you write a formula down to show us how you got to that 65 to 70 miles per hour?

Just so we are clear, I'm not talking about the 65 miles per hour, how you got to 65 to 75 miles per hour?

MR. MANLEY: Objection.

THE COURT: Sustained, asked and

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answered.

MS. NEWCOMBE: Your Honor, this was addressed on redirect.

THE COURT: Let me see. Just a moment. I understand your point. Let me just see. Sustained.

Thank you.

Q. Is there anywhere in any of your notes that you wrote down any numbers showing how you got to that 65 to 70?

MR. MANLEY: Objection, Judge.

THE COURT: Sustained. Same ruling.

Q. Is it your testimony that the only evidence, the only written document that exists, is this document where it says 65 to 70, maybe?

A. Yes.

Q. Thank you.

MS. NEWCOMBE: I have nothing further, your Honor.

THE WITNESS: Thank you.

THE COURT: Anything further on redirect?

MR. MANLEY: Just one thing, Judge.

THE COURT: Yes.

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MR. MANLEY: If I can have People's

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COURT OFFICER: I'm sorry?

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MR. MANLEY: 193.

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THE COURT: Yes.

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COURT OFFICER: (Handing).

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REDIRECT EXAMINATION

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BY MR. MANLEY:

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Q. Mr. Swope, you were shown this?

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A. Yes.

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Q. Is this a certified transcript of any
testimony that you gave?

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A. No.

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Q. So it's not certified by a reporter or
anything like that?

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A. That's correct.

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Q. And is this certified to come from the
Broward County Sheriff's department at all?

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A. No, it doesn't have their name on it.
It's not even a logo. There is nothing on it
except paper with writing on it. There is no
logo, no notary on it.

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Q. And you said that parts of this are
fraudulent, right?

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A. Absolutely, they are.

Q. And this document came from a website called Michigan Prosectors dot org, right?

A. I don't know. Probably. I don't know. I've seen various forms of that all over the internet.

MR. MANLEY: I have no further questions, Judge.

THE WITNESS: Thank you.

THE COURT: Anything further on re-recross?

MS. NEWCOMBE: Your Honor, I ask that this be admitted into evidence. Let the jury decide it's weight.

MR. MANLEY: My objection remains, Judge.

THE COURT: Sustained.

(CONTINUED ON NEXT PAGE FOR CERTIFICATION)

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THE COURT: Anything further?

MS. NEWCOMBE: No. Thank you.

THE COURT: Thank you.

You may stand down.

THE WITNESS: Thank you, your Honor.

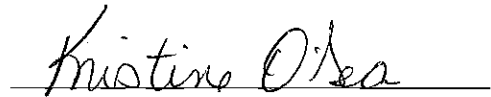
Thank you, Ladies and Gentlemen.

(Whereupon, the witness stepped down from the witness stand and the requested portion of the transcript was concluded.)

* * *

C E R T I F I C A T I O N

I, Kristine O'Dea, a Senior Court Reporter, employed by Suffolk County County Court, do hereby certify that the foregoing is a true, accurate and correct transcript of the minutes of this proceeding.



KRISTINE O'DEA
Senior Court Reporter