

1 THE COURT: People?

2 MR. CANTY: At this time People call Detective
3 Kouril from the Nassau County Police Department.

4 (The Court Officer left the courtroom and
5 returned shortly thereafter with the witness.)

6 THE CLERK: Step up to the box, and remain
7 standing, and raise your right hand.

8 Do you swear or affirm the testimony you are
9 about to give will be the truth, the whole truth, and
10 nothing but the truth?

11 THE WITNESS: I do.

12 THE CLERK: Thank you. Have a seat, please.
13 Would you give the Court Reporter your name, spelling
14 your last name, and your shield number and command.

15 THE WITNESS: George Philip Kouril,
16 K-O-U-R-I-L, Shield Number 111, Third Squad, Third
17 Precinct.

18 D E T E C T I V E G E O R G E P H I L I P
19 K O U R I L, having been first duly sworn by the Clerk
20 of the Court, testified as follows:

21 MR. CANTY: May I proceed, your Honor?

22 THE COURT: Yes.

23 MR. CANTY: Thank you.

24 Good morning, detective. How are you?

25 THE WITNESS: Good morning. You?

1 MR. CANTY: Doing well.

2 DIRECT EXAMINATION

3 BY MR. CANTY:

4 Q Where are you employed currently?

5 A Nassau County Police Department.

6 Q How long have you worked for the Nassau County
7 Police Department?

8 A Just over 12 years.

9 Q And, in what capacity are you employed by the police
10 department presently?

11 A I am a detective in the Third Squad.

12 Q What areas of Nassau County does that cover?

13 A We cover the Albertson-Mineola areas.

14 Q And, how long have you been a detective?

15 A Just about -- let's see -- two months.

16 Q Prior to being a detective what was your position
17 with the police department?

18 A I was a police officer.

19 Q And, in total how many years have you been a police
20 officer either in Nassau County or another jurisdiction?

21 A Just under 25 years.

22 Q Could you describe your duties as a police officer?

23 A Enforce the law of the county of Nassau County.

24 Q Could you describe the training you received in
25 order to become a police officer?

1 A I received firearms, driving, Penal Law, CPL.

2 Q And, in your 24 years of experience as a police
3 officer how many arrests have you made, approximately?

4 A Thousands.

5 Q I would like to direct your attention to
6 approximately 8:45 p.m. on January 20, 2004. Were you working
7 on that date at that time?

8 A Yes, I was.

9 Q And, where were you working?

10 A I was in the Mineola-Garden City Park area.

11 Q Who, if anyone, were you working with?

12 A I was with my partner, Detective Charles DeCaro.

13 Q And, what were you wearing during that tour?

14 A Plain clothes.

15 Q Were you in a marked or unmarked police vehicle?

16 A Unmarked.

17 Q Did there come a time where you heard a dispatch for
18 a disturbance at Mineola High School?

19 A Yes, there was.

20 Q What, if anything, did you do with respect to that
21 dispatch?

22 A We responded there.

23 Q Could you describe where you were when you first
24 received the call?

25 A We were heading west on Jericho Turnpike which is

1 past Herricks Road when the call came out, and we made a
2 U-turn -- (Indicating) -- and gave the two police cars that
3 were assigned a disregard.

4 Q What direction did you travel to Mineola High
5 School?

6 A Made a right on Armstrong heading south toward it.

7 Q What, if anything, did you observe when you turned
8 on to Armstrong Avenue going to Mineola High School?

9 A On the east side of the street heading north were
10 four males walking northbound to Jericho Turnpike away from the
11 school.

12 Q Did there come a time when you actually arrived at
13 Mineola High School?

14 A Yes, there was.

15 Q Could you describe to us what, if anything, happened
16 when you arrived at the high school?

17 A We went inside and we were approached by the
18 athletic director or basketball coach and he told us there were
19 four males and one of them was on the basketball team and one
20 was kicked off and was not allowed in school no more and he
21 was -- they were creating a disturbance and they were asked to
22 leave numerous times.

23 MR. MASSIMO: Object to the hearsay.

24 THE COURT: Sustained.

25 Q Did there come a time when you left Mineola High

1 School?

2 A Yes.

3 Q Where did you go?

4 A Travel back up north, Armstrong Avenue.

5 Q Why did you travel that direction?

6 A Because the four males we saw earlier fit the
7 description of the four males described to us at the Mineola
8 High School.

9 Q Did there come a time when you saw the individuals
10 again?

11 A Yes.

12 Q Where was that?

13 A Inside the Dunkin' Donuts at Herricks and Jericho
14 Turnpike.

15 Q Approximately, how much time had elapsed when you
16 left Mineola High School and when you arrived at Dunkin'
17 Donuts?

18 A A minute.

19 Q I would like now to direct your attention to Dunkin'
20 Donuts. Did there come a time when you entered the Dunkin'
21 Donuts?

22 A Yes.

23 Q When you entered the Dunkin' Donuts where did you
24 go?

25 A We walked inside. There was a lobby and we walked

1 through there and into the store.

2 Q Where did you go when you entered the store?

3 A We walked over to two males that were against the
4 window on the east side.

5 Q What, if anything, did you do when you walked up to
6 those individuals?

7 A Well, we started a conversation with them.

8 Q And, what, if anything, happened during that
9 conversation?

10 A Um, behind me there was some male started screaming
11 and yelling.

12 Q Do you recall what the individual said?

13 A Yes. He said, fuck that. This is my hood. You
14 don't have to talk to those niggers.

15 Q Do you see the individual who made that comment in
16 the courtroom today?

17 A Yes, I do.

18 Q Could you point him out and describe an article of
19 clothing?

20 A Yes, there. (Indicating). A plaid and white
21 multicolored sweater.

22 MR. CANTY: I would like the record to reflect
23 the witness has identified the defendant.

24 THE COURT: That's granted.

25 Q What, if anything, did you do with respect to that

1 individual?

2 A He continued screaming so we turned around and
3 walked toward him.

4 Q How did that affect your ability to do the
5 investigation at Mineola High School?

6 A It was a hindrance.

7 Q Were you able to continue a conversation with the
8 two individuals?

9 A No.

10 Q What direction did you travel?

11 A Well, we walked toward the counter and where the
12 counter is at Dunkin' Donuts, and he had received a sandwich
13 and he walked back, like, southbound towards the table.

14 Q And, what, if anything, did the defendant do when he
15 sat down at the table?

16 A All along walking to the table screaming, fuck that.
17 I don't have to talk to you niggers.

18 Q What, if anything, do you observe with respect to
19 the patrons at the Dunkin' Donuts?

20 A Because of his screaming and yelling --

21 MR. MASSIMO: Objection.

22 THE COURT: Sustained.

23 Q What, if anything, did you observe with respect to
24 the individuals specifically, officer -- detective?

25 A People were leaving the Dunkin' Donuts because of

1 the screaming.

2 MR. MASSIMO: Objection.

3 THE COURT: Sustaining the conclusory part of
4 that answer.

5 MR. CANTY: Thank you, your Honor.

6 Q Did there come a time where you approached the table
7 the defendant was sitting at?

8 A Yes.

9 Q What, if anything, did you ask of the defendant?

10 A For his identification.

11 Q And, what was his response?

12 A He said, fuck that. I don't have to give you that.

13 THE COURT: I am sorry. Could you read back
14 the question again?

15 (The Court Reporter read back the requested
16 portion of the testimony.)

17 MR. MASSIMO: Judge, I'm going to object.

18 That statement was not noticed to the defense.

19 Q In sum and substance is that the statement the
20 defendant gave you?

21 THE COURT: There is an objection that the
22 statement wasn't noticed to the defense. So I'm going
23 to sustain the objection.

24 MR. CANTY: Okay. I will rephrase the
25 question.

1 Q With respect to the specific comment that the
2 defendant made is there anything I can show you that would
3 refresh your recollection?

4 A Yes.

5 MR. MASSIMO: Judge, I don't know how that
6 clears the defect.

7 THE COURT: I don't either. People?

8 MR. CANTY: Well, the statement, your Honor,
9 in sum and substance that's the statement noticed to the
10 defense counsel. If it's different, I would like to
11 have the opportunity to get the exact statement.

12 THE COURT: I'm going to ask the witness to
13 step down for a minute. And, counsel, step up.

14 (Witness left the witness stand and the
15 courtroom.)

16 (Discussion held off the record.)

17 THE COURT: Okay.

18 (Witness entered the courtroom and the witness
19 stand.)

20 Q Officer, is there anything that I could show you
21 that would refresh your recollection with respect to the
22 statement the defendant made?

23 A Yes.

24 MR. CANTY: Take a look at that piece of paper
25 that I have just given you. Read the pertinent part and

1 when you are done reading it, if you could put it down
2 and I will ask you another question.

3 THE WITNESS: (Examining).

4 Q After looking at that statement has your memory been
5 refreshed?

6 A Yes.

7 Q What was the defendant's response to the question of
8 whether or not he had an ID?

9 A He said, you might as well wait for me to finish
10 eating 'cause I ain't telling you anything.

11 Q Okay. At this point what did the defendant do?
12 What, if anything, did the defendant do?

13 A Well, he was continuing to talk, saying, this is my
14 hood. Fuck you, nigger. People were leaving.

15 Q And, what, if anything, did he do with the table he
16 was sitting at?

17 A He took the table and pushed it into my leg.

18 Q Where did that table hit you in your leg?

19 A On my upper thigh.

20 Q And, at this point how far had the table traveled?

21 A Two, three feet.

22 Q What did you do with the table after it hit you on
23 the leg?

24 A Well, I walked in front of the table now.

25 Q Where do you position yourself?

1 A I was in front of the table. The table was behind
2 me and I was in front of the defendant.

3 Q For what purpose were you now standing on one side
4 of the defendant?

5 A Because he was going to be placed under arrest.

6 Q What, if anything, did you say to the defendant with
7 respect to him being placed under arrest?

8 A I told him to stand up and put his hands behind his
9 back.

10 Q What did he do?

11 A He just sat there.

12 Q Did there come a time when he was taken out of the
13 seat?

14 A He went to reach for the table and pushed the table
15 back a little further, and we went to grab his hand and he
16 began flailing his arms and trying to stand up.

17 Q And, approximately, how long did it take you from
18 when you told him he was being placed under arrest to when he
19 was actually placed under handcuffs?

20 A I would say well over a minute.

21 Q During that period of time what was the defendant
22 doing?

23 A Flailing his arms, kicking his feet, screaming.

24 Q And, what, if anything, were you saying to the
25 defendant during that time period?

1 A Put his hands behind his back.

2 Q And, did the defendant comply with your orders?

3 A Yes.

4 MR. MASSIMO: Judge, should we move to the
5 box?

6 THE COURT: Okay.

7 (Defendant and his attorney left the defense
8 table and entered the jury box.)

9 MR. CANTY: Detective, you are going to have
10 to bear with me. We are having a little trouble with
11 this tape.

12 THE WITNESS: Okay.

13 MR. MASSIMO: That goes for me as well, Judge.

14 (Viewing videotape.)

15 Q Detective, do you recognize this tape?

16 A Yes, I do.

17 Q What is this tape of?

18 A This is a tape of the lobby and the front desk of
19 Dunkin' Donuts and I guess the back where they make the donuts.

20 Q Do you recognize the three individuals that were
21 just standing up at the front counter?

22 A Yes, I do.

23 Q What do you recognize them from?

24 A Those are the males that I saw walking northbound on
25 Armstrong and that was the Dunkin' Donuts we had spoken to.

1 Q Can you please point out where you first talked to
2 the two individuals that you testified to briefly?

3 A Against the east side of the building there, inside
4 against the window.

5 Q Looking at this screen here?

6 A Away from the desk.

7 MR. MASSIMO: Judge, I'm sorry. I wanted to
8 get for the record the time. I think it's the same
9 thing. 8:51:06 pointing right-bottom screen, upper-left
10 corner; is that fair?

11 (Viewing videotape.)

12 Q Do you recognize the individual in this screen right
13 here?

14 A Yes, I do.

15 Q Who is that individual?

16 A This gentleman right here.

17 THE COURT: Which screen are you talking
18 about?

19 MR. CANTY: Bottom left-hand screen at
20 approximately 8:51:14.

21 THE COURT: Just out of curiosity, how do you
22 recognize the defendant?

23 MR. CANTY: His face was just shown.

24 THE COURT: Right now all I see is somebody's
25 jacket. Is that it?

1 Q Is that the individual that you arrested that
2 evening?

3 A Yes. This gentleman right here on the bottom.

4 THE COURT: Which one?

5 THE WITNESS: The bottom left.

6 THE COURT: Okay.

7 Q Where are you at this point?

8 A We are on inside the lobby there on the east side of
9 the building by the witnesses talking to the other two
10 gentlemen.

11 Q What, if anything, is the defendant doing at this
12 point?

13 A Right now he's yelling, fuck that. This is my hood.
14 You don't have to talk to the niggers.

15 MR. MASSIMO: Judge, this is 8:51:30?

16 MR. CANTY: Yes.

17 (Viewing videotape.)

18 MR. CANTY: I am just going to rewind it.

19 (Rewinding videotape.)

20 Q Officer, do you see -- let me rewind it --

21 (Rewinding videotape.)

22 Q -- do you see anywhere on this screen the table
23 which the defendant pushed into you on that evening?

24 A Yes, I do.

25 Q Could you please point out where that table is?

1 MR. MASSIMO: Judge, it might be easier to
2 have the witness next to the screen.

3 THE COURT: All right.

4 (Witness left the witness stand.)

5 THE WITNESS: (Indicating). This is the table
6 right here.

7 THE WITNESS: Sorry if I'm in the way.

8 THE COURT: That's okay.

9 (Viewing videotape.)

10 MR. CANTY: That's at 8:50:13.

11 (Viewing videotape.)

12 MR. CANTY: And 8:50:50.

13 Q What, if anything, has happened to that table with
14 respect to where it was positioned before?

15 A Here it's been moved. He's already pushed it into
16 me.

17 Q Who pushed the table?

18 A Mr. Wharton. (Indicating).

19 Q Can you describe the direction and angle in which he
20 pushed the table in the picture here using the video?

21 A Forty-five degree angle. My partner is over here.
22 I was standing here and he pushed it into me and I walked
23 around toward the other tables here.

24 Q At this point what, if anything, are you doing?

25 A Now he is being placed under arrest because of

1 pushing the table.

2 Q At 8:52:10, right?

3 A Yes.

4 (Viewing videotape.)

5 MR. CANTY: I am going to play this in slow
6 motion for you.

7 (Viewing videotape.)

8 Q What, if anything, is the defendant doing at that
9 point -- it's very quick -- if you can tell?

10 A I can tell. I remember he is fighting with us. Not
11 to be cuffed.

12 (Viewing videotape.)

13 MR. MASSIMO: Objection to that last portion.

14 THE COURT: I will sustain the objection with
15 respect to the last comment.

16 Q 8:52:10, the defendant is now being instructed to be
17 placed under arrest?

18 A Correct.

19 MR. CANTY: I just want to rewind that one
20 more time.

21 (Rewinding videotape.)

22 (Viewing videotape.)

23 Q What, if anything, does the defendant do to the
24 video prior to you and your fellow officer attempting to place
25 him under arrest? Tell me what you see and please describe it.

1 (Viewing videotape.)

2 A This table.

3 (Viewing videotape.)

4 A See, here he is reaching for the table to bring it
5 back to me, so I push it away from him.

6 MR. MASSIMO: Objection to the bring back
7 portion.

8 MR. CANTY: Tape speaks for itself, Judge, how
9 he is trying to grab it.

10 THE COURT: He made a conclusion as to what
11 his intention was.

12 MR. CANTY: Judge --

13 THE COURT: He reached for the table.

14 Q What direction was his hand coming as he pulled
15 back?

16 A He was reaching like this. (Indicating). Well --
17 (Indicating).

18 Q Which direction did his hand --

19 A Coming toward back to him and -- (Indicating).

20 Q Who, if anyone, would have been in his way?

21 A Myself.

22 Q Now, from 8:52:10 to 8:52:42 what, if anything, was
23 going on?

24 A We are fighting with him, rolling on the floor. He
25 is kicking his feet at the end. My partner is trying to grab

1 his arms.

2 THE COURT: I'm having a terrible time
3 understanding. Do you need him? Because I can't hear
4 you.

5 MR. CANTY: Can you speak loud? When you
6 answer questions, look at the Judge.

7 Q What, if anything, happened between 8:52:10 and
8 8:52:42?

9 A We are rolling on the floor with him for all that
10 time. He is kicking his feet. I'm trying to stop him from
11 kicking his feet. My partner is trying to cuff him from
12 behind.

13 Q At this point has the defendant been handcuffed at
14 this point?

15 MR. CANTY: I will play it and tell me if you
16 can answer it.

17 (Viewing videotape.)

18 A No.

19 Q How are you able to determine he has not been
20 handcuffed?

21 A I saw my partner with his arm -- with his arm behind
22 his back.

23 MR. CANTY: Tell me if you see anything else
24 on the tape.

25 (Viewing videotape.)

1 Q Is that the hand you were referring to, detective?

2 A Yes.

3 MR. CANTY: I have no further questions --
4 actually, I do.

5 Q Do you recognize this man?

6 A Back it up.

7 MR. CANTY: I am going to rewind it.

8 (Rewinding videotape.)

9 (Viewing videotape.)

10 Q Do you recognize that man at the counter?

11 A Yes, I do.

12 Q Did there come a time where he identified himself to
13 you?

14 A Yes, he did.

15 Q How did he identify himself?

16 A As we were rolling around, he came over to us and
17 told us he was a detective from the district attorney's office
18 and did we need any help and further officer assistance.

19 Q How much time had transpired when you originally
20 told the defendant he was being placed under arrest and when
21 this individual asked if you needed any additional assistance?

22 A I would say well over two minutes.

23 MR. CANTY: I'm going to rewind it and let you
24 take a look.

25 (Rewinding videotape.)

1 MR. MASSIMO: I think he answered the
2 question.

3 THE COURT: I want you to stop it right there
4 and now play it forward. Where is the individual you
5 are talking about?

6 MR. CANTY: This individual? (Indicating).

7 THE COURT: Where is he?

8 MR. CANTY: He is at the counter.

9 THE COURT: And, where is the defendant?

10 MR. CANTY: I don't want to testify, Judge. I
11 would prefer the witness answer.

12 THE WITNESS: At this point?

13 THE COURT: Yeah.

14 THE WITNESS: It is hard to say. He might be
15 back here.

16 THE COURT: Didn't you tell us that zippered
17 front is the defendant on lower left?

18 THE WITNESS: Yes.

19 THE COURT: Where is the individual you are
20 identifying for the district attorney's office?

21 THE WITNESS: (Indicating).

22 THE COURT: Where are the two individuals at
23 the moment? What's the time on that, counsel?

24 MR. CANTY: Well, Judge, I have to bring it
25 back to where we were before.

1 THE COURT: Okay.

2 (Rewinding videotape.)

3 THE COURT: Where is the defendant?

4 THE WITNESS: He is right here.

5 THE COURT: So the defendant is at one counter
6 and the individual is at another. Is there more than
7 one counter?

8 THE WITNESS: That's the one counter here and
9 here is this individual.

10 THE COURT: This is the individual standing
11 next to the defendant?

12 THE WITNESS: At this time, yes.

13 THE COURT: And, your testimony was at that
14 point in time what was the defendant doing?

15 THE WITNESS: He is -- we are talking to the
16 other two defendants over here and he's turning around
17 and screaming at us.

18 THE COURT: This individual is standing there?

19 THE WITNESS: Yes.

20 THE COURT: Play the tape forward slowly, if
21 you can.

22 (Viewing videotape.)

23 THE WITNESS: See how everybody is looking
24 that way?

25 MR. MASSIMO: Judge, I don't believe there is

1 a question.

2 MR. CANTY: May I inquire?

3 THE COURT: You are playing it for me right
4 now.

5 (Viewing videotape.)

6 THE COURT: What time is it now, counsel?

7 MR. CANTY: 8:51:58.

8 THE COURT: Continue your inquiry.

9 Q With respect to the video we just watched,
10 detective, what direction was this individual looking as the
11 defendant walked away?

12 MR. MASSIMO: Objection.

13 THE COURT: Sustained.

14 Q What direction did he turn to look?

15 MR. MASSIMO: Objection.

16 THE COURT: Sustained. Tape speaks for
17 itself. I just saw it.

18 Q What, if anything, was going on when the detective
19 looked over toward the window?

20 MR. MASSIMO: Objection.

21 THE COURT: That's sustained. What was going
22 on at that moment?

23 THE WITNESS: At some moment.

24 MR. CANTY: Immediate previous to this moment.
25 I will tell you when.

1 (Rewinding videotape.)

2 (Viewing videotape.)

3 Q 8:51:30?

4 A We are talking to the other gentlemen on the east
5 side of the building. From where the defendant is yelling at
6 us saying, fuck that. This is my hood. Don't talk to the
7 niggers, and it was his intention to look this way.

8 MR. MASSIMO: Objection.

9 THE COURT: Sustained.

10 MR. CANTY: With respect to the last comment
11 or the whole answer?

12 THE COURT: I have a piece of physical
13 evidence. I can figure it out.

14 (Viewing videotape.)

15 Q What, if anything, did this individual say to you
16 with respect to the assistance he offered?

17 MR. MASSIMO: Objection.

18 THE COURT: Sustained.

19 MR. CANTY: Judge, I'm offering it for the
20 truth of the matter.

21 THE COURT: Overruled.

22 THE WITNESS: Repeat that.

23 Q What, if anything, did he say with respect to the
24 assistance he offered to you?

25 A We were on the ground and he came over to us, if we

1 needed any assistance from any other officers.

2 MR. MASSIMO: I'm not really sure it is --
3 what it is being offered for outside the truth.

4 THE COURT: Well, I'm not sure what it's being
5 offered for either. So we can move on.

6 MR. CANTY: Thank you.

7 (Witness returning to witness stand.)

8 MR. MASSIMO: Shall we go back?

9 THE COURT: Are you done?

10 MR. CANTY: I am done with the video.

11 (Defendant and his attorney left the jury box
12 and returned to the defense table.)

13 Q Detective, were you ever able to apprehend a suspect
14 with respect to the trespass at Mineola High School?

15 MR. MASSIMO: Objection.

16 THE COURT: I'm going to sustain that
17 objection.

18 MR. CANTY: That goes solely to one of the
19 charges the defendant is facing.

20 THE COURT: I'm sustaining the objection.

21 Q Detective, how -- with respect to the defendant
22 pushing the chair in your leg, how did that affect your ability
23 to conduct your investigation?

24 A It hindered it.

25 Q How so?

1 A 'Cause I was trying to investigate trespass and this
2 gentleman interfered with my investigation.

3 Q With respect to the -- can you describe the manner
4 in which the defendant spoke when he made the comments?

5 THE COURT: What comments?

6 MR. CANTY: The comments -- I can read them.
7 When the defendant stated, fuck that. This is my hood.
8 We don't have to talk to any of you niggers. You might
9 as well wait for me to finish eating. This is my hood
10 and you don't tell me what to do in my hood.

11 MR. MASSIMO: I understand the point of
12 reference, but I don't believe that's the officer's
13 testimony.

14 Q In sum and substance those comments you heard the
15 defendant make, can you describe the manner in which he made
16 the comments?

17 A Very loud and aggressive.

18 Q And, when the comments were made what, if anything,
19 did you observe with respect to the patrons that were at the
20 Dunkin' Donuts?

21 A They all left.

22 Q And, with respect to the defendant, when you
23 attempted to place him in handcuffs what, if any, verbal
24 commands did you give him?

25 A I told him to put his hands behind his back, stand

1 up with his hands behind his back, and he said, no.

2 Q How did that affect your ability to place handcuffs
3 on the defendant?

4 MR. MASSIMO: Objection.

5 THE COURT: Overruled. I will let him answer
6 it.

7 A It was very difficult.

8 MR. CANTY: Thank you. No further questions.

9 MR. MASSIMO: May I, your Honor?

10 THE COURT: Yes, you may.

11 MR. MASSIMO: Good afternoon. I apologize. I
12 get confused between officer and detective.

13 THE WITNESS: No problem.

14 CROSS-EXAMINATION

15 BY MR. MASSIMO:

16 Q Now, when you entered the Dunkin' Donuts on that
17 evening both yourself and at that time Officer DeCaro were in
18 plain clothes, correct?

19 A Yes.

20 Q And, when you entered you were speaking to two
21 individuals you testified, correct?

22 A Yes.

23 Q And, you were -- this was regarding this trespass at
24 Mineola High School that you had testified about?

25 A Correct.

1 Q Now, when Mr. Wharton first made his comments, it
2 was clear from the comments that he had no interest in speaking
3 with you; is that correct?

4 A I imagine.

5 Q Do you believe that you can arrest somebody for
6 merely cursing at you?

7 MR. CANTY: Objection, Judge.

8 THE COURT: I'm going to overrule the
9 objection.

10 A No.

11 Q Now, you are not African-American, correct?

12 A Correct.

13 Q And, Officer DeCaro is not African-American; is that
14 correct?

15 A That's correct.

16 Q And, it was clear to you the defendant's comments
17 were directed at the two of you, correct? Is that your
18 perception?

19 A Yes.

20 Q Now, after Mr. Wharton made his comments or even
21 possibly during, he walked over and sat at a table, correct?

22 A (Sigh). I guess, yes.

23 Q When you actually approached the table he was in a
24 seated position, correct?

25 A No.

1 Q He was standing when you got to the table?

2 A I walked over after Mr. Wharton screamed and was
3 yelling. I walked over to the counter and me and him walked
4 back to the table together.

5 Q When you got to the table, Mr. Wharton was seated at
6 that time, correct?

7 A He sat down, yes.

8 Q Now, while he was seated both yourself and Officer
9 DeCaro were standing, correct?

10 A Yes.

11 Q And, at that point in time I would imagine that you
12 put yourself in a position where you could have access to the
13 defendant, if necessary, correct?

14 A Yes.

15 Q You didn't want to have something between you and
16 the defendant because you knew this was a situation, right, or
17 a potential situation?

18 A Yes.

19 Q Now, you have been trained to deal with these types
20 of situations, haven't you?

21 A Yes.

22 Q And, part of your training is try to defuse the
23 situation, isn't it?

24 A Yes.

25 Q While we are on your training, you have also been

1 trained in how to handle individuals that don't want to be
2 placed under arrest, right?

3 A Yes.

4 Q You have been trained techniques in order to try to
5 get people under control, correct?

6 A Yes.

7 Q How tall are you, officer?

8 A Five, four.

9 Q And, how much do you weigh -- well, how much did you
10 weigh at the time of the incident is more relevant?

11 A One-fifty.

12 Q Have you been trained in combat scenarios?

13 A I don't understand the question.

14 Q Have you been trained in a scenario with combat with
15 another individual as part of your duties as a police officer?

16 MR. CANTY: Objection.

17 THE COURT: You want to rephrase it? I don't
18 know what you mean by "combat".

19 Q Have you been trained techniques in order to control
20 somebody if they are taking physical action towards you?

21 A Yes.

22 Q In fact, you're trained to use techniques in order
23 to prevent them from using more physical force?

24 A To subdue them, yes.

25 Q Now, you said that Mr. Wharton pushed a table

1 towards you, right?

2 A Yes, he did.

3 Q And, when he pushed that table towards you were you
4 positioned -- well, we will go from your positioning. Was
5 Mr. Wharton to your left? Was he in front of you? Was he to
6 your right, or some other direction?

7 A He was in front of me on the angle to my right.
8 (Indicating).

9 Q To your right?

10 A Yes.

11 Q And, which leg -- well, withdrawn. You said a table
12 hit you in the thigh area?

13 A Yes.

14 Q Which thigh?

15 A My right.

16 Q This was after you had asked him for identification,
17 correct?

18 A Yes. Twice.

19 Q You had asked him twice before he pushed the table?

20 A Yes.

21 Q And, at this point why were you asking Mr. Wharton
22 for identification?

23 A Because I realized he was one of the people that was
24 in the school at that point and because I was -- because of his
25 behavior in Dunkin' Donuts.

1 Q Because he had cursed towards you?

2 A Didn't curse toward us. Cursed to the other people
3 but was directed at us.

4 Q So his behavior you had observed in the restaurant
5 prior to that?

6 A And, the trespassing.

7 Q And, it was your feeling that Mr. Wharton had an
8 obligation at that point to comply with your request?

9 MR. CANTY: Objection, Judge.

10 THE COURT: Overruled.

11 MR. CANTY: Calls for speculation as to what
12 he thought the defendant wanted.

13 THE COURT: I don't think it does and I'm
14 going to overrule the objection.

15 THE WITNESS: Sorry. Can you repeat the
16 question?

17 THE COURT: I will have her read it back.

18 (The Court Reporter read back the requested
19 portion of the testimony.)

20 A Yes.

21 Q Isn't it true, detective, that it was actually
22 either yourself or Officer DeCaro who had originally moved the
23 table?

24 A No.

25 Q Isn't it true that the table was moved so that the

1 two of you could have a position in front of Mr. Wharton in
2 case you did need to subdue him?

3 A No.

4 Q You wrote numerous paperwork on the night of that
5 incident, correct?

6 A Yes.

7 Q One of those is what is known as an 85A or the Crime
8 Report, correct?

9 A Yes.

10 Q And, isn't it true, Detective Kouril, that in the
11 Crime Report you never mention Mr. Wharton pushing a table at
12 you or striking you or anything with regard to Mr. Wharton
13 pushing a table?

14 A Correct.

15 Q Isn't it true -- well, withdrawn. What other
16 paperwork did you do in regard to this case?

17 A Well, I assisted on all the arrest paperwork.

18 Q You also filled out the obstruction of governmental
19 administration complaint on that evening?

20 A Yes.

21 Q Signed it, right?

22 A I have to see it.

23 Q Sure. Would it refresh your recollection if I
24 showed you a copy of that?

25 A Yes, sir.

1 MR. MASSIMO: All right. If I could just have
2 a moment, your Honor. I am looking for the marked copy.

3 THE COURT: Counsel, I'm going to have to take
4 a break. Maybe this will be a good time to do that
5 before you start another line of questioning because I
6 have a feeling you are not going to finish in the next
7 10 minutes.

8 MR. MASSIMO: No.

9 THE COURT: Give you time to find your
10 exhibit. We are going to reconvene at twelve o'clock.

11 Detective, you are under oath. You can't
12 discuss your oath with anybody. Not with the district
13 attorney's office or with your partner or anybody else.

14 THE WITNESS: Yes, your Honor.

15 THE COURT: All right.

16 (A lunch break is taken to 2:00 p.m.)

17 (Case laid aside; later recalled in the p.m.
18 session, December 13, 2005.)

19 THE CLERK: The trial of Joshua Wharton
20 continuing. Case on trial, People versus Joshua
21 Wharton.

22 People ready?

23 MR. CANTY: People ready.

24 THE CLERK: Defendant ready.

25 MR. MASSIMO: Defendant is ready.

1 THE COURT: We will recall the witness who was
2 on the stand.

3 MR. CANTY: Yes.

4 (The Court Officer left the courtroom and
5 returned shortly thereafter with the witness.)

6 THE CLERK: Detective, you are reminded you
7 are still under oath.

8 THE WITNESS: Thank you.

9 MR. MASSIMO: Good afternoon, detective.

10 THE WITNESS: Hello.

11 MR. MASSIMO: May I proceed, your Honor?

12 THE COURT: Please.

13 MR. MASSIMO: Okay.

14 CROSS-EXAMINATION CONTINUING

15 BY MR. MASSIMO:

16 Q Detective, I believe we both were at the point where
17 I had asked whether or not you had filed the original charge
18 for obstruction of governmental administration with regard to
19 Mr. Wharton. And, I believe you said you needed your
20 recollection refreshed with regard to that?

21 A That's correct.

22 Q Would it refresh your recollection if I showed you
23 the original obstruction of governmental administration charge?

24 A Yes.

25 THE CLERK: (Handing).

1 COURT OFFICER: (Hanging.)

2 THE WITNESS: Thank you. (Examining).

3 MR. MASSIMO: Just indicate when you are
4 finished?

5 THE WITNESS: Yes, I did that. I signed it.

6 Q In fact, you signed it on the bottom, correct?

7 A Yes.

8 Q And, you signed that knowing that false statements
9 would be punishable as a Class A misdemeanor under the Penal
10 Law?

11 A Yes.

12 Q Now, isn't it true, detective, that you never stated
13 in that charge anything with regard to Mr. Wharton's pushing a
14 table towards you or your partner?

15 A That's correct.

16 Q In fact, you never stated that Mr. Wharton pushed a
17 table toward yourself or Detective DeCaro in any of the
18 original paperwork you filled out on this case on the night of
19 the incident?

20 A Correct.

21 Q In fact, the first time there is any mention of
22 Mr. Wharton pushing a table toward either yourself or Officer
23 DeCaro was when you filled out a second set of complaints in
24 June of 2004; is that correct?

25 A I have to see that, also.

1 MR. MASSIMO: Sure. So would it refresh your
2 recollection if I showed you the set of complaints from
3 June of 2004?

4 THE WITNESS: Yes.

5 MR. MASSIMO (Handing).

6 THE WITNESS: (Handing). Thanks.

7 MR. MASSIMO: (Handing).

8 THE WITNESS: (Examining). Okay. Sir, what
9 was the date on that one?

10 MR. MASSIMO: The other one that you had?

11 THE WITNESS: Yes.

12 MR. MASSIMO: Just give me a moment.

13 (Handing). You wish to see the other one to refresh
14 your recollection?

15 THE WITNESS: Yes.

16 COURT OFFICER: (Handing).

17 THE WITNESS: (Examining). I'm sorry. The
18 one I just had. The one you showed me before.

19 MR. MASSIMO: You want to see it again?

20 THE WITNESS: Yes.

21 MR. MASSIMO: You can hold on to both.

22 COURT OFFICER: (Handing).

23 THE WITNESS: (Examining). Okay.

24 Q Does that refresh your recollection?

25 A Yeah.

1 Q Okay. And, the first time it was written was in the
2 complaint of June 18 of 2004; is that correct?

3 A I guess it appears to be that way.

4 Q When you did that second set of complaints, you sat
5 down with an assistant district attorney, correct?

6 A Yes.

7 Q Her name was Anna Acquafredda?

8 A I believe so.

9 Q When you filled out this second set of complaints,
10 she made you aware that the defense had filed a motion to
11 dismiss, based on the fact that there was no physical
12 interference?

13 MR. CANTY: Objection, your Honor.

14 THE COURT: What's the objection?

15 MR. CANTY: Just to the form of the question
16 as to why the motion was -- that was filed by defense
17 counsel and how that affected -- what the conversation
18 was between --

19 THE COURT: Counsel, rephrase.

20 MR. MASSIMO: Okay.

21 Q The time on June 18 when you completed the second
22 set of complaints --

23 A Yes.

24 Q -- you had discussed with Ms. Acquafredda why the
25 complaints were being filed?

1 A Yes.

2 Q And, you were made aware the defense had moved to
3 discharge the bill of particulars specifically on the ground
4 there was no physical interference with regard to the
5 governmental obstruction administration?

6 A No.

7 Q You weren't aware of that?

8 A That wasn't the conversation.

9 Q June 18, 2004 you alleged that Mr. Wharton pushed
10 the table toward yourself and your partner, correct?

11 A I'm not sure.

12 Q Now, would you agree with me that the fact that he
13 pushed the table towards yourself and Officer DeCaro was an
14 important fact in this case?

15 MR. CANTY: Objection, your Honor.

16 THE COURT: Overruled.

17 A That played into it.

18 Q You never charged him with assault, correct?

19 A Correct.

20 Q Or attempted assault?

21 A Correct.

22 Q The fact is you never made those charges because he
23 never really did push the table toward you, correct?

24 A Not correct.

25 Q Now, you never spoke to any person in the store who

1 was afraid of this incident?

2 A I am sorry. I didn't understand.

3 MR. MASSIMO: Let me withdraw that.

4 Q You never spoke to any patron in the store who was
5 caused to leave due to Mr. Wharton's action, correct?

6 A Correct.

7 Q And, do you agree that Mr. Wharton did not encourage
8 anybody to fight with yourself or Detective DeCaro?

9 MR. CANTY: Objection.

10 THE COURT: Overruled.

11 MR. CANTY: Judge, it calls for him to
12 speculate as to the intent of what somebody else was
13 thinking.

14 THE COURT: I don't think so. I think he
15 asked -- I am sorry.

16 MR. CANTY: He believed that the defendant --

17 THE COURT: Perhaps I didn't hear the question
18 correctly. Would you read the question back.

19 (The Court Reporter read back the requested
20 portion of the testimony.)

21 THE COURT: Overruled.

22 MR. CANTY: Objection, Judge.

23 THE WITNESS: Would you repeat it again?

24 Q Would you agree that Mr. Wharton did not encourage
25 any other individual other than himself to fight with you or

1 Officer DeCaro?

2 A I don't know. I can't --

3 Q Was there anything in your statements that you
4 testified to that you believe was an encouragement to fight for
5 someone else to fight either yourself or Officer DeCaro?

6 A I don't know. I don't know what other people think.

7 Q Well, do you believe that Mr. Wharton said anything
8 to incite attack to yourself or Officer DeCaro?

9 A Depends on how the statements were perceived.

10 Q Did you hear him say anything to incite patrons to
11 attack -- I am sorry -- incite anyone to attack patrons in
12 Dunkin' Donuts?

13 MR. CANTY: I will object as to the relevance
14 of that question. It doesn't go to the charge the
15 defendant faces.

16 THE COURT: I am overruling the objection.

17 THE WITNESS: Could you repeat the question?

18 I'm sorry.

19 Q Did you hear Mr. Wharton state anything that
20 encouraged or incited anyone to attack any of the patrons of
21 Dunkin' Donuts?

22 A Depends on how the people perceived the situation at
23 the time.

24 Q Did you hear him say anything to attack any of the
25 employees?

1 A Um, I don't know how people would perceive the
2 screaming, irrational behavior. I don't know how they would
3 perceive his behavior. So I don't know how they felt. If they
4 felt fear or --

5 MR. MASSIMO: If I can, Judge, I just want to
6 use the video.

7 THE COURT: Sure.

8 COURT OFFICER: Here you go. (Handing).

9 MR. MASSIMO: So --

10 MR. CANTY: Judge, may I stand to watch?

11 THE COURT: Sure.

12 (Viewing videotape.)

13 MR. MASSIMO: All right. I just want to stop
14 it for a moment, Judge, for the record to reflect we are
15 8:50 and 46 seconds.

16 Q This is the bottom-left screen at the counter that
17 is Mr. Wharton?

18 A Yes.

19 Q And, this individual is here. I believe his name
20 was Masur?

21 A I never said his name. But that is his name, yes.

22 Q That's what that is?

23 A Yes. I believe so.

24 MR. MASSIMO: I am pointing to the
25 lower-bottom screen to the individual in the

1 light-colored screen?

2 THE WITNESS: You mean the lower-right screen.

3 MR. MASSIMO: Yes. I am sorry. It was kind
4 of redundant.

5 (Viewing videotape.)

6 MR. MASSIMO: Okay. I just want you to watch.
7 I stopped it 8:51 and 14. Okay.

8 Q It appears that Mr. Wharton in the lower left of the
9 screen is paying for the sandwich he's ordered, correct?

10 A Yes.

11 (Viewing videotape.)

12 Q And, at that point by the way, he wasn't saying
13 anything to you; is that correct?

14 A I am not sure how far --

15 Q You are not sure if it was at this point or after
16 that point?

17 A He was talking to the other people about us. It was
18 nothing said to us. At that point he wasn't talking to us,
19 correct.

20 THE COURT: Let me ask you a question. Did he
21 say anything before he paid for the sandwich?

22 THE WITNESS: Are we talking to the two people
23 on the side windows there? I don't believe so at this
24 time, your Honor.

25 THE COURT: I thought that was the somebody

1 pointed -- this is after you get the glimpse of the
2 defendant's face, isn't it?

3 MR. MASSIMO: I believe it is.

4 THE COURT: I believe it is later than that.

5 MR. MASSIMO: I am going to go right through
6 it.

7 THE COURT: Okay.

8 (Viewing videotape.)

9 THE WITNESS: I think we just come in now.

10 MR. MASSIMO: I just want you to watch this
11 portion and this screen particularly. (Indicating).

12 (Viewing videotape.)

13 MR. MASSIMO: 8:51 and 42 seconds.

14 Q At this point does it appear Mr. Wharton had
15 received his sandwich?

16 A That looked like change.

17 Q You see he got something in his hand?

18 A Yes.

19 Q Do you know at this point whether or not he was
20 stating anything to you?

21 A Yes.

22 Q At this point he is saying?

23 A He is saying it way before this.

24 THE COURT: When before that?

25 A He is saying it 30 seconds before that. If you see

1 the one gentleman there turn his head, and you could see his
2 body turning towards us, Mr. Wharton's turning towards us.

3 Q You believe in this point of time he is stating
4 something to you?

5 A He has already said it to us.

6 MR. MASSIMO: Okay.

7 (Viewing videotape.)

8 MR. MASSIMO: Stopping at 8:51 and 46 seconds.

9 Q Did it appear to you Mr. Wharton left a tip at this
10 point?

11 MR. CANTY: Objection.

12 THE COURT: I will allow him to answer it.

13 A I don't know.

14 Q It appears to you that his hand put change in that
15 jar? You are not sure?

16 A No.

17 MR. MASSIMO: I want you to watch this and I
18 will stop it again and ask you a question. Okay.

19 (Viewing videotape.)

20 Q Okay. Now, we are now at 8:51 and 52 seconds. We
21 saw Mr. Wharton start to walk away on this screen?

22 A Yes.

23 Q Would you agree this is Mr. Wharton walking back
24 over there?

25 A Yes, and I am right behind him now.

(Viewing videotape.)

Q Again, still at 8:51:54, but this is a point where it appears Mr. Wharton walks over? The screen is in the lower right-hand corner?

A Correct. Towards the table.

(Viewing videotape.)

Q We are now at 8:52:02. Okay. Some four to eight seconds later. This clock goes by four seconds. At this point in that four to eight seconds he's already pushed the table towards you?

A I have to look at that again with the time. 8:51:48 you said when he started walking back?

MR. MASSIMO: We can go back.

(Rewinding videotape.)

(Viewing videotape.)

THE COURT: What's the time now?

MR. MASSIMO: Right now it's 8:51:50 it's marked.

THE WITNESS: Um-hum.

Q There is you, by the way?

A Yes.

Q Following Mr. Wharton?

A Yes.

THE COURT: What time is it now?

THE WITNESS: 8:51:54.

1 MR. MASSIMO: 8:51:54 but I still -- he is on
2 the edge --

3 MR. CANTY: Judge, I'm going to object.

4 THE COURT: You can't testify.

5 MR. MASSIMO: I understand.

6 Q Does it appear that he is still on the edge right
7 here?

8 A Yes.

9 (Viewing videotape.)

10 Q So it's 8:51:54 at this point when it appears you
11 leave the screen, right?

12 A Yes.

13 (Viewing videotape.)

14 MR. MASSIMO: Now, again, your Honor, for the
15 record, it's 8:52:02.

16 Q At this point you're testimony is he had already
17 pushed the table toward you?

18 A Correct.

19 Q In that eight seconds he sits down and pushed the
20 table toward you?

21 A Correct.

22 Q And, it's not correct you did push the table out of
23 the way so the two of you would have a clear position with
24 regard to Mr. Wharton?

25 A No, not at that time, no.

1 Q Now, at some point -- well, let me withdraw that.
2 After Mr. Wharton was placed into handcuffs he was cooperative,
3 correct?

4 A Um, that he had to be. Whatever.

5 Q You didn't have trouble getting him off the floor?

6 A We both had to pick him up.

7 Q Because he was handcuffed. He wasn't fighting you?

8 A No, not like he was before he was handcuffed.

9 Q He walked out of the store without incident with
10 you?

11 A Right.

12 Q Now, Mr. Masur had come over while you guys were
13 putting him into handcuffs?

14 A It's hard to say. I believe he came over towards
15 the end.

16 Q At some point?

17 A Yes.

18 Q And, when he was on the ground he was down flat on
19 the ground, right?

20 A Who?

21 Q Mr. Wharton.

22 A Yes.

23 Q And, you were on top of him toward the back of his
24 body where his legs were?

25 A Yes, I believe so, yes.

1 Q And, Detective DeCaro was on top of him towards the
2 front of his body?

3 A I don't believe DeCaro was on top. He was standing
4 in front of him or kneeling in front of him and reaching over
5 his arms to cuff his arm.

6 MR. MASSIMO: I will shut this off.

7 Q When you filled out the arrest paperwork in this
8 case, you listed Mr. Masur as a witness, right?

9 A I have to see it.

10 Q Would it refresh your recollection?

11 A Yes, it would.

12 MR. MASSIMO: I will withdraw that.

13 Q Did you speak to Mr. Masur on that night?

14 A For a couple of seconds, yes.

15 Q He didn't have to assist you in any way in terms of
16 handling the defendant, correct?

17 A That's correct.

18 Q Now, isn't it true that really the reason why
19 Mr. Wharton was arrested was because he was a wise guy towards
20 you?

21 A No.

22 Q Isn't it true that in the original charges that you
23 and Officer DeCaro draw up there was no mention of any physical
24 action by Mr. Wharton towards either one of you other than on
25 the resisting charge?

1 MR. MASSIMO: Sure. (Hanging).

2 COURT OFFICER: It is not marked in evidence.

3 MR. CANTY: That's fine.

4 MR. MASSIMO: I am just asking for
5 recollection.

6 THE WITNESS: (Examining). That's correct.

7 Q And, isn't that because Mr. Wharton never used any
8 physical action toward either one of you until after he was put
9 to the ground by the two of you?

10 MR. CANTY: Objection. The question has been
11 asked and answered as to what the conduct of the
12 defendant was on that day.

13 THE COURT: Let him answer it one more time,
14 counsel.

15 A That's incorrect.

16 COURT OFFICER: (Hanging).

17 MR. MASSIMO: Nothing further, your Honor.

18 COURT OFFICER: (Hanging).

19 MR. MASSIMO: Thank you.

20 REDIRECT EXAMINATION

21 BY MR. CANTY:

22 Q You stated on cross-examination you didn't have the
23 opportunity to speak to any patrons that left the store during
24 that incident?

25 A That's correct.

1 Q Why didn't you have the opportunity to speak to
2 them?

3 A Because we were too involved with Mr. Wharton on the
4 floor and yelling and screaming.

5 MR. CANTY: No other questions, your Honor.

6 MR. MASSIMO: Nothing further.

7 THE COURT: Thank you very much, detective.

8 (Witness left the witness stand and the
9 courtroom.)

10 THE COURT: People?

11 MR. CANTY: At this time the People rest.

12 MR. MASSIMO: Judge, could I just have one
13 minute to speak with his family?

14 THE COURT: Yes, you can.

15 (Defendant, his attorney, and his parent left
16 the courtroom and returned shortly thereafter.)

17 (Mr. Canty left the courtroom and returned
18 shortly thereafter.)

19 THE COURT: Okay. Counsel?

20 MR. MASSIMO: Your Honor, at this time the
21 defendant rests.

22 THE COURT: Do you wish to close, counsel?

23 MR. MASSIMO: Yes, I do. Judge, I will try to
24 keep as brief as possible. But unfortunately I think
25 there are a lot of substantial legal issues. What I