

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X

4 JOSHUA WHARTON, GAIL WHARTON AND
5 JONATHAN WHARTON, Plaintiffs,

6 - against -

7 COUNTY OF NASSAU, NASSAU COUNTY POLICE
8 DEPARTMENT, P.O. PHILLIP COURIL, P.O.
9 CHARLES DECARO AND LIEUTENANT MICHAEL
10 H. MCGOVERN,

11 Defendants.
12 -----X

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14
15 99 Quentin Roosevelt Boulevard
16 Garden City, New York

17 December 10, 2008
18 2:00 p.m.

19 DEPOSITION of JOSHUA WHARTON, a Plaintiff,
20 pursuant to Article 31 of the Civil Practice Law
21 and Rules of Testimony, and Order, held at the
22 above-mentioned time and place, before Jasmin
23 Trovato, a Notary Public of the State of New
24 York.
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A P P E A R A N C E S:

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Garden City, New York 11530
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BY: ERICA M. HABER, ESQ.

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2 IT IS HEREBY STIPULATED by and between the
3 attorneys for the respective parties hereto that:

4 All rights provided by the CPLR, and Part 221
5 of the Uniform Rules for the Conduct of
6 Depositions, including the right to object to any
7 question, except as to form, or to move to strike
8 any testimony at this examination is reserved;
9 and in addition, the failure to object to any
10 question or to move to strike any testimony at
11 this examination shall not be a bar or waiver to
12 make such motion at, and is reserved to, the
13 trial of this action.

14 This deposition may be sworn to by the
15 witness being examined before a Notary Public
16 other than the Notary Public before whom this
17 examination was begun, but failure to do so or to
18 return the original of this deposition to
19 counsel, shall not be deemed a waiver of the
20 rights provided by Rule 3116 of the CPLR, and
21 shall be controlled thereby. The filing of the
22 original of this deposition is waived.

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3 IT IS FURTHER STIPULATED, that a copy of
4 this examination shall be furnished to the
5 attorney for the witness being examined without
6 charge.
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Joshua Wharton

J O S H U A W H A R T O N, having been first
duly sworn by a Notary Public of the State of New
York, was examined and testified as follows:

EXAMINATION BY

MS. HABER:

Q. Good afternoon.

A. Good afternoon.

Q. Please state your name for the
record?

A. Joshua Wharton.

Q. What is your current address?

A. 230 Mill Road and that's Medford
New York, 11763.

Q. I'm just going to be asking you a
series of questions this afternoon related to
your arrest on January 20th, 2004.

A. Yes.

Q. If you don't understand my
question, please let me know, I'll be happy to
rephrase it for you, or if you don't hear me, I
will be happy to repeat it.

Like Mr. Massimo said, just give
oral responses to the questions rather than
nodding your head or using your hands, that would

Joshua Wharton

1 be great so the court reporter can take down your
2 answers.
3

4 A. Understood.

5 Q. Thank you.

6 How long have you lived at 230 Mill
7 Road?

8 A. For the past three years.

9 Q. And what was your prior address?

10 A. Prior address was 67 Whaley Street,
11 Freeport, New York, that's 11520.

12 Q. And what years did you live at the
13 Whaley Street address?

14 A. For eight months.

15 Q. Do you know what year that was,
16 those eight months?

17 A. 2005, the end of '05 the end of '04
18 into '05. 2005.

19 Q. Did you live with anyone at that
20 address?

21 A. I was renting a basement apartment.

22 Q. By yourself?

23 A. Correct.

24 Q. And where did you live prior to the
25 Whaley Street address?

Joshua Wharton

A. Garden City Park, 272 Bedford Avenue, Garden City Park, New York 11040.

Q. And how long did you live at that address?

A. All my life.

Q. What's your date of birth?

A. [REDACTED]

Q. And what's your Social Security number?

A. [REDACTED]

Q. Are you married?

A. No.

Q. Do you have any children?

A. No.

Q. Are you currently taking any medication?

A. No.

Q. Are you currently employed?

A. Yes.

Q. Where are you employed?

A. Right now I work as an intern at Mercy Medical Hospital and I also work as a home health aide for South Shore in Suffolk County.

Q. Where is Mercy Medical Hospital,

Joshua Wharton

1 located?

2
3 A. On Peninsula Boulevard in Rockville
4 Centre.

5 Q. And are you a paid intern?

6 A. No, I wish, but no.

7 Q. And what is your internship in?

8 A. I'd say about eight and a half
9 weeks from today. The date would be February, I
10 don't have the exact date.

11 Q. I'm sorry. I didn't speak loudly
12 enough. What is your internship in, what area?

13 A. Medical office assistant.

14 Q. And what are your job duties and
15 responsibilities?

16 A. Anywhere from patient care to
17 filling, medical billing, encoding, transcription,
18 phlebotomy, EKG, urine analysis. That pretty
19 much sums it up. There are a couple of other
20 things, it has to do with computer skills.
21 Pretty much front office as well as back office
22 and laboratory work.

23 Q. Are you in school now?

24 A. The internship site is affiliated
25 with the school. Franklin Carrey Institute. I

Joshua Wharton

1 graduated from the course on December 2nd and I
2 started my internship at Mercy Medical Hospital
3 on the 3rd.
4

5 Q. And what degree did you graduate
6 with?

7 A. Medical office degree certificate,
8 certified.

9 Q. Have you been searching for work
10 after your internship ends?

11 A. Yes, no luck. I have been
12 searching.

13 Q. What type of work had you been
14 doing?

15 A. I would like to get back in the
16 mortgage field. Until that happens, until the
17 economy comes up, I'm going to stick with the
18 medical field and hopefully full-time at Mercy
19 Medical, that's what my goal is for now.

20 Q. I'm sorry. You began your
21 internship on December 3rd '08?

22 A. Correct.

23 Q. And it's going to end?

24 A. Mid February, probably around
25 Valentine's day.

Joshua Wharton

1 Q. You also mentioned your a home
2 health aide for South Shore; is that correct?

3 A. Yes.

4 Q. What is South Shore?

5 A. South Shore is actually a company,
6 they hire home health aides for families who have
7 disabled family members. Basically, what I do is
8 I take care of my brother and he is disabled and
9 I gotten enrolled in a program that help assist
10 with family members who are disabled, who can't
11 help themselves through life pretty much. There
12 is no overcoming their problem really, which is
13 down syndrome. He cannot beat that. That is a
14 life long illness that he has. Fortunately, I
15 had an opportunity to get hired through them and
16 I work with the company to take care of my
17 brother.

18 Q. Do they pay you to take care of
19 your brother?

20 A. Yes. I have not gotten paid with
21 them until I completed their school and I
22 completed the school and I will start to get paid
23 this week.

24 Q. How much will you get paid?
25

Joshua Wharton

1 A. \$11.50 an hour. I didn't quite
2 complete the week yet. I don't know how much the
3 paycheck will come out to.
4

5 Q. How many hours per week will you be
6 working?

7 A. Through the South Shore, I will be
8 working anywhere from four to eight hours, I
9 would say.

10 Q. Per week?

11 A. Per week -- per day actually.

12 Q. Now, you just testified that you
13 enrolled in a program with South Shore?

14 A. Yes.

15 Q. Could you explain that program to
16 me?

17 A. It's employment but being that it's
18 a family member, you have to qualify -- you
19 cannot live from the same residence as the person
20 you are taking care of. Therefore, the program
21 entitles me, I would live outdoors from my family
22 members and be able to come in and take care of
23 them as an employee of South Shore.

24 Q. So, were you trained by South Shore
25 to get your certification?

Joshua Wharton

1 A. No. I was trained through another
2 company called Pathways to Independence which is
3 very similar but it was a Nassau County facility.
4 I was working with them for two years. That was
5 a second job though that was never my number one
6 job that I had done. I was in the mortgage
7 department the whole time. After that day ended,
8 I would go home and clock in for Pathways, which
9 is now South Shore.

10 Q. So Pathways turned into South
11 Shore?

12 A. They turned in the information when
13 we moved into Suffolk. They didn't have any
14 facilities out in the area so I had terminated my
15 job there for Pathways and got hired for South
16 Shore. So it's very similar practice. It's just
17 two different companies.

18 Q. But you received a certification in
19 home health aide from Pathways?

20 A. Yes. I didn't receive any
21 certification for it.

22 Q. I'm sorry. I was confused.

23 A. There was no certification for that
24 particular job. They hire you. They give you a
25

Joshua Wharton

1 physical, PPD test they qualify you basically for
2 the job and I went through protocol and
3 everything and I was hired.
4

5 Q. So what years did you work at
6 Pathways?

7 A. Pathways was, I believe, if not the
8 end of '03, 2004 and I ended that maybe 2006.

9 Q. Did you testify that you had
10 another job in a mortgage company?

11 A. Yes.

12 Q. What mortgage company did you work
13 for?

14 A. First Capital Home Mortgage that
15 was located at the Mineola Train Station, 211
16 Station Road.

17 Q. Just going back a minute to the
18 South Shore. Who is your supervisor at South
19 Shore?

20 A. The South Shore is actually my
21 mother, she's my supervisor. But the lady at the
22 office, I think her name is Mona or Mina, I don't
23 have her last name available.

24 Q. Do you know South Shore's address?

25 A. I know it's on Route 112, I don't

Joshua Wharton

1 know the exact address at this moment.

2 Q. In what town?

3 A. Patchogue.

4 Q. When did you begin working at First
5 Capital Home Mortgage?

6 A. Mid '03, middle of 2003 towards the
7 end, maybe September of 2003. And then I worked
8 there for on and off for two years.

9 Q. What was your job title?

10 A. Teller marketer for the first
11 seven, eight months, teller marketer.

12 Q. What happened after the seven or
13 eight months, what was your job title?

14 A. Junior loan officer.

15 Q. Did you remain a junior loan
16 officer until you left your employment there?

17 A. Yes, I did for, I don't remember
18 the length of time that I remained at. I had got
19 fired from that company because of -- what was
20 it? The company was just rehiring new people and
21 they were getting rid of the teller marketers. I
22 got caught up in the mix. My title wasn't set as
23 a junior loan officer, they had me as teller
24 marketer so I was in the line of fire to get
25

Joshua Wharton

1 terminated.

2 Q. Were you laid off?

3 A. Yes, I was laid off and rehired a
4 month later at the same place.

5 Q. And what title were you rehired in?

6 A. Junior loan officer.

7 Q. Do you recall what date that was?

8 A. Not off the top of my head, no.

9 Q. Were you working full time at First
10 Capital?

11 A. Part time.

12 Q. What were your duties and
13 responsibilities as a junior loan officer?

14 A. Pretty much code calling,
15 structuring loans for clients. Basically, I
16 would fill out a loan application for the senior
17 loan officer and that was pretty much what I had
18 to do. Part time.

19 Q. Did you receive a salary or an
20 hourly wage?

21 A. Yeah. I was getting \$400 every two
22 weeks. Very steep.

23 Q. And where were you working at the
24 First Capital Home Mortgage as a junior loan
25

Joshua Wharton

officer on January 20th, 2004?

A. Yes.

Q. Were you laid off before or after your arrest?

A. I was actually laid off twice from First Capital. One time it was before, the next time it was after, because I had found another mortgage company to work with at that time. So one was before the incident and one was after the incident.

Q. The time that you found another mortgage loan company to work for, did you get terminated or did you resign?

A. I resigned.

Q. So you were not fired from that job?

A. Yeah.

Q. Did you, in fact, go work for another mortgage company?

A. Yes.

Q. When was that?

A. This was maybe in 2005.

Q. And where did you go?

A. Mortgage Source on Old Country

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Joshua Wharton

1 Road.

2 Q. Do you know what town?

3 A. Garden City. It was in the
4 Citibank Building right in front of the mall, the
5 second floor.
6

7 Q. And what was your title at Mortgage
8 Source?

9 A. Junior loan officer.

10 Q. Do you recall the name of your
11 supervisor at First Capital?

12 A. At First Capital it was John
13 DeCanyo.

14 Q. Could you spell Decanyo for the
15 record.

16 A. D-E-C-A-N-Y-O.

17 Q. And do you recall his title?

18 A. He was the broker for the firm at
19 that time. One of the brokers at the firm.

20 Q. And who was your supervisor at
21 Mortgage Source?

22 A. John Gerozounis.

23 Q. Could you spell that for the record
24 too.

25 A. G-E-R-O-Z-O-U-N-I-S, I believe

Joshua Wharton

1 that's the correct spelling.

2 Q. And what were your duties and
3 responsibilities at Mortgage Source?

4 A. I would structure loan applications
5 for the clients, again, code call, pretty much
6 try to improve their home loans that they had if
7 not get them a second loan. Pretty much the same
8 duties as First Capital except I was actually
9 able to close loans on my own, but never really
10 had that happen yet. But they gave me the
11 opportunity to go for it.

12 Q. And I believe you said you started
13 in 2005. Are you still working there?

14 A. No.

15 Q. When did you leave Mortgage Source?

16 A. I was there for about three months,
17 so I believe in 2005 I was done with them.

18 Q. And why did you leave Mortgage
19 Source?

20 A. Not enough production. They were
21 actually cleaning house too. They were getting
22 rid of brokers and loan officers. I happen to be
23 one of the weakest links, they call it. I had to
24 be dismissed.
25

Joshua Wharton

1 Q. Other than your internship at Mercy
2 Medical and your job at South Shore and Pathways
3 and First Capital, have you worked anywhere else?

4 A. AFG Atlantic Mortgage Group. It's
5 another mortgage firm.

6 Q. When did you work from?

7 A. I started in, I believe, it was
8 September, like, October of 2006 and I was there
9 for a year.

10 Q. So until October of last year, you
11 think?

12 A. I would say a little less than a
13 year. Maybe August the summer of 2007.

14 Q. And what was your title at AFG?

15 A. Senior loan officer, mortgage
16 consultant.

17 Q. What were your job duties and
18 responsibilities there?

19 A. Same thing as the other company,
20 structure loans, debt consolidation. At this
21 point, credit checks, pretty much find banks,
22 different banks to actually distribute loans to.
23 I closed deals there, that was good there. I
24 closed three loans with AFG. Pretty much the
25

Joshua Wharton

1 same duty except that we did a lot of credit
2 counseling, debt consolidation we did there at
3 AFG that was more rounded off for me.

4 Q. Did you earn a salary there?

5 A. Commission. That was hard.

6 Q. So approximately, how much did you
7 earn per month, let's say?

8 A. When I first started, I was on
9 salary plus commission, I was on maybe \$450 every
10 two weeks, with 15 percent commission. After the
11 first six months, I started to do well, much
12 better. They dismissed the salary and went to 30
13 percent commission. I received about three
14 closings, two closings with them. My income, I
15 made about \$9,000 with them, a little under.

16 Q. Did you work there part-time as
17 well?

18 A. I was full-time.

19 Q. Who was your supervisor at AFG?

20 A. Mathew McDermott.

21 Q. And what's his title?

22 A. Senior mortgage consultant.

23 Q. Where is AFG located?

24 A. 400 Garden City Plaza in Garden
25

Joshua Wharton

1 City directly on the side of the mall. The
2 Macy's side. That blue glass building.

3 Q. Other than that, have you been
4 employed in any capacity other than what we
5 discussed?

6 A. MPS, Merchants Processing of Long
7 Island and that's in Hicksville.

8 Q. And what was your title there?

9 A. Inside sales rep.

10 Q. And what type of company is MPS,
11 Merchant Processing?

12 A. They deal with credit card
13 terminals. They distribute credit card terminals
14 to new existing business instead of collecting
15 cash. If they had credit cards from customers,
16 they had a chance to receive those payments
17 through credit instead of cash. They would keep
18 sales flowing. My job was to contact these
19 businesses and offer, if they hadn't had the
20 offer already, offer them a chance to receive
21 American Express credit cards, anything to help
22 their business produce. That is what my job was.
23 I was only there about three, four months.

24 Q. Why did you leave?
25

Joshua Wharton

1 A. To tell you the truth, they
2 terminated me there. I was the youngest one
3 there at the time. It was a lot of competition,
4 I would say, with the variance of the company. I
5 believe it was one of the things survival of the
6 fittest. There was a lot going on in there.
7 They dismissed me after a while.

8 Q. What year were you working there?

9 A. This was 2007, the end of 2007.

10 Q. And why did you leave AFG
11 Financial?

12 A. The economy. The market. We were
13 running out of the banks to handle the loans that
14 we were processing one by one every day. We had
15 300 banks, we had to scratch out our list. Our
16 company was becoming a bank. We didn't have to
17 distribute our loans to anybody, we can keep it
18 in-house. Everything was shattering; even the
19 account that our banks were dealing with, our
20 company accounts. Everything demolished. The
21 company went down. I found MPS of Long Island
22 and they accepted me with open arms and that's
23 where I ended up.

24 Q. So you were there at the end of
25

Joshua Wharton

1 2007. Were you employed anywhere else in 2008?

2 A. No. I decided to go to school. I
3 was looking for employment, nothing happened and
4 I thought school was the best thing for now until
5 I can get back up with the economy and get back
6 on track. I went to Franklin Institute. I had
7 been there all year. I just graduated.

8 Q. Congratulations.

9 A. Thank you.

10 Q. When did you begin Franklin
11 Institute?

12 A. November of 2007. November 29th.

13 Q. What program did you enroll in
14 there?

15 A. Medical office assistant.

16 Q. It's a certification program?

17 A. Correct.

18 Q. Did you attend Mineola High
19 School?

20 A. Yes.

21 Q. And what years did you attend
22 Mineola High School?

23 A. From 2000 to 2005. I got left
24 back. I was messing up a little bit in my
25

Joshua Wharton

1 freshman year so that, you know, I had to pay the
2 course for that. I got back on track and
3 graduated in 2005.

4 Q. So you were a student there on
5 January 20th, 2004?

6 A. Yes.

7 Q. Where is Mineola High School
8 located?

9 A. It's 10 Armstrong Road in Garden
10 City Park and that 11040.

11 Q. And you graduated, I guess, in June
12 of '05?

13 A. Yes.

14 Q. What grade were you in on January
15 20th, 2004?

16 A. Super senior.

17 Q. Do you know the name of the
18 school's principal in 2004?

19 A. Either Mr. Pucchio or
20 Ms. Bernstein. Ms. Bernstein. I forgot which
21 one was the assistant principal out of the two.
22 Those were the head of the school at the time.

23 Q. Did you participate in any
24 extracurricular activity while you attended
25

Joshua Wharton

1 Mineola High School?

2 A. Maybe I did basketball for a little
3 bit, that didn't last to well because in my
4 freshman year the grades were a little to low to
5 stay on the team. I had to work on that. Other
6 than that, I would help out with anything, like,
7 in the classrooms and stuff like that, but no
8 real outside activities, extracurricular.
9

10 Q. What year did you join the
11 basketball team?

12 A. Sophomore.

13 Q. Would that be 2001, 2002?

14 A. Actually, it was freshman year
15 because I had moved out of state to Philadelphia
16 the end of '01. I was down there for a year and
17 a half. I came back to school to New York in
18 10th grade, 11th grade. I think mid 10th grade I
19 came back.

20 Q. So you moved to Philadelphia during
21 your freshman year?

22 A. Yes.

23 Q. Why did you move to Philadelphia?

24 A. When I moved to Philly, I wasn't
25 doing good in school at the time and there was a

Joshua Wharton

1 lot of problems in the area, in the neighborhood.
2 It wasn't to good at the time. There was a lot
3 of mischief in the area. And my parents, they
4 had a problem, I had to get out of there because
5 if I stayed around, I wasn't going to finish
6 school and things weren't looking good at all.
7 The chances of actually completing school and not
8 getting in any trouble were slim. So the best
9 bet was for me to move out the area for that time
10 being. I had to make that decision.

11 Q. And did you go live with family in
12 Philadelphia?

13 A. Yes. I lived with one of my oldest
14 sisters, Latoya. And I stayed with them for the
15 time being in Philadelphia.

16 Q. What type of trouble were you
17 concerned about getting into?

18 MR. MASSIMO: Objection.

19 A. Basically, bad kids, you know, a
20 lot of people my age, around bad environment,
21 like, at the time it was just miserable really.
22 There was nothing really happening in my
23 neighborhood. There was violence, not too much
24 with that. Hanging out with the wrong crowd.
25

Joshua Wharton

1 Getting bored. Something was going to happen. I
2 had a lot of free time after school being that I
3 was not involved in extra activities. I was
4 looking for something new, a new chance to
5 breath.

6
7 Q. What did you do when you went to
8 Philadelphia?

9 A. I went to a private school when I
10 got out there. I was surprised. I was enrolled,
11 they accepted me being that I was from Mineola
12 High School and it was considered an excellent
13 school. They had Mineola High School as an
14 excellent school. They compared the grades.
15 They said how did you fail and still be able to
16 attend the school. They gave me a chance and I
17 flew by it wonderfully. That school was called
18 Parkway.

19 Q. And that's located in Philadelphia?

20 A. Yes. North Philly. I believe it
21 was German Town area it's called.

22 Q. So did you attend Parkway for your
23 entire freshman year?

24 A. I think it was my sophomore year
25 that I completed in Parkway. My sophomore year.

Joshua Wharton

1 And I came back at the end of that sophomore year
2 I came back in the summer. I re-enrolled in
3 Mineola High School.
4

5 Q. So what grade did you re-enroll
6 into?

7 A. When I came back, it was 11th
8 grade.

9 Q. So you came back as a junior?

10 A. Correct. Junior.

11 Q. What year was that?

12 A. I believe it was '03.

13 Q. So would it had been the fall in
14 '03 that you enrolled in your junior year?

15 A. I think so. Everything was in the
16 middle of the year when I made these moves. It's
17 hard to say the exact, I believe it was '03 when
18 I came back.

19 Q. So on January 20, 2004, you could
20 have been a junior and you became a senior in the
21 fall of '04 and graduated in '05?

22 A. Yes. I spent a lot of time to try
23 to clean up my act and everything as far as the
24 school. That sounds about right.

25 Q. Who was your coach when you were a

Joshua Wharton

member of the basketball team?

A. Mr. Guido. I remember the short shorts he wore for no reason.

Q. Do you recall him being the director of the athletics, being called athletic director?

A. It's going to come to me I bet when I leave here. I don't recall his name.

Q. That's okay. We can leave a space in the transcript. If you remember when you review your transcript, you can fill it in.

A. No problem.

INSERT: _____

Q. How long were you a member of the basketball team for?

A. A couple of months.

Q. Were you kicked off the team?

A. Yes. I didn't even get a chance to start a game because of my grades. I didn't think grades had anything to do with it, but I was wrong. So they found out I wasn't doing good in my academics, they put me on probation for it. If you don't get your grades up at a certain time

Joshua Wharton

1 you are not going to be able to play any games,
2 and they ended up dismissing me.

3 Q. Were you ever told by anyone that
4 you were not allowed to attend basketball games?

5 MR. MASSIMO: Objection.

6 You can answer it.

7 A. No.

8 Q. Did you attend basketball games at
9 the high school?

10 A. A few of them. A few.

11 Q. Did there come a point in time when
12 you went to Mineola High School on January 20th,
13 2004?

14 A. Yes.

15 Q. What time did you go to the high
16 school?

17 A. I went there for school that day
18 and then I returned maybe for the basketball game
19 around 6:00 o'clock, maybe seven the game
20 started.

21 Q. Did you attend the basketball game
22 with anyone?

23 A. No, I went there to see who was
24 going to be at the game.
25

Joshua Wharton

1 Q. And did you, in fact, find people
2 at the game?

3 A. Yes. My girlfriend, a couple of
4 other friends from school.

5 Q. Are you still dating the same girl?

6 A. No.

7 Q. Who was your girlfriend at the
8 time?

9 A. Anyis, A-N-Y-I-S. It's not the way
10 it sounds.

11 Q. What was her last name?

12 A. Baptista.

13 Q. And who else did you hang out with
14 at the basketball game?

15 A. A friend JJ Snowden and another
16 friend Brian McGuad.

17 Q. How do you spell McGuad?

18 A. M-C-G-U-A-D.

19 Q. Do you know Miss Baptista's
20 address?

21 A. 104 Albertson Avenue in Albertson,
22 New York. I don't remember the zip code. 11570,
23 I believe.

24 Q. What about Mr. Snowden? Is JJ, I'm
25

Joshua Wharton

1 assuming he is a male?

2
3 A. Yes. He lived in Garden City Park,
4 he lived on Mark Avenue.

5 Q. And what about Mr. McGuad?

6 A. He lived on First Street. I don't
7 have the address. Close to Winthrop Hospital.

8 Q. In Mineola?

9 A. Yes.

10 Q. What did you do when you arrived at
11 the basketball game?

12 A. I watched the game pretty much.

13 Q. Did you watch the entire game?

14 A. Yeah.

15 Q. Other than Miss Baptista and
16 Mr. Snowden and Mr. McGuad, did you speak to
17 anyone else when you were at the game?

18 A. There were a lot of my classmates
19 that were there. It was pretty much a school
20 event. There were a lot of people from my class
21 and other people that I knew. They were all
22 there. We all sat in the same bleachers in the
23 same row.

24 Q. Did you come into contact with any
25 school administrators at the game?

Joshua Wharton

1 A. No.

2 Q. Did you see your former basketball
3 coach?
4

5 A. No, I don't think he was at that
6 game there.

7 Q. Did you speak to or see the
8 athletic director?

9 A. I think I seen him there that night
10 Mr. G. I spotted the shorts.

11 Q. Did you speak to him?

12 A. No.

13 Q. How long did the game last?

14 A. Maybe hour and a half, could be
15 more or less an hour and a half, two hours.

16 Q. How did you get to the game?

17 A. I walked.

18 Q. What did you do when the game was
19 over?

20 A. Went to Dunkin Donuts with Brian
21 and JJ.

22 Q. How did you get there?

23 A. Walked. It's directly like a block
24 away, not even.

25 Q. Which Dunkin Donuts did you walk

Joshua Wharton

1 to?

2 A. There's only one in that area.
3 It's Herricks Road, Jericho Turnpike and Herricks
4 Road intersection.
5

6 Q. Do you recall what time you left
7 the high school to go to Dunkin Donuts?

8 A. Directly after the game. I don't
9 know what time it was, maybe around 8:00, 8:15.

10 Q. How long does it take to walk from
11 the high school to the Dunkin Donuts?

12 A. Ten minutes, five minutes,
13 depending on how fast you're walking.

14 Q. When you were walking to Dunkin
15 Donuts, did you happen to observe a police car
16 going towards the high school?

17 A. No. There was no police car in the
18 area.

19 Q. What road did you walk down to get
20 to Dunkin Donuts?

21 A. The Armstrong Road, it goes
22 straight pass the car wash.

23 Q. Do you remember what time you
24 arrived at Dunkin Donuts?

25 A. Within the 8:00 hour. 8:00, 8:15,

Joshua Wharton

1 I believe. It was pretty cold that day, so we
2 were walking fast from the school when we left.
3 It was cold. I remember trying to get there and
4 get inside, indoors.
5

6 Q. Do you recall about how many
7 customers were inside when you got there?

8 A. Not too many.

9 Q. Could you approximate?

10 A. Maybe five.

11 Q. Do you remember how many employees
12 were working at the time when you got there?

13 A. Two.

14 Q. How often did you go to that Dunkin
15 Donuts?

16 A. Every day. There is a pizzeria
17 right next door to it, it was either Dunkin
18 Donuts or pizza, that was my appetite.

19 Q. Did you know the employees that
20 worked at the Dunkin Donuts on January 20th?

21 A. I knew them on a day-to-day basis.
22 I didn't know them personally. When I come in, I
23 knew them by face, I didn't know their names.
24 They always greeted me when I walked in. I was a
25 regular, pretty much.

Joshua Wharton

1 Q. But you don't recall their names?

2 A. No.

3 Q. Do you know whether they still work
4 there?
5

6 A. I have no idea. I haven't been
7 there in a long time.

8 Q. I'm going to take out a sheet of
9 paper. If you don't mind, I'm going to ask you
10 to draw a diagram, a very basic diagram of Dunkin
11 Donuts so you can describe what happened to you.
12 Do you mind?

13 A. No, I don't.

14 Q. Once you finish drawing the
15 diagram, we'll describe it for the record.

16 A. Stick figures?

17 Q. Don't put any figures. Just draw
18 out the layout of Dunkin Donuts and we can walk
19 through it.

20 MR. MASSIMO: You want to mark the
21 piece of paper?

22 MS. HABER: Sure, I can mark it.

23 (Whereupon, the aforementioned
24 document was marked as Defendant's F for
25 Identification.)

Joshua Wharton

1 A. These are registers, just in case.
2
3 What else do I put? Do I put myself? It's the
4 cash register, the freezer, the entrance, the
5 table and these tables are along the windows.
6 This is the Jericho side and this is the Herricks
7 Road side.

8 Q. Why don't you write Jericho on the
9 bottom of your diagram.

10 What was the first thing you did
11 when you entered the Dunkin Donuts? And you can
12 use the diagram if you like.

13 A. I walked straight to the cash
14 register.

15 Q. And the cash register is in the
16 back of the store?

17 A. Yeah.

18 Q. When you walked in?

19 A. Yes --

20 MR. MASSIMO: Just indicate that he
21 came in the entrance and went to the cash
22 register on the diagram.

23 Q. And what did you do when you got up
24 to the cash register?

25 A. I ordered a sandwich and a coffee

Joshua Wharton

1 or just a sandwich.

2 Q. Do you recall what type of sandwich
3 you ordered?

4 A. Sausage egg and cheese. I was
5 starving that time too.

6 Q. Were you with JJ and Brian?

7 A. Correct.

8 Q. Did JJ and Brian come up to the
9 register with you?

10 A. Yes, they did. We all came
11 together and I assume they were going to order
12 something too. At the time when we ordered, we
13 spoke for five minutes and when I turned around
14 to pay, I noticed my friends walked over here.
15 (Indicating.)

16 Q. By here, are you indicating what?

17 A. Herricks Road diagram.

18 Q. So both JJ and Brian walked over to
19 the window near Herricks Road?

20 A. Correct.

21 Q. Were you still standing at the
22 counter waiting for your sandwich at that point
23 in time?

24 A. Yes.
25

Joshua Wharton

1 Q. What happened next?

2 A. I paid for the sandwich and I went
3 to look for my friends to see if they are getting
4 something. I noticed two men standing over them.
5 I don't know what it was, they were asking them
6 for something. I looked at JJ and asked him
7 what's going on and he just looked at me and said
8 I don't know. The officer said turn around. One
9 of the men said turn around. I said, I'm not
10 talking to you, I'm talking to JJ. He said shut
11 up. And I said, no, I'm talking to my friends.
12 They both walked over to me and asked if I had
13 identification, I said yeah. He said let me see
14 it. I said when I'm done eating you can get the
15 ID. I got the sandwich from the cashier, I
16 walked over from their table slightly across to
17 the cash register. I proceeded to sit down, they
18 followed me to my seat and asked one more time,
19 give me your ID and I said you can have my ID
20 when I'm finished eating, like, what is this
21 about?

22
23 Next thing I know, they moved. One
24 of the officers directly in front of me moved the
25 table to the side of me, and another officer

Joshua Wharton

1 standing right here (indicating), and I hear the
2 walkie-talkies going off and assumed they are now
3 police. One of the walkie-talkies are really
4 loud now. At that point, I put my sandwich down
5 on the table, the officer reached for it and I
6 just grabbed my sandwich, I hugged it. I took my
7 food off the table, and I'm holding it. Then he
8 tried to reach again for my sandwich, that's when
9 I had cupped it again and kind of sit back in my
10 seat a little bit. There was no words. At this
11 point, the officers had contact with each other.

12 The officer behind me tackled me.
13 I'm sitting down. He just basically put me in a
14 headlock while I'm sitting down and I tried to
15 put my sandwich -- I don't know what happened.
16 It happened so fast. There was nothing I could
17 do. They took me down from my seat and both
18 officers are on me. I don't know if I had my
19 sandwich in my hands or not. At this point, they
20 are manhandling me. They were using excessive
21 force. I don't know what the problem was. I
22 don't know why they took it this far, put me on
23 the floor and being arrested, manhandling me. I
24 didn't understand that. My two friends were
25

Joshua Wharton

1 still in Dunkin Donuts at that time when I had a
2 chance and took me off the floor and cuffed me, I
3 noticed JJ and Brian were standing in the
4 entrance by Dunkin Donuts, by the door, and they
5 proceeded to ask me and said should I call your
6 father. I said go to my friend's house and tell
7 his parents. He was there in the beginning of
8 the game, I knew my parents were not home.
9 That's exactly what they did. JJ and Brian, I
10 think it was JJ. He told my friend's mother
11 about the incident that took place in Dunkin
12 Donuts.

13 Q. I'm going to break that story down
14 a little bit.

15 First of all, could you mark the
16 table on the diagram, Defendant's Exhibit F. Was
17 that the table you were sitting at?

18 MR. MASSIMO: For the record, he
19 just indicated it was with an Exhibit F.

20 Q. So the table that you just wrote
21 Exhibit F on, is the table that you were sitting
22 at when the officer approached you?

23 A. Yes.

24 Q. Did you notice when the officers
25

Joshua Wharton

1 walked in to Dunkin Donuts? Did you notice they
2 were present?
3

4 MR. MASSIMO: Did he see them when
5 they walked in?

6 A. No.

7 Q. So, you did not see the officers
8 walk into Dunkin Donuts?

9 A. Correct.

10 Q. How many officers were there?

11 A. Two.

12 Q. And when was the first time that
13 you noticed them or that you saw them?

14 A. When I proceeded to ask JJ and
15 Brian if they were going to order, that's when I
16 noticed the two men officers approaching -- well,
17 already confronting them at that point.

18 Q. Were the officers in uniform?

19 A. No, plainclothes.

20 Q. Do you know what type of car they
21 were driving?

22 A. Well, actually it was --

23 MR. MASSIMO: Well, the question is
24 at what point. I think he got a very
25 good view after the incident.

Joshua Wharton

1 A. Exactly. I can tell you the
2 interior and everything.
3

4 Q. Once you got in the car, after you
5 were arrested, was it a marked police car or
6 unmarked?

7 A. Unmarked. It was like a taxicab.
8 It was a Crown Victorian car, silver, but it had
9 a taxi on it, like, a cab if it was a decoy. It
10 had a cab thing on it, like, a blue cab on it.
11 It said Plainview Taxi. That's why I'm thinking
12 they are undercover for real.

13 Q. Do you know the names of the
14 officers who entered the Dunkin Donuts?

15 A. I know them now. I know the names
16 now. Detective Couril and Decaro, but I do not
17 know which is which.

18 Q. Do you remember what the officers
19 were wearing?

20 A. Jeans, hoody jackets, I believe, it
21 was sneakers or boots they had on. I believe
22 boots.

23 Q. They were both wearing the same
24 thing, generally speaking?

25 A. No. One of the officers had a dark

Joshua Wharton

1 clothing on it, was either Navy blue or black.

2 Q. And what was the other, what colors
3 was the other officer wearing?

4 A. Light blue jeans, a light color
5 hoody and maybe a kaki colored jacket over it or
6 a sandy brown color.

7 Q. How long did they speak to JJ and
8 Brian for?

9 A. No longer --

10 MR. MASSIMO: That he saw?

11 Q. That you saw.

12 A. No longer than a couple of seconds.
13 It's a very fast incident.

14 Q. Did you come to learn what the
15 officer said to JJ and Brian, if anything?

16 A. No.

17 Q. Did JJ and Brian tell you what they
18 said to the officers, if anything?

19 A. No. They didn't have a chance to
20 speak about it.

21 Q. Did you learn at all what the sum
22 and substance of their conversations were?

23 A. Excuse me? I'm sorry.

24 Q. Did you ever come to learn what
25

Joshua Wharton

1 they were talking about for those few seconds?

2 A. No.

3 Q. Do you know how long you were
4 inside the Dunkin Donuts before the officers came
5 in or before you saw the officers?

6 A. About five minutes. More or less
7 five minutes.

8 Q. Do you know which officer asked you
9 for your identification?

10 A. No, I do not because I don't know.
11 The one with the the light colored clothes on, I
12 don't know if that is Couril or Decaro. I don't
13 know which one is which.

14 Q. Is one taller than the other? Is
15 there a way that you can distinguish one by their
16 characteristics?

17 A. The taller one is one with the
18 light colors. They actually both are pretty
19 short though. When I stood up, they were shorter
20 than me, around the same height. The one with
21 the lighter clothes is taller.

22 Q. How many times did the officer ask
23 you for your identification?

24 A. Two times.
25

Joshua Wharton

1 Q. Did you ever show him your
2 identification?
3

4 A. Well, at the time no, not directly
5 when they asked, but they retrieved the
6 information from me after manhandling me in that
7 manner that they done.

8 Q. Did either of the officers, while
9 you were inside the Dunkin Donuts, did either of
10 the officers ask you whether you had been present
11 at Mineola High School that evening?

12 A. No.

13 Q. Did you raise your voice or yell at
14 the officers?

15 A. Yes.

16 Q. What did you say?

17 A. Leave me alone. I'm not talking to
18 you, to ya'll. Why are you following me to my
19 seat? What else did I say? That was pretty much
20 it. They were the ones doing pretty much of the
21 talking.

22 Q. Did your friends say anything to
23 the officers that you heard?

24 A. I really didn't hear my friends, I
25 don't know if they said anything at all. They

Joshua Wharton

1 were very observant but they didn't say anything.

2
3 Q. You just said the officers were
4 doing most of the talking. What did they say?

5 A. You are a tough guy. You are a
6 punk. A bunch of nonsense. I didn't know what
7 the cause was; because I said no to my ID. I
8 don't know what the reason for them trying to
9 disrespect me. Basically, they were just asking
10 -- they were talking to themselves but talking a
11 lot to me about me, but still requesting for the
12 ID. They only asked twice. The next thing I
13 know, I didn't have enough time to figure out
14 what the cause was of questioning me about. I
15 didn't understand what was going on. I took it
16 as racial profiling. It was just so instant. I
17 went in there minding my own business on a
18 regular day. I'm known in there. I'm a regular.
19 That was the first and only time I had been in a
20 situation like this. Still to this day, I don't
21 know what it was about.

22 Q. How long did the incident last from
23 the time that you saw the officers speaking to JJ
24 and Brian until you were in handcuffed; how long
25 was that time period?

Joshua Wharton

1 A. Eight minutes, eight to ten
2 minutes.
3

4 Q. Did the officers at any point in
5 time on January 20th, 2004, did the officers
6 advise you that they were investigating a
7 trespassing at the high school?

8 A. No, not at all.

9 Q. While you were inside the Dunkin
10 Donuts, did you yell something to the effect of,
11 "Fuck that. This is my hood. We don't have to
12 talk to you niggers." And excuse my language.
13 Did you yell anything to that effect?

14 A. No. But I did say, "Fuck that."
15 "I'm not talking to you." "Why are you following
16 me"? And I was on the way to my seat.

17 Q. Did you at any point in time use
18 the N word?

19 A. No.

20 Q. How many times did you say, "Fuck
21 that"?

22 A. Just once. The second they
23 followed me, because they said, give me your ID,
24 really demanding. That's when they protruded to
25 come to me exactly right there at the register.

Joshua Wharton

1 But the cashier turned around and gave me my
2 sandwich. As soon as they gave me my sandwich, I
3 took it and the opportunity to not speak to them.
4 I attended to my original plan, to get my food
5 and enjoy it. I took the sandwich and walked to
6 my seat. That's when all hell broke loose.
7 Following me and said, punk and all that crazy
8 stuff. I sat down and they asked for my ID again
9 and I said, "Fuck that." "I'm not talking to
10 you."

11
12 Q. Did you yell that? Was your voice
13 raised in any way?

14 A. No. They were in front of me.
15 They directed me to my table, pretty much waiting
16 for my response. They were just really wanted to
17 take it down before I sat down, that's the way I
18 took it. They were treating me as a suspect. It
19 was humiliating. I didn't do anything wrong at
20 the time. I didn't do anything wrong. I didn't
21 feel I needed to speak to them. I didn't need to
22 speak to any police for that matter. I sat down
23 and that's when they took me down.

24 Q. You said the officers called you
25 tough guy, punk, and you said all that crazy

Joshua Wharton

1 stuff. What do you mean by all that crazy stuff?

2 A. They were kind of cursing. I
3 remember one thing they were saying, called me a
4 shit head. That's the only vulgar thing they
5 said, besides tough guy and punk. They asked me
6 if I thought I was tough and I didn't respond. I
7 went to eat. I wasn't trying to entertain what
8 they were looking for. I was trying to eat my
9 food, really.

10 Q. At that point in time, did you know
11 that they were police officers when they were
12 calling you tough guy and punk?

13 A. At that time, I did. Their
14 walkie-talkies were real loud, it didn't prove
15 that they were police. People can have
16 walkie-talkies. It was extremely loud as if
17 another call was coming in. It alerted pretty
18 much who was in there. That's how I knew it was
19 police. It was a nuisance. I didn't think they
20 were police when they first walked in, I thought
21 they were men coming in questioning my friends as
22 if there was a problem and that's when I noticed
23 them. That's the only time I noticed them when
24 they walked in to JJ and Brian.
25

Joshua Wharton

1 Q. Were they wearing badges?

2 A. No, no badges were present.

3 Q. Did they ever identify themselves
4 as police officers?

5 A. I believe towards the end when they
6 actually cuffed me, stood me up, I believe
7 someone else walked over to the scene to where we
8 were standing and I believe seen or heard or seen
9 one of them, say, yeah, I'm an officer, showed
10 them some type of credentials to a bystander. I
11 didn't know what relevance it was. I didn't know
12 what it was, if they were going to help or were
13 there. They were all in plainclothes. It wasn't
14 a patrol policeman in there.

15 Q. How long had you been sitting at
16 the table before the officers touched you?

17 A. I was at the table for less than a
18 couple of seconds, less than a couple of seconds.
19 Because I sat down at the table directly in front
20 of me. One of the officers, picked the table up,
21 moved it to the side, picked it up and moved it
22 so I couldn't get comfortable to eat the way I
23 would normally eat. They moved the table and
24 stood directly in front of me. At this point, I
25

Joshua Wharton

1 asked them, what is this about? I'm trying to
2 eat. No words were said. They didn't say
3 anything after that. They had eye contact to
4 each other. One officer positioned themselves
5 directly to the side of me. (Indicating.)
6

7 MR. MASSIMO: Indicating left
8 shoulder.

9 A. Yeah. Left shoulder. Out of view.
10 I couldn't see. I thought he was directly behind
11 me but he was beside me. The other officer was
12 looking at him, made eye contact, the next thing
13 they took me down. There was no reason to use
14 excessive force, no reason to use force at all or
15 take it that far.

16 Q. At that point, did they identify
17 themselves as police officers?

18 A. No.

19 Q. Did you fight back?

20 A. No.

21 Q. Did you --

22 A. I didn't have no time to do
23 anything. I didn't have any time to do anything.
24 As soon as I sat down, there was no time to eat
25 or to do anything. They didn't give me that, of

Joshua Wharton

1 course.

2 Q. How long were you on the ground
3 with the officers?

4 A. I would say two minutes.

5 Q. And what was happening during those
6 two minutes?

7 A. They were putting me in all types
8 of headlocks and body maneuvers. That was the
9 worse two minutes that I ever experienced. They
10 were putting me -- one officer, the taller one,
11 with the light colors on, he was towards my upper
12 body. When I was on the ground he kept kneeling
13 me in the head, really hard. That year I had
14 braids. I took the braids out, I had a little
15 afro, but I had a hat. That was the thing that
16 presents a concussion. He was like UFC. He was
17 definitely using excessive force.

18 Q. What do you mean by UFC?

19 A. It's like a wrestling thing, like
20 extreme fighting. He was using moves that
21 actually existing or derives from -- I don't
22 think anyone deserves that. He kept dropping his
23 knee on my head. I don't know what it was. He
24 had me cuffed already, he just kept putting his
25

Joshua Wharton

1 knee on me. The other one had my wrist in an arm
2 lock, telling me he was going to break my hand.
3 Going to break my jaw, not my jaw, my hand. He
4 was going to snap it. He kept doing that. It
5 didn't hurt, but, like, the force he was using,
6 if he actually had my arm in the right position,
7 he would have broke my hand instantly. That's the
8 way he was doing it. I don't know if that was
9 part of the training. I didn't know where he
10 learned that. If my hand was in the right
11 position, I don't know if he purposely didn't
12 break my hand or just trying to and didn't
13 understand why it was not working. I don't know.
14 But the same time, that right there,
15 (indicating), was very abusive in my eyes.

16 Q. At what point in time during, we'll
17 call it a scuffle, were you handcuffed?

18 A. At what point?

19 Q. Because you said one of the
20 officers were kneeling you in the head but you
21 were already handcuffed at that point. So when
22 did they get you in handcuffs?

23 A. They got me cuffed after being
24 kneed in the head. When they first took me down,
25

Joshua Wharton

1 my arm was under my chest, I believe. I don't
2 know if I had my sandwich, I was pinned to the
3 floor and I couldn't move my arm. So they were
4 kneeling me and rolling me over and they pulled my
5 arm after all of that, they cuffed me. After the
6 wrestling move or whatever they were doing,
7 that's when they cuffed me. My arm was under me.
8 They had one arm, it wasn't to be cuffed. The
9 other officer was trying to break my wrist.
10

11 MR. MASSIMO: He was indicating his
12 arm underneath, was his left arm.

13 THE WITNESS: Yes. And the officer
14 had this arm. (Indicating.)

15 Q. Meaning your right arm?

16 A. He didn't bring it behind me to
17 cuff me, he was holding it like trying to break
18 my wrist. The other officer, he is kneeling me
19 and pulling this arm from under my chest, the
20 left arm, swing it behind my back, then the other
21 officer brought my right arm from behind, cuffed
22 me, stood me up, went through all my pockets,
23 emptied my pockets, took out my identification.
24 I think I had a junior's license and my school ID
25 and they held it and they looked it over and

Joshua Wharton

1 walked me outside to the car.

2
3 Q. Just to go back for the record. So
4 when you were first put on to the ground by the
5 officers, you were holding your sandwich in your
6 left arm, close to your chest so that your left
7 arm was going across your chest; is that correct?

8 A. Correct.

9 Q. And they brought you to the ground
10 and you were faced down; correct?

11 A. I'm sitting in a seat just like
12 this, the officer sitting aside from me tried to
13 reach for my sandwich and I held it to me.

14 MR. MASSIMO: Indicating by folding
15 his arms across his chest.

16 A. Yes. I didn't understand why he
17 was trying to take my sandwich from me. He
18 proceeded to do it one more time. He didn't take
19 the sandwich because I'm holding it. So they
20 moved the table, actually the table was already
21 moved. He was trying to take the sandwich at
22 this point. Once they stopped talking about
23 anything, there was silence. They took me down
24 in a headlock, the officer to the left of me,
25 behind me, put me in a headlock and I leaned

Joshua Wharton

1 forward. So when I went to stand up, the officer
2 standing in front of me, tackled me and now we
3 are all on the ground.
4

5 Q. So when they put you in a headlock,
6 at that point, what did you do?

7 A. Nothing.

8 Q. Did you flail your arms or keep
9 them crossed with your sandwich?

10 A. I'm in a headlock, my hands are
11 still crossed, I'm leaning forward putting body
12 weight on me. He is trying to bring me down out
13 of the chair, but the way I was seated, he had to
14 put excessive force for me to fall out of the
15 chair. I was trying to stand up, not to fall on
16 the floor. The officer tackled me, the one
17 standing in front of me.

18 Q. Was that the one with the lighter
19 clothes?

20 A. Darker clothes. He tackled us,
21 pretty much being that he seen me not falling yet
22 and the other officer still standing, he didn't
23 have me out the chair. He made sure I was on the
24 ground and he tackled me. Being that I was still
25 in the headlock, the officer with the light color

Joshua Wharton

1 clothes, he was on the top of my body and I was
2 on the ground and I fell with my left arm under
3 my chest. I was on the ground with this arm
4 free, my right arm free.
5

6 MR. MASSIMO: So on your chest?

7 THE WITNESS: Yes. They brought me
8 down and I was on my chest.

9 Q. Were your legs out straight or did
10 you fall on your knees?

11 A. I don't remember how I fell. I
12 remember laying straight.

13 Q. You were laying straight?

14 A. Yeah, there were no tables there.
15 I was laying straight. The taller one with the
16 light clothes was kneeling me on my head, the
17 other officer, he was making around my right side
18 and he had my arm and put it in a wrist lock.
19 Telling me, I'm going to break your wrist. I'm
20 going to break your fucken wrist.

21 Q. That was the officer in the dark
22 color?

23 A. Darker Clothes.

24 Q. That grabbed your arm telling you
25 he was going to break your wrist?

Joshua Wharton

1 A. Yes.

2 Q. Meanwhile, you were still on the
3 ground, was your left arm underneath you?

4 A. Yes. And the taller officer, with
5 the light color clothes was kneeling my head,
6 where I would have to move from his knee and roll
7 over. And he would take my arm, he was
8 inflicting pain for me to roll to a point where
9 they can successfully arrest me and take me out
10 to the car.

11 Q. So at that point, you rolled over
12 and he got your left arm and put you in
13 handcuffs?

14 A. I didn't roll over willingly, they
15 manhandled me. The other officer took my arm out
16 of the wrist lock and cuffed it and put the cuff
17 on super tight to the point where they were
18 showing me -- I didn't know what they were trying
19 to prove. And they took me in the unmarked car
20 and left from Dunkin Donuts.

21 MR. MASSIMO: Indicating with his
22 hands behind his back.

23 Q. So did they, at some point, did the
24 officers at some point pick you up off the
25

Joshua Wharton

1 ground?

2 A. Yes.

3 Q. How long were you on the ground
4 again?

5 A. No more than a minute and a half,
6 two minutes, no more than that.

7 Q. What happened when they stood you
8 up?

9 A. They proceeded, well -- before they
10 stood me up, they went through my pockets some
11 more. They stood me up, then they proceeded to
12 still go through my pockets. I believe they came
13 across my ID, my identification. After they
14 received the identification, they walked me out
15 to the car, they told me I was going away for a
16 long time. You are going in the County for a
17 long time. I was, like, I really believed it for
18 a minute, I did. I didn't know what cause they
19 had to lock me up, but I thought they had a
20 right. I thought they were right. They said I
21 was going away for a long time doing nothing. He
22 made it clear I was going to be locked up.

23 Q. At any point, did you try not to be
24 put in handcuffs? Did you flail your arms, did
25

Joshua Wharton

1
2 you kick?

3 A. I think at the point I was trying
4 not to be in handcuffs was when I first didn't
5 want to speak to them. That's the point I didn't
6 want to be in handcuffs. I said, I don't want to
7 speak to you. At that point, I didn't want to
8 take it further. There was no reason for me to
9 be questioned. I didn't do nothing wrong, at
10 all. I didn't understand why they were pursuing
11 me so hard.

12 MR. MASSIMO: I think the question
13 was as they were using force whether you
14 tried; am I correct?

15 MS. HABER: Yes.

16 MR. MASSIMO: As they were using
17 force on you, were you trying to stop
18 them from handcuffing you?

19 THE WITNESS: No. Actually, I was
20 cooperative the whole time, but I didn't
21 know why they were inflicting so much
22 force anywhere. I didn't know why they
23 were abusing me the way they were. I
24 didn't resist anything. I was
25 cooperating 100 percent. I was trying to

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1 protect myself from further injury. I
2 was moving myself from the officer's
3 knee. I couldn't move my arm, it was in
4 a wrist lock. One of the officers, he
5 released the lock and proceeded to put my
6 handcuffs on.
7

8 Q. What is a wrist lock? I'm not
9 familiar with what that is. What do you mean?

10 A. It's a maneuver. They take your
11 wrist and put it in a certain position to inflict
12 pain for someone to be put in submission for you
13 to give up. I didn't give up anything. I don't
14 know if it was, like -- I didn't do anything. I
15 didn't know what the problem was. They just kept
16 telling me, I'm going to break your wrist. I'm
17 going to break your wrist. They had my wrist. I
18 was cooperative at all times. They kept
19 insisting that they were trying to break my
20 wrist.

21 MR. MASSIMO: He was indicating
22 with his wrist folded down to a 90 degree
23 angle, I would say.

24 A. He held my arm up straight and put
25 pressure upon pressure to me, to almost if you

Joshua Wharton

1 were to tap out in pain or something like that,
2 basically humiliate me. I don't know what it
3 was. It was painful. He didn't break my wrist
4 like he said he was going to.
5

6 Q. How did you become familiar with
7 that term?

8 A. The wrist lock?

9 Q. Yes.

10 A. My father. I know about it from,
11 like, TV, I guess. Wrestling and even in school,
12 they practice maneuvers in school. I had friends
13 on the wrestling team, they would show you how to
14 do a leg lock, an ankle lock, a headlock.

15 Q. While you were on the ground, did
16 you say anything to the officers?

17 A. Stop. Stop kneeling me. Stop
18 trying to break my wrist. Stop, please. Get off
19 of me. That's it.

20 Q. Did they say anything to you aside
21 from what you've already told us?

22 A. I don't remember at that point what
23 was said, everything was just moving so rapidly.
24 So fast. I don't remember anything that was said
25 at that point.

Joshua Wharton

1
2 Q. Did you know at that point that
3 they were police officers?

4 A. Actually, I know what I said to
5 them. I do know what was said at that point when
6 I was on the ground. I tried to tell them my
7 father is a correctional officer. Why was I
8 being treated like this? Why was I being
9 arrested? And he said really, call them. I told
10 them I live in this hood, I live out here. He
11 said hood, this is our hood. They didn't believe
12 I lived in the neighborhood. They took it like
13 I'm being territorial, I'm claiming streets. No,
14 I'm a resident in this area. They didn't find
15 out until they took my ID, I had school ID and
16 everything. That's when they realized I am a
17 resident of that neighborhood right there.

18 Q. Once they stood you up, did you say
19 anything to them?

20 A. No.

21 Q. Did they say anything to you at
22 that point?

23 A. Tough guy. Cursing me out. A
24 couple of things. I don't remember what they
25 said. I remember they cursed me, I remember my

Joshua Wharton

1 expression from what they were saying. I don't
2 remember their exact words, I remember being
3 disgusted how they talked to me. They did a
4 number on me and they are still talking down on
5 me, like, if as I was a criminal or needed to be
6 treated that way. I don't know. I didn't say
7 anything at that point. I told JJ to go to a
8 friend's house and tell my friend's mother.

9 Q. What friend were you referring to?

10 A. Terrel Bates and his mother Robin
11 Bates.

12 Q. And how do you know Terrel?

13 A. We went to school together, the
14 same high school. He lives directly around the
15 corner from the high school and I live up the
16 street from the high school.

17 Q. Why didn't you call your parents?

18 A. At the time they didn't let me call
19 my parents. When I got to the precinct, they
20 didn't grant me a phone call or anything. And
21 the reason I told my friend JJ don't even go to
22 my house, I knew they weren't home at the time.
23 I knew it was probably my younger brother. I
24 don't know if my brother was doing the night
25

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1 shift. He was doing a lot of work for the County
2 at the time. I believe my mom was doing
3 recreational stuff at the park. The best bet was
4 to not alert my mom, to contact my friend's mom
5 and she would alert my parents the best way how.
6

7 Q. What happened when the officer
8 stood you up right?

9 A. They still went through my pockets
10 a little bit more. Then they walked me out to
11 the car.

12 Q. Did you know why you were being
13 arrested at that point in time?

14 A. Not at all.

15 Q. Did they tell you what you were
16 charged with?

17 A. No. They just said I'm going away.

18 Q. Did they read you your rights?

19 A. No.

20 Q. Did they put you in the back of the
21 police car?

22 A. Yes.

23 Q. And where did they take you?

24 A. Third Precinct. Fingerprinted me,
25 stripped me of my belongings. Still didn't grant

Joshua Wharton

1 me a phone call. Pretty much booked me.

2
3 Q. Did you sustain any physical
4 injuries as a result of the actual arrest?

5 A. Well, I had a knot on my head,
6 like, the back of my head. It was very tender.
7 It was almost like a welt. I didn't get checked
8 out though. They didn't allow me to go anywhere
9 to get checked out for what they done. My wrist,
10 my fingertips were numb from the cuffs. They had
11 the cuffs on me for so long, so tight. They
12 didn't release it even when I asked them to.

13 For two months, I was going through
14 tingling sensation in my fingertips. I didn't
15 know what it was from. I didn't get diagnosed by
16 a doctor or anything from the cuffs or anything.

17 Q. Did you seek treatment for any
18 injuries you sustained as a result of the
19 injuries you had?

20 A. No. No medical treatment, just
21 used Epson Salt.

22 Q. Did that cure your injury?

23 A. Yeah, it did. It soothed the
24 swelling in my wrist a little bit. And that was
25 pretty much it. The head, I put ice on it.

Joshua Wharton

1
2 Q. How long did the knot on the back
3 of your head last for?

4 A. I don't know how long the knot
5 lasted for. The pain lasted for a week, a week
6 and a half. I don't know if the swelling went
7 down before or after that, I don't know.

8 Q. Are you still experiencing any
9 numbness in your fingers?

10 A. No.

11 Q. During the incident at the Dunkin
12 Donuts, were you able to observe any of the
13 customers that were located inside the store at
14 the time?

15 A. I did see a lot of the customers
16 that were there. I seen maybe three, four people
17 there.

18 Q. What were the three or four people
19 doing while you were being placed under arrest?

20 A. I think they were ordering. I
21 think they were forming a small line. I'm not
22 sure if it was a line or just waiting to order
23 like a regular day.

24 Q. Did anyone leave the establishment
25 during this incident that you noticed?

Joshua Wharton

1
2 A. There were two people sitting
3 directly next to my table or maybe towards the
4 back of my table, I believe, when I actually
5 stood up and in cuffs, they weren't there
6 anymore, I don't know were they went. But there
7 were still people coming in or just leaving the
8 area.

9 Q. I believe you mentioned that you
10 came to learn there was another officer present
11 in the Dunkin Donuts; is that right?

12 A. I don't know if it was an officer.
13 I don't know who he was. He was in plainclothes.
14 One of the officers that were arresting me was
15 discussing something with him and showed him a
16 credential. I don't know if it was an ID or a
17 piece of paper they were discussing something had
18 took place that night. The other person was
19 observing nothing. What was said to me, you
20 know, and he didn't carry on a full conversation
21 with them. I don't know if he asked them what
22 was going on or if he identified himself to the
23 officer. I don't know if he was an officer at
24 the time he was there observing. I remember what
25 he looked like.

Joshua Wharton

1 Q. What did he looked like?

2 A. He was a caucasian male, white hair
3 a light color jacket on, very light, like off
4 white jacket, on it had a collar on it, blue
5 jeans, regular clothes, dress down. Just a
6 regular day for him.
7

8 Q. Were you able to hear anything that
9 was said between him and the two officers?

10 A. No.

11 Q. So from the time you came from the
12 basketball game until you entered in the Dunkin
13 Donuts, and to the time you were placed in the
14 police car, how long was that time period?

15 A. Maybe twenty minutes.

16 Q. Did you speak to any officers once
17 you arrived to the Third Precinct?

18 A. No.

19 Q. Did you ever sign what they call a
20 notification of rights card?

21 A. I do not recall if I signed
22 anything.

23 Q. It would tell you, you have the
24 right remain silent, anything you say can be used
25 against you. It is like a post size document.

Joshua Wharton

1 A. I don't recall anything like that.
2
3 I recall them taking my belongings and taken to
4 the back.

5 Q. Were you interviewed while you were
6 at the stationhouse?

7 A. No, they didn't interview me. They
8 asked me why I was misbehaving. Why didn't I
9 just give them the ID. They were pretty much
10 apologizing a little bit. We didn't have to go
11 this far. We didn't have to do this but see what
12 happens when you don't give your ID, like, trying
13 to justify why I was locked up.

14 Q. Tell me everything. Which officer
15 are you referring to actually?

16 A. The short one.

17 MR. MASSIMO: That's the one with
18 darker clothing?

19 THE WITNESS: Yeah, darker
20 clothing.

21 Q. Now, tell me everything that the
22 officer in the darker clothing said to you and
23 you said to him while you were at the
24 stationhouse to the best of your memory.

25 A. This is actually in the back of the

Joshua Wharton

1 car. We went by the high school for some reason
2 we left Dunkin Donuts and they drove to the high
3 school. This is maybe 9:00 now, maybe 9:15, the
4 officer with the lighter clothing got out of the
5 car, still had my identification, to see if I
6 actually attended school there or if I was making
7 it up. He went in and spoke with somebody and
8 returned to the vehicle. But while that officer
9 was inside, the short one with the darker
10 clothing, he insisted on telling me all I had to
11 do is give the ID. I didn't have to be such an
12 ass. We didn't have to take this that far. He
13 basically was being, like, this is what we had to
14 do. You should had give your ID and now you are
15 going away. I said, are you serious? I just
16 stopped. I don't want to talk to you. I just
17 stopped. That was weird. That was the weirdest
18 moment. It was almost like they acknowledged
19 that they were wrong. He just still was trying
20 to tell me I was going away.

21
22 Q. When the officer came back, the
23 officer in the lighter clothing, when he came
24 back in the car, after going in the high school,
25 did he say anything?

Joshua Wharton

1 A. No. They were talking amongst each
2 other. They had a couple of jokes amongst each
3 other and they were laughing.
4

5 Q. Could you remember what they said?
6 Could you hear what they said?

7 A. Yeah, but I don't remember. I
8 couldn't take it.

9 Q. Once you got to the precinct, did
10 you observe the officers filling out any
11 paperwork on the computer?

12 A. Yes.

13 Q. Did they ask you any questions
14 during that time they were filling the paperwork?

15 A. No. They didn't ask me anything.
16 They were stumped filling out that paperwork.
17 They took about four hours. Once they thought it
18 was complete, they would ask another officer, a
19 female lady, come and review it, and they changed
20 it. This was all in front of me. I was cuffed
21 to a wall. Because they moved me from downstairs
22 and they took me upstairs, that's where they were
23 doing the paperwork, and I was cuffed to a wall.

24 MR. MASSIMO: Indicating left-hand.

25 Q. Were you handcuffed to a wall or

Joshua Wharton

1 the bench?

2 A. On the wall. There were these
3 little loops on the wall, just cuffed to it.

4 Q. Was your arm in the air or was it
5 down?

6 A. It was in the air.

7 Q. So like level with your shoulder?

8 A. I would say a little lower, just
9 about depending on how tall you are. If you sit
10 tall, you would be leveled out. If you are
11 short, your arm would be up here, the whole time.

12 Q. Higher than your shoulder?

13 A. Yes.

14 Q. Was this at the Third Precinct?

15 A. Third Precinct.

16 Q. How long were you placed in the
17 holding cell in handcuffs?

18 A. I was there all night. Not in that
19 holding cell, they moved me back to the regular
20 bullpen or cell. I don't know what time it was.
21 I didn't have no clock. I would say I was in the
22 holding cell while they were typing up the report
23 the charges for about good two, three hours.

24 Q. Were you in handcuffs that whole
25

Joshua Wharton

1
2 entire time?

3 A. Yes.

4 Q. Did you have any conversation with
5 any officers at that point, during the point you
6 were at the holding cell?

7 A. Yeah. I asked to call my parents,
8 I requested a phone call. They denied that.

9 Q. Do you recall which officer denied
10 you the phone call?

11 A. They both did. At certain times I
12 was talking to the both of them.

13 Q. These are the two officers that
14 arrested you?

15 A. The same two. I even asked the
16 officer that was passing by the room if I can get
17 a phone call, he just looked at me, smirked and
18 walked off.

19 Q. Were there any other prisoners in
20 the cell with you?

21 A. No.

22 Q. So you were in there alone with the
23 officers?

24 A. Yes.

25 Q. And the officers, I mean the two

Joshua Wharton

officers who arrested you; is that right?

A. Correct.

Q. Were there any other officers present in the room?

A. Not in the room but on the outside. There's a window so you can see right through and you can see the desk and the few other officers that's walking around the facility, Third Precinct. They were in the background. And the two officers, one officer would come in, start typing, the other one would come in review it. They would both leave, come out discuss exactly what else to change around. The other officer would come in and type it or delete something and type it. They were stumped for three hours. The whole time I was in there, they did not know what to charge me with it. I thought I was going home. I said what are ya'll doing? Are you serious? I was humored by it and pissed off. Are they really going to put me through this? Are they going to do this? They sure did.

Q. After you were in the cell for about two, three hours, what happened next?

A. They brought me back down to the

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Joshua Wharton

1 regular pen, they took me to be fingerprinted.

2 They had to fingerprint me again. There was an
3 electronic -- they did each finger and put me in
4 the pen and told me to wait. I'm waiting for
5 transportation. I didn't get my phone call or
6 anything. They told me I was going to the
7 county.

8
9 Q. When you say you were put in the
10 pen, what are you referring to?

11 A. I don't know if it was the lower
12 level or the basement. It's where you are kept
13 in the precinct. It's an actual cell. There are
14 three cells lined up and they keep you in the
15 cell until they decide where it is that they are
16 going to send you. I believe it is the basement,
17 I'm not sure.

18 Q. Were you handcuffed when you were
19 waiting in the pen?

20 A. No, they took the cuffs off of me.
21 When they first sent me in there, I was still
22 cuffed.

23 Q. At what point did they remove the
24 handcuffs?

25 A. When they took me upstairs to do

Joshua Wharton

1 the paperwork they released one hand and cuffed
2 me to the wall.

3
4 Q. At the time when you went to the
5 pen in the basement, were you in handcuffs?

6 A. When I went back to the pen or when
7 I first went to the pen in the basement?

8 Q. I was talking about after you were
9 in the holding cell for two or three hours, when
10 they filled out the paperwork?

11 A. Yeah, I wasn't in cuffs when they
12 put me in the pen.

13 Q. They bring you in from the Dunkin
14 Donuts, you do the fingerprinting, are you
15 fingerprinted at that point?

16 A. They fingerprinted after the
17 holding pen, after the holding one and did the
18 charges, they brought me back down in the cell.
19 Then they brought me out of the cell to
20 fingerprint me.

21 Q. Where did you go after you were
22 fingerprinted?

23 A. Back in the cell.

24 Q. Were you handcuffed at that time?

25 A. No.

Joshua Wharton

1
2 Q. At any point in time when you were
3 at the Third Precinct, did your parents come to
4 see you?

5 A. They said they did, when I got out,
6 they said they came up there. I don't know if
7 they did or not. I was hoping I thought my
8 friend's mom was going to come up. I thought my
9 parents were working. They found out the next
10 day I was out. That they come up there in
11 between everything. I think when I was in there,
12 I heard one of the officers, when I was outside
13 of the pen, mention, like, your father was up
14 here. They didn't say my last name, they just
15 said, inmate -- I forgot how they referred to me.
16 But I believe I heard someone mention that my
17 father was there. He did come up. This is -- I
18 don't know what time. I really don't know what
19 time it was at that time.

20 Q. Did you meet with your parents at
21 the Third Precinct?

22 A. No.

23 Q. After you went to the pen, and they
24 told you were waiting for transportation, did
25 they ever, in fact, provide you with

Joshua Wharton

1 transportation somewhere?

2 A. No, they kept me there.

3 Q. So you were at the Third Precinct?

4 A. They released me from there
5 surprisingly around 6:30, 6:00, seven in the
6 morning.
7

8 Q. Were you ever brought to Mineola to
9 Police Headquarters?

10 A. No.

11 Q. So you never left the Third
12 Precinct to go anywhere else with regards to this
13 arrest on that date?

14 A. Yes. I stayed right there at the
15 Third Precinct.

16 Q. Where did you go when you left the
17 precinct?

18 A. Walked. And I walked to a phone
19 actually to call my father, he was on his way
20 back up there. We met halfway and he took me
21 home. Yeah, they even gave me my sandwich back.
22 They held it overnight with the ketchup package.
23 And he said as a joke, now you can eat. It was
24 all cold. I don't know if they kept it outside
25 overnight and decided to give it back to me. He

Joshua Wharton

1 decided to give it back to me with the ketchup
2 and said now you can eat it.
3

4 Q. Did you get your other property
5 back as well?

6 A. Yeah. It was my wallet and the
7 belt.

8 Q. When you were released from the
9 Third Precinct, did the police give you an
10 appearance ticket?

11 A. Yes.

12 Q. So what did the appearance ticket
13 say, if you remember?

14 A. I don't know. I think my first
15 court day was scheduled in February, that
16 happened in January. I had to go to court in
17 February.

18 Q. Did you appear in court at any time
19 on January 20th or 21st of 2004?

20 A. No.

21 Q. During the period of time that you
22 were detained at the Third Precinct, did you
23 speak to an attorney?

24 A. No. I didn't have an attorney at
25 this point. I never retained one at that point.

Joshua Wharton

1
2 Q. At what point did you retain an
3 attorney?

4 A. I don't know. For my first or
5 second court date, third court date. I have no
6 clue on when that was.

7 Q. So at first you went to court
8 representing yourself?

9 A. Yes.

10 Q. And tell me about the first court
11 date. Where did you go and what judge did you
12 appear in front of?

13 A. The first court date was in
14 Hempstead on Main Street. I don't recall the
15 name of the judge. I believe they adjourned it.
16 I showed up, they adjourned it and that went on
17 numerous occasions.

18 Q. On the first court date, were you
19 notified of the charges against you?

20 A. I believe I asked -- I believe me
21 or my father, I believe I asked what I was being
22 charged with and I don't know if the legal aid,
23 if they actually discussed it. I think they did.
24 I think they told me what I was being charged
25 with.

Joshua Wharton

1 Q. What were you being charged with at
2 that time, if you remember?

3 A. I believe obstructive of
4 governmental administration, disorderly conduct.
5 I believe resisting arrest they charged me with.
6 That's all I recall from that. There was a list
7 of charges.

8 Q. Have you been notified of those
9 charges prior to February at this court date?

10 A. No.

11 Q. Did your appearance ticket tell you
12 what you were being charged with?

13 A. I don't remember what the
14 appearance ticket looked like.

15 Q. So you were represented by a legal
16 aid attorney on that first appearance?

17 A. Yes.

18 Q. And were you incarcerated at Nassau
19 County center as a result of this arrest?

20 A. No.

21 Q. Were you criminally prosecuted as a
22 result of this first arrest? After that first
23 court date, did the prosecution continue?

24 A. Meaning that -- I'm sorry. The
25

Joshua Wharton

1 word prosecution stumped me.

2 Q. Did your criminal case continue?

3 A. Correct.

4 Q. Do you know the name of the
5 assistant district attorney that handled the
6 case?
7

8 A. I believe it was a tall guy. I
9 don't know his name though.

10 MR. MASSIMO: Off the record.

11 (A discussion was held off the
12 record.)

13 Q. You went to court for about two
14 years?

15 A. Two and a half years more or less.

16 Q. Do you know approximately how many
17 times you had to go to court?

18 A. Around 20 or 21 times. I had to
19 appear in court 16 of those times.

20 Q. So your case was called about
21 twenty times and you appeared personally about 16
22 times?

23 A. Correct.

24 Q. And the other four times your
25 lawyer appeared on your behalf?

Joshua Wharton

1 A. Yes.

2
3 Q. Which lawyer did you eventually
4 hire?

5 A. Massimo.

6 Q. Did you pay for your attorney in
7 any way?

8 A. Me personally? No, my parents. I
9 was still struggling with my finances.

10 Q. Did your criminal case proceed to
11 trial?

12 A. Yes.

13 Q. And was the case tried by a judge
14 or by a jury?

15 A. It was both.

16 Q. Did you have a jury there during
17 your trial?

18 A. Yes.

19 MR. MASSIMO: Do you know what a
20 jury is?

21 THE WITNESS: The jury is the
22 people that decide whether you are
23 innocent or guilty after reviewing it.

24 Q. And did you give testimony in front
25 of the jurors?

Joshua Wharton

1 MR. MASSIMO: Actually, that is
2 assuming fact.
3

4 Off the record.
5 (A discussion was held off the
6 record.)

7 MS. HABER: Let me rephrase the
8 question.

9 Q. During the trial, did any witnesses
10 testify in front of the jury?

11 A. Yes.

12 Q. Or a jury?

13 A. Yes.

14 Q. How many members were on the jury?

15 A. I do not recall.

16 Q. Did the jury issue a verdict?

17 A. Yes.

18 Q. What was the verdict?

19 A. Not guilty.

20 Q. On all charges?

21 A. Yes.

22 Q. I was under the impression that the
23 case was tried by a judge. Just by the judge; is
24 that wrong?

25 A. What I recall is seeing the

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1 witnesses up there and I did see a few people.

2 I'm not sure if it was the jury or just lawyers
3 in the seating arrangements on the side of the
4 judge. I might had took that for a jury.

5 Q. Do you remember engaging in what's
6 called in jury selection where your lawyers would
7 ask the jurors questions and they would give
8 answers and you would pick people to sit on the
9 jury; did that happen?

10 A. No, I don't think so.

11 Q. Did you testify at the criminal
12 trial?

13 A. No.

14 Q. As a result of all of these court
15 dates that you appeared at, did you have to miss
16 work?

17 A. Yes, I missed work, school. That's
18 about it.

19 Q. Did any of your employers give you
20 any problems with missing work?

21 A. Yeah, I had a hard time getting
22 employed with a lot of the companies. I was
23 trying to get off a commission based job and I
24 was trying to get established and salary paid,
25

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1 but being that the case was still open, it was
2 hell trying to get hired anywhere because the
3 case would pop up. It would still be opened. I
4 couldn't get hired. I had to stick with the
5 commission trying to work as best as possible and
6 hope for a closing to happen or something of that
7 nature. But it was really hell for me. The
8 schooling, I missed a lot of school. I had to
9 catch up with that. Fortunately, I did graduate
10 from high school. Did a lot of night school.

11 My health kind of deteriorated
12 because of the stress level. I don't know if it
13 was an ulcer. I never was diagnosed with
14 anything. I had serious stomach problems because
15 of the situation. It was almost like not a
16 paranoia, it was a nervous thing. Walking
17 through Mineola, had to get to work. I worked in
18 Mineola, I was always cautious if I was going to
19 be retaliated against these officers or
20 colleagues from them. It was a major case being
21 that I wasn't convicted so the precinct look at
22 this, would you, we have something for him.
23 That's how I take it. I was a very nervous wreck
24 for two years. I didn't think that was going to
25

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1 last that long. I didn't even know it lasted
2 that night. It extended. Two and a half years
3 it was. Things were trial and error for me.
4

5 Q. Did you ever have to seek
6 counseling for your nervousness?

7 A. No. I would go to the church and
8 speak to the minister there. I really didn't. I
9 couldn't afford any counseling, any psychiatrist,
10 anything like that. I wasn't really affording
11 that. My income wasn't that great at all.

12 Q. Do you have health insurance?

13 A. I had health insurance.

14 Q. Were you covered on your father's
15 insurance plan?

16 A. Yes. Being that I was still a
17 student in school, that covered me.

18 Q. And are you aware that the County
19 insurance plan provides mental health coverage?

20 MR. MASSIMO: Objection.

21 You can answer.

22 A. I wasn't aware of that. I'm about
23 to beat my father up. He didn't tell me that.

24 Q. When you went to speak to your
25 pastor, did you tell him or her how you were

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1 feeling emotionally?

2 A. Yes. I did explain that to her in
3 extent. The advice they gave me was stay mindful
4 prayerful, continue to fly straight and narrow.
5

6 MR. MASSIMO: I'm going to object
7 to any part of the conversation as to any
8 part that might be privileged.

9 MS. HABER: Except that he is
10 alleging mental injuries.

11 MR. MASSIMO: I understand.

12 Q. What's your pastor's name?

13 A. At the time, Donny McClurkin.

14 Q. Could you spell his last name?

15 A. M-C-C-L-U-R-K-I-N.

16 Q. And what congregation does he
17 preside over?

18 A. Perfecting Faith Church of
19 Ministries.

20 Q. Where is that located?

21 A. In Freeport, on North Main Street.

22 Q. And how often would you seek
23 guidance from your pastor with regard to your
24 arrest?

25 A. Mostly every Sunday, if not, I

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1 would just speak to him a little bit. He would
2 actually speak to me a lot of the times. If I
3 was working, he would stop by, stop by my
4 mother's house because my mother did the security
5 for the congregation. It was a comfort zone. He
6 felt he can extend his courtesy to the family.
7

8 Q. You said every Sunday for how many
9 years or months?

10 A. I would see him probably, I would
11 actually speak on the matter maybe, like, six
12 times a year. This went on for two years, about
13 ten or twelve times, I actually spoke with him
14 about the matter.

15 Q. Did you ever seek any other kinds
16 of treatment with regard to your injuries? I
17 think you mentioned stomach problems. Did you
18 seek any treatment for your stomach problem?

19 A. I went to the ER, like, twice
20 trying to see if it was any ulcers or see what
21 the cause, no real diagnosis either. They
22 probably said eat less acidic food, stay away
23 from tomato sauce and see if that helps. That's
24 the only advice I gotten. No real diagnosis.

25 Q. Which ER?

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1 A. Nassau University. The medical
2 center there.
3

4 MS. HABER: I'm going to request
5 production for the medical records
6 pertaining to his treatment for his
7 stomach problems.

8 MR. MASSIMO: We'll get you an
9 authorization.

10 THE WITNESS: Do I bring that in
11 myself?

12 MR. MASSIMO: I'll take care of
13 that.

14 Q. Did you ever have these types of
15 stomach problems prior to your arrest?

16 A. No.

17 Q. And are you continuing to have
18 these stomach problems today?

19 A. Yes. Like, my stomach cringes when
20 I go through Mineola, if I have to go pick up any
21 documents from a job. Just the environment over
22 there, it makes me super cautious, like, if I am
23 in the wrong area. But I have to be there. I
24 have to go. I have to do what I have to do. I
25 always get that same pit in my stomach. I cannot

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1 shake it. I don't fear anything too much. But
2 when I'm there, it's automatic nervous wrecking
3 situation for me every time I pass the area or go
4 through that area. I rather get through as
5 quickly as possible but red lights, stop signs
6 everything slows me down.
7

8 Q. Any other symptoms that you've
9 suffered emotionally as a result of your arrest
10 on January 20th?

11 A. No. Just humiliation of it all
12 being that this happened all while I was still in
13 school. My whole school heard about the
14 situation, some laughed about it some was amazed
15 about it, but it was still a humiliation thing to
16 speak of. Being that I was in the mortgage
17 department in the corporate world, a lot of the
18 coworkers heard about the situation, joked about
19 it on numerous occasions. It kind of made me
20 uncomfortable being that it was a laughable
21 matter. The fact that it happened in my home
22 town, it's amazing, it's humiliating; really.

23 Even when I go there and I still
24 see the ladies that knew me, the workers there,
25 they, like, still apologize of that situation,

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1 sorry that had to happen to you. Even though
2 it's years down the line, they still say the same
3 thing. I don't know, it's a problem for me.

4 Q. So the employees who were working
5 at the Dunkin Donuts on the 20th are still
6 working at that Dunkin Donuts?

7 A. The last time I seen them was a
8 year ago. They actually remodeled the whole
9 thing, I thought it was going to be a Baskin
10 Robins, they renovated the Dunkin Donuts that
11 they had and put new furniture in there new
12 stuff.

13 Q. To your knowledge, how did your
14 coworkers hear about the case, if you know? Did
15 you tell them about it?

16 A. No. My coworker Richie Lasambet,
17 he kept calling my cell phone that night, he
18 heard through another friend in my neighborhood
19 that I was locked up, and he works with me in the
20 mortgage field, I was with the same company,
21 First Capital. Once I was locked up, the next
22 day he told my boss. I didn't go to work I
23 called off that day. When I got back to work,
24 they all knew about it. The word spread really
25

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1 rapidly. I just had to say, Yeah, it did happen.
2 I didn't do anything wrong but it did take place.

3 Q. Were you prescribed any medication
4 for your stomach as a result of going to the ER?

5 A. No.

6 Q. Do you recall the name of the
7 doctor that you saw at Nassau Community Center?

8 A. No, not at all. Emergency room,
9 any doctor they throw me to that's who I went
10 with.

11 Q. Do you recall on January 20th,
12 2004, having any contact with a police officer
13 named Lieutenant Michael McGovern?

14 A. Before this incident?

15 Q. No, during this incident. Any time
16 on that day or the 21st of January?

17 A. No.

18 Q. Do you know if Lieutenant McGovern
19 was present at Dunkin Donuts?

20 A. I have no idea. I just know about
21 the two arresting officers.

22 Q. And neither of those were Michael
23 McGovern; correct?

24 A. Correct.
25