

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

-v-

No. 159346

JACQUES JEAN KABONGO,
Defendant-Appellant.

Court of Appeals No. 338733
Wayne County Circuit Court No. 16-010745-01-FH

[On Appeal from the Court of Appeals
Murray, C.J., and Meter, and Gleicher, JJ.]

**PLAINTIFF-APPELLEE'S
APPENDIX**

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1 also be asked of you at some point as well.

2 THE CLERK: For seat number one, Eric
3 Schawinsky, S-C-H-A-W-I-N-S-K-Y.

4 For seat number two, Ihekerema Fulton-Goree,
5 F-U-L-T-O-N, hyphen, G-O-R-E-E.

6 For seat number three, Tenisha Whitford,
7 W-H-I-T-F-O-R-D.

8 Seat number four, Robert Lambert,
9 L-A-M-B-E-R-T.

10 Seat number five, Barbara Burall, B-U-R-A-L-L.

11 Seat number six, Elaine Starrett,
12 S-T-A-R-R-E-T-T.

13 Seat number seven, Terrill Fountain,
14 F-O-U-N-T-A-I-N.

15 Seat number eight, Gregory Razook,
16 R-A-Z-O-O-K.

17 For seat number nine, James Schwartz,
18 S-C-H-W-A-R-T-Z.

19 For seat number 10, Rhonda Boyd-Baker,
20 B-O-Y-D, hyphen, B-A-K-E-R.

21 For seat number 11, Mark Trueblood,
22 T-R-U-E-B-L-O-O-D.

23 For seat number 12, David White, W-H-I-T-E.

24 Seat number 13, Kyle Stamper, S-T-A-M-P-E-R.

25 Seat number 14, Jasma Reynolds,

1 THE COURT: Okay. Thank you, juror number
2 seven.

3 Anybody else?

4 All right. Juror number thirteen what is your
5 genuine hardship?

6 POTENTIAL JUROR THIRTEEN: Same thing with any
7 job.

8 THE COURT: All right. Thursday and Monday?

9 POTENTIAL JUROR THIRTEEN: Yeah.

10 THE COURT: Thank you.

11 How about you, juror number fourteen?

12 POTENTIAL JUROR FOURTEEN: Mine is just,
13 basically, my kids missing school because I had to, you
14 know, get here early enough because don't get to school
15 until 8:30.

16 THE COURT: Okay. Did you ask the chief judge
17 for any kind of deferment or a hardship?

18 POTENTIAL JUROR FOURTEEN: Not yet.

19 THE COURT: Not yet?

20 POTENTIAL JUROR FOURTEEN: Uhm uhm.

21 THE COURT: And, juror number three, I saw
22 your hand go up?

23 POTENTIAL JUROR THREE: Yes. Also my job and
24 get my kids to school.

25 THE COURT: Did you ask the chief judge for

1 any kind of deferment or an excuse altogether for
2 serving on the jury due to a hardship?

3 POTENTIAL JUROR THREE: No.

4 THE COURT: Okay. Thank you very much.

5 Now, some of you may have health problems that
6 would make jury service difficult; for instance, does
7 anybody have a medical problem that the Court should be
8 aware of so that we can accommodate you?

9 Yes, juror number three?

10 POTENTIAL JUROR THREE: I have a torn ligament
11 and I have a broken -- I have arthritis bad in my knee
12 so I can't sit or stand at periods of time.

13 THE COURT: Juror number three, if you should
14 need to stand, or stretch, or even maybe move around a
15 little bit in the jury box or, perhaps, switch you with
16 a juror who has a little more leg room I'd be happy to
17 do that.

18 POTENTIAL JUROR THREE: Okay. Thank you.

19 THE COURT: Does anyone have any sight or
20 hearing problems?

21 Does anyone have any language barriers?

22 I'm not seeing any hands go up.

23 And this is a criminal case and the document
24 used to charge a defendant with a crime is called an
25 Information. And the Information in this case charges

1 And grade 12.

2 THE COURT: Thank you, juror number twelve.

3 Good morning juror number thirteen.

4 POTENTIAL JUROR THIRTEEN: Good morning.

5 Im a research assistant. I'm single. And a
6 Bachelors in Biology.

7 THE COURT: What kind of research are you
8 working on?

9 POTENTIAL JUROR THIRTEEN: Drug invitro
10 models.

11 THE COURT: Very interesting.

12 Thank you, juror number thirteen.

13 THE COURT: Good morning, juror number
14 fourteen.

15 POTENTIAL JUROR FOURTEEN: Good morning.

16 Direct care. Single. High school diploma.
17 And I got my CNA certificate.

18 THE COURT: Thank you, juror number fourteen.

19 Have any members of the panel ever been on a
20 criminal jury panel before by show of hands?

21 Okay. Let's start with juror number two. How
22 long ago was that?

23 POTENTIAL JUROR TWO: Years and years ago but
24 we didn't have to serve because the defendant pled or
25 something and then we left.

1 Juror number seven, did I see your hand?

2 POTENTIAL JUROR SEVEN: Yes. It was about
3 maybe three years ago.

4 THE COURT: Was it here at Frank Murphy?

5 POTENTIAL JUROR SEVEN: Yes.

6 THE COURT: And without telling me what it was
7 your panel able to reach a verdict?

8 POTENTIAL JUROR SEVEN: Yes.

9 THE COURT: Thank you. Anybody else in the
10 second row?

11 How about the third row?

12 Okay. Do any of our jurors have any close
13 association with persons involved in the legal
14 profession such as attorneys or court personnel?
15 Anybody in the first row?

16 Juror number four?

17 POTENTIAL JUROR FOUR: Yeah, I have a
18 question. My brother's is a parole officer so I don't
19 know if that counts or not?

20 THE COURT: We'll talk about that.

21 So your brother is a parole officer. Now, the
22 law states that a person in law enforcement, a police
23 officer, that testimony is to be given -- put to the
24 same test of weight and credibility as that of any other
25 witness meaning they don't come in with an advantage,

1 they don't come in with a disadvantage, you treat them
2 like any other witness. Would you be able to do that
3 given the fact that your brother is a parole officer?

4 POTENTIAL JUROR FOUR: Yes.

5 THE COURT: Okay. Thank you.

6 Second row?

7 Juror number five, who might that person be in
8 relationship to you?

9 POTENTIAL JUROR FIVE: My father, my brother,
10 stepmother all deputy sheriffs, and military police in
11 my family, nephew and brother. My grandfather was an
12 attorney who passed away but I think that's it.

13 THE COURT: All right. Juror number five, you
14 heard what I said to juror number four which is that the
15 law states that a police officer's testimony is to be
16 weighed the same way you weigh the testimony of any
17 other witness they don't come in with an advantage they
18 don't come in with a disadvantage. Given the extensive
19 law enforcement connections in your family will you be
20 able to that in this case?

21 POTENTIAL JUROR FIVE: Yes.

22 THE COURT: Okay. Is there anything about
23 your relationships with your family members who are in
24 law enforcement that you think would affect your ability
25 to be a fair and impartial juror in this case?

1 POTENTIAL JUROR FIVE: No.

2 THE COURT: Thank you.

3 Anybody else in the second row?

4 Juror number eight, who might that be in
5 relationship to you?

6 POTENTIAL JUROR EIGHT: My cousin and his wife
7 are attorneys.

8 THE COURT: All right.

9 POTENTIAL JUROR EIGHT: And my cousin is also,
10 a different cousin, is a Wayne County sheriff.

11 THE COURT: Okay. So we've got both the law
12 and law enforcement.

13 Now, as to your relatives who are lawyers do
14 you discuss the law and the courts with these relatives?

15 POTENTIAL JUROR EIGHT: No, not actively.

16 THE COURT: Is there anything about the
17 relationships with the lawyers in your family that would
18 affect your ability to be fair and impartial in this
19 case?

20 POTENTIAL JUROR EIGHT: No.

21 THE COURT: All right. Now, as to your
22 relatives who are in law enforcement if I told you the
23 law states that the testimony of a police officers is to
24 be weigh and tested the same way as that of any other
25 witness they don't come in with an advantage, they don't

1 come in with a disadvantage, they're like any other
2 witness; would you be able to follow the law?

3 POTENTIAL JUROR EIGHT: I think so.

4 THE COURT: Okay. Because you realize that
5 every case is different?

6 POTENTIAL JUROR EIGHT: Yes.

7 THE COURT: Okay. So you would listen to the
8 evidence that comes off that stand or comes in by way of
9 exhibits and keep an open mind until the time comes to
10 decide the case?

11 POTENTIAL JUROR EIGHT: Yes.

12 THE COURT: Thank you, juror number eight.

13 Anybody in the third row?

14 All right, juror number nine?

15 POTENTIAL JUROR NINE: I have an uncle who's a
16 retired police officer from Canton, Michigan and a
17 father-in-law who is an attorney.

18 THE COURT: All right. Now, does your
19 father-in-law practice criminal law?

20 POTENTIAL JUROR NINE: He does not anymore.
21 He did do criminal law but he is retired.

22 THE COURT: Is there anything about your
23 relationship with your father-in-law who was an attorney
24 that would affect your ability to be a fair and
25 impartial juror in this case?

1 POTENTIAL JUROR NINE: No.

2 THE COURT: Now, as to your relative who is
3 retired from the Canton Police Department the law states
4 that the testimony of a police officer is put to the
5 same test of weight and credibility as that of any other
6 witness. You look at them -- you treat them like any
7 other witness. They don't come in with an advantage or
8 a disadvantage. If I tell you that's the law will you
9 be able to follow it?

10 POTENTIAL JUROR NINE: Yes.

11 THE COURT: Thank you, juror number nine.

12 Anybody else the in the third row?

13 Now, has anyone on the panel or a member of
14 your family, or a close friend been the victim of a
15 crime? Anybody in the first row?

16 I usually get a lot of yes's on this one so
17 I'm going to take my time and make sure I cover
18 everybody.

19 Yes, juror number two?

20 POTENTIAL JUROR TWO: Yeah, we have been --
21 our family has been but it was a long time ago. I can't
22 remember the years and stuff. Senior moment. I'm 64
23 so --

24 THE COURT: I'm not so far behind you.

25 POTENTIAL JUROR TWO: We have had, you know,

1 robbery and stuff like that but it was, like, a long
2 time ago nothing recent.

3 THE COURT: Juror number two, is there
4 anything about that experience, even if it was a long
5 time ago that, would affect your ability to be a fair
6 and impartial juror in this case which is a CCW case?

7 POTENTIAL JUROR TWO: No, ma'am.

8 THE COURT: Thank you.

9 Juror number three?

10 POTENTIAL JUROR THREE: Yes, my cousin
11 was -- went to jail for armed robbery.

12 THE COURT: I'm sorry to hear that.

13 Now, you've heard this is a carrying a
14 concealed weapon case. Is there anything about your
15 cousin's experience that would affect your ability to be
16 a fair and impartial juror in this case?

17 POTENTIAL JUROR THREE: No.

18 THE COURT: Thank you, juror number three.

19 Anybody in the second row?

20 Yes, juror number seven, who might that be in
21 relationship to you and what kind of crime was it?

22 POTENTIAL JUROR SEVEN: My sister.

23 THE COURT: And I don't mean to be intrusive.
24 You know, what kind of crime was it?

25 POTENTIAL JUROR SEVEN: A robbery.

1 POTENTIAL JUROR ELEVEN: Well, it's
2 delayed --

3 THE COURT: Was that in this county?

4 POTENTIAL JUROR ELEVEN: Saginaw.

5 THE COURT: Yes, juror number five?

6 POTENTIAL JUROR FIVE: Can you repeat what you
7 just said because I didn't know what HYTA was?

8 THE COURT: It's the Holmes Youthful Trainee
9 Act which means if you were convicted of a crime when
10 you were a young person if you successfully complete the
11 terms of your probation the conviction never enters.

12 POTENTIAL JUROR FIVE: I never heard that
13 term. It was a different state and that may apply to me
14 since I was a teenager and it was over 25 years ago.

15 THE COURT: Okay. Great. You were a
16 teenager?

17 POTENTIAL JUROR FIVE: Yes.

18 THE COURT: And what state was this in?

19 POTENTIAL JUROR FIVE: Illinois.

20 THE COURT: Well, thank you, juror number
21 five.

22 And one of final question is, is everyone able
23 to put aside feelings of sympathy during deliberations
24 and listen to the evidence?

25 POTENTIAL JURORS: Yes.

1 THE COURT: And can everybody keep an open
2 mind until the time comes to decide the case?

3 POTENTIAL JURORS: Yes.

4 MS. POSIGIAN: May we approach?

5 THE COURT: Certainly.

6 (Sidebar off the record)

7 (Back on the record)

8 Ladies and gentlemen, we're going to need to
9 take a very brief break. I'm going to ask the jurors to
10 leave the courtroom with the exceptions just for the
11 moment of jurors numbers one, five, and eleven, okay?
12 This will be very fast with the three of you.

13 So can I all ask you to return to the hall,
14 please?

15 THE COURT OFFICER: All rise for the jury.

16 (Jurors exit courtroom at 10:56 a.m.)

17 THE COURT: Juror number five, just to make
18 sure you're not disqualified may I ask your date of
19 birth?

20 POTENTIAL JUROR FIVE: July 18, 1968.

21 THE COURT: And, juror number three, to make
22 sure you're not going to be improperly -- make sure
23 you're not going to be improperly, you know, precluded
24 may I have your date of birth?

25 POTENTIAL JUROR THREE: 3-19-81.

1 MS. POSIGIAN: Okay. So you had at least some
2 good jury experience, right?

3 POTENTIAL JUROR SEVEN: Yes.

4 MS. POSIGIAN: As good as it can be?

5 POTENTIAL JUROR SEVEN: As good as it can be.

6 MS. POSIGIAN: All right. Now, the judge
7 asked you if you knew people in the court system at all
8 but does anyone -- police officers. Has anyone had a
9 bad experience with a police officer? Got pulled over?
10 Only juror number seven out of everybody?

11 (Whereupon all jurors talking in consort)

12 POTENTIAL JUROR EIGHT: I've been pulled over.

13 MS. POSIGIAN: We have to start -- For the
14 court reporter we have to say numbers before we talk.

15 All right. Juror number four, what were you
16 saying?

17 POTENTIAL JUROR FOUR: If you do with what the
18 officer says you don't have an issue so.

19 MS. POSIGIAN: Okay. Juror number two?

20 POTENTIAL JUROR TWO: I'm sure I have been
21 pulled over and stuff like that before but I don't
22 remember how long ago that was.

23 MS. POSIGIAN: Okay. Anyone else pulled over
24 by the police?

25 All right. There we go.

1 take the time off.

2 THE COURT: And anybody else on the panel?
3 Number seven?

4 POTENTIAL JUROR SEVEN: I work the second
5 shift and that's 3:00 to 11:00 but --

6 MS. POSIGIAN: On Sunday? Sunday into Monday?

7 POTENTIAL JUROR SEVEN: Sometimes we work
8 seven days. It's a manufacturing plant.

9 THE COURT: Well, are you scheduled to work
10 this weekend?

11 POTENTIAL JUROR SEVEN: Actually, just
12 Saturday this weekend, tomorrow and Saturday.

13 THE COURT: Thank you.

14 MS. POSIGIAN: Anyone else on the panel?

15 Juror number fourteen?

16 POTENTIAL JUROR FOURTEEN: Mine's is direct
17 care. It varies because it goes by my mother's hours
18 because she works two jobs and I take carry of my
19 handicap little sister so it's kind fluctuated between
20 when she works.

21 MS. POSIGIAN: But Sunday night, though, you
22 think you can get sleep before you come on in here
23 Monday morning?

24 POTENTIAL JUROR FOURTEEN: Well, I'm deal with
25 the three kids I got at home and --

1 MS. POSIGIAN: You never sleep.

2 POTENTIAL JUROR FOURTEEN: Yeah, I don't. And
3 I definitely don't sleep now.

4 MS. POSIGIAN: Are there any issues with your
5 pregnancy or anything?

6 POTENTIAL JUROR FOURTEEN: Well --

7 MS. POSIGIAN: Medically, that would prevent
8 you or make it difficult for you?

9 POTENTIAL JUROR FOURTEEN: Personally, I don't
10 really want to say that part. But other than that I'll
11 be okay but I do be in pain sometimes. I'm early but I
12 still be in pain now. So I just went to the doctor
13 yesterday for being in pain. Other than that I'm okay
14 right now.

15 MS. POSIGIAN: Okay.

16 THE COURT: Times up.

17 MS. POSIGIAN: Thank you.

18 THE COURT: Mr. Halpern.

19 MR. HALPERN: Thank you, your Honor.

20 Good morning.

21 You do a lot of waiting and I'm reminded of --
22 I'm just reminded of a lawyer who was celebrating his
23 50th year. I got a whole bunch more than that. But
24 when he was celebrating his 50th year he raises his
25 glass, everybody has a glass of wine, and then he said

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MR. HALPERN: Your Honor?

THE COURT: Five minutes.

MR. HALPERN: I believe you're going to hear evidence and testimony to the affect that -- and you heard a comment made already by the prosecutor that there's such a thing as what's called open carry with exception of certain areas, like, schools, and ballparks, and airports, and there's a list. There' s certain exceptions. The constitution -- you'll hear evidence that the constitution, both United States, Michigan --

MS. POSIGIAN: Objection, your Honor. At this point -- I have an objection. The Court has made -- has given some guidelines, I believe, and I would ask the Court disallow Mr. Halpern from --

THE COURT: I think you can question about open carry, Mr. Halpern, question about whether people have any opinions or perceptions of people carrying weapons openly but that's as far as I think you can go at this point.

MS. POSIGIAN: Thank you.

MR. HALPERN: Are there any of you, taking the judge's question, are there any of you that have any kind of an opinion whatsoever about people having -- doing an open carry of a gun; like, boy, I

1 can't stand that, or that's terrible, or that's the
2 People's rights? Some opinion about open carry, okay?

3 Juror number four, and others?

4 I'll begin because it's the lowest number
5 anyway, number two, and you can tell me as we go.

6 Please, juror number two, tell me what your beliefs and
7 feelings are about that?

8 POTENTIAL JUROR TWO: Open carry?

9 MR. HALPERN: Yes.

10 POTENTIAL JUROR TWO: It would depend on where
11 I'm at. If I'm in a bank and somebody come in there
12 with a gun, I would be concerned. It would depend on
13 where I'm at. If somebodies walking around with a gun,
14 yeah, I would feel threatened.

15 MR. HALPERN: Do you have any opinion as to
16 whether law enforcement people have an opinion?

17 MS. POSIGIAN: Objection, your Honor, he's
18 asking --

19 POTENTIAL JUROR TWO: I don't know --

20 THE COURT: Hold on, hold on. I'm sorry juror
21 number two.

22 MS. POSIGIAN: I have an objection, your
23 Honor. Counsel is asking the juror whether they have an
24 opinion on whether a police officer may have an opinion.
25 I don't you understand how that an answer to that

1 that's stance on it.

2 MR. HALPERN: Thank you. And, please, I
3 didn't catch all the raised hands.

4 Juror number eight?

5 POTENTIAL JUROR EIGHT: I think in certain
6 large gatherings of people even if the law says okay to
7 carry open carry it would still concern me.

8 MR. HALPERN: Thank you, juror number eight.

9 Anyone else, please?

10 MR. HALPERN: Juror number five?

11 POTENTIAL JUROR FIVE: Just to be clear you're
12 only asking if we have an opinion about open carry? If
13 that's the case then that's okay. If it's open carry
14 it's not a drawn weapon. That's a right. But being a
15 police officer's daughter it's not going to concern me
16 unless the gun is raised. There's two different things
17 here. I'm trying to follow what you're asking. And
18 you're only asking the opinion of whether or not if the
19 gun is in use; is that correct?

20 MR. HALPERN: I may be clearer so if I'm
21 understanding what you're saying. When a person does an
22 open carry, as the daughter of a police officer, do you
23 have an opinion about that person doing an open carry?

24 POTENTIAL JUROR FIVE: It's the law. They're
25 allowed to have it. And I see they have it and it's not

1 in use or being misused there's no problem.

2 MR. HALPERN: Anybody else, please?

3 About police officers, and believing police
4 officers, or not believing police officer because
5 they're police officers. Now --

6 THE COURT: Mr. Halpern, you're passed your
7 time but I'll let you ask one more question.

8 MR. HALPERN: Juror number 11, police
9 officers -- and you expressed you'd like to hear more
10 than one. You will hear two who participated in this
11 arrest. Now, the fact that there are two saying the
12 same things, and having the same reports, and having
13 whatever, that each say the same thing would that
14 convince you, because two of them are now saying the
15 same thing, that it must be true because these two
16 partners are saying the same thing just because there's
17 two of them?

18 POTENTIAL JUROR ELEVEN: I trust our officers
19 to uphold the law, and to be honorable, and protect
20 society. So two of them corroborating I would say, yes,
21 I would trust their claim.

22 MR. HALPERN: Is there anyone who agrees with
23 juror number 11? Anyone who agrees with juror number 11
24 that two police officers same the same thing then it
25 must be true?

1 going back and forth. Also, it shows that there is a
2 pattern and that's what I'm reflecting. Batson doesn't
3 necessarily have to show a pattern the way, you know,
4 Swain versus Alabama, you had show a pattern with other
5 cases, and prior, and other cases to show that the
6 prosecutor was not making a racist decision that would
7 cause the case to have -- to be started a new panel.

8 THE COURT: I would also note for the record
9 that we still have three African Americans on the jury
10 and we have one Hispanic juror.

11 MR. HALPERN: Well, we do but we also have
12 three less black people.

13 THE COURT: All right. I don't remember
14 what's left vernier as fr as African Americans.

15 Ms. Posigian?

16 MS. POSIGIAN: Yes, your Honor. I believe
17 that one of the jurors is Asian with a Hispanic name.
18 Also, we have juror eight who is an Arabic male on the
19 panel just so the record is clear.

20 With regard to the non-based reasons for my
21 dismissal I did dismiss three African American jurors.
22 I can put the reasons on the record if the Court would
23 like?

24 THE COURT: Sure. Let's start with juror two,
25 Ms. Fulton-Goree.

1 MS. POSIGIAN: With regards to juror number
2 two she had what seemed, at least to me, to be a very
3 difficult time with short-term memory. She could not
4 remember the Court's first question when asked what her
5 occupation was and she couldn't remember any of the
6 additional questions after that. She had to ask a few
7 times. Also, she indicated she's having a senior moment
8 here and there. She indicated, when asked about contact
9 with the police, she thought she had been pulled over or
10 she thought she had contact with the police before. She
11 couldn't remember any sort specifics. Same with whether
12 herself or her family were a victim of the crime she
13 thought, yes, maybe robberies or armed robbery or
14 something, I can't remember, I can't remember, I don't
15 remember how long ago, I don't remember anything. So
16 she had a problem with memory and it's the Peoples
17 concern for her that if we're going to hear testimony
18 today and then have a long weekend and come back on
19 Monday. And, so, the likelihood that she would forget
20 testimony seemed fairly probable and the People were
21 concerned about that.

22 THE COURT: All right. Mr. Halpern?

23 MR. HALPERN: Yes. There's absolutely no
24 validity to what was just stated. That witness
25 indicated only a difficulty in remembering whether

1 Court has ruled on the ultimate question of intentional
2 discrimination the preliminary issue of whether the
3 defendant has made a prima facia showing becomes moot.
4 And that's the case of Hernandez which is 500 U.S. at
5 359. And then the step two of the Batson framework is
6 that the prosecutor must articulate a neutral
7 explanation related to the particular case to be tried.
8 And the second step the Court is only concerned with
9 whether the proffered reasons violates the Equal
10 Protection Clause and that's, again, part of the Batson
11 case.

12 I'm going to find in this case that the
13 prosecutor as to juror number two has offered a race
14 neutral explanation for the peremptory challenge and
15 further has articulated a neutral explanation for the
16 dismissal. Juror number two did indeed have a difficult
17 time with memory she did discuss senior moments. She
18 had to kind of had to step back and reach back in her
19 memory to recall things such as whether or not she had
20 been the victim of a crime, such as -- there were some
21 other specific ones. But I do remember she did seem to
22 have a problem keeping up with this case.

23 And Batson's second step does not required
24 articulation of persuasive reason or even a plausible
25 one so long as the reason is not inherently

1 discriminatory it suffices. And that's the case of Rice
2 versus Collings, 546 U.S. 333 which is a (2006) case.

3 So here the prosecutor has provided a race
4 neutral explanation for her peremptory challenges to
5 number two so I'm going to then deny the Batson
6 challenge as to juror number two.

7 And I'll even go to the third step which
8 requires that the trial Court make a final determination
9 of whether the challenger of the strike, which would be
10 the defense, has established purposeful discrimination.
11 And whether there is purposeful discrimination is the
12 persuasiveness of the prosecutor's justification for the
13 peremptory strike. It comes down to whether the trial
14 Court finds the prosecutor's race neutral explanations
15 to be creditable. And in this case I will find that it
16 was reasonable, her explanation is not improbable, there
17 was a rationale that had some basis in accepted trial
18 strategy. And so I'm going to deny the Batson challenge
19 as to juror number two.

20 Next juror?

21 MS. POSIGIAN: As it relates to juror number
22 three who I believe was the first juror that I struck,
23 Ms. Whitford. She clearly did not want to be here. She
24 was refusing to make eye contact with myself asking her
25 questions, she was sitting down rolling her eyes, she

1 had her arms crossed a number of points. When the Court
2 asked about real hardships it was my job, it was my
3 kids. The Court asked about medical reasons, oh, I have
4 arthritis. And then also she said she had a torn
5 ligament in her leg and she said it made it difficult
6 for her to sit stand and then she said she had a
7 broken -- and then didn't even tell us what the broken
8 part of her body was. And the People would like jurors
9 that -- I know everyone doesn't necessarily want to be
10 here, it's not their favorite thing, but people that are
11 going to be attentive jurors. And based on her body
12 language and her lack of interaction with me when I was
13 trying to interact with her as well as the multitude of
14 excuses she gave that is the reason that the People
15 excused her.

16 THE COURT: Mr. Halpern?

17 MR. HALPERN: That's the usual responses about
18 the lack of contact, and she didn't look at me, and her
19 body language, and she really didn't want to be here.
20 She didn't tell us what part of her body was ever broken
21 as if, I don't know what that means, but that somehow is
22 further justification so to speak. I just don't believe
23 we've heard anything other than the usual excuses that
24 cover up a use of a peremptory for racial reasons.

25 THE COURT: All right. Obviously, again, the

1 first step in a Batson challenge is whether the facts
2 and circumstances of the voir dire suggests that racial
3 discrimination motivated a strike. And in this case the
4 prosecution volunteered an explanation for the strikes.
5 And in this particular case, clearly, the Court has to
6 make findings of fact regarding whether the
7 prosecution's justification for the strikes seems
8 creditable under all of the relevant circumstances
9 including whether the jurors actually exhibited the
10 expressions claimed, and I'm reading from the Tennille
11 case, and whether the Averred, A-V-E-R-R-E-D, were the
12 reasons for the strikes. So for step one the challenge
13 has been made, step two there has been a neutral
14 explanation related to the particular case. And, again,
15 the second step does not require articulation of a
16 persuasive reason or even a plausible one so long as the
17 reason is not inherently discriminatory. And here the
18 prosecution provided several reasons, and I would concur
19 with her, because the first question out the box with
20 juror number two was is a one to two day trial a genuine
21 hardship and she was the first person to raise her hand.
22 She then did sit with her arms crossed. I did notice
23 the eyes rolling. She proffered her reasons for not
24 wanting to be on the jury; her job, her children, and
25 physical condition. So I'm going to find that there has

1 been a reason offered that is not inherently
2 discriminatory. And as to the third step I'm going to
3 make the final determination of whether the challenger
4 has established purposeful discrimination and I'm going
5 to find out they have not, the defendant has not. I
6 believe the prosecutor's explanation is reasonable, it
7 is not improper, and it has a proffered rationale, has
8 some basis and suspected trial tragedy.

9 Next juror.

10 MS. POSIGIAN: With regard to juror 14,
11 Ms. Reynolds, it's not on record but Ms. Reynolds was
12 clearly quite pregnant. She indicated that she had gone
13 to the doctor the day before for severe pain. As she's
14 sitting in the jury seat her head was in her hand and
15 she also just appeared to be in extreme pain. It did
16 not appear to the People that she was going to be
17 necessarily inattentive or trying to off the jury but
18 based on her quite extreme pregnancy and the fact that
19 she said she was having sever pains the day before the
20 People had a concern both with her being able to sit
21 through today as well as possibly losing her over the
22 weekend if she has to keep going back to the doctor.
23 But, again, the head in her hands, her eyes are closing,
24 and she's clearly in distress. The People excused juror
25 number 14.

1 THE COURT: Mr. Halpern, you want to comment
2 on jury number fourteen's pregnancy?

3 MR. HALPERN: Yeah. I mean, there' was one
4 juror sitting there, juror number eight, who was taking
5 a quick snooze. I mean, the point being that other than
6 the fact that she was pregnant there was absolutely
7 nothing whatsoever -- and that didn't disable her in
8 anyway, you don't become disabled, generally speaking,
9 by being pregnant. I can't speak, I'm a guy. But
10 that's no basis to excuse somebody because they're
11 pregnant. And other than that there wasn't anything
12 that this witness exhibited that wasn't exhibited by
13 other jurors as well.

14 THE COURT: Well, let me ask you, Mr. Halpern,
15 I also remember that juror number 14 was one of the
16 first people to raise her hand when I asked if a two day
17 trial would be a genuine hardship. She was also one of
18 the jurors who said that coming back on Monday may be a
19 problem for her because her hours are flexible. She
20 also indicated she may have trouble coming back
21 depending upon her mother's schedule because she has
22 other children at home that need to be taken care of; is
23 that correct?

24 MR. HALPERN: That's correct, your Honor. I
25 certainly -- your Honor is making absolutely correct

1 statements. That is all correct but other people have
2 complained -- other people on a jury have complained
3 about their work schedule and about -- and they haven't
4 been excused. And as I say juror number eight I thought
5 was dozing at least a couple of times.

6 THE COURT: Well, Mr. Halpern, you're free to
7 dismiss juror eight if you'd like. He's an Arabic
8 American. But, you know, you can dismiss him and use a
9 peremptory if you believe that he's not paying
10 attention. But what I'm asking you, though, is given
11 the prosecution's articulated reasons on what we all
12 agree about how juror number 14 behaved, and the answers
13 she gave, and the difficulties that she faces how is
14 that discriminatory?

15 MR. HALPERN: The statements that have been
16 made and try to justify that and the Court has the
17 position that I've expressed as well.

18 THE COURT: All right. The first step, again,
19 in Batson as to juror number 14 requires whether the
20 facts and circumstances of voir dire suggests that
21 racial discrimination motivated a strike. Again, we
22 have already established on the record the racial
23 composition of this jury. And once the prosecutor has
24 offered a race neutral explanation for the peremptory
25 challenges and the trial Court has ruled on the

1 ultimate question of intentional discrimination the
2 preliminary issue of whether the defendant has made a
3 prima facia showing becomes moot. So I'm going to find
4 that there is a race neutral explanation for the
5 peremptory challenge. This lady is pregnant, she did
6 have her head in her hand, she testified to having a
7 doctor's appointment, she was clearly not feeling well.
8 She testified she has flexible work hours, she has
9 children at home, she dependant upon her mother for
10 childcare assistance.

11 In step two the prosecutor must articulate a
12 neutral explanation related to the particular case to be
13 tried. I believe that has been established. Again,
14 Batson's second stipulate does not require articulation
15 of a persuasive reason or even a plausible one so long
16 as the reason is not inherently discriminatory. And in
17 this particular case we have, now, several reasons why
18 juror number 14 -- why the dismissal of juror number 14
19 using a peremptory would have been appropriate.

20 The third step requires the trial Court to
21 make a final determination of whether the challenger of
22 the strike has established purposeful discrimination.
23 And in this particular case I'm going to hold that the
24 defense has not established purposeful discrimination.
25 The reasons stated by the prosecution were reasonable,

1 MS. POSIGIAN: Pass for cause.

2 THE COURT: Peremptory, Mr. Halpern?

3 MR. HALPERN: May I consult with my client?

4 THE COURT: Certainly.

5 MR. HALPERN: Thank you for the opportunity to
6 consult.

7 Your Honor, we would thank and excuse juror
8 number five.

9 THE COURT: Thank you, juror number five.

10 MS. POSIGIAN: Your Honor, before that juror
11 is excused --

12 THE COURT: Would you like to take up a matter
13 outside the presence of the Court?

14 MS. POSIGIAN yes, please.

15 THE COURT: Outside the presence of the jury?

16 MS. POSIGIAN: Yes.

17 THE COURT: Could you, please, all exit the
18 court room, please?

19 (Jurors exit the courtroom at 2:23 p.m.)

20 THE COURT: Ms. Posigian?

21 MS. POSIGIAN: Your Honor, the People are
22 concerned that the defense has excused three jurors,
23 they are all Caucasian, and based on, especially, the
24 third challenge witnesses reasons, the People didn't see
25 any reason the defense would want to excuse her and are

1 antagonistic I felt. So all of those reasons.

2 THE COURT: Ms. Posigian?

3 MS. POSIGIAN: Your Honor, that juror, juror
4 number five, ha been on the panel, I think she was on
5 the initial panel. And there are several people that
6 have friends or family members that are in law
7 enforcement.

8 With regard to her felony conviction the
9 officer-in-charge did run her name and her date of birth
10 over the break that we had and she had no record.

11 THE COURT: And that was placed on the record,
12 too, as I recall.

13 MS. POSIGIAN: Yes. And feelings aren't
14 anything that really had been articulated.

15 The people are concerned that there's not
16 a race neutral reason for excusing juror number five.

17 MR. HALPERN: I've used the same reasons in
18 reasoning that the prosecutor used in terms of exchange
19 of feelings, and the looks of somebody, the responses
20 that were made. And number five also didn't really
21 recall things so maybe she has a real problem
22 remembering --

23 THE COURT: I don't recall that at all,
24 Mr. Halpern. We haven't spoken to juror number five
25 since we had our first round of dismissals. Juror

1 number five has been just sitting there.

2 MR. HALPERN: Right. But my concern --

3 THE COURT: So I'm confused. I don't remember
4 her saying she couldn't remember anything.

5 MR. HALPERN: Yeah, she couldn't remember --
6 First of all, the conviction was out of state so I don't
7 know whether or not the officer was able to check --

8 THE COURT: Let's swear the officer in.
9 Madam clerk, could you swear the officer in,
10 please?

11 THE CLERK: Yes.

12 Do you solemnly swear or affirm that the
13 testimony you're about to give will be the truth and
14 nothing but the truth?

15 OFFICER BARNETT: Yes.

16 THE COURT: Officer, I believe we've already
17 placed this on record but you did, based upon juror
18 number five indicating that she had an old conviction
19 out of Illinois --

20 OFFICER BARNETT: Yes.

21 THE COURT: We provided a date of birth and
22 her name. What were you able to find?

23 OFFICER BARNETT: I was able to find nothing
24 on her record. She did not have a criminal record at
25 all. And when you -- in state or out of state.

1 THE COURT: Mr. Halpern?

2 MR. HALPERN: Yes?

3 THE COURT: So your objection to her criminal
4 record --

5 MS. HALPERN: Well, then, my position is that
6 she's lying. If they didn't find it, and according to
7 the officer, then she wasn't telling the truth and I
8 certainly don't want my client to be judged by someone
9 who isn't telling the truth either way.

10 THE COURT: First of all, again, with Batson
11 the first step is whether the facts and circumstances of
12 the voir dire suggests that racial discrimination
13 motivated a strike. Evidence raising merely an
14 inference of discrimination surmounts the first Batson
15 test creating a prima facia case. I think in this case
16 the prosecution, as to juror number five, has
17 established a prima facia case because this is the third
18 peremptory challenge which the defense has raised. The
19 other two were Mr. Trueblood, juror number 11, and
20 Ms. Lori Monkaba who was juror number 14.

21 The step two is to articulate a neutral
22 explanation related to the particular case to be tried.
23 And in this particular case Mr. Halpern articulates the
24 fact that she has police officers in her family. But
25 during the voir dire of number five I did not hear any

1 additional voir dire directed to her about her
2 relationships with police officers. She testified
3 clearly to me during the voir dire that her
4 relationships would not affect her ability to be a fair
5 and impartial juror and she understood that the
6 testimony of a police officer is to be put to the same
7 challenges of weight and credibility as that of any
8 other witness.

9 As far as any -- as far as the fact that she
10 didn't have a conviction or couldn't remember a
11 conviction I'd far rather a juror disclose that she
12 thinks that she may have a conviction and we investigate
13 it and find out that she doesn't rather than a juror lie
14 and say I don't have one when in reality they do. I
15 don't feel it's appropriate to kick juror number five
16 because she raised a concern which the Court was able to
17 address.

18 Finally, when we talk about evaluating the
19 plausibility of a race neutral explanation for a
20 strike in light of all the evidence with a bearing on
21 it this inquiry, according to the Tennielle case
22 necessarily includes careful consideration of relevant,
23 direct, and circumstantial evidence of intent to
24 discriminate. And, also, in this case I have asked the
25 defense very specifically what problems they have with

1 juror number five considering the fact she has been
2 seated on this jury since the original 14 jurors were
3 impanelled. What I'm hearing is feelings. There
4 is -- I have to -- I'm charged as the judge -- I'm
5 charged as the judge to probe more deeply when someone
6 just talks about feelings. And there's not sufficient
7 facts here. I'm not hearing about somebody that's
8 sleeping, somebody nervous, preoccupied, angry,
9 disrespectful or agitated. I'm just hearing about
10 feelings. I'm tasked with engaging in a more
11 penetrating analysis focussing on ascertaining whether
12 the proffered race neutral reason is pretext intended to
13 mask a discrimination. Evaluation of the central
14 question requires the Court to permit argument by the
15 opposing counsel who bears the burden of persuading the
16 Court that the -- that there was purposeful
17 discrimination here. This record lacks any objective
18 indicia of concern -- concerning the impartiality of
19 juror number five or that she is otherwise unfit to
20 serve as a juror in this case. So I'm going to
21 find -- I'm sorry, let me just double check. I'm going
22 to find that the reason offered is insufficient and I am
23 going to find that the challenger has established
24 purposeful discrimination. So I'm going to keep juror
25 number five on the jury but --

1 okay not to feel comfortable. Jury duty is not easy.
2 But the law does allow people to have guns and the law
3 does set out ways in which people can carry guns and
4 ways people cannot unless certain other things happen;
5 you know what I'm saying? A gun is an object that is
6 very heavily ruled by laws, okay? You understand what
7 I'm saying? My question to you is can you follow the
8 law that I give you? When you raise your hand and take
9 an oath that you're going to listen to the evidence and
10 make your decision based on the law, and that law
11 governs how we carry guns; can you do that?

12 POTENTIAL JUROR EIGHT: I'll try to.

13 THE COURT: Okay.

14 So when had you take the oath you're going to
15 listen to the evidence and you're going to apply the law
16 as I give it to you?

17 POTENTIAL JUROR EIGHT: I'll try my best.

18 THE COURT: Thank you.

19 Do you any close association with police
20 officers or law enforcement?

21 POTENTIAL JUROR EIGHT: No.

22 THE COURT: Other than a traffic infraction
23 ever have you ever been convicted of any kind of
24 offense? I think you mentioned a misdemeanor?

25 POTENTIAL JUROR EIGHT: Correct.

1 A Mr. Kabongo. He's wearing the suit.

2 MR. HALPERN: I stipulate that he's looking
3 directly at Mr. Kabongo and identified him.

4 THE COURT: Thank you.

5 MS. POSIGIAN: Thank you.

6 BY MS. POSIGIAN, CONT'D:

7 Q So you see the defendant?

8 A Yes, ma'am.

9 Q And did you make any observations of anything particular
10 with regard to the defendant at that point in time?

11 A Yes, the defendant was walking toward the street. At
12 that time he had a weapon which was holstered and
13 exposed which is an open carry weapon. I didn't think
14 much of it. Once he -- Well, that's my observation when
15 I first saw him. He has -- May I stand to show?

16 Q Yes. If that would assist the jury with your testimony?

17 A He was walking eastbound towards the street of Monte
18 Vista when we first saw him kind of similar to what my
19 weapon is. It's open carry.

20 MS. POSIGIAN: And, for the record, the
21 witness has an exterior black leather holster on his
22 right hip with a gun holstered this that holster and the
23 sweat shirt he's wearing is tucked behind the gun.

24 THE WITNESS: Correct. Which would me it's
25 open carry.

1 Q Would you mind going around and pointing for the jury?

2 A Yes, ma'am. This house right here.

3 Q So, for the record, the second house on the west side of
4 Monte Vista south of Kendall?

5 A Correct.

6 Q Okay. You said he walked into the street into his -- or
7 a pickup truck?

8 A Correct.

9 Q And what did you observe next?

10 A The vehicle was a four-door pickup truck. He walked to
11 the driver's passenger side which we all know a
12 four-door pickup truck has the rear passenger side. He
13 opened up the passenger. It appeared he was grabbing
14 tools at that time. I continued to make my observation
15 of Mr. Kabongo using the mirror on the vehicle so I
16 turned it that way.

17 Q Let me stop you real quick.

18 So you said you're traveling northbound. At
19 some point did you pass him?

20 A Correct.

21 Q Okay. So you're using your mirrors to look southbound
22 Monte Vista?

23 A Correct.

24 Q At what point did you pass him? Where was he when you
25 passed him?

1 A I don't -- I don't pretty much remember at what point
2 but I do remember he was walking towards the street. I
3 had a clear view of him because he was walking towards
4 the street. But we were going at a slow rate of speed.

5 MR. HALPERN: Your Honor, I object. It has
6 nothing to do with the question. If he doesn't know he
7 doesn't know.

8 THE COURT: Overruled.

9 BY MS. POSIGIAN, CONT'D:

10 Q So at some point you're looking in your mirrors and what
11 do you see next?

12 A I see Mr. Kabongo he opened up the driver's passenger
13 door. He had a blue shirt on that day. He grabbed his
14 blue shirt and he covered his weapon.

15 May I demonstrate?

16 Q Yes, please?

17 A He was opening up the passenger door. Once he opens it
18 up he's grabbing some tools or something. He looks and
19 with his right hand he completely covers his weapon.
20 That's when I stopped my vehicle.

21 Q Okay. I'm going to stop you real quick.

22 MS. POSIGIAN: So, for the record, the witness
23 is taking the sweatshirt from behind the gun, which is
24 on his right hip, and placed it all the way coving down
25 over the bottom the barrel of the gun?

1 THE WITNESS: Correct. Concealing the weapon.

2 BY MS. POSIGIAN, CONT'D:

3 Q Fully concealing the weapon?

4 A Correct.

5 Q And you said, when you were doing your demonstration, he
6 looked back, and you were looking over your right
7 shoulder?

8 A I was looking through my rear -- the vehicle's mirrors.

9 Q Did Mr. Kabongo, the defendant, look back?

10 A I don't know what direction he was looking at but he was
11 looking northbound on Monte Vista, well, his face was
12 facing northbound on Monte Vista.

13 Q In your direction?

14 A Correct.

15 Q You stopped your vehicle?

16 A I stopped my vehicle.

17 Q What did you do next?

18 A I exited out of the vehicle. At that point he had
19 already closed the door. He was walking back towards
20 the house. I asked him if he had a CPL for the weapon.
21 Based on my observations prior I had observed him open
22 carry and then conceal the weapon. I knew that, in
23 fact, what he had on his hip was a weapon. So I asked
24 him if he had a concealed pistol license to carry the
25 weapon concealed.

1 Q When you're having that conversation with him had you
2 made it back to that second house on Monte Vista?

3 A He was walking towards the house.

4 Q Where were you when you had that conversation with him?

5 A I parked my vehicle. I really don't know the distance
6 but it was a little distance away from his vehicle. I
7 walked towards him and once walking I asked him if he
8 had a CPL for the weapon.

9 Q At this point is the gun still concealed?

10 A Correct, it's still concealed.

11 Q And what did he say to you?

12 A He told me he did have a CPL. He did also advised me
13 that the concealed pistol license was expired.

14 Q Where is your partner at this point in time?

15 A My partner, Officer Collrin, he exited the vehicle, I
16 believe. I don't know exactly where he was at because I
17 was in the driver side and he was in the passenger. So
18 once he exited -- once I put the vehicle in park I
19 exited. He exited as well. I don't know where he was
20 at or where he was positioned.

21 Q And you said defendant advised you his CPL was expired?

22 A Correct.

23 Q What did you do after that?

24 A I asked him step in my direction. I grabbed the CPL and
25 I observed the CPL was expired, I believe, more than a

1 year. Just to double check I didn't want to just go
2 off --

3 MR. HALPERN: Objection to the conversation,
4 your Honor.

5 THE COURT: Okay. I'll taken the objection.

6 BY MS. POSIGIAN, CONT'D:

7 Q What was the purpose for you looking at the CPL?

8 A Just to verify the expiration date on the CPL.

9 Q And you said you remember it was over a year but you
10 didn't remember the exact date?

11 A I believe it had an expiration of 2015. I don't
12 remember the exact date.

13 Q Did you later ascertain what that date was or did you
14 ascertain on the certificate the date it expired?

15 A Yes.

16 Q Did you put that date in your report?

17 A I believe so.

18 Q Would seeing your report refresh your recollection as to
19 that date was that it expired?

20 A Yes. Expiration date was 9-12, 2015?

21 Q Now, based on the information that the CPL was expired
22 what did you do next?

23 A I gave it to my partner so he could enter it into LEIN.
24 LEIN is --

25 Q What is it that you gave your partner?

1 A That's correct.

2 Q And as you say you put in the did he tails of -- the
3 serial number of the weapon, you put in did he tails as
4 to -- as to had the CPL expired? I mean, you gave all
5 that information, didn't you?

6 A Correct.

7 Q In fact, about when it expired, not only does he tell
8 you, yes, you I have a CPL, according to your testimony,
9 I have a CPL but it's expired and, in addition to that,
10 he shows you the CPL?

11 A Correct.

12 Q And you confirm that it's expired?

13 A Yes.

14 Q And you give it to your partner to see if it's expired?

15 A Yes.

16 Q Would you have any other either estimate, if you know,
17 or exact if you happen to know, that you have over 200
18 and something words in this report here; is that
19 correct?

20 A I didn't count.

21 Q Twenty lines and information approximately?

22 A I didn't count the lines.

23 Q Where, if at all, did you ever indicate in your report
24 that Mr. Kabongo went into the street?

25 A It wasn't indicated. I said --

1 A We were approaching Kendall. I can't give you an exact
2 distance on when he we stopped before. But the vehicle
3 was put into park and I exited it.

4 Q Whether it's exactly here -- But this, in any event, is
5 before you get to Kendall?

6 A Correct. We put -- I put the vehicle in park prior to
7 getting to Kendall.

8 Q Am I further correct that you don't, in fact, arrest Mr.
9 Kabongo and you don't, in fact, take his gun until your
10 partner tells you that he verified the CPL was expired?

11 A Correct.

12 Q All that time he has his gun?

13 A Yes.

14 Q Now, the conversation you say you had with Mr. Kabongo
15 after you got out the vehicle and approached him was
16 your partner immediately present during that time?

17 A He stepped into the vehicle to verify the CPL.

18 Q During that time period that you spoke with Mr. Kabongo
19 did another gentleman seem to come from the house to
20 find out what's going on?

21 A He had some workers there present, that's correct.

22 Q So it was even more than one person came out? Two
23 people?

24 A That's after the fact. Once I was speaking with Mr.
25 Kabongo there was, I don't recall how many people, but I

1 MS. POSIGIAN: Yes, your Honor.

2 People call Officer Collrin.

3 THE CLERK: Raise your right hand.

4 Do you solemnly swear that the testimony
5 you're about to give in the cause now pending before the
6 Court will be the truth so help you God.

7 THE WITNESS: A-L-E-X-A-N-D-E-R,
8 C-O-L-L-R-I-N.

9 DIRECT EXAMINATION

10 By MS. POSIGIAN:

11 Q Good morning, sir.

12 A Good morning.

13 Q Would you please state your name for the record?

14 A Alexander Collrin.

15 Q And how are you employed?

16 A I'm a police officer with the City of Detroit.

17 Q How long have you been with DPD?

18 A It will be 10 years in this upcoming September?

19 Q And what is your current assignment?

20 A I work 30-Series at that time Second Precinct.

21 Q And were you working in that capacity back on October
22 15, 2016 about 4:00 p.m.?

23 A Yes, ma'am.

24 Q Were you working alone or with a partner?

25 A With a partner.

1 Q And what was that person's name?

2 A Royer Hernandez.

3 Q Did the two of you were you on foot or in a vehicle?

4 A In a vehicle.

5 Q Who was driving?

6 A My partner, Royer Hernandez.

7 Q And where were you seated in that car?

8 A The front passenger seat.

9 Q And at some point did the two of you come to the area of
10 Monte Vista near Kendall in the City of Detroit?

11 A Yes, ma'am.

12 Q And what direction were you traveling in that area?

13 A My scout car was going -- made a left turn off School
14 craft and was going northbound on Monte Vista
15 approaching Kendall.

16 Q I'm going to hand you what's been admitted as People's
17 Exhibit 1 with the red dot showing Kendall and Monte
18 Vista. Can you -- and I know it's not depicted on that
19 map. But can you explain to ladies and gentlemen of the
20 jury when looking at this map where Schoolcraft is?

21 A Schoolcraft is an east and west street. It's just north
22 of the Jeffries. Schoolcraft is a main thoroughfare for
23 east and west traffic and Monte Vista is a residential
24 street.

25 Q So looking at Exhibit 1 that's depicted on the screen

1 would that be above the area that we can see the top or
2 below the bottom we can see at the bottom, Schoolcraft?

3 A Well, you can't see Schoolcraft, it's not marked on the
4 street, but Schoolcraft would be just below on the
5 bottom.

6 Q So south of that location?

7 A That's correct.

8 Q How many blocks south?

9 A It's just one city block. So from Kendall it's one city
10 block to Schoolcraft.

11 Q So it's just below the cutoff lane of that map?

12 A Yes, ma'am.

13 Q So you're, you said, turned left so you're traveling
14 north on Monte Vista?

15 A That's correct.

16 Q And do you make any observations before you got to
17 Kendall?

18 A Yes, ma'am.

19 Q And what do you see?

20 A I observed Mr. Jacques Kabongo he walking down the
21 driveway, the second house between the first and second
22 house and the driveway, he was walking eastbound along
23 the driveway approaching towards Monte Vista.

24 Q All right. When you said the second house the second
25 from where?

1 A Second house off the corner of Kendall and Monte Vista.

2 Q Would that be north or south of Kendall?

3 A It's going to be south of Kendall and then on the left
4 side of the street.

5 Q Approaching with Exhibit 2. Can you see in that exhibit
6 the house that you're --

7 A The areal view, yes, it's over top of the intersection.

8 Q Okay.

9 A And it shows -- clearly depicts the first and second
10 house and then the driveway between both houses. And
11 Mr. Kabongo was actually walking down the driveway. If
12 you see right here along this driveway between the first
13 and second house.

14 Q Now, when you say Mr. Kabongo do you see the person in
15 court today that you saw back October 15, 2016?

16 A Yes, ma'am. He's wear the gray suit --

17 MR. HALPERN: Stipulate, your Honor, that he's
18 looking directly at my client and identifying Mr.
19 Kabongo.

20 THE COURT: Thank you, Mr. Halpern. Noted.

21 BY MS. POSIGIAN, CONT'D:

22 Q Looking at this areal photograph it appears like there's
23 a vacant lot sort of between the second and third houses
24 that are depicted on the west side of Monte Vista?

25 A Yes, ma'am. There's a clear no obstructed view of

1 where Mr. Kabongo was coming from; there's no trees, no
2 bushes, no overgrowth, no houses, there's nothing
3 blocking the view from where I observed Mr. Kabongo
4 coming down between the houses.

5 Q Okay. Thank you.

6 Approaching with Proposed Exhibit 3, a Google
7 street view. Can you look at that and tell me if you
8 would recognize what's depicted that exhibit, what's in
9 your hand right; now do you recognize that?

10 A Yes, ma'am. The location where Mr. Kabongo was coming
11 out from the first and second house.

12 Q So there's a house that is primarily white in that
13 photograph?

14 A The delapidated house?

15 Q Yes.

16 A That's correct.

17 Q Now, was that house still there on October 15, 2016?

18 A No, ma'am.

19 Q Okay. So is that area where the house was depicted, on
20 Exhibit 2, is that vacant lot?

21 A Yes, ma'am. The house was demolished by the City.

22 Q Now, looking at that second house does that fairly and
23 accurately depict how the house was that you saw the
24 defendant coming down the driveway? Does that depict
25 how the house looked on that day October 15, 2016?

1 A Similar, yes, ma'am.

2 Q And what's different?

3 A I believe the grass is more up kept in this picture than
4 the day that I observed Mr. Kabongo come down the
5 driveway.

6 Q But aside from maybe some --

7 MR. HALPERN: Objection, your Honor. That's
8 leading.

9 MS. POSIGIAN: Aside from --

10 MR. HALPERN: He's answering the question
11 about --

12 THE COURT: Excuse me. May I make a ruling,
13 please?

14 I'm going to sustain your objection.

15 BY MS. POSIGIAN, CONT'D:

16 Q Aside from the grass is there anything else that's
17 different about that house, the second house off
18 Kendall, that you observed?

19 A There's no address on the location. And I don't know if
20 there's -- I can't see if there's an address on the
21 residence in the picture but it accurately depicts the
22 location, yes, ma'am.

23 Q Okay.

24 MS. POSIGIAN: People would move for admission
25 of Exhibit 3.

1 MR. HALPERN: Like to voir dire?

2 THE COURT: Certainly. Go right ahead.

3 VOIR DIRE

4 BY MR. HALPERN:

5 Q Just one question, please, Officer Cole?

6 A Collrin.

7 Q Officer Collrin, that picture that you're holding, in
8 terms of a yes or no if you can answer, does that
9 picture accurately reflect what you viewed that day, the
10 entire picture, either yes it does or it doesn't?

11 A No, it does not.

12 MR. HALPERN: Thank you.

13 THE COURT: So you're objecting to its
14 admission.

15 MR. HALPERN: Yes.

16 THE COURT: Thank you.

17 I'm going to sustain the objection.

18 BY MS. POSIGIAN, CONT'D:

19 Q With regard to the address that you indicated on October
20 15, 2016 was there an address affixed to the front of
21 that location at all?

22 A No, ma'am.

23 Q All right. So you said -- I'm looking at Exhibit 2
24 again. You said you saw the defendant walking eastbound
25 down the driveway of that house toward Monte Vista.

1 Where were you in the car located when you made that
2 first observation?

3 A I'd probably say the third to fourth house ran
4 between --

5 Q Okay.

6 MR. HALPERN: Say it again?

7 MS. POSIGIAN: The third to fourth house right
8 in between.

9 BY MS. POSIGIAN, CONT'D:

10 Q Would that be on the third to fourth house that are
11 depicted -- the third to fourth house in between?

12 A South of Kendall. So on Monte Vista, third to fourth
13 house, right down here, right about at this location
14 where I observed the -- Mr. Kabongo.

15 Q Indicating the driveway between the third and fourth
16 house depicted on the bottom of the map?

17 A Yes, ma'am.

18 Q On the west side.

19 When you make that observation what do you do?

20 A I notify my partner. I see Mr. Kabongo, he's wearing a
21 blue long sleeved Lions shirt, he's got blue Dickey
22 style pants on with Timberland boots. I observed that
23 he's got an -- outside the pants holster, like an Echo
24 style shirt, with a black semiautomatic handgun similar
25 to what I'm carrying.

1 Q Based on your observation you said you let your partner
2 know. Did you do anything else?

3 A No. I just advised -- I advised my partner of my
4 observations and then my intention was to the narcotics
5 location that I had a complaint on.

6 MR. HALPERN: Your Honor, I would ask -- Would
7 you allow me to approach?

8 THE COURT: We're going to send the jury out.

9 MR. HALPERN: Thank you.

10 (Jurors exit to jury room at 11:49 a.m.)

11 The Court has my objection. I move for -- The
12 Court has my objection to what's just been heard and in
13 violation of the Court's order.

14 THE COURT: Hold on just a minute, Mr.
15 Halpern.

16 Officer Collrin, could I ask you to step off
17 the witness and back into the room, please?

18 Okay. Your objection is to again, Mr. Halpern
19 so the record is clear?

20 MR. HALPERN: My objection is to the officer's
21 testimony in violation of the Court's order and in
22 violation, apparently, of what the prosecutor reportedly
23 told the officer. And I believe the open ended question
24 even asks or begged for that kind of response but, you
25 know, I can't be certain about that. That's difficult

1 to make that allegation. But, certainly, the officer's
2 testimony is such that it's not only in violation but
3 the reason the Court entered such an order was so that
4 it would not taint this trial in any manner. I believe
5 this trial has been tainted and I ask the Court to
6 declare a mistrial.

7 MS. POSIGIAN: Your Honor, the officer's
8 testimony was that he observed the defendant and then
9 his attention was turned elsewhere. The officer was
10 advised not to say special operations which he fully
11 complied with, he was advised not to say that he was in
12 the area to followup on a narcotics complaint, which he
13 fully complied with. I explained to him the Court's
14 reasoning and rulings. I didn't anticipate that answer
15 but I don't believe that it's prejudiced the defendant
16 in anyway. If the officer said his attention turned
17 elsewhere away from the defendant that doesn't implicate
18 the defendant was involved in any illegal activity
19 aside from the CCW or related to any narcotics. I can
20 easily ask him a followup cleanup kind of a question was
21 that the opposite direction the defendant -- or not
22 involved with the defendant to clarify that for the
23 jury.

24 THE COURT: I'm going deny the motion for a
25 mistrial.

1 The order was that Mr. Kabongo's case is
2 unrelated to police special operation and that has not
3 come up. It also was marijuana operations and/or
4 investigation and that has not come up. What the
5 officer testified to as having received a complaint
6 about -- a complaint about something that prompted him
7 to be on that street at that time.

8 I would also note that during Ms. Posigian's
9 questioning of, I believe it was Officer, questions were
10 asked whether or not Mr. Kabongo was involved in any
11 other kind of illegal activity other than simply CCW and
12 that went un-objected to. So I think that Officer
13 Collrin has stayed within the meaning of the Court's
14 order. All he did was indicate that he was responding
15 to a complaint.

16 So I'm going to deny your motion for a
17 mistrial.

18 Anything else?

19 MR. HALPERN: Yes. The Court was not accurate
20 when said he got a complaint about something he clearly
21 indicated that it was marijuana.

22 THE COURT: All right. I'm not -- I don't
23 recall that but I do remember something about a
24 complaint.

25 Ms. Posigian?

1 MS. POSIGIAN: My recalling -- my recollection
2 of the officer's testimony is my -- in answer to my
3 question is he said my attention turned elsewhere to the
4 narcotics and that's when Mr. Halpern objected.

5 THE COURT: Okay. Counselors, I don't
6 remember if it was marijuana or narcotics but I do
7 remember that the officer indicated he was on that
8 street because he was responding to a complaint. That
9 doesn't have anything to do with police special
10 operations, and/or marijuana operations, or
11 investigation.

12 MR. HALPERN: It does, your Honor. It does
13 exactly that because that's what he testified to that
14 there was a marijuana complaint.

15 THE COURT: But that's different from
16 marijuana operations and/or investigation.

17 And the other thing is, Mr. Halpern, is that
18 Ms. Posigian clearly asked Officer Hernandez about
19 whether or not Mr. Kabongo was involved in any other
20 kind of illegal activity whether it was drugs or
21 anything else and you did not object to it. I, quite
22 frankly, thought you would but you didn't.

23 And, also, the officer's testimony opens up
24 for your purpose the cross examination about the fact
25 that he was distracted.

1 MR. HALPERN: I don't need the help, judge.

2 THE COURT: Okay.

3 MR. HALPERN: I really don't need the help.

4 But what I do need is for this Court to enforce its
5 orders but the Court doesn't want to do that.

6 THE COURT: You're real close, Mr. Halpern, to
7 being held in direct criminal attempt intent.

8 I have been listening very, very, closely to
9 this testimony and I do not think that the bride too far
10 of my order has been crossed.

11 MR. HALPERN: When I disagree with your Honor
12 I'm not --

13 THE COURT: And that's fine. You can disagree
14 with me.

15 MR. HALPERN: When I disagree with your Honor
16 I'm not in contempt and if you think so then hold me in
17 contempt.

18 THE COURT: Mr. Halpern, that's not necessary.
19 I do wish, however, that you would curb your attitude
20 towards the Court. I have been evenhanded in my rulings
21 on this case and I believe your remarks as to my conduct
22 of this trial are unnecessary and they are
23 disrespectful.

24 MR. HALPERN: Well, I don't believe your Honor
25 has been evenhanded with respect to this matter either.

1 THE COURT: All right, Mr. Halpern, I think we
2 need to stop this conversation. I'm going to deny your
3 motion for a mistrial.

4 Anything else?

5 MS. POSIGIAN: No. Thank you.

6 THE COURT: Anything else, Mr. Halpern?

7 MR. HALPERN: No thanks.

8 THE COURT: Bring them back in.

9 (Jurors seated in jury box at 11:56 a.m.)

10 Counselors, are our jurors all present?

11 MS. POSIGIAN: Yes, your Honor.

12 THE COURT: Mr. Halpern?

13 MR. HALPERN: Yes, your Honor.

14 BY MS. POSIGIAN, CONT'D:

15 Q Officer Collrin, I think we were at you told your
16 partner about your observations?

17 A That's correct.

18 Q The Defendant's gun as far as -- how was his shirt in
19 relation to the gun in the holster? Could you maybe
20 demonstrate?

21 A The shirt was tucked into the right and the front and
22 back of the shirt was draped over to the front and the
23 back of his waistline. But the right side of his shirt
24 was tucked into his pants.

25 Q Okay. And you said once you told your partner your

1 attention went elsewhere?

2 A My partner replied I see him and then my attention was
3 to a different location.

4 Q Okay. At some point did you turn your attention back to
5 the defendant?

6 A Yes, ma'am.

7 Q How long after your partner indicated he was looking at
8 the defendant did you turn your attention back?

9 A Maybe three to five seconds.

10 Q And what observations did you make of the defendant once
11 you turned your attention back to him?

12 A Mr. Kabongo was on the driver's side, the rear driver's
13 side, of a pickup truck that was parked right wheels to
14 curb out in front of the location he came out. The rear
15 driver's side, so the passenger -- driver side but on
16 the passenger door was open. Mr. Kabongo was in between
17 the door and the vehicle. The door's shut and then
18 Mr. Kabongo proceeded to walk around the back of the
19 pickup truck.

20 Q And did you make any observations of the gun at this
21 point in time?

22 A No, ma'am.

23 Q Why not?

24 A At that time just the way that my vehicle was angled.
25 We pulled up a little further just beyond the threshold

1 of the pickup truck. And at that angle I couldn't see
2 the gun but I could observe Mr. Kabongo walking up
3 towards the grassy portion of the grass just beyond the
4 street.

5 Q And at some point -- So I just want to make sure I you
6 understand this. So you're traveling northbound at some
7 point and you passed the defendant?

8 A We passed the vehicle, yes, past the defendant.

9 Q And you are on the front passenger side and your partner
10 is the driver?

11 A Yes, ma'am.

12 Q So when the defendant is behind you are you saying you
13 physically turned and you were able to see him or
14 just --

15 A Just the angle of the scout car and then my partner,
16 his -- him being in the driver seat, and the angle we
17 were pulled up at, I was looking back but I couldn't see
18 him just beyond the pickup truck.

19 Q Okay. And at any point were you -- So you saw the
20 defendant -- The shirt's tucked inside his pants and the
21 gun's exposed?

22 A Yes, ma'am.

23 Q At any point did the shirt change position?

24 A Yes, ma'am.

25 Q When does that happen?

1 A When he's approaching the grass I can no longer see the
2 weapon being exposed. So at that time when I made the
3 observations the shirt was draped over the top of the
4 gun and I could no longer see the gun.

5 Q So based on that what did you do?

6 A My partner -- it was pretty much an information
7 encounter to start with.

8 Q Well, did the car keep going or did --

9 A No, my partner stopped the scout car. Both myself and
10 my partner exited out the vehicle. We approached Mr.
11 Kabongo.

12 Q Now, where did you stop the vehicle you were in?

13 A My vehicle was just passed the bumper. There's a white
14 pickup truck right there in the picture.

15 Q On Exhibit 2. All right.

16 A So just, maybe, our bumper is right about where the
17 bumper or the front end of the pickup truck in the
18 picture. So our vehicle's just past passed the pickup
19 truck beyond the back of the threshold of the pickup
20 truck and it's just pulled up a little further forward.

21 Q The stop, you said, was informational, right?

22 A That's correct.

23 Q Okay. At some point did you approach the defendant?

24 A Myself and my partner, yes.

25 Q When you approached him were you able to still see the

1 weapon you seen earlier?

2 A No ma'am.

3 Q Why not?

4 A The shirt was draped over the top of the gun.

5 Q Did you have a conversation with the defendant?

6 A My partner was the only person that made contact with

7 the defendant. Being the jump man I'm the cover

8 officer. My partner's the leads officer and he's making

9 any type of communication with whoever we come in

10 contact with unless a question that is directed toward

11 me and then I would respond to the question.

12 Q So, in this case, did you observe a conversation between
13 the defendant and your partner?

14 A Yes, ma'am.

15 Q How far away from those two people were you when that
16 conversation happened?

17 A I'd say about seven, eight, feet.

18 Q Were you able to hear what that conversation was?

19 A Yes, ma'am.

20 Q Did the defendant advise that he had a CPL?

21 A Yes, ma'am.

22 Q Did you do anything with regard to that information?

23 A My partner asked Mr. Kabongo if he had a

24 concealed pistol license, he produced a concealed pistol

25 license. Mr. Kabongo also made a statement that his

1 concealed pistol license was a little expired. That's
2 when my partner gave me the concealed pistol license. I
3 went back to the scout car and then ran the concealed
4 pistol license through our Law Enforcement Information
5 Network.

6 Q And did you receive any results or information back from
7 Law Enforcement Information Network?

8 A Per the Law Enforcement Information Network the
9 concealed license was expired on September 12 of 2015.

10 Q Did you advise your partner of the same?

11 A Yes, ma'am.

12 Q And what happened next?

13 A My partner disarmed Mr. Kabongo of his Glock 19, removed
14 the magazine, made it safe, ejected it a round out the
15 chamber. I can't remember where he put the weapon but
16 then he placed handcuffs on Mr. Kabongo and notified him
17 of his charges.

18 Q With regard to the defendant what was his demeanor
19 during the initial stop through arrest?

20 A Mr. Kabongo was actually quite pleasant. He was -- I
21 hate to say it I didn't really want to arrest him but
22 due to the fact of the situation -- you know, he was
23 very compliant. We gave direct orders, he followed
24 every single one he. He was not argumentative or
25 combative t all. We actually kind of felt bad about the

1 A I work for Vent Craft Heating and Cooling. We install
2 furnaces, air conditioners on rental and commercial.

3 Q Is that your business?

4 A It's a family owned business by my stepfather.

5 Q And, in addition to working as you just described, do
6 you do any side jobs or side work as well?

7 A That, I do, yes, on the weekend usually or in the
8 evening.

9 Q Did there come a time from the first time, approximately
10 anyway, when -- Tell me when you began to do some work
11 at properties that are owned by Jacques Kabongo?

12 A I've done work for Jacques for probably the last couple
13 of years at Monte Vista and at his personal house but
14 those are the only two I can think of that I've ever
15 done.

16 Q Can you estimate a number of times you've been to those
17 two homes approximately?

18 A Monte Vista, I've probably been down there, including
19 this trip, three at the most.

20 Q And the other location is where?

21 A His Stansbury house I've probably been there twice.

22 Q On this occasion to I'm referring to, October 15th of
23 last year, 2016, were you at the Monte Vista house doing
24 some work?

25 A Yes, I was installing a furnace that Jacques had

1 purchased used because the previous one was stolen.

2 Q On that occasion were you in anyway armed? Were you
3 personally armed?

4 A I was not personally armed, no.

5 THE COURT: At which point, Mr. Halpern? When
6 you said on that occasion which occasion are we talking
7 about?

8 MR. HALPERN: October 15, 2016.

9 THE COURT: Okay. I apologize for the
10 interruption.

11 BY MR. HALPERN CONT'D:

12 Q Was Mr. Kabongo armed on the occasion of October 15th,
13 2016?

14 A Yes, he was.

15 Q And would you describe the manner in which you observed
16 his being armed?

17 A Well, he had his gun on his right side and the hand part
18 of it was sticking out of his pants so it was -- I saw
19 it.

20 Q Is that the first occasion you ever saw Mr. Kabongo
21 having a weapon exposed like that if you remember?

22 A That day -- Well, that's the first time I've seen him
23 carry, yes, with me being present.

24 Q With what?

25 A With me being present.

1 Q Oh, sorry.

2 When you were at the house during that house
3 on Monte Vista working what portion of the house were
4 you mostly at?

5 A I was, basically, in the basement until later in the day
6 when I went up to the thermostat. So I was strictly in
7 and out the back door.

8 Q And if you know where -- was the place or places that
9 you observed Mr. Kabongo at that location? Where was he
10 mostly?

11 A Well, that day he was in and out. The last time I saw
12 him he was in the backyard painting the garage.

13 Q Do you have any recollection at all of the way he was
14 dressed color-wise or -- if you have a recollection
15 whatever you remember?

16 A I know he had a T-shirt on. You know, other than that,
17 no, I don't recollect how else he was dressed.

18 Q Remember the color of the shirt?

19 A He had a white shirt on and I know he also had a blue
20 shirt at some point in the day.

21 Q Mr. Hornung, I've drawn, so to speak, streets and cross
22 streets. And this is Kendall here, this is -- Help me.
23 This is Monte Vista. I've drawn two houses towards the
24 end and put an X over here. I made that into the
25 driveway and I'm drawing a vehicle here parked at the

1 curb. To the best of your recollection am I drawing
2 this part that I've described, at least, accurately?
3 That's a bad word for my drawing but, anyway, accurately
4 that this was the second house from the corner that
5 there's an empty lot next door and that he was at the
6 curb just beyond the entrance to the driveway?

7 A Yes, that would be Jacque's vehicle that was parked
8 right there.

9 Q In fact, you were in that vehicle, weren't you, earlier
10 that day?

11 MS. POSIGIAN: Objection, leading.

12 MR. HALPERN: Sorry, your Honor.

13 THE COURT: Sustained. But go ahead just
14 rephrase, it Mr. Halpern.

15 MR. HALPERN: I'm sorry. I didn't mean to do
16 that.

17 THE COURT: It's okay.

18 BY MR. HALPERN, CONT'D:

19 Q At any point earlier that day, so sorry, were you in
20 that vehicle with him?

21 A We had run to the supply house to pickup a part for the
22 furnace.

23 Q And later on that day were you in fact the driver of
24 that vehicle?

25 A After the cops had cuffed Jacques, Jacques was able to

1 hand me his keys and I drove his vehicle back to his
2 Stansbury house.

3 Q Thanks.

4 There came a time, am I correct, that while
5 you're at the house you came up at some point, and as
6 you just started say about the cops who were there, did
7 you come up and see cops at some point?

8 A Yes, I did.

9 Q At the point in time that you came up did it -- did it
10 appear to you that cops and Jacques had -- were in
11 contact with each other in some way? What did you
12 observe?

13 A Well, what I observed was Jacques being told to put his
14 arms behind his back at that point. And I stood by my
15 truck which was in the driveway up by the house.

16 Q Here?

17 A Yeah, a little further out. The nose of my truck was
18 right to the front of the house. And, so, yeah, I saw
19 him putting his hands behind his back. And Jacques had
20 called me over, and the cops agreed that I could come
21 over, and that's when he was able to give me his keys to
22 take the vehicle back to his house.

23 Q Did you see a black police car at the point in time that
24 you came out and were in this area?

25 A The cop car was facing opposite of Jacques's.

1 Q Opposite meaning that direction?

2 A Yes.

3 MS. POSIGIAN: And, for the record, toward
4 Kendall.

5 THE WITNESS: Towards -- The cop car was
6 facing Kendall, yes.

7 BY MR. HALPERN, CONT'D:

8 Q And how -- Whereabouts was that cop car?

9 A Against the curb of the corner house.

10 Q This house?

11 A Yes.

12 Q Was it straight against the curb or on any angle?

13 A It might have been on a slight angle but the nose of it
14 was definitely at the curb.

15 Q It wasn't out in the street in the middle of the street?

16 A No.

17 Q It wasn't, like, right next to this car right here?

18 A No, because my truck would have been able to pull up.
19 If I wanted to pull up I could have pulled up.

20 Q Did there come a time after the police had left together
21 with Jacques in tow that you were able to then take
22 Jacques's car over to the Stansbury address?

23 A Yes.

24 Q When you did that did you see any tools in the vehicle
25 itself?

1 A There were some on the passenger side floor front
2 personal side floor.

3 MR. HALPERN: No other questions.

4 Thank you.

5 THE COURT: Ms. Posigian?

6 CROSS EXAMINATION

7 BY MS. POSIGIAN:

8 Q Good afternoon, sir.

9 A Hello.

10 Q You said you've known the defendant about two years?

11 A Yeah, more like probably five.

12 Q Okay. So you've been doing work for him for two years?

13 A Yes.

14 Q So you guys were friends first and then you started
15 doing work for him?

16 A Friends, yeah. Not outing type friends or anything like
17 that but he knew of me and what I did.

18 Q Okay. So at least acquaintances of some kind?

19 A Yes.

20 Q You had known him for five years so you guys would, what
21 hang out in groups or be together at certain events with
22 mutual friends; how did that work?

23 A No, strictly, just if he had a problem at his house, at
24 one of the houses, he would call and ask me to come fix
25 it if I was available.

1 Q Oh okay. So he trusted you to come to his own personal
2 house?

3 A Correct.

4 Q Trusted you to drive his truck?

5 A Correct.

6 Q Not take anything?

7 A Correct.

8 Q Who lives at 1820 North Maple Road in the City of Ann
9 Arbor Washtenaw County?

10 A That I do not know.

11 Q You ever been over to that residence before?

12 A No, I have not.

13 Q The standard house you were referencing where was that
14 located? What city is that in?

15 A That is in Detroit as well.

16 Q So you've known him for five years, done work for him
17 for two, been over his house and you said that was the
18 first time you saw him carry his gun?

19 A Yes.

20 Q And you came -- were you in the basement or working on
21 the thermostat right before you came out of the house?

22 A I was at that time thermostat right before I'd come out
23 the house.

24 Q So is the thermostat on the main floor?

25 A It's on the main floor but it's in the middle of the

1 house.

2 Q Okay. I'm going to approach you with what's been
3 admitted as Exhibit 2 with this being Kendall and Monte
4 Vista?

5 A Okay.

6 Q Would you say that's the house we're talking about here?

7 A Yes.

8 Q Okay. Is it your testimony that the defendant's truck
9 was parked just south of the driveway?

10 A Yes.

11 Q Okay. And then the officer's was parked just north of
12 the driveway with an opening for the driveway?

13 A Yes.

14 Q Who else was there that day with you guys?

15 A I had an assistant with me, Brian Costigan.

16 Q Could you spell that?

17 A C-O-S-T-I-G-A-N.

18 Q And Brian with an I or an Y?

19 A With an I.

20 Q Okay. So that day, obviously, you saw the defendant was
21 arrested and he was in handcuffs and driven away by the
22 police, right?

23 Did you ever -- Did the police tell you why he
24 was under arrest?

25 A They did.

1 Q O you knew he was under arrest for carrying concealed
2 weapon?

3 A Right, that's what they said.

4 Q But you knew on that date October 15, 2016 that's why he
5 was arrested?

6 A Yes.

7 Q Do you do a lot of your work in the City of Detroit?

8 A No, I do not. He is actually the only one that I've
9 gone down for. I mean, our company, we don't do any
10 work down there anymore.

11 Q So you knew back in October of 2016 he was under arrest
12 for CCW. Did you attempt to contact the police and say,
13 hey, he's innocent he didn't do this?

14 A I was shocked. I mean, I had a full plate that day. I
15 was actually a little pissed I was still at the job
16 sight at the time this went down because I had two other
17 calls to go to that day that were Vent Craft related.

18 Q Was this a side job?

19 A So I had no thought.

20 Q Was this a side job?

21 A This was a side job, yes.

22 Q So that's a no.

23 And then at some point you're made aware he's
24 been charged with felony carrying concealed weapon?

25 A Yes.

1 Q And you know he's had other court dates and things in
2 the past prior to trial?

3 A Per this trial?

4 Q For this offense?

5 A I know this occasion that's all I'm aware of.

6 Q Okay. So this is April 3rd, that's October, November,
7 December, January, February, March; five and a half
8 months ago this happened?

9 A Yes.

10 Q Tried to contact the Detroit Police Department at all
11 about this case?

12 A No.

13 Q When did -- Did you find out the defendant, Mr. Halpern,
14 was his attorney at some point in time?

15 A When I got a phone call from the attorney asking me to
16 state what I saw that day.

17 Q Okay. So he called you?

18 A Yes.

19 Q When was that?

20 A That was maybe a month ago.

21 Q Okay. And so that would be, what, beginning of March?

22 A I'd say around March.

23 Q Okay. Did you have any conversations with the defendant
24 between the date he was arrested and today?

25 A The day he was arrested?

1 Q Between that day five and a half months ago and today
2 did you have any conversation with the defendant?

3 A Other than Jacques called and said his attorney would be
4 contacting me.

5 Q Oh, he called you first?

6 A Yes.

7 Q Talked about I want you to tell my attorney things for
8 me?

9 A Just what I saw.

10 Q And I want you to come to court for me?

11 A I didn't know I'd be in court until I was summonsed by
12 the attorney.

13 Q Okay. And that was via a phone call that he called you?

14 A That was when I went to the attorney's office and then
15 he summonsed me.

16 Q Okay. But just to be clear you were in the house prior
17 to the defendant being arrested?

18 A I had come out of the house to see -- because I came
19 from the thermostat to go to the truck to get a new
20 thermostat.

21 Q Would that be your truck or the defendant's truck?

22 A My truck, my work truck, which was parked in the
23 driveway. And when I looked out to the street is when I
24 saw the cops parked where we talked and they had just
25 told Jacques to put his arms behind his back and that's

1 THE COURT: Thank you, Mr. Hornung. You're
2 excused.

3 THE WITNESS: Thank you.

4 THE CLERK: Raise your right hand.

5 Do you solemnly swear that the testimony
6 you're about to give in the cause now pending before the
7 Court will be the truth so help you God?

8 THE WITNESS: Yes, I will.

9 THE CLERK: Please say and spell your name for
10 the court reporter.

11 THE WITNESS: David Nicholson,
12 N-I-C-H-O-L-S-O-N.

13 DIRECT EXAMINATION

14 BY MR. HALPERN:

15 Q Good afternoon.

16 Please Say your name?

17 A David Nicholson.

18 Q Mr. Nicholson, do you know the gentleman to my left in
19 front of you and if so how do you know Mr. Kabongo?

20 A We work at Blue Cross Blue Shield of Michigan. I've
21 known him since 2009 when I moved -- we both moved into
22 the same facility out in Southfield. I noticed him
23 before but really didn't know him until he was seated
24 behind my desk and that's how I met him.

25 Q When you say same facility what are you referring to?

1 A The Blue Cross Blue Shield of Michigan facility that was
2 out there on Inkster and 11 Mile at the time.

3 Q And now you're located where?

4 A At the Renaissance Center.

5 Q Was Mr. Kabongo already employed at the point in time
6 that you came to Blue Cross?

7 A Yes.

8 Q And your work and his work are they such that you work
9 on the same area, in the same work, or are you separated
10 from working together other than being in the same
11 company?

12 A We're separated but some of my work may cross over into
13 what he does.

14 Q And in addition to your associations at work and knowing
15 him from work do you also socialize?

16 A Yes, we socialize.

17 Q And you do so on what kind of a basis that is -- is it
18 just one or two times a year or much more often than
19 that?

20 A Possibly, maybe, three to four times. We've gone to
21 different events together. We may meet up for coffee at
22 Starbucks. Just, you know, nothing formal or --

23 Q Are you aware of Mr. Kabongo having any association with
24 properties in Detroit?

25 A Yes, I am.

1 Q Do you know the streets -- a street or streets that he
2 has locations?

3 A I don't necessarily no the streets, per say, because I
4 can't remember them but there's one property in
5 particular that I have gone over and met him there a
6 couple of times from a security standpoint. I was
7 always worried about him being in that certain
8 neighborhood. I just know the area but I can never
9 remember the name of the street.

10 Q Are you a person with a CPL?

11 A Yes, I am.

12 Q Do you know at all any past history, if any, of Mr.
13 Kabongo having his CPL?

14 A Yes, he had his CPL back, maybe, a year or two ago. And
15 a couple of times we've talked about issues with the
16 CPL. I'm an NRA Certified Trainer.

17 Q You are or he is?

18 A I am.

19 MS. POSIGIAN: Objection, your Honor. At this
20 point I think we're going far afield of the purpose for
21 what this witness is proffered for.

22 MR. HALPERN: Not at all, your Honor.

23 THE COURT: All right. Send the jury out.

24 (Jurors exit to jury room at 2:47 p.m.)

25 THE COURT: All right. Ms. Posigian -- oh, ay

1 we ask this witness to return to the witness room for
2 just a moment, please, sir.

3 Ms. Posigian, your objection was what?

4 MS. POSIGIAN: Yes. This witness was being
5 tendered as a habit witness. The witness, I believe,
6 can properly -- he can state how he knows the defendant,
7 the times he's come in contact with the defendant, and
8 things relevant to the defendant's invariable response
9 to certain behaviors but talking about him being, him
10 the witness, being an NRA Certified Gun Trainer and
11 conversations that he's had with the
12 defendant especially -- he can't testify to what the
13 defendant said in the conversations. The defendant can
14 testify about that if he wants. But this is a habit
15 witness and his testimony is far afield of any habit
16 evidence.

17 THE COURT: Mr. Halpern?

18 MR. HALPERN: And that's what I intend to ask
19 him questions about. I'm qualifying him so that he's
20 capable of answering these questions about how he
21 carries his weapon, why he carries it that way, the
22 occasions that he's seen --

23 THE COURT: Mr. Halpern, I don't know what
24 being a Certified NRA Trainer or something has to do
25 with this witness's observation of Mr. Kabongo's habit.

1 What we need is foundation concerning an invariable
2 response that the practice has been performed on
3 numerous occasions and personal knowledge of the
4 practice to establish the proper foundation. I don't
5 see whether he's a Certified NRA instructor, yes or no,
6 I don't see what that has to do with anything. The
7 question is whether or not he observed Mr. Kabongo with
8 the practice of open carry. He's not being offered as
9 an expert witness at least as I understood your prior
10 offer of proof.

11 MR. HALPERN: Very well, your Honor.

12 THE COURT: Okay. Can we bring the jury back
13 in and Mr. Nicholson back in?

14 THE COURT OFFICER: All rise for the jury.

15 (Jurors seated in jury box at 2:51 p.m.)

16 THE COURT: Counselors, are our jurors all
17 present?

18 MS. POSIGIAN: Yes, your Honor.

19 MR. HALPERN: Yes, your Honor.

20 THE COURT: Thank you.

21 Please continue, Mr. Halpern.

22 BY MR. HALPERN, CONT'D:

23 Q Mr. Nicholson, did there come a time when you discovered
24 some information about Kabongo's renewal of his CPL?

25 A Yes, at a point in time he admitted to me he had not

1 renewed his CPL.

2 Q And how did you respond?

3 A I was not about it.

4 Do you want me to give the reason?

5 Q Well, you're unhappy about it?

6 A Umm hmm.

7 Q Did you express that to him?

8 A Yes.

9 Q And in terms of open carry did that subject come up at
10 all between the two of you?

11 A Yes, it did. As of when I found out that he did not
12 renew his CPL I had a discussion with him about the
13 proper procedure for, one, transporting a firearm
14 without his CPL and how to carry his firearm without a
15 CPL.

16 Q In that regard did you, in any manner at all, express
17 any kind of concern in that regard about carrying and
18 storing?

19 MS. POSIGIAN: Same objection, your Honor.

20 THE COURT: Are you -- I'm going to overrule
21 the objection but clarify for me, Mr. Halpern, are you
22 talking about carrying and transporting in an automobile
23 or are you talking about carrying on a person?

24 MR. HALPERN: Automobile is what I believe.

25 THE COURT: Okay.

1 MR. HALPERN: I'll let the witness answer I
2 believe.

3 THE WITNESS: My concern which I have a
4 concern -- I don't know what I can say or can't say. My
5 concern is just with anybody that I talk to that I
6 specifically have concern with.

7 BY MR. HALPERN, CONT'D:

8 Q Hold on for a second before you continue on.

9 Okay.

10 A One of the many concerns that I have is as a CPL holder,
11 especially with black males, you have to really --

12 MS. POSIGIAN: Same objection, your Honor.
13 This is outside of the purpose for which this witness is
14 being offered.

15 THE COURT: That's true, Mr. Halpern. This
16 witness is being proffered for a very specific purpose
17 and I'm not hearing the foundation yet for him to profer
18 that testimony.

19 MR. HALPERN: The reason that he's testifying
20 on the very subject that he's saying is to show
21 that -- I don't want to testify, judge --

22 THE COURT: Send the jury back out, please.

23 (Jurors exit to jury room at 2:55 p.m.)

24 THE COURT: Ms. Posigian, again, now that the
25 jury's out of the courtroom, can you please state your

1 objection again?

2 MS. POSIGIAN: Yes, your Honor. The witness
3 started to answer the question that he had concerns with
4 black males carrying weapons. And, again, this witness
5 is being proffered as a habit witness; what is the
6 defendant's response his invariable response to a
7 certain particular situation. And the witness has to
8 testify as to his personal observations of the
9 defendant. And at this point in time it appears that
10 the only relevant portion of time that the witness could
11 testify about would be from after the defendant's CPL
12 expired which testimony came out was in September of
13 2015 and the date of this offense which is October 2015.
14 So at most the witness would have observed the defendant
15 three times or four times.

16 THE COURT: Well, we don't even have --

17 MS. POSIGIAN: Based on his testimony.

18 THE COURT: -- three or four times a year he
19 sees the defendant.

20 Mr. Halpern, please -- I guess, Mr. Halpern,
21 let me be very specific in my question so that the
22 record is clear. If I'm not mistaken Mr. Nichols is
23 being proffered for the purposes of showing habit. How
24 does his cautionary remarks to Mr. Kabongo about opening
25 carrying and being a black male bear on showing practice

1 that it's an invariable response, that it has been
2 performed on numerous occasions, and personal knowledge
3 of the practice.

4 MR. HALPERN: Because by so advising him and I
5 assume he will indicate that he said he would comply
6 with all of those requirements. And then indicating
7 the -- I don't know how many but we'll find out, three,
8 four occasions when he seen him, in fact at the location
9 itself, open carrying and making certain that he is open
10 carrying in the proper manner then that constitutes a
11 proper testimony under rule 406 to indicate that there's
12 evidence of a habit of a person. And it indicates
13 further that it doesn't have to be corroborated
14 and -- or having eyewitnesses. It's relevant to prove
15 the conduct of the person on a particular occasion where
16 hes in conformity with the habit or routine and he's
17 telling him what the routine is.

18 THE COURT: Okay. Actually, no. At this
19 point, Mr. Halpern, that's not what I'm hearing. What
20 I'm hearing is all of this gentleman's experience and
21 his counsel to the defendant and all those other things
22 which really are not relevant to the issue for which
23 this witness is being proffered which is the habit that
24 Mr. -- I would assume that Mr. Kabongo had of open
25 carrying; is that it?

1 MR. HALPERN: Yes.

2 THE COURT: Then let's get to that point.
3 Let's get to the point that it's an invariable response,
4 that it's been performed on numerous occasions, and
5 personal knowledge. All the rest of this is irrelevant
6 and it's needlessly consuming time and it's confusing
7 the issues.

8 MS. POSIGIAN: And, your Honor, before the
9 jury's brought back in something counsel stated in his
10 answer to you earlier caused me concern and I'd like to
11 raise it now. Mr. Halpern indicated that the witness
12 would testify that the defendant after being counselled
13 stated that he was properly advised and he would comply
14 with open carry law. I just wanted to make it very
15 clear I object to this witness saying anything the
16 defendant would say, specifically, that he was going to
17 conform his conduct to the requirements of law. This is
18 counsel's own witness offering the defendant's own
19 statement and it's hearsay.

20 THE COURT: Okay. That would be a hearsay not
21 subject to any exception. But, Ms. Posigian, what do
22 you want me to do at this point?

23 MS. POSIGIAN: If it happens again I just
24 want raise an objection, I don't to speak an objection,
25 so we don't have to keep bringing them in and out.

1 THE COURT: You're not asking for a curative
2 instruction?

3 MS. POSIGIAN: No, not at all.

4 THE COURT: Mr. Halpern, are we clear now what
5 we need to be doing with this witness?

6 MR. HALPERN: Yes, your Honor.

7 THE COURT: Okay. Let's bring the jury back
8 in.

9 THE COURT OFFICER: All rise for the jury.

10 (Jurors seated in jury box at 3 o'clock p.m.)

11 THE COURT: Counselors, are our jurors all
12 present?

13 MS. POSIGIAN: Yes, your Honor.

14 MR. HALPERN: Yes, your Honor.

15 THE COURT: Mr. Halpern?

16 MR. HALPERN: Thank you.

17 BY MR. HALPERN, CONT'D:

18 Q You were indicating Mr. Nicholson that you had
19 conversations concerning the subject matter of open
20 carry with Mr. Kabongo?

21 A Yes.

22 Q And in that regard, in addition to that or those
23 whatever conversations, were you ever at any of his
24 properties when he was open carrying at that time?

25 A Yes, I have been at those properties where he has been

1 open carrying.

2 Q Did you ever help him out working there as well on
3 projects?

4 A Just basically carrying in stuff for him, or with him,
5 but nothing extensive to -- I'm not a carpenter, or a
6 builder, or whatever. And the other couple of times was
7 just to go over there with him because, you know, to me
8 I see it as a high risk situation him going over there
9 by himself late at night to do repairs. There's an
10 abandoned home right next to him with open doors.
11 There's been a couple of times -- there's one incident
12 where he's actually gone in there and there's already
13 been somebody in the house. Each time he does repairs a
14 lot of times a lot of stuff gets stripped back out. So
15 a couple of times I have gone over there with him for
16 that reason. And just the standpoint of I just didn't
17 like him going over there by himself.

18 Q On those occasions was he open carrying?

19 A Yes.

20 MR. HALPERN: I have no other questions.

21 Thank you.

22 CROSS EXAMINATION

23 BY MS. POSIGIAN:

24 Q Good afternoon, Mr. Nicholson.

25 A Good afternoon.

1 streets and addresses, maybe, in Detroit and Ann Arbor.
2 Could you explain or indicate what your residence is,
3 and what the other property and properties may be, and
4 how they relate to you and you relate to them?

5 MS. POSIGIAN: Objection, compound question.
6 And it's not very clear in terms of residences, whose
7 residence is this, his residence, someone else's, a
8 rental property, et cetera.

9 THE COURT: Thank you. Sustained.

10 Can you break that down, Mr. Halpern, please?
11 We've got several addresses here. Just break it down so
12 we're clear what we're talking about?

13 BY MR. HALPERN, CONT'D:

14 Q You've heard the address given, apparently, by the
15 prosecutor an address in Ann Arbor. Do you live in Ann
16 Arbor?

17 A Yes, I do. 1820 north Maple is my primary residence.

18 Q How long have you lived there?

19 A Over 20 years.

20 Q You heard about streets or addresses in Detroit. What
21 addresses in Detroit are you -- do you have any
22 association with?

23 A Stansbury address, the 14009 Monte Vista address, also
24 an address on Appoline, 14224 Appoline, and I have an
25 address in Ypsilanti. They're rental properties for the

1 most part but I reserve the Stansbury address as a
2 second home to cutback on my long drive from Ann Arbor
3 to Detroit.

4 Q Other than what you've just indicated you keep Stansbury
5 as a second address for convenience for traveling the
6 other addresses do you rent them?

7 A Yes, I rent the 14009 Monte Vista, and 14225 Appoline,
8 as well as the 670 Desoto that's in Ypsilanti.

9 Q Do you personally service those properties?

10 A Yes, I do.

11 Q How long a period of time -- or start it another way.
12 I'm sorry.

13 When did you first obtain a CPL so that you
14 could carry a weapon, a concealed weapon?

15 A In 2011.

16 Q And in order to get that CPL, without a whole lot of
17 detail, what do you have to go through?

18 A You have to take the CPL course. You have to get
19 clearance with the state, provide fingerprints, they do
20 a background check.

21 Q Any classes?

22 A Yes. I vaguely remember the minimum number of hours but
23 there's a minimum number of hours you have to be present
24 for.

25 Q Part of those classes have to do with what subjects?

1 A Safety first and foremost, understanding the law with
2 firearms as it relate to Michigan, in particular, as
3 well as federal laws, and also touching on subjects such
4 as open carry. The strongest is on safety, though.

5 Q How long was that CPL good for in terms of time?

6 A I believe four years. It would have expired on my
7 birthday in 2015.

8 Q During the time period of those four years that you had
9 a CPL did you carry the weapon that you were arrested
10 with or another weapon?

11 A Can you repeat the question?

12 Q Sure.

13 What gun did you carry during the time of the
14 CPL?

15 A The Glock 19 that I owned that's registered to me.

16 Q Want to show you what's been marked Defendant's Proposed
17 Exhibit J and ask you if you recognize it and if so what
18 is that?

19 A This is my pistol sells record and my gun registration.

20 Q Is that for this weapon we're talking about here?

21 A Yes, it is.

22 MR. HALPERN: Move for its admission.

23 MS. POSIGIAN: Your Honor, I don't know that
24 there's relevance but I don't have any objection to it.

25 THE COURT: All right. I'm going to go ahead

1 and admit Defense Exhibit J.

2 BY MR. HALPERN, CONT'D:

3 Q Show you what's been marked for identification purposes
4 as Defendant's Proposed Exhibit B.

5 THE COURT: It's already been admitted, Mr.
6 Halpern.

7 MS. POSIGIAN: That one has?

8 THE COURT: The deed for the property?

9 MS. POSIGIAN: Yes.

10 THE COURT: Yes, that was admitted.

11 BY MR. HALPERN, CONT'D:

12 Q Exhibit B it's been admitted. I made a mistake.

13 And would you identify that?

14 A Yes, this is the deed to the property for my Monte Vista
15 home.

16 Q Thank you. And what's the date down at bottom?

17 A April 15, 2003.

18 Q Take you back to October 15th of 2016. And before I do
19 I know you've indicated that on your birthday in 2015
20 your CPL expired. Was that a purposeful decision on
21 your part or negligent?

22 A It was purposeful. My everyday activities are not
23 conducive to carrying a firearm. I drive through
24 multiple counties, I have municipalities as customers,
25 I'm all over the map from Ann Arbor, to Detroit, to

1 Saginaw. It's just not conducive. I stop at multiple
2 places. And there are precautions that you have to take
3 with a firearm so it's not practical for me to have one
4 in the first place. The main need was, specifically,
5 for my safety when I'm at the properties that I manage.
6 I've had well over 30 break-ins to my rental properties.

7 Q Did you report those break-ins to the Second Precinct?

8 A I call in the Second Precinct a lot.

9 Q Why?

10 A Because I want a record that there are break-ins. Most
11 of the time I want an officer to arrive. I've been at
12 the house before where I've had people inside the home
13 so I called the Second Precinct a lot. And sometimes I
14 file a police report. So, you know, I sustain a great
15 deal of larceny, some home invasion and, you know, times
16 of which I just, you know, needed someone there.

17 Q At the point in time that your CPL expired did you make
18 any kind of determination with respect to open carry?

19 A Yes. Primarily, I mean, that was my rationale. The
20 thing is, is as long as I'm transporting the firearm
21 safely with the ammunition separate from the firearm in
22 a case, which I'm not inclined to carry the firearm in
23 the first place because it just seems to be more of a
24 hassle than anything, but in times that I would need it
25 I knew I could be open carry.

1 Q What, if any, purpose or advantage, however you want to
2 put it, was it to open carry when you were working on
3 the Monte Vista address?

4 MS. POSIGIAN: I'll object to relevance.

5 THE COURT: I'll allow it. Overruled.

6 Go ahead and answer.

7 THE WITNESS: Well, mainly for protection. As
8 I said -- It's not the safest area. You know, I'm
9 saying that nicely. And that would be the only reason I
10 would need, you know, my firearm on that property.

11 BY MR. HALPERN, CONT'D:

12 Q You heard some testimony at least by one of the officers
13 maybe both I'm not sure. But, anyway, you've heard
14 testimony that there was no address on the house; is
15 that true, or accurate, or not?

16 MS. POSIGIAN: Objection. It's asking the
17 witness to comment on another witness's testimony.

18 THE COURT: I'll sustain the objection. But,
19 Mr. Halpern, could you just re-ask the question? I
20 think your address is about the address on the house.

21 BY MR. HALPERN, CONT'D:

22 Q Did you have an address on the house?

23 A Yes, I've had an address on that house at least six
24 years.

25 I'd like --

1 MS. POSIGIAN: Objection --

2 THE COURT: Mr. Kabongo, just wait until the
3 next question, okay?

4 BY MR. HALPERN, CONT'D:

5 Q What you see up on the board at this time is it
6 relatively accurate or inaccurate in a way that you'd
7 want to correct the showing of the two homes, of a
8 truck, a vehicle parked here by a curb, you're vehicle
9 in front, the driveway?

10 A Relatively.

11 Q Thank you.

12 On any occasion -- Well, just backing up for
13 just minute. When you say you reported B&Es on a couple
14 of occasions somebody was inside the house; am I saying
15 that right?

16 A Yes.

17 Q Did the police ever showup?

18 A No.

19 MS. POSIGIAN: Objection as to relevance.

20 THE COURT: I'm going to overrule the
21 objection. But, Mr. Halpern, you are getting a little
22 far afield from the issues in this case.

23 BY MR. HALPERN, CONT'D:

24 Q At any point in time prior to this occasion on the
25 16th -- 15th, sorry, of October of last year did the

1 police ever stop you?

2 A Yes. I was shovelling my snow in the wintertime and two
3 officers in a black car pulled up to the house and asked
4 me what I was doing in the house. And they asked me for
5 my ID. I told them I was shovelling the snow. I gave
6 them my ID. And I happened to have a bill -- I happened
7 to several bills that showed the property address of
8 Monte Vista. And the officer said, okay. And they
9 asked me what I was doing in that neck of the woods.
10 And they heard my dog barking because the house was
11 vacant at the time so I would tend to leave the door dog
12 there and check on him a couple times a day. And the
13 officers pulled off --

14 MS. POSIGIAN: I'm going to object to the
15 narrative at this point in time. This answer has gone
16 far beyond the answer to the question.

17 MR. HALPERN: I'll move on.

18 THE COURT: And I'll sustain the objection.

19 By MR. HALPERN, CONT'D:

20 Q Let's get to the date itself, then. On that date, at
21 some point in time, did you see a black police car and
22 if so where were you, approximately or exactly, and
23 where was that police car, approximately or exactly,
24 WHEN you first saw it?

25 A I was on my front lawn and the car was probably,

1 approximately, between those -- like, the fourth house.

2 Q Here?

3 A Right.

4 Q You had a clear view of that vehicle?

5 MS. POSIGIAN: Objection, leading.

6 THE COURT: Overruled.

7 BY MR. HALPERN, CONT'D:

8 Q Was there anything whatsoever blocking where you were to
9 the point that you first observed the police car?

10 A Nothing until I got closer to my car. You know, the
11 car -- the officers were traveling about 15, 20 miles an
12 hour.

13 Q They were going northbound or --

14 A Yes.

15 Q Did you go to your vehicle?

16 A Yes. I opened the passenger door.

17 Q When you went to your vehicle what was your purpose in
18 going to your vehicle at that point?

19 A Part of my inspection that I was doing along with the
20 furnace that we were repairing I included painting the
21 house and framing in a window. So I grabbed some tools;
22 a hacksaw, a staple gun, a measuring tape, a brush, I
23 think I had a paint tray also.

24 Q And where were these items in your vehicle before you
25 got there? Where were the items inside your vehicle as

1 that the police car had pulled up. Would you put an X
2 where you say you were when the police car pulled up?

3 A When the police car pulled up. I was already at the
4 door the passenger door. So I would have been, based on
5 this picture, out of view.

6 Q So when the police car first pulled up and stopped you
7 were still at the door?

8 A Yes.

9 Q The front passenger door?

10 A Front passenger door.

11 Q When you started to close that door, got your stuff,
12 closed the door and started walking toward your home at
13 what point in time did you hear a police officer call
14 out to you in some way? Where were you at that point?

15 A On the other side of this sidewalk past this tree with
16 closer to that sidewalk that goes to the line. Not the
17 sidewalk but the step that goes to the home. Because I
18 was walking at an angle to go back toward the back of
19 the house.

20 Q Were you somewhere close to these steps?

21 A Almost. Almost there. Maybe, like, three steps away.

22 Q Where the pointer is I've made markings, correct?

23 A Yes.

24 MR. HALPERN: May I publish, your Honor?

25 THE COURT: Certainly.

1 MR. HALPERN: Thank you.

2 BY MR. HALPERN, CONT'D:

3 Q Showing you Exhibit F.

4 MS. POSIGIAN: No objection.

5 THE COURT: It's been admitted.

6 BY MR. HALPERN, CONT'D:

7 Q Exhibit F, do you recognize that photograph and one
8 person is in that photograph; who is that?

9 A Me. I am.

10 Q In relation to when you first saw the police vehicle
11 coming north towards your home and your vehicle was that
12 anywhere near where you were, or was that where you
13 were, or you were closer to the curb?

14 A I was -- Yes, that is approximately where I was in
15 motion.

16 MR. HALPERN: May I publish, your Honor?

17 THE COURT: Certainly.

18 BY MR. HALPERN, CONT'D:

19 Q What reason, if any, would you have for purportedly
20 covering up what was uncovered when you first saw the
21 police vehicle?

22 A I would have no reason --

23 MS. POSIGIAN: Can you be specific with that
24 question, please, your Honor.

25 THE COURT: I'll overrule. I understood the

1 question.

2 THE WITNESS: I have no reason. I was open
3 carry. I can legally open carry.

4 BY MR. HALPERN, CONT'D:

5 Q At any point in time was there any discussion whatsoever
6 between yourself and either or both of those police
7 officers while you were out in front of your home as to
8 open carry; did that subject come up at all or not?

9 A Only after I realized that they were arresting me and on
10 our ride back to the detention center. I, you know, I
11 was really blind sided by them arresting me. It seemed
12 to be a cordial conversation. He did ask for my CPL.
13 But I told him I was open carry all the way to the
14 detention center and they did not respond at all.

15 Q No response?

16 A They only said I seemed like a really nice guy and they
17 felt really bad but because of cameras and everything
18 that's going on, you know, they had to arrest me.

19 Q There was an indication that the next day Detective
20 Barnett attempted to see -- to come and talk to you and
21 you were gone; how did that happen?

22 A Attorney Makerson(PH) got me out on a writ approximately
23 2 o'clock in the morning. He reached out to Officer
24 Barnett several times and he did not get a response is
25 what he told me.

1 MS. POSIGIAN: Well --

2 THE COURT: Ms. Posigian?

3 MS. POSIGIAN: Objection as to hearsay. What
4 an attorney told the defendant that the
5 officer-in-charge may have said or done is hearsay.

6 THE COURT: Not only hearsay it's double
7 hearsay and I'm going to ask the jury disregard the
8 testimony concerning what Mr. Makupson(PH) said to the
9 officer and what the officer said in response on the
10 basis of double hearsay.

11 BY MR. HALPERN, CONT'D:

12 Q And the -- you were arrested around what time in the
13 afternoon?

14 A About 4 o'clock.

15 Q And you didn't get out -- weren't released until the
16 2:00 or 3:00?

17 A Until 2:00. The writ process took several hours.

18 MS. POSIGIAN: Object as to relevance.

19 THE COURT: Yes. This is irrelevant Mr.
20 Halpern. It does not make anything at issue in this
21 case more or less probable.

22 MR. HALPERN: Your witness.

23 CROSS EXAMINATION

24 BY MS. POSIGIAN:

25 Q What's your address on Stansbury?

1 A 17604.

2 Q And that's in the City of Detroit?

3 A Yes, it is.

4 Q How often do you stay there?

5 A Several times a week.

6 Q Several; two, three --

7 A Four, sometimes. I work downtown Detroit so it's not
8 always practical for me to drive from Ann Arbor.

9 Q Okay. So you're in Detroit more than you're in Ann
10 Arbor?

11 A Yes.

12 Q So you gave the Detroit Police Department your Ann Arbor
13 address?

14 A That's my primary address.

15 Q But that's not what actually truly is your primary
16 residence, aright?

17 A As I mentioned during the week I work, I have homes in
18 Detroit --

19 Q You're not answering the question.

20 The question was --

21 MR. HALPERN: Objection, your Honor. This
22 business of the prosecutor telling him he's not
23 answering the question is objectionable.

24 THE COURT: I'm going to overrule the
25 objection. We need to listen to the question that's

1 asked and answer it.

2 MR. HALPERN: I'm saying it's not up to the
3 prosecutor --

4 THE COURT: Mr. Halpern, I've made my ruling
5 and she has -- the witness needs to answer the question
6 that is asked.

7 BY MS. POSIGIAN, CONT'D:

8 Q You indicated that you sleep in Detroit more often than
9 you sleep in Ann Arbor; is that correct?

10 A It varies.

11 Q So how often -- What's the address on Monte Vista again?

12 A 14009.

13 Q And how often do you go over there? Back in October,
14 2016 how often -- how many times that month were you at
15 that location?

16 A By the 15th I probably had been there five or six times.

17 THE COURT: And just so I'm clear that was in
18 the month of October?

19 THE WITNESS: In the month of October.

20 MS. POSIGIAN: And I believe he said prior to
21 the 15th.

22 BY MS. POSIGIAN, CONT'D:

23 Q So you were there every other day, basically, in October
24 2016?

25 A I had an inspection, yes.

1 Q Does that mean you're doing the inspecting or someone
2 else was doing the inspecting?

3 A That means that I received an inspection from the City
4 from the Building Safety Department and there are items
5 that I adhere to.

6 Q Okay. So defense Exhibit D and F I'm going to hand you.
7 When were those photos taken?

8 A Sometime in October -- No, I don't remember.

9 Q Okay. Were they taken after your arrest?

10 A Yes.

11 Q You wanted to recreate what happened that day?

12 A Give counsel an accurate description.

13 Q Of what happened?

14 A Umm hmm.

15 Q And looking at F is that how your truck was parked that
16 day?

17 A Yes.

18 Q And I should say, specifically, I'm talking about wheels
19 to the curb they were right up on that curb?

20 A I do that often.

21 Q Why do you do that?

22 A It's just a habit.

23 Q Well, in Ann Arbor you get a ticket for that, right?

24 A Yes. It's not as expensive as one in Detroit, but,
25 yeah.

1 to the jury's question. It would make it appear to the
2 jury by making that statement in response without my
3 request, in addition to it, as if it's something that's
4 in aspect of the case that they should not consider
5 since it wasn't admitted into evidence. And that's the
6 reason I asked the Court to indicate to them that it was
7 admitted solely for the purpose of impeachment. But
8 even if the Court wasn't going to use that word at least
9 say you may consider it for other purposes, otherwise,
10 the Court's instruction appears to tell the jury to
11 essentially demean or disregard this critical aspect of
12 impeachment. And I object --

13 THE COURT: Thank you. Objection is noted.

14 (Off the record)

15 (Back on the record at 12:34 p.m.)

16 THE CLERK: Case number 16-10745-01-FH.

17 People versus Jacques Kabongo.

18 Jury trial verdict.

19 MS. POSIGIAN: Anna Posigian on behalf of the
20 People.

21 MR. HALPERN: Sheldon Halpern on behalf of Mr.
22 Kabongo.

23 THE COURT: Good afternoon counselors, and Mr.
24 Kabongo, and to the officer-in-charge.

25 I just received a note saying they have

1 reached an unanimous verdict. Is there anything that we
2 need to take up before I bring the jury out to read the
3 verdict?

4 MS. POSIGIAN: No thank you, your Honor.

5 MR. HALPERN: No, your Honor.

6 THE COURT: Okay. Thank you.

7 Let's bring the jury out.

8 (Jurors seated in jury box at 12:35 p.m.)

9 Counselors, are our deliberating jurors all
10 present?

11 MS. POSIGIAN: Yes, your Honor.

12 MR. HALPERN: Yes, your Honor.

13 THE COURT: All right, let's have a seat.

14 THE CLERK: Will the foreperson please stand
15 and state your seat number?

16 JUROR NUMBER TWO: I am juror number two.

17 THE CLERK: How do you find the defendant,
18 Jacques Jean Kabongo as to count one carrying concealed
19 weapon?

20 JUROR NUMBER TWO: The jury finds the
21 defendant guilty of carrying a concealed weapon.

22 THE CLERK: Will the jury please stand?

23 Raise your right hand.

24 Do you say upon your oath, foreperson, all
25 members of the jury that you find the defendant,

1 a nightmare everyday thinking that, you know, it was a
2 dream but I was in fact found guilty. So the charge
3 was stressful enough and the guilty conviction has been
4 exacerbating.

5 THE COURT: It's got to be very hurtful for
6 you, Mr. Kabongo, and I do understand that.

7 Is there anything else you would like to say?

8 THE DEFENDANT: Thank you for your
9 consideration.

10 THE COURT: Thank you, Mr. Kabongo.

11 I'm going to adopt the recommendation of the
12 presentence report with some modifications. I'm going
13 to sentence Mr. Kabongo to one year of nonreporting
14 probation.

15 You have to do the 50 hours of community
16 service.

17 And, counselors, I don't see the need to
18 impose condition number two. Mr. Kabongo is a stable
19 member of the community.

20 MS. POSIGIAN: That's fine.

21 THE COURT: I don't think we're going to lose
22 him, in other words.

23 MS. POSIGIAN: That's fine.

24 THE COURT: So I'm going to not impose
25 condition number two.