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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CRIMINAL PART
BERGEN COUNTY
DOCKET NO.: 09-08-1485
A.D. # A-1580-11T4

STATE OF NEW JERSEY,)
)
)
 Plaintiff,) TRANSCRIPT
) OF
 vs.) TESTIMONY
)
 STEPHEN SCHARF,)
)
)
 Defendant.)

Place: Bergen County Courthouse
10 Main Street
Hackensack, NJ 07601

Date: April 5, 2011

BEFORE:

HONORABLE PATRICK ROMA, J.S.C.

TRANSCRIPT ORDERED BY:

HELEN GODBY, ESQ., (Assistant Deputy Public
Defender)

APPEARANCES:

WAYNE MELLO, ESQ., (Assistant Prosecutor)
Attorney for the State

EDWARD BILINKAS, ESQ.
SARA MCARDOE, ESQ.
JASON ALTERBAUM, ESQ.
Attorney's for Defendant

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KING TRANSCRIPTION SERVICES
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Audio Recorded
Recording Opr: Diane Gundlah

1 THE COURT: Good morning.

2 MR. BILINKAS: Morning, Judge.

3 MR. MELLO: Good morning, Judge.

4 THE COURT: Please be seated. Okay.

5 MR. MELLO: Good morning, Your Honor.

6 THE COURT: Good morning. Are we ready to
7 proceed? Do we have to take care of any matters before
8 starting?

9 MR. MELLO: No, sir. In the matter of State
10 of New Jersey v. Stephen Scharf the State is ready to
11 proceed with the Miranda hearing. We have four
12 witnesses scheduled for you today. I have advised
13 counsel of the same. They will be in order, Paul
14 Abbott, Walter Siri, S-I-R-I.

15 THE COURT: Okay. We'll handle the Miranda
16 testimonial motion. Who is your first witness?

17 MR. MELLO: Yes, sir. The first witness will
18 be Paul Abbott. And I do have -- for counsels. Ronald
19 Karnick will be third and the fourth witness will be
20 James Lynam.

21 THE COURT: All right.

22 MR. MELLO: And that should take us
23 substantially --

24 THE COURT: All right.

25 MR. MELLO: Through the events -- today we

1 will have several witnesses tomorrow -- and we expect
2 to conclude the testimony -- tomorrow.

3 THE COURT: Okay.

4 MR. MELLO: I understand that Ms. McArdoe has
5 a personal matter to attend to this afternoon and of
6 course whatever we need to do to accommodate that.

7 THE COURT: Well, let's try to do that with
8 an eye towards getting as much done this morning.

9 MR. MELLO: Yes, sir.

10 MR. BILINKAS: Sir, just -- just for the
11 record and I don't see any of the Officer's in -- in
12 court that they intend to call for this hearing but, I
13 would request that sequestration --

14 MR. MELLO: -- officer is here.

15 MR. BILINKAS: Right. Other than the one
16 testifying.

17 THE COURT: All right.

18 MR. MELLO: -- be the only one present. All
19 other testifying witnesses will be kept outside. And
20 Judge with respect to the first witnesses, there are a
21 number of exhibits that may during the course of
22 examination and/or cross examination be identified by
23 any perspective witness and in an effort to make things
24 a bit easier for the Court, Mr. Bilinkas and I have
25 reviewed those exhibits and that should expedite

1 matters a bit.

2 MR. BILINKAS: Correct.

3 THE COURT: Just one question.

4 MR. MELLO: Sir?

5 THE COURT: Before proceeding with the
6 testimonial motion, there was a motion to dismiss in
7 reading through this paperwork. Was that withdrawn?

8 MR. BILINKAS: No.

9 THE COURT: Okay. Well, my question is
10 what's the status of that motion?

11 MR. MELLO: The motion to dismiss? Its been
12 briefed by both parties, we'll litigate that motion
13 following the testimonial motion.

14 THE COURT: Okay.

15 MR. MELLO: -- ready sir we'll proceed.

16 THE COURT: Ready.

17 MR. MELLO: Thank you. The State calls Paul
18 Abbott.

19 THE COURT: Please step up here, face the
20 court clerk.

21 COURT CLERK: Raise your right hand.

22 P A U L A B B O T T, WITNESS, SWORN.

23 COURT CLERK: State your name for the record.

24 THE WITNESS: Paul Abbott. A-B-B-O-T-T.

25 THE COURT: All right. Please have a seat.

1 You may begin.

2 DIRECT EXAMINATION BY MR. MELLO:

3 Q Thank you, sir. Sir, before we begin the
4 questioning proper, I'm going to ask you to concentrate
5 on the following. Would you please listen carefully to
6 any question asked by myself or counsel for the
7 defendant and try to keep your voice up so that both
8 counsel and Judge Roma can clearly hear your answers to
9 any question, all right?

10 A Yes, sir.

11 Q And if you would I believe that microphone is
12 on so perhaps you can kind of direct your voice toward
13 that microphone so it will be amplified. Now, if you
14 would, would you state your background in law
15 enforcement?

16 A I am currently a retired sergeant in the Palisades
17 Interstate Parkway Police.

18 Q Retired as of what date, sir?

19 A Last Friday, April 1st.

20 Q Congratulations on making it.

21 A Thank you.

22 Q If you would, and as much as it's the
23 beginning of your retirement, if you would go back in
24 time with us a bit and just share with us your
25 experience as a law enforcement officer.

1 A I've been with the Parkway since 1986. I had a
2 short time before that I was a special volunteer
3 officer in my town in -- New Jersey. I was -- Police
4 Commissioner for a year when I was on the council,
5 during that time -- two years, excuse me; during that
6 time on the council, which was just overseeing that
7 really -- serving in a Police capacity. But, my time
8 -- the Parkway I've been largely involved in law
9 enforcement through traffic, park violations, crimes,
10 that type of things. I became a Sergeant in 1993 and
11 I've been a Sergeant since then.

12 Q Now, what we are about to discuss is an
13 investigation into the death of a young woman named,
14 Jody Ann Scharf. And what I'm going to do is
15 concentrate my questions on your involvement in the
16 investigation of that particular death. Understood?

17 A Yes, sir.

18 Q All right. I'm going to direct your
19 attention now specifically to a date in the past and
20 that date would be September the 20, 1992; understood?

21 A Yes, sir.

22 Q If you would, can you tell us first were you
23 employed as a Police Officer with the Palisade
24 Interstate Parkway Police on that date?

25 A Yes, I was sir.

1 Q Do you recall if in your capacity as a Police
2 Officer with the Palisade Interstate Park Police you
3 worked a shift on that particular date?

4 A Yes, I did.

5 Q Can you tell us first, the shift that you
6 worked on that date, September 20, 1992?

7 A Yes. I was working on a four to midnight tour,
8 the afternoon, evening hours.

9 Q Would you tell us first the general nature of
10 your assignment during that tour of duty; four to
11 midnight, September 20, 1992?

12 A Yes. I was assigned to patrol duties in a marked
13 unit in a uniform. We're assigned to a -- what we call
14 -- refer to as districts at that time that rotated on a
15 daily basis. It included checking areas, checking the
16 highway, checking the lookout areas, areas that would
17 be closed, there were some areas that had to be closed
18 at certain hours, general patrol and clearing people
19 from closed areas when it was closing time.

20 Q All right. Now, I'm going to concentrate on
21 about mid point in your shift which would be military
22 time, 2000 hours, civilian time, our time, about eight
23 p.m., all right?

24 A Yes.

25 Q Now, first of all can you tell us at about

1 eight p.m. on the 20th of September 1992, can you tell
2 us if at that time it was dark?

3
4 A Yes, it was dark.

5 Q Can you tell us if the weather was clear or
6 not?

7 A I think it was a pretty clear evening with
8 moderate temperatures.

9 Q Okay. Can you estimate the temperature that
10 you recall at about eight p.m. or thereabouts on the
11 20th of September 1992?

12 A I'd say it was the low 60's.

13 Q All right.

14 A You know, very tolerable weather.

15 Q Fair enough. Now, I'm going to direct your
16 attention to a very specific moment in time, and that
17 would be 2008, eight minutes passed eight on the 20th
18 of September 1992, all right?

19 A Yes, sir.

20 Q That is going to be the beginning of the
21 focus of my questions. In that regard, I'm going to
22 ask you with respect to your participation in the
23 events that we describe, that is the death of Jody Ann
24 Scharf, on the 20th of September 1992. Did you prepare
25 a report?

A Yes, I did.

1 MR. MELLO: For the record to counsel.

2 MR. BILINKAS: No objection.

3 MR. MELLO: You want me to show you each one?

4 MR. BILINKAS: No.

5 MR. MELLO: Okay.

6 MR. BILINKAS: If you can just identify --

7 MR. MELLO: Sure. Sure.

8 Q Just take a moment to look at that report.

9 Do you recognize that report?

10 A Yes, this appears to be my report.

11 Q And when was that report prepared?

12 A That was prepared following this incident which
13 initiated on September 20th and this report would have
14 been completed on the 24th -- 21st, sorry, contiguous
15 with my tour of duty.

16 Q So, that would be just -- did you complete
17 that report?

18 A Yes, it was after midnight of that night.

19 Q And that would be just after midnight when
20 the report was completed?

21 A Yes. Shortly thereafter.

22 Q All right. The date is 9/2/92 on the report;
23 correct?

24 A Correct.

25 Q And it describes your activities on that

1 date.

2 A Beginning at that time, yes.

3 Q All right. Now, again specifically directing
4 your attention to 2008, eight minutes passed eight on
5 the 20th of September 1992, did you receive a specific
6 assignment?

7 A Yes, I did.

8 Q What was the nature of that assignment?

9 A I was dispatched to the scene of a reported cliff
10 case.

11 MR. BILINKAS: Judge, if I may? It appears
12 that the witness is -- is reading from his -- report.
13 I think that's --

14 A I'm sorry. Yea --.

15 MR. BILINKAS: I don't have any problem with
16 him looking at his report. I would just like the
17 record to reflect when he does look at the report to
18 refresh his recollection.

19 THE COURT: Okay. Sergeant if you would, if
20 you need to look at the report, please let us know.

21 A Okay.

22 THE COURT: Otherwise, if you would just turn
23 it over.

24 A Hmm mmm.

25 THE COURT: But, if at any time you need to

1 refer to the report let us know and you may do so.

2 A Okay, thank you.

3 Q Thank you, sir. Would you please continue
4 your answer. Did you receive a specific assignment on
5 eight minutes past eight on September 20, 1992?

6 A Yes, I was dispatched to report to the Rockefeller
7 Look Out following a report of a woman falling from the
8 cliff or, a cliff case.

9 Q Now, I believe you testified at the time you
10 were in uniform?

11 A Yes, I was.

12 Q And you were on patrol?

13 A Yes.

14 Q You were in a marked patrol unit?

15 A Yes. J19.

16 Q Now, upon receiving that dispatch did you
17 immediately proceed to the Rockefeller Look Out?

18 A Yes, I did.

19 Q Can you tell us approximately how much time
20 it took you to arrive at Rockefeller Look Out?

21 A I'd say approximately four minutes.

22 Q Upon your arrival at that location, can you
23 tell us what if anything occurred?

24 A As I entered the look out area, I was driving
25 toward the center of the lot; right after I entered the

1 look out area, the parking lot of it, as I was going
2 further back, a white male was standing in the middle
3 of the lot walking slightly -- walking slowly toward me
4 with his arms out in the middle of the lot.

5 Q At the time you arrived at the look out, was
6 it dark?

7 A Yes, it was dark.

8 Q Are there any artificial lights in that look
9 out area?

10 A No, sir there's not.

11 Q When you arrived at the location did you have
12 your emergency lights on?

13 A Yes, sir.

14 Q Upon arriving at that location, you now see
15 the white male that you described?

16 A Yes.

17 Q Can you tell us the first thing in your
18 memory that you recall seeing about him?

19 A He was stepping slowly, had his arms kind of
20 raised slightly and out to the sides, he was right in
21 the headlights of the vehicle as I came down, that was
22 the -- the first thing I saw.

23 Q Did you see anything in his hands at that
24 time?

25 A No, sir. There's nothing in his hands. They were

1 just --

2 Q Can you tell us -- I'm sorry.

3 A That's okay.

4 Q Finish your answer.

5 A I was just saying that his hands were just
6 extended out like this and there was nothing in them.

7 Q So, fair to say that you would characterize
8 his -- his action as "flagging you down"? Getting your
9 attention?

10 A Yes. Yes.

11 Q Now, what's the next thing that happened at
12 this point?

13 A I exited from the -- I stopped, I exited from the
14 patrol car and started walking toward him.

15 Q And? Please continue.

16 A At that point, Officer Tameo (phonetic) pulled in
17 immediately behind me in his patrol car. And I was
18 approaching Mr. Scharf and he stated that his wife fell
19 from the cliff. He said, my wife fell from the cliff.

20 Q Now, you may have said this but, give us the
21 sense of where you are in the look out when you first
22 encounter that male who identifies himself as Mr.
23 Scharf.

24 A Okay. There's a binocular area -- an area with
25 binoculars to my right, it's right near the beginning

1 of the look out as you come in from -- going south to
2 north. It's in the -- in the first part of it. I'd
3 say the first third to quarter of -- of the length of
4 the look out lot.

5 Q So, would it be fair to say that you entered
6 the look out area from the parkway -- the Palisade
7 Interstate Parkway at its south entrance traversing in
8 a northerly direction?

9 A That's correct. Entered from the south going
10 north and encountered Mr. Scharf approximately even
11 with the binocular area.

12 Q Now, at that time Mr. Scharf had advised you
13 that his wife had fallen from the cliffs?

14 A Yes. He's -- hmm mmm.

15 Q And he identified himself by name? That
16 would be Stephen Scharf.

17 A I don't -- I don't recall if I got his name
18 immediately at that point or if it was after we went up
19 closer to where the actual incident occurred.

20 Q All right at some point at that look out in
21 those first moments, you do get his name?

22 A Yes.

23 Q Do you see him in court?

24 A Yes, I do.

25 Q Would you point him out, please?

1 A The gentlemen in the orange jumpsuit at the table
2 by the wall there.

3 MR. BILINKAS: Stipulate that he's identified
4 my client for the record.

5 MR. MELLO: Thank you.

6 THE COURT: Defendant will be identified by
7 the record.

8 Q All right. Now, I'm going to direct your
9 attention to that specific moment in time when Mr.
10 Scharf has advised you that his wife has fallen from
11 the cliff; correct?

12 A Yes.

13 Q Can you tell us his exact words as you recall
14 them to be?

15 A His exact words were, my wife fell from the cliff.

16 Q Did you note those words in your report?

17 A Yes, I did.

18 Q Okay. Would you turn to your report and tell
19 us if you, in referring to those words in your report
20 put those words in quotation marks?

21 A Yes, I did. I have them in quotations.

22 Q And if you would, would you read the words
23 that you have in quotation marks?

24 A Okay. Words in quotations are, my wife fell off
25 the cliff.

1 Q Now, you refer to Patrolmen Tameo arriving
2 just after you; correct?

3 A Yes. He was immediately behind me when I pulled
4 in the look out.

5 Q And Mr. Scharf has now advised you, "my wife
6 fell off the cliff"?

7 A Yes, sir.

8 Q What is the next thing that occurs following
9 that statement?

10 A I ask where? He indicated it was at the north end
11 of the -- the north end of the look out, beyond the
12 parking lot and I had him get in my car so we could
13 drive down there.

14 Q Now, obviously he has reported a tragedy.
15 That his wife has fallen from the cliffs. You have to
16 answer.

17 A Yes.

18 Q Are you familiar with the cliffs at that
19 area?

20 A Yes.

21 Q Would it be fair to say that it's a dangerous
22 area?

23 A Yes, it is.

24 Q To be walking about.

25 A Hmm mmm.

- 1 Q As a matter of fact, is that area fenced off?
- 2 A Yes, it is.
- 3 Q And is in fact in that area, are there signs
4 posted, warning, persons not to begin to traverse the
5 cliff area beyond any fenced off areas?
- 6 A Yes, there were. There's signs also indicating
7 the trails close at dusk, which was earlier.
- 8 Q Now, obviously a tragedy had occurred so
9 speed is important; correct?
- 10 A Absolutely.
- 11 Q You now put him in or, ask him to take a seat
12 in your patrol vehicle?
- 13 A Yes, I did.
- 14 Q Where would he be seated?
- 15 A In the back in the patrol car, because the -- the
16 front has -- has equipment in there.
- 17 Q Now, at that time tell us where you drove to.
- 18 A Drove to the north end of the Rockefeller Look
19 Out, adjacent to where the path went down to -- toward
20 the wooded area, toward the -- the cliff area that had
21 been indicated by Mr. Scharf as being the direction.
- 22 Q Did Patrolmen Tameo follow you?
- 23 A Yes, he did.
- 24 Q Now, I'd like you to tell us what occurs at
25 that point when you and Mr. Scharf and Officer Tameo

1 are at the north end of the lot.

2 A Okay. I exited the vehicle, I open the door so
3 Mr. Scharf could exit the vehicle. Officer Tameo came
4 up from his vehicle and the three of us started down
5 the path so Mr. Scharf could explain to us where --
6 where this occurred. You know, in a more exact way,
7 more exact place.

8 Q Now, you testified that it already was dark?

9 A Yes, it was.

10 Q You now enter a wooded area?

11 A Correct.

12 Q Would it be fair to describe it as pitch dark
13 in that particular area of the cliffs at that time?

14 A Yes, it's very dark.

15 Q Now, this would be September 20, 1992?

16 A Yes.

17 Q Fair to say that foliage was full at that
18 time?

19 A Yes, it was.

20 Q Did you use any artificial light to walk into
21 that wooded area?

22 A Yes, sir. I had a three cell flashlight and
23 Officer Tameo also had a flashlight.

24 Q As you entered that wooded area, do you
25 recall who entered the area first?

1 A I led down -- down the trail, I think it was Mr.
2 Scharf was behind me and Officer Tameo behind him.

3 Q Did you see any artificial light in Mr.
4 Scharf's hands at that time?

5 A No.

6 Q But, you and Officer Tameo both had
7 artificial light to illumine your path?

8 A Yes, we did.

9 Q At this time, and the time would be that
10 point at which Mr. Scharf has told you his wife has
11 fallen from the cliff and he has shown you the general
12 area where she has fallen and you are about to enter
13 the woods at that area; understood the reference?

14 A Okay. I understand.

15 Q Can you tell us his demeanor at that time as
16 you observed it to be?

17 A He seemed quiet, in control of himself, he just
18 kind of walked along and indicated further up the --
19 the trail toward the point where he had been.

20 Q In describing him as in control of himself,
21 was he at any time emotional or histrionic at all?

22 A No. No. Not at all.

23 Q Was he at any time animated at all?

24 A No. He seemed surprisingly calm.

25 Q Now, as you traverse through that wooded

1 area, can you tell us what you will ultimately come to?

2 A It's a brush area covered with leaves et cetera
3 and followed the path, we came to the green restraining
4 fence and he indicated right beyond there -- point at
5 the cliffs where he said he and his wife had been.

6 Q Okay. Did he tell you how he and his wife
7 got to the edge of the cliff?

8 A Yes. I asked him if they had gone through the
9 fence? And he said yes, he had done that.

10 Q Now, if you would can you describe for the
11 Court the fence that exists at that point, which
12 restrains people from going beyond?

13 A Okay. It's like a demarcation fence. It's made
14 of vinyl strands, I think three or four -- I think
15 three strands that run horizontally, it's green in
16 color and fastens with posts periodically to hold it.
17 It's more of a restraining type fence to keep people
18 back from the edge of the cliffs.

19 Q Now, with respect to that fence, Mr. Scharf
20 indicated that he and his wife had somehow climbed
21 through that fence to go to the edge of the cliffs?

22 A Yes, they did. Or he did.

23 Q And did he show you the point at which he and
24 his wife arrived at the edge of the cliff?

25 A Yes. He -- he pointed an indicated an area.

1 Q Can you describe that area for the court?

2 A Okay. It's an area beyond the restraining fence.
3 It's right at the edge of the cliff. Its more or less
4 a flat rock which extends out, drops slightly down; I'm
5 indicating maybe eight inches with my hands here,
6 extends out a little bit more and then is rather sheer
7 on the outside edge of it. It's flat hard granite
8 rock, I guess.

9 Q At that point, would you say that is a
10 dangerous point and location on the cliff edge?

11 A Yes, I would say so.

12 Q And from that point it's a sheer drop down --
13 considerable distance; correct?

14 A Yes, it is.

15 Q Now, at this time he has shown you where he
16 climbed through the fence and where he and his wife
17 went to the edge of the cliff --

18 A Yes.

19 Q What happens next?

20 A Officer Tameo and myself had gone through the
21 fence, approached near the edge of the cliff, began
22 shouting to see if we got any response from down below,
23 from his wife --

24 Q Did you permit Mr. Scharf to go beyond the
25 restraining fence?

1 A No. He stayed behind the fence. We kept him on
2 the inside -- the look out side of the fence and just
3 Officer Tameo and myself had -- had gone beyond that.

4 Q And why was he kept at that particular
5 location behind the fence?

6 A Well, because it is a dangerous area and just not
7 -- just safer for him to be back there and not involved
8 right at the cliff. You know,

9 Q --

10 A We didn't know if he was going to become
11 disruptive, excited at some point. He didn't but, we
12 didn't know that. So, it was just safer to keep him
13 back.

14 Q All right. So, in short for his safety he's
15 kept behind the --?

16 A Yes. Hmm mmm.

17 Q And he obeyed your instruction?

18 A Yea. He never questioned.

19 Q Now, you call over the cliff; is that what
20 you said?

21 A Yes. We -- we hollered --

22 Q What -- what are you calling out?

23 A Well, first we were just yelling to see if we got
24 anybody and then we were calling her by name, by -- by
25 the name Jody, which we were told is her first name.

1 Q And did you receive any response?

2 A No, we did not.

3 Q And that particular point in time, what is
4 the next thing that occurs? That now receive no
5 response after calling out, what happens next?

6 A Okay. I radioed headquarters that we had located
7 the -- the spot, northbound on the trail from the north
8 end of the look out. Officer Tameo took -- walked with
9 Mr. Scharf back to the look out, back to his vehicle
10 and I stayed at -- at the -- the point Mr. Scharf had
11 pointed out to us.

12 Q Now, you have at this point informed
13 headquarters of the situation; correct?

14 A Yes.

15 Q Mr. Scharf is taken back to the lot by
16 Officer Tameo?

17 A Yes.

18 Q And is it fair to say you were awaiting
19 arrival of other Police, law enforcement rescue
20 personnel?

21 A Yes.

22 Q At that time, following that notification to
23 headquarters, do you make any observations on the cliff
24 edge?

25 A Yes, I was trying to shine my light down to see if

1 I could see anything, would still continually yell
2 periodically and I observed a pocketbook on a ledge
3 below the cliff.

4 Q Can you tell us first, you saw that by --

5 A By -- I was down with my flashlight shining it.

6 Q There's a woman's pocketbook on the ledge --

7 A Yes.

8 Q Below?

9 A Hmm mmm.

10 Q Can you estimate the distance from the edge
11 of the cliff to the ledge where you see the woman's
12 pocketbook?

13 A I felt it was about eight feet.

14 Q Now, with respect to that particular item;
15 the woman's pocketbook, did you recover it at that
16 time?

17 A No, I did not.

18 Q Do other law enforcement personnel arrive at
19 Rockefeller Look Out?

20 A Yes, they did.

21 Q Do you recall Sergeant Nelson Pagan, P-A-G-A-
22 N arriving at that location?

23 A Yes. He came down to where I was on the -- at the
24 cliffs.

25 Q Did emergency units other than Palisade

1 Interstate Parkway Police begin to arrive at the scene?

2 A Yes. There were members of the Fire Department
3 from Englewood Cliffs and yes, there were personnel
4 from there and -- and the equipment.

5 Q Now, it would be fair to say at this time
6 what is beginning is an attempt to rescue the woman
7 that has fallen from the cliffs?

8 A Yes.

9 Q In that regard, does Sergeant Pagan begin a
10 rescue attempt?

11 A Yes, he did.

12 Q Does he begin it with any other law
13 enforcement person?

14 A With Mike or Michael Cioffi who is both a member
15 of the Englewood Cliffs Fire Department and Police
16 Department.

17 Q And would that be Michael Cioffi who is now
18 the Chief of Police of Englewood Cliffs?

19 A That is the same.

20 Q Same person. Now, as Pagan and Cioffi begin
21 that rescue attempt, do they begin that attempt by
22 means of repelling from that point that Mr. Scharf
23 indicated to you his wife had fallen?

24 A Yes.

25 Q With respect to the woman's pocketbook that

1 you testified you saw on a ledge about eight feet or so
2 below the cliff edge; was that item recovered?

3 A Yes. Sergeant Pagan recovered that and tossed it
4 up to me.

5 Q Did you secure that pocketbook at that time?

6 A Yes, I did.

7 Q Did you ultimately turn that item over to any
8 other Police Officer?

9 A Yes, I did. I turned it over to Detective
10 Karnick, Ronald Karnick of our department.

11 Q Now, would it be fair to say that at this
12 particular moment in time when Officer's Pagan and
13 Cioffi have begun to repel down the cliff in an attempt
14 to rescue Jody Scharf, that you remain at the cliff
15 edge and assist in terms of the rescue -- operation
16 that's begun?

17 A Yes. I tried to assist with the lights and
18 anything I could help with and also maintain
19 communication to our headquarters. When they are
20 repelling they have portable radios and due to the
21 nature of the cliffs they are not always the most
22 reliable -- there are some areas where it's very
23 difficult to understand the transmissions if they go
24 through at all. So, by being at the top of the cliff I
25 could relay any communications from Sergeant Pagan to

1 headquarters and back.

2 Q Does there come a point in time that you
3 leave the cliff edge and return to the parking lot of
4 Rockefeller Look Out?

5 A Yes, there was. Hmm mmm. Yes. I believe that
6 was about, you could say 12:30 our time or 0030 hours,
7 I believe I returned to the lot when the bulk of the
8 rescue work -- attempt was completed at the top of the
9 cliff.

10 Q Well, while you're on the cliff edge --

11 A Hmm mmm. Okay.

12 Q Do you become aware that the rescue attempt
13 now has become a recovery? Which is to say the
14 recovery of the dead body of Jody Scharf, the wife of
15 Mr. Stephen Scharf?

16 A Yes, I did become aware of that.

17 Q And are you referring now to the approximate
18 time when that recovery has been completed and that
19 body has been pronounced by medical personnel as being
20 deceased?

21 A Yes.

22 Q So, after all of that activity is the point
23 at which you return to the lot?

24 A That -- that's when I returned to the lot.

25 Q When you return to the lot, tell us what

1 occurs there?

2 A Returned, I saw my patrol car, there was one other
3 civilian vehicle or, non emergency vehicle, non Police
4 vehicle in the lot, I called it -- the plate into
5 headquarters just to verify and the car did belong to
6 Mr. Scharf and at that time I completed a -- what we
7 called an abandoned vehicle sheet, which is routine for
8 us. And completed as much information as I had --

9 Q All right.

10 A You know, for that at that time and --

11 Q Now, let me ask you this you see a car?

12 A Yes.

13 Q Is it -- it's not a Police or emergency
14 vehicle?

15 A Correct.

16 Q What is it in fact a white Taurus?

17 A Yes, it was.

18 Q Ford Taurus? You radio the plate information
19 to headquarters, you're advised that the car is
20 registered to the Scharf family?

21 A Right.

22 Q Now, at that point it's known to you but, you
23 also fill out an abandoned vehicle report?

24 A Right. I started --

25 Q And that report, you did not consider that

1 vehicle to be abandoned in the sense of Mr. Scharf
2 abandoned any ownership or control over it; correct?

3 A That is correct. I should have explained a little
4 bit further --

5 Q Yea. So, tell us why you'd fill out that
6 report?

7 A Okay. This -- this is a form that we document any
8 unattended vehicle which is left for a period of time
9 or in an area which is restricted or closed at that --
10 at that time. It allows us to document it so if
11 necessary it remains for our shift and -- and the
12 following shifts, so they're aware the cars been
13 checked. It includes whether there's damage on the
14 vehicle or not, whether the vehicle is locked or not,
15 if you spoke to the owner, if he was informed of a --
16 we have a policy -- after 24 hours the vehicle will be
17 towed. That gives you an opportunity to specify if an
18 arrest -- if it was involved in an arrest of some type
19 where it may be left because -- the person was
20 arrested. It denotes whether doors are locked or
21 unlocked, which of course I had to look to -- to find
22 that out. Anything significant or noteworthy about the
23 vehicle.

24 Q Now, at this point in time there's certainly
25 -- there's no arrest; correct?

1 A No, there was not.

2 Q Now, as you were outside the car, did you
3 make any observations of the interior of the car?

4 A Yes, I did. I noted that there was, what appeared
5 to be an empty wine cooler on the rear floor and a
6 plastic cooler type container on the seat.

7 Q That was a -- an empty wine -- wine --

8 A Wine cooler bottle --

9 Q Bottle?

10 A Right. Hmm mmm. What appeared to be.

11 Q That's on the floor?

12 A Yes. Hmm mmm.

13 Q And you saw a cooler or, that which you
14 described as a cooler on the rear seat?

15 A Yea. One of those plastic coolers that people --

16 Q Okay.

17 A Very often carry drinks in.

18 Q Now, did you receive any instructions at that
19 time with respect to this car?

20 A I received -- I -- I was told to stay there and
21 secure the vehicle, watch the vehicle.

22 Q And did you do so?

23 A Yes, I did.

24 Q Can you tell us approximately what time you
25 were relieved on scene?

1 A I was -- well, I was relieved at 12:30 and I
2 returned at about 10 of one, about a twenty minute
3 period I was relieved for. And then I believe
4 Detective -- Detective Karnick came down and relieved
5 me at two o'clock in the morning.

6 Q And did you note those times in your report,
7 sir?

8 A Yes, I did.

9 Q And when Detective Karnick arrives, before
10 you are relieved of duty by Detective Karnick do you
11 see Detective Karnick do anything with respect to the
12 car?

13 A Yes. He entered the vehicle and removed several
14 items.

15 Q And it is then that you are released from the
16 scene?

17 A Yes. Hmm mmm.

18 Q And do you then go back to headquarters?

19 A Yes, I do.

20 Q And is that when you begin to prepare your
21 report?

22 A Yes, sir.

23 Q Now, with respect to the motor vehicle
24 information that you receive, does your report note the
25 address of Stephen Scharf?

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A Yes, it does.

Q Would you please tell us?

A It was -- well, I'll give it to you specifically.

Q Give us the specifics.

A 27 Knolo Hill Road, that's K-N-O-L-O Hill Road in Hacketstown, New Jersey.

Q You find that that is now Knob Hill Road? Knob Hill?

A Is it Knob Hill? I have it as Knolo here. I'm not aware of -- that that was incorrect. The typewriter I used was old even back in 1992. It made typos then, too.

Q Okay. And during the course of your involvement in this investigation, were you made of any -- made aware of any witnesses other than Mr. Scharf to the fall of Mrs. Scharf from the cliff?

A No. Nobody came forward from the time I initially entered the look out and was stopped in front of the binocular area; there were people there, there were cars there, nobody approached me. When I went down to the -- when we drove to the far end of the lot, nobody was standing there, nobody approached me, nobody was with Mr. Scharf at -- at the time he was a lone individual. There was just -- nobody seemed to be -- there were no witnesses that came forward as having ay

1 knowledge.

2 Q But, there were a number of cars in the lot
3 when you arrived?

4 A Yes, there was. It's an area where people
5 congregate, especially on nights -- you know, pleasant
6 evenings weather wise.

7 MR. MELLO: May I just have one moment,
8 Judge?

9 THE COURT: You may.

10 MR. MELLO: I think I'm done Mr. Bilinkas.

11 THE COURT: Cross examination?

12 MR. MELLO: Oh, I'm sorry. If -- if I might?

13 Q Sir, obviously you have identified Mr. Scharf
14 as the person that you met that night -- that his wife
15 had fallen from the cliff, and it is obviously a good
16 deal of time since 1992. I'm going to show you a
17 photograph that is marked S2 -- well, actually two
18 photographs to be clear for the record. Counsel, one
19 is a back view and that would be S3 of the same person.
20 But, I want you to focus on S2. Is that the person
21 that you've identified as Mr. Scharf?

22 A Yes.

23 Q And that's a photograph of Mr. Scharf taken
24 on that date?

25 A Yes. Hmm mmm.

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MR. MELLO: Okay. Appreciate that.

THE COURT: Cross?

CROSS EXAMINATION BY MR. BILINKAS:

Q Mr. Abbott, how would you like me to refer to you?

A Whatever's convenient -- you know, for you.

Q What was your last position within the Police Department?

A Sergeant.

Q Do you mind if I refer to you as Sergeant?

A That's acceptable to me.

Q Now, how many years had you been on the force as of September of 1992?

A Six years.

Q And on this particular night in question, you were dispatched to the Rockefeller Look Out center; correct?

A That's correct.

Q And when you got there, it was dark but, the weather was clear; correct?

A Yes.

Q Now, before your testimony today could I assume that you reviewed your report with the prosecutor?

A Yes.

1 Q And -- and is that basically the first time
2 that you've seen your report since 1992?

3 A Yep.

4 Q And would you agree with me that prior to
5 your reviewing that report that your recollection may
6 not have been as -- as keen as it was today; correct?

7 MR. MELLO: Objection. Form of the question.

8 THE COURT: Sustained. Ask another question.

9 Q Sergeant when you responded, you got to the
10 area, you indicated that my client was in the middle
11 of the lot with his hands out attempting to flag you
12 down; correct?

13 A Yes. He was walking slowly and had his hands out
14 like this or walking slowly.

15 Q And -- and basically, walking in front of
16 your car to get your attention; correct?

17 A Yes. He was right -- right in my headlights and
18 you know, just right there.

19 Q And other than you and him, there was no one
20 else at the look out point; correct?

21 A At that point?

22 Q At that point when you arrived --

23 A There were -- there were people over the sides.
24 There were other people in there.

25 Q Okay.

1 A And then Officer Tameo pulled in right behind me,
2 just a second or two behind me.

3 Q Okay. So, when you first got to the look out
4 site there were numerous people visiting that site;
5 correct?

6 A Yes.

7 Q And can you approximate the number of people
8 at the site the same time that you --

9 A No. I would --

10 Q First saw my client?

11 A I would describe it as numerous people. I mean,
12 it was more than a few but, I couldn't give you an
13 exact number or a best guess on -- my focus -- when I
14 pulled in he was in my headlights, that was my focus,
15 everything else was kind of peripheral. But, I noted
16 there -- there were other people and cars there.

17 Q Okay. And were -- were people out of their
18 cars in addition to being in their cars?

19 A Yes.

20 Q And when you came on, you came in with your
21 lights flashing; correct?

22 A Yes, I did.

23 Q And -- and did you see those other people at
24 any point, leave the Rockefeller Look Out area?

25 A I did not see them leave. At that point, I was

1 concerned with Mr. Scharf, getting to this location and
2 getting emergency equipment -- on their way. I think
3 other -- other Officer's responding after me had
4 interaction.

5 Q Okay. So, it's your recollection that other
6 Officer's had interactions with other people at the
7 look out center that were there at the same time you
8 arrived?

9 A Right. I believe so. It was not my primary focus
10 obviously.

11 Q --

12 A Yes.

13 Q Okay. So, when -- when you first get there,
14 my client flags you down and did you get out of your
15 car or did you open the window and have a conversation
16 with him?

17 A No. I got out of the car and walked over to him.

18 Q Okay. And the first thing he says according
19 to you is, my wife fell off the cliff; correct?

20 A Yes.

21 Q And the prosecutor indicated that you put
22 that statement in quotation marks; correct?

23 A Yes, I did.

24 Q Now, at that point did you have him enter
25 your patrol vehicle?

1 A Yes. So, that we could go to the area -- the look
2 outs a longer distance and the fastest way to cover
3 that ground was in -- in the patrol car.

4 Q Okay. And what specifically did you ask him
5 when he got into your car?

6 A I -- I just asked him where and he indicated down
7 -- you know, the north end of the lot, he said by the
8 cliffs, beyond the -- beyond the lot. I had him get
9 him -- just hop in the back and drove up as close as I
10 could to the entrance of that trail back to the area he
11 had indicated.

12 Q Do you recall the exact words that he told
13 you with respect to where his wife had fallen from the
14 cliff?

15 A Not precisely. No.

16 Q But, irrespective of whether or not you
17 recall those exact words, you got an indication from
18 him where she fell; correct?

19 A Yes.

20 Q And at that point, you immediately had him
21 get in your vehicle and -- and drive to that location
22 because you were hoping that you could rescue and --
23 and save his wife's life; correct?

24 A Yes.

25 Q And when -- when you drove from where he

1 stopped you to the point where you got out of the car,
2 how long did the take approximately?

3 A Seconds.

4 Q Okay. And -- and can I assume that you
5 weren't looking at his demeanor during those few
6 seconds as you drove?

7 A No. -- he was behind me in the rear seat. As I
8 said I had equipment on the front seat, I -- just had
9 him get in as quickly as possible so we could get down
10 to the end of that lot and find the location.

11 Q Okay. When you got to the end of the lot to
12 the trail that you, he and Tameo took where was Tameo?

13 A He was behind me. When I went down the lot he --
14 he also followed us down the lot.

15 Q So, is it --

16 A So, when I got -- the end, he got out also.

17 Q Okay. Is it safe to say that basically you
18 both got out of your cars at the same time and started
19 down the trail towards the cliff edge?

20 A Within seconds. Yea. We -- I got out of the car
21 -- so he could show us and Officer Tameo had exited his
22 car also.

23 Q Okay. Did you have a conversation with Tameo
24 as to what was going on?

25 A As we walked I guess -- we would have

1 communicated. I don't remember exactly what but, it
2 pertained to getting down to the area where Mr. Scharf
3 had indicated.

4 Q But, as you sit here today you have no --
5 specific recollection of what you said to Tameo or what
6 Tameo said to you; correct?

7 A Not specifically. No.

8 Q Okay. Fair enough.

9 A Not as far as like verbiage word for word. No.

10 Q Understood. And you indicated on direct and
11 correct me if I'm wrong, that my client was behind you
12 and in front of Tameo; correct?

13 A Yes.

14 Q Now, did you hurry down that path or, did you
15 just walk?

16 A We weren't meandering. We were trying to get down
17 -- obviously, we had a rescue in mind, time is of the
18 essence and we needed to get there. So, it was a
19 pretty quick pace, there were obstructions, it is a
20 natural kind of trail, it's a wooded areas, there is
21 rocks, there is trees down, there's vines, there's
22 branches, there's you know, what have you. But, it was
23 a fairly rapid walk.

24 Q Okay. And when -- when you say you -- you
25 rapidly walked down that trail; so there's no

1 misunderstanding, that is a trail that's commonly used
2 by people who frequent that look out; correct?

3 A Yes.

4 Q Okay. Irrespective of the signs that --

5 A Okay.

6 Q Specifically prohibit people from going
7 beyond the asphalt lot; isn't it a fact that that trail
8 is commonly used by many people who visit that area?

9 A Yes. There are people that go in there and
10 violate the rules and it's not uncommon.

11 Q And -- times you've tried to chase people out
12 of there?

13 A Yep. That was a big part of our patrol jobs.
14 You know, from early spring through the summer and into
15 the fall.

16 Q And --

17 A Was partly that.

18 Q And will you agree with me that that path
19 that you, Scharf and Tameo hurried down was a well worn
20 path?

21 A -- little problem with the well worn path because
22 it -- it is -- there's constantly foliage coming down
23 there. As I said the vines, so it -- it actually
24 changes season to season. There's times when it's more
25 clear in the winter time than it would be say in the

1 summer time or in the fall. Trees can have branches
2 come down constantly so, I wouldn't say -- it's not an
3 area -- it's not maintained as a clear path like oh,
4 come take this -- it's -- it's intended as a wilderness
5 trail.

6 Q And --

7 A So, it's not like somebody's coming out cleaning
8 it every day or --

9 Q Understood.

10 A Paved or anything like that.

11 Q Understood.

12 A It's a natural phenomena.

13 Q And approximately how long did it take you to
14 get from your car at the north end to the roped off
15 area where Mr. Scharf pointed to you where -- that his
16 wife had fell -- fallen off?

17 A Very rough time maybe, a minute and a half, two
18 minutes, something like that.

19 Q Okay. And --

20 A Be my best recollection I could give you.

21 Q Understood. Now, when you got to that area,
22 do you recall specifically what you asked my client,
23 Stephen Scharf?

24 A No, I -- other than I know specifically, I asked
25 him where? Where -- you know there was -- you know,

1 primary emphasis and -- and the reason to have him come
2 down there was to identify the particular place along
3 -- where on the cliff.

4 Q Okay. But, as you sit here today you don't
5 know what was said or how he indicated to you the exact
6 position; correct?

7 A No. Other than -- you know, he just pointed it
8 over -- it was there ---

9 Q But, do you recall --

10 A You know, he -- he indicated to me in some manner.
11 I can't remember the exact manner now. But, he did
12 indicate to me where specifically at the edge of the
13 cliff he was --

14 Q Okay. And at --

15 A With his wife.

16 Q That point in time, you and Tameo climbed
17 through the fenced area; correct?

18 A Yes. Yes.

19 Q Now, when you're talking about this fenced
20 area, would you describe it or is it fair to say that
21 it looks like a boxing arena with ropes?

22 A That's probably a good analogy to it since it is
23 -- it was like a vinyl cable going along with spaces in
24 between them.

25 Q Okay. Vinyl cables --

1 A Yea.

2 Q And there's a couple feet -- between each
3 cable; correct?

4 A Yea. Probably foot and a half vertically. Maybe
5 something like that.

6 Q Okay. And -- and when you and -- Tameo got
7 through that fenced area, basically all you had to do
8 was lift up the top cable and climb right through;
9 correct?

10 A Yea. You had to kind of you know, get around
11 through it.

12 Q Yea. Like you would get into a boxing ring
13 --?

14 A It's not as high as that I don't think but, yea
15 it's kind of where you got to pull it apart or go over
16 the top.

17 Q Okay. And -- and will you agree with me that
18 right beyond that cable leading to this cliff edge,
19 that the grass was worn leading up to the cliff edge?

20 A That's hard for me to say because you know the
21 areas so covered with leaves --

22 Q As you sit --

23 A All the time --

24 Q Here today, you don't --

25 A I -- it's not -- I couldn't really tell you how

1 worn the grass was there.

2 Q Okay. Well, you kept Mr. Scharf on the
3 opposite side of those wires; correct?

4 A Yes, we did.

5 Q And you basically indicated that that was
6 done for his safety; correct?

7 A Right.

8 Q Now, you and Tameo both were looking over the
9 ledge, calling out for his wife?

10 A Yes. And Tameo -- Officer Tameo was a foot or two
11 back, I got a little bit closer. And -- yea.

12 Q Okay. Did -- did Tameo ever look over the
13 edge?

14 A Yes. I would say he looked over the -- the edge.

15 Q Okay. And -- and what was my client Stephen
16 Scharf doing when you and Tameo were looking for his
17 wife?

18 A He was back by the fence and he was very quiet. I
19 didn't hear anything from him. You know, glanced back
20 a couple of times.

21 Q What was --

22 A And that was -- our primary interest was seeing if
23 we could get a response.

24 Q Understood. Understood. Now, when you say
25 you didn't look at my client or you only glanced back a

1 few times, did you -- did you shine the flashlight in
2 his face? Do you recall specifically looking at his
3 demeanor at that point?

4 A At -- at that point, no. -- primarily focusing
5 the light down and out and on the trail where we were.
6 I may have shined the light back there just to see
7 where he was and back but, it would have been briefly.
8 And not long enough to determine demeanor -- only
9 placement where he was.

10 Q And when you testified on direct when you
11 were talking about your observations and your testimony
12 regarding my clients demeanor, you were referring to
13 when you first approached him in the Rockefeller lot
14 and he told you my wife fell off the cliff; correct?

15 A That and along the trail also. I believe that
16 there was conversation and he seemed very kind of calm,
17 quiet -- at that time he, you know remained behind the
18 fence -- without argument or comment on that. He just
19 --

20 Q Do you recall --

21 A Acquiesced.

22 Q The exact conversation during the hurried
23 walk down the trail with my client?

24 A Not specifics. Other than -- just -- generally
25 that it was to get us to a location.

1 Q And -- and you've described my client as
2 quiet; correct?

3 A Yes.

4 Q Would you say it's a fair observation that he
5 was dazed when you were talking to him?

6 A You're asking my opinion.

7 Q Yes.

8 A I -- I did not see him as dazed. I saw him as
9 controlled. I saw him as being guarded, controlling
10 his emotions. It was out of the ordinary to have an
11 individual in that situation based on my experience to
12 not be quite a bit more emotional.

13 Q Well, how many times --

14 A He just didn't seem emotional. But, it also
15 didn't seem to be like a stressed -- didn't seem dazed
16 an shocked.

17 Q Okay. Did -- when you say your experience,
18 have you ever had any experience with a husband whose
19 wife had fallen off a cliff?

20 A I've dealt with several families where they had a
21 family member go and they were quite emotional about
22 it. One case -- it was involving a brother, everybody
23 was quite emotional at it. I've been at the scene of
24 severe accidents that -- accidents with death. I've
25 seen people under stress for 24 and a half years in a

1 Police situation. I -- my military service, I did a
2 tour and a half in Vietnam, I saw people in stress
3 situations where things could sometimes get emotional.
4 Where -- we dealt a lot with civilians that were in
5 Vietnam and family members were killed and the reaction
6 to those people. My own experience from just naturally
7 losing people in my family. All -- all of those
8 things. If you're asking my experience with that, I
9 also worked for 19 years as an X-ray technician,
10 hospital administrator, manager of an X-ray department,
11 teaching X-ray. I've seen people all my life at their
12 best and very often at their worst in the most
13 stressful situations -- some may choose not even to
14 remember because they're horrific. And --

15 Q And would you --

16 A I did not find his behavior consistent with my
17 experience.

18 Q And will you agree with me that different
19 people handle stress differently?

20 A Yes, I would.

21 Q Now, after you and Tameo called numerous
22 times to try to find Mrs. Scharf when was my client
23 taken up to the asphalt lot?

24 A He was taken up there by -- Officer Tameo walked
25 him back up there. Immediately, after we called and

1 got no response several times.

2 Q Okay. So you -- you didn't walk back with
3 him; correct?

4 A No. I stayed to mark the location and make radio
5 contact with headquarters and Officer Tameo walked back
6 with Mr. Scharf to the parking lot.

7 Q Okay. So, I'm clear on this point, the only
8 contact that you had with my client is when he first
9 made a statement to you; correct?

10 A Correct.

11 Q You hurried in your car with your back to him
12 driving to the north end of the lot; correct?

13 A Correct.

14 Q The minute, minute and a half where your back
15 was faced to him down to the area that he pointed his
16 wife had fallen; correct?

17 A Well, I -- I think you had asked me how long it
18 took to walk down there. In which case, we were
19 reasonably close together and conversing during that
20 time, walking from the parking lot for that minute and
21 a half down to the location at the cliff. That wasn't
22 where he was behind us and we were calling from the
23 cliff. That was walking down was that minute and a
24 half time span.

25 Q Right, and was he behind you when --

1 A He -- he --

2 Q He was --

3 A He was behind me but, he was immediately behind me
4 and we were -- did converse because he was explaining
5 where they were. So, I -- we did have conversation at
6 that point.

7 Q Okay. But, my --

8 A Then, he was behind us. I didn't want you to
9 confuse with it that it was a minute and a half span of
10 time that he was behind us when I wasn't talking to
11 him.

12 Q Okay.

13 A That was while we were calling out.

14 Q I understand that you had a conversation
15 with him on the way down; correct?

16 A Okay. It was just the way you phrased the
17 question; you asked that minute and a half behind me
18 and I thought that's when you meant that.

19 Q And -- and well, did he walk down alongside
20 of you or was he behind you during that trip --

21 A No. He -- he was immediately behind me. He
22 wasn't, you know --

23 Q Okay.

24 A It's not like it was 15 yards or something. He
25 was close by where you could carry on a conversation.

1 Q But, irrespective of that conversation your
2 back or side was turned to him. You weren't looking at
3 him directly; correct?

4 A Not specifically. His -- it would be like if you
5 walked with anybody you would glance back from time to
6 time. You know.

7 Q And did you shine the flashlight because it
8 was so dark to see --

9 A No, I kept the flashlight in front of us so you
10 could see because there were a lot of obstructions on
11 the trail, you know, vines, et cetera. As I explained
12 it's very rough terrain there.

13 Q Okay. So, at that point when Tameo walks him
14 back up to the lot, you really don't have any contact
15 with him from that point on; correct?

16 A From that point on, no.

17 Q Okay. And when you learn that Mrs. Scharf
18 had expired did you or anyone tell my client that his
19 wife was dead?

20 A I did not. I -- I -- that was -- I was still down
21 at the -- the look out, I believe he was up at our
22 headquarters.

23 Q Okay. So, you had no further contact --

24 A I had -- had no -- no.

25 Q Okay. Now, when you were down at the cliff

1 edge after my client was brought back to the lot --

2 A Yes.

3 Q Did they bring any lighting equipment to the
4 specific edge?

5 A Yes, they did.

6 Q Okay. What specific lighting did they bring?

7 A They're the very bright fire lights that are lit
8 up, they're on cables -- guess, they run back to
9 generators. I couldn't tell you how much, how many of
10 them --

11 Q Do you know where they were placed?

12 A Several lights -- no, to the sides and down they
13 had them. Not specifically after all this time. No, I
14 couldn't.

15 Q Okay. Were they beyond the fence line?

16 A Oh, yes.

17 Q And as you sit here today you have no
18 recollection of exactly where they were or what they
19 were pointed at; correct?

20 A Well, they were pointed towards the top of the
21 cliffs because the repeller's had to tie off there and
22 that's the area that was illuminated. So, it's really
23 that whole area and shining down from the cliffs.

24 Q Okay. And where did the repeller's tie off
25 from?

1 A They tied off on the -- on the trees and -- then
2 Sergeant Pagan, I think he used a group of trees,
3 several trees that he had tied off on --

4 Q Those trees were beyond the fence line back
5 where Mr. Scharf was standing I assume; correct?

6 A I believe they were toward the outside of the
7 fence toward the cliff. I don't think they were on the
8 other side of the fence. The fence --

9 Q Your recollection is that there were trees
10 beyond the fence line that the repeller's tied off on.

11 A On the -- on the cliff side of the fence as -- as
12 it would run parallel -- would be between the fence and
13 the cliff -- as I recall they may have extended more
14 lines than that. I know they tied off on several --

15 Q Okay. Now --

16 A Several different points.

17 Q If you're at the fence looking at the cliff
18 -- where Mr. Scharf pointed out his wife had gone over,
19 were the lines to the left or the right of that area?

20 A Well, I think Sergeant Pagan's line was right at
21 the point where Mr. Scharf had indicated that she went
22 --

23 Q When you -- when you say the exact point --

24 A Well, right on --

25 Q Mr. --

1 A On this flat metal -- sorry, not metal. On this
2 flat rocky point -- Sergeant Pagan was right at that
3 point.

4 Q Okay. Now, will you agree with me that at no
5 point while my client was down at that specific
6 location that he pointed to the exact position where
7 his wife had gone off the cliff? Which side? Which
8 direction; isn't that a fact?

9 A I -- I can't say specifically that he did say, oh
10 right there. He indicated --

11 Q Indicated the big flat rock?

12 A By pointing to the -- to the -- yea. The flat
13 rock that they were on.

14 Q Now, were you there when Pagan and Cioffi
15 started to repel down?

16 A Cioffi. Yes.

17 Q Cioffi. Excuse me. And -- and will you
18 agree that because they thought it was a rescue mission
19 that they were moving as fast as they can to try to get
20 down to save that woman's life?

21 A Yes. It's not -- it's not a quick process but,
22 yea.

23 Q They weren't lingering around or --

24 A No.

25 Q You know, taking their time. They were going

1 down the cliff attempting to save someone's life;
2 correct?

3 A Yes. They were going with purpose.

4 Q Now, Pagan at some point stops at the ledge;
5 correct?

6 A Yes.

7 Q Okay. And -- and how wide is that ledge?

8 A The --

9 Q The ledge that the pocketbook --

10 A The lower ledge?

11 Q Yes.

12 A Actually, extends out pretty far. It seems to --

13 Q Like six, seven feet? Some points?

14 A Probably at some point, maybe close to that.

15 Q And will you agree with me that if you're
16 looking over the ledge where Ms. Scharf fell that it
17 extends to your left six, seven feet and basically,
18 goes all the way around to the fence line?

19 A There -- I don't know --

20 MR. MELLO: I'm sorry.

21 A About all the way around to the --

22 MR. MELLO: I'm sorry.

23 A Fence line. There is a portion of it --

24 MR. MELLO: I'm sorry.

25 THE COURT: Is there an objection?

1 A I'm sorry.

2 MR. MELLO: Yes, thank you, sir.

3 THE COURT: Your objection?

4 MR. MELLO: Very simply. Would the question
5 please be rephrased as follows; point at which Mr.
6 Scharf indicated that Mrs. Scharf fell.

7 THE COURT: All right. Ask another question.

8 Q Mr. Scharf gives you the general location of
9 where his wife fell; correct?

10 A General --

11 Q Big flat rock --

12 A Location. It's -- it's a fair size rock but, it's
13 also a specific area.

14 Q Okay. Specific area but the big flat rock in
15 front of the wire fence; correct?

16 A Yes, it's several feet wide.

17 Q Okay. And -- and approximately eight or ten
18 feet below there's a ledge that extends according to
19 you, approximately seven, eight feet; correct?

20 A Depending on how you define -- there was one area
21 where the pocketbook was on that ledge does continue
22 around but, it's not the same quite -- type quality.
23 It's -- probably not the right word for it. But, it --
24 it changes, becomes rougher, less of an obvious ledge
25 angle --.

1 Q Okay. And -- and -- and it slopes up back
2 towards the trail area; correct?

3 A -- if you're facing toward the river from the top
4 of the cliff it goes off to the left -- goes beyond
5 that hmm.

6 Q Now, by the time you went back up to the
7 Rockefeller Look Out parking lot my client was in
8 another Police Officer's car; correct?

9 A This is when I went back to the look out?

10 Q Yes.

11 A I believe he had been taken to headquarters --
12 that he had gone to headquarters. -- I don't know. He
13 wasn't there when I came back.

14 Q Okay. So, do you know how he got back to
15 headquarters?

16 A I'm sure he had a ride from -- from the Police.

17 Q Okay. And -- and --

18 A I -- I wasn't there when they actually left. So,
19 I don't know.

20 Q Do you have -- in light of the fact that you
21 were the one that was told to secure his car; do you
22 have any idea why he didn't drive his own car back to
23 Police headquarters?

24 A No. I don't know specifically why he wouldn't --

25 Q Was he so --

1 A Probably under the circumstances --

2 Q Based on your --

3 A You know.

4 Q Observations of him, was he too upset to
5 drive his own car?

6 A Not -- what I saw of him, no I don't think he was
7 too upset to have driven.

8 Q Okay. So, based on your observations he was
9 emotionally capable of driving his car; correct?

10 A I would -- my impression would be that, yes. He
11 probably would be.

12 Q And -- and who told you to secure his
13 vehicle?

14 A It may have been Detective Karnick that -- that
15 was radioed from headquarters.

16 Q Okay. Now, did you indicate to anyone prior
17 to your going back to the station that Mr. Scharf's
18 demeanor was suspicious?

19 A No. Hmm mmm.

20 Q Kept that to yourself?

21 A I -- I -- if you want to say, I -- I would say I
22 found -- I noted it, I didn't -- I wouldn't have said
23 even suspicious at the time. I just noted it seemed --

24 Q Odd?

25 A Out of character, very odd and -- and just very

1 controlled and I had no --

2 Q But, from your --

3 A Reason beyond that to --

4 Q Your standpoint with all your law enforcement
5 experience, you didn't think it was indicative of
6 someone who had committed a crime?

7 A No. I -- I just felt it was very unusual in its
8 -- control and kind of the guardedness about the
9 statement.

10 Q And because of that --

11 A It seemed out of the ordinary. I would have to
12 describe it that way. Not suspicious. Just something
13 -- I noted it briefly. You know?

14 Q But, based on your experience clearly not
15 something which would be indicative of someone who had
16 just committed a crime?

17 MR. MELLO: That's a hard question for anyone
18 to answer.

19 THE COURT: All right. Sustained. Next
20 question.

21 Q Now -- and you filled out this abandoned
22 vehicle report; correct?

23 A Yes, I did.

24 Q At that time, was Mr. Scharf or a family
25 member allowed to take the vehicle from the look out

1 area?

2 A There's -- attempt to do so. I did the abandoned
3 sheet, I was told just to secure the car, had somebody
4 approach to take the vehicle, I would have just asked
5 headquarters if it was all right to make sure.

6 Q They -- they told you to secure the car;
7 correct?

8 A Right. Hmm mmm.

9 Q Make sure no one goes in or out; correct?

10 A Right.

11 Q And didn't you also understand that to mean
12 make sure no one takes the vehicle from the look out
13 area?

14 A Right. Hmm mmm.

15 Q So, that car being secured was under Police
16 protection, so to speak?

17 A Yea. Protections probably a good word for it.

18 Yea.

19 Q And is there any doubt in your mind that if
20 someone walked up and said I'm Mr. Scharf's friend, I'm
21 taking the car that you or members of your department,
22 would not have allowed that vehicle to leave the area
23 at that point?

24 A Not only to the -- I would have only released it
25 to the proper owner with the authority of headquarters.

1 Sometimes the headquarters does things I don't and they
2 just tell us, secure that vehicle and any decisions
3 made with that vehicle are made at the headquarters,
4 not on the scene.

5 Q Okay. But, as --

6 A You know.

7 Q You were concerned, you didn't know even as a
8 Police Officer whether or not that vehicle was seized
9 and not be driven?

10 A No. I didn't know that at that point. They just
11 basically said, you know watch the car.

12 Q Now, the prosecutor asked you whether or not
13 anyone came up as a witness to you at your time at that
14 look out center; irrespective of that you'll agree with
15 me that there were numerous witnesses at the look out
16 when you first learned that his wife had fallen off the
17 cliff?

18 A --

19 MR. MELLO: There were numerous -- numerous
20 people.

21 THE COURT: I'm sorry?

22 MR. MELLO: That -- there were numerous
23 people.

24 Q Numerous people. Perspective witnesses to my
25 clients actions on the night in question.

1 A There were people in the look out and that's the
2 best as far as I could -- there were people in the look
3 out.

4 Q And -- and to your knowledge no one attempted
5 to keep them there and talk to them and get
6 information, if any as to what they knew about this
7 circumstance; correct?

8 A To my knowledge. No.

9 Q And -- and do you have any idea how the
10 Police were called to this area on that specific night?

11 A I know from hear say what I heard later at
12 headquarters. I -- not that I witnessed --

13 Q Isn't it a fact that --

14 A Anybody reporting it.

15 Q Isn't it a fact that my client ran up with a
16 flashlight and flagged down a passing motorist and --
17 and asked for help for his wife and that's why you and
18 your department were asked to respond?

19 A Okay. I responded because I was directed by my
20 headquarters that there was a cliff case. These other
21 actions you're mentioning now, I don't have first hand
22 knowledge of.

23 Q So, will you agree with me that someone,
24 somehow notified your department that there was a
25 problem?

1 A That -- and there was some kind of a cliff case.
2 Yes, that we can agree on.

3 Q And as you sit here today, do you have any
4 idea who that person was?

5 A No, I don't.

6 Q Now, do you keep dispatch records of people
7 that call your department?

8 A Some -- sometimes there would be -- by dispatch
9 records, there would be a case number if it -- if it
10 you know, warranted that.

11 Q Well, for instance was there tape recordings
12 used for calls into the department back then?

13 A Phone -- yes, I think phone calls and radio calls
14 would have been recorded.

15 Q Okay. And so, whoever called, whatever was
16 said was in fact memorialized by those recordings on
17 the night in question; correct?

18 MR. MELLO: Objection. There's no evidence
19 whatsoever that A, a call was made, how the
20 notification was made and that it was recorded.

21 THE COURT: Sustained.

22 MR. BILINKAS: If I may, Judge? The records
23 do indicate that a passing motorist called the station
24 that in fact a conversation was recorded. Because the
25 prosecutor never secured those tapes those tapes were

1 in fact destroyed. So --

2 THE COURT: You can question this witness as
3 to what he knows.

4 MR. BILINKAS: Correct.

5 THE COURT: But, if it's outside the realm of
6 what the knows, if it's hear say, it will be
7 objectionable.

8 MR. BILINKAS: Okay. And again --

9 THE COURT: Once again, ask another question.

10 Q At that time --

11 MR. MELLO: Excuse me. -- comment by
12 counsel. The incident that counsel refers to is the
13 appearance of -- motorist at --. Not a call. And that
14 is not within the purview of --.

15 THE COURT: All right. Now, we have two
16 different suggestions.

17 MR. BILINKAS: Which are?

18 THE COURT: Well, you indicated it was as a
19 result of a call. The prosecutor is indicating it's
20 the result of a motorist coming to headquarters. And
21 again, I'm going to remind you to move on.

22 Q At the time that this accident occurred --

23 MR. MELLO: Objection to the form.

24 THE COURT: Sustained.

25 Q At the time Jody Scharf fell off the cliff,

1 September of 1992, your department recorded all phone
2 calls coming into the station; correct?

3 A I --

4 MR. MELLO: If he knows that.

5 THE COURT: Do you know?

6 A I don't know if they recorded all of them. To my
7 knowledge they had a basic tape machine that -- that
8 ran. But, what that involved and what phone lines it
9 was on or not on, I don't know.

10 Q To your knowledge did they record -- radio
11 transmission between members of the department and the
12 station?

13 A To my knowledge, for the most part, yes.

14 Q If someone came into the department and
15 reported a -- instance of someone falling off a cliff,
16 would it be normal Police procedures to identify that
17 person and obtain information from them?

18 MR. MELLO: Judge, I'm going to object to the
19 form of that question. I'm also going to object
20 because I think it's a bit beyond the scope of a
21 Miranda hearing. It might certainly be a subject for a
22 trial.

23 MR. BILINKAS: I'll withdraw the question,
24 Judge.

25 THE COURT: Thank you.

1 MR. BILINKAS: If I can just have a moment
2 Judge, I believe --

3 THE COURT: Excuse me one moment.

4 (JUDGE ADDRESSES ANOTHER CASE)

5 MR. BILINKAS: Nothing further, Judge.

6 THE COURT: All right.

7 MR. MELLO: I just have a few questions,
8 Judge. Just to clarify a couple of questions that Mr.
9 Bilinkas asked.

10 RE-DIRECT BY MR. MELLO:

11 Q When -- when you arrive and you are
12 encountered by Mr. Scharf and Mr. Scharf tells you his
13 wife had fallen from the cliff, you obviously are now
14 involved in a tragic event, a life threatening and
15 perhaps a life lost event; correct?

16 A Yes.

17 Q Now, at that particular moment in time you
18 obviously ask in some manner, where she fell off the
19 cliff? So, that you can attempt to rescue that person
20 that's fallen from the cliff; correct?

21 A Absolutely. Absolutely. Want to get the most
22 resources there to try and get the -- ultimately the
23 best result and give this person the best chance that
24 they can to survive this --

25 Q Of course.

1 A And that is just priority over everything.

2 Q And with respect to that priority of course
3 Mr. Scharf has told you his wife has fallen from the
4 cliff; correct?

5 A Yes.

6 Q And it is obviously imperative that he shows
7 you where she fell from the cliff so that you can have
8 your best chance to hopefully rescue that person.

9 A Exactly, sir.

10 Q And in that regard it is Mr. Scharf who takes
11 you through the woods to the fence and points to the
12 location at the edge of the cliff where she went off;
13 correct?

14 A Yes.

15 Q And just so we're clear and I think we all
16 agree, that point as you described it actually forms a
17 natural if you will, be fair to say a -- a naturally
18 formed stone seat?

19 A Yes, it does. That's why I kept emphasizing it's
20 very flat, it's not a huge rock but, it's -- its flat
21 and then there was a slightly lower area that extended
22 out a little bit more.

23 MR. MELLO: Thank you.

24 THE COURT: Anything further?

25 MR. BILINKAS: No.

1 THE COURT: Re-cross? No. You may step
2 down. Thank you, sir.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Next witness.

5 MR. MELLO: Thank you, sir. Walter Siri,
6 please.

7 THE COURT: Paperwork up here can be
8 retrieved. Thank you. Good morning.

9 MR. SIRI: Good morning, sir.

10 THE COURT: Please step up here. Face the
11 court clerk.

12 COURT CLERK: Raise your right hand.

13 W A L T E R S I R I, WITNESS, SWORN.

14 COURT CLERK: State your name for the record.

15 THE WITNESS: My name is Lieutenant Walter A.
16 Siri, Junior, Siri, S-I-R-I.

17 THE COURT: All right. Lieutenant, please
18 have a seat.

19 THE WITNESS: Thank you.

20 THE COURT: You may begin.

21 MR. MELLO: Thank you, sir. Ready sir?

22 THE COURT: You may begin.

23 MR. MELLO: Thank you.

24 DIRECT EXAMINATION BY MR. MELLO:

25 Q So, let's begin if you will with describing

1 your background in law enforcement.

2 A -- first an inspector with the New Jersey State
3 Police Alcoholic Beverage Control Enforcement Bureau in
4 19 -- I'm sorry, 1986. In May of 91 I was laid off and
5 went to the Department of Corrections for the state of
6 New Jersey for six months, after which I was picked up
7 by the Palisades Interstate Parkway Police where I
8 currently am.

9 Q And you've served with that department how
10 long?

11 A Since 1991, coming up on 20 years.

12 Q And if you would, would you describe your
13 experience with that department?

14 A I started out as a patrolman, performed patrol
15 duties, I became a member of the repel team there and
16 around 94/95 did extensive training and accident
17 reconstruction work with the prosecutors office; fatal
18 accident reconstruction unit and I'm currently the
19 administrative Lieutenant for the Parkway Police
20 Department.

21 Q Now, sir I'm going to direct your attention
22 to September 20,1992, all right?

23 A Yes, sir.

24 Q And I'm going to ask you first, at that time
25 were you employed by the Palisade Interstate Parkway

1 Police?

2 A Yes, sir I was.

3 Q What was your rank at that time?

4 A I was a Police Officer; a patrolman, sir.

5 Q How long had you been with the department as
6 of that date?

7 A With the Palisades I was there from November of 91
8 so, just under a year.

9 Q At that particular time, September 20, 1992
10 did you work on that date?

11 A Yes, sir I did.

12 Q Do you recall the shift that you were working
13 on that date?

14 A Yes, sir it was an evening shift. The four to
15 twelve shift.

16 Q Do you recall the general nature of your
17 assignment on that four to twelve shift on September
18 20, 1992?

19 A If my memory serves me correctly, I was the D3
20 car. I was assigned the lower portion of the parkway
21 on the southern end.

22 Q And if you would, can you describe for the
23 Court the general territorial boundaries within the
24 responsibility of the Palisade Interstate Parkway
25 Police?

1 A At that time, D3 was the southeastern side of the
2 parkway, below the highway, the lower roadways, the
3 Englewood Boat Basin -- dock area and historic park
4 areas.

5 Q Now, with respect to that particular shift,
6 were you in uniform?

7 A Yes, sir I was.

8 Q And can you tell us what patrol vehicle you
9 utilized on that shift, whether or not it was marked?

10 A I was in an unmarked brown Chevy Caprice. I
11 believe the number on that car was J29.

12 Q Now, I'm going to direct your attention to a
13 very specific time on the 20th of September 1992 and
14 that time would be at approximately eight p.m. or
15 thereabouts; all right?

16 A Yes, sir.

17 Q And specifically, I'm going to direct your
18 attention to eight minutes passed eight on that
19 evening. Understood?

20 A Yes, sir.

21 Q Can you tell us first where you were at that
22 time on that date?

23 A I was at Police Headquarters on Alpine off exit
24 two and I had just finished my lunch period.

25 Q Now, at that time as you finished your lunch

1 period, did anything unusual occur?

2 A As I was preparing to leave the building to go
3 back on patrol, a gentlemen came in and stated that he
4 had been flagged down in the Rockefeller Look Out area
5 and that a man reported to her that his wife had fallen
6 off the cliff.

7 Q Respect to that report, that was a report in
8 person by an individual; correct?

9 A That's correct.

10 Q That was not the result of a call; is that
11 correct?

12 A That is correct.

13 Q To your knowledge, other than the receipt of
14 that information from that person, was that person
15 identified in any manner by any Police authority?

16 A No, sir. Not to my knowledge.

17 Q Can you describe the demeanor of that
18 individual?

19 A -- was excited.

20 Q And he reported to you that an individual had
21 advised him of what?

22 A That his wife had fallen off a cliff.

23 MR. BILINKAS: Your Honor, if I may for the
24 record, is this Lieutenant specifically stating that he
25 is the person that spoke to this individual?

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MR. MELLO: Well, I -- I --

MR. BILINKAS: --

MR. MELLO: I appreciate that. I'll ask.

Q Did you hear that report?

A Yes, sir I did.

Q And to answer counsel's question, you heard this report; were you the person that was immediately being spoken to?

A No, sir I was not. That would have been our shift commander that night, Sergeant Nelson Pagan.

Q But, that conversation between Pagan and the individual took place in your presence?

A Yes, sir. Right in front of me.

Q And you have recalled that conversation specifically?

A Yes, sir.

Q Now, I -- I think I asked you this but, just to make sure, that was the report that brought Police attention to a fall from the cliffs on that date; correct?

A Yes, sir.

Q There was no phone call that brought Police attention to a cliff falling on that date?

A Not to my knowledge, sir.

MR. BILINKAS: Objection.

1 THE COURT: Do you have an objection?

2 MR. BILINKAS: No. Withdrawn.

3 Q And with respect to the report by that
4 individual you have reviewed all Police reports in this
5 case I presume?

6 A Yes, sir.

7 Q And is there anything that shows a phone call
8 by any civilian reporting that fall?

9 A No, sir.

10 Q Now, let me focus your attention on that
11 specific point where the individual has appeared, has
12 advised Police that a woman has fallen from the cliff.
13 Were you advised of the location of that fall which is
14 to say what part of the cliffs?

15 A Yes, sir. The man reported the Rockefeller Look
16 Out.

17 Q All right. Now, what happens next?

18 A Sergeant Pagan gave me the keys to J7, which is
19 our rescue unit, it has all our repelling gear in it at
20 that time, and told me to pull the vehicle up in front
21 of headquarters. I exited the building to look for the
22 vehicle, it was not at our headquarters. It was -- at
23 our maintenance department. I transported Sergeant
24 Pagan there and together we drove tandem with the two
25 vehicles and responded to the Rockefeller Look Out.

1 Q Now, when you respond to Rockefeller, do you
2 respond in your patrol car?

3 A I was in my patrol car, in J29 and Sergeant Pagan
4 was in J7, the rescue vehicle.

5 Q Okay. So, you respond in two separate
6 vehicles?

7 A That's correct.

8 Q Okay. Just wanted to make sure of that.
9 Now, is it fair to say as you responded to that
10 location this was obviously an emergency situation?

11 A Absolutely.

12 Q Clearly, you are familiar with the cliff area
13 at that particular location?

14 A Yes, sir.

15 Q And is it fair to say that you were familiar
16 with the cliff area throughout the Parkway
17 jurisdiction?

18 A Yes, sir.

19 Q And it's fair to say, is it not the cliff
20 areas can be exceedingly dangerous?

21 A Absolutely.

22 Q You now have a report of a woman who's fallen
23 from the cliffs that is quite possibly a life and death
24 situation?

25 A Yes, sir.

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Q Is it fair to assume that you responded not only immediately but, immediately with your emergency lights on and same for Sergeant Pagan?

A Yes, sir.

Q Now, can you tell us what occurs as you arrive at the Rockefeller Look Out and if you would tell us where you enter and what happens?

A Okay. We took -- the Palisades south to a -- spot just south of the look out where we could cut across the center median and then came back north into the look out. As we were entering the look out, Sergeant Pagan instructed me to close the look out and clear the vehicles from it. By closing the look out, so I had to put two barricade's up over the entrance and then get on the PA system and verbally advise everyone in the area to return to their vehicles and to leave the area.

Q And did you observe other vehicles in the area that you were instructed to clear?

A Yes, sir I did.

Q Now, can you tell us after you cleared the look out area, what happened next?

A After look out area was cleared, Sergeant Pagan asked me to drive a man who was later identified as Mr. Scharf to our Police headquarters.

Q Do you see that person you've called Mr.

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Scharf in court today?

A Yes, sir I do. His hair is lighter, his mustache is missing but, he's sitting over to the left.

MR. BILINKAS: Identified my client for the record.

THE COURT: -- record -- will be identified.

Q Now, can you tell us why Mr. Scharf was transported to headquarters?

A Mostly for a matter of safety. We didn't want Mr. Scharf --

THE COURT: Is there an objection?

MR. BILINKAS: My objection -- testifying -- as to what he was told or personal knowledge -- just asking that specific question I think calls for --.

THE COURT: All right. Change the question.

Q From your own personal knowledge, why was Mr. Scharf transported to headquarters?

A As a matter of safety, not only for himself but for the people -- the personnel that were working to retrieve his wife.

Q Now, with respect to the safety of Mr. Scharf, again that's a very dangerous area; is it not?

A Yes, sir it is.

Q And Mr. Scharf had indicated that his wife had fallen from the cliffs?

1 A That's correct, sir.

2 Q And that indeed would be a tragic
3 circumstance; would it not?

4 A Yes, sir.

5 Q -- fair to say that the behavior of a person
6 under that kind of stress is potentially unpredictable?

7 A Yes, sir. Absolutely.

8 Q And would it be fair to say the last thing
9 that anyone wanted to see was another -- another fall
10 from the cliffs?

11 MR. BILINKAS: Judge, again I have objected
12 to these leading questions but at this point --

13 THE COURT: They are leading.

14 MR. BILINKAS: --

15 MR. MELLO: I'll -- through. I'll -- through
16 it. Fair enough.

17 Q Now, let's talk about that moment in time
18 when you first see Mr. Scharf, all right? Now, your
19 assignment is to transport Mr. Scharf to headquarters.

20 A That's correct.

21 Q Where is Mr. Scharf when you receive that
22 assignment?

23 A Sitting in the back of then Patrolmen Tameo's
24 vehicle.

25 Q And would that be a marked or unmarked car?

1 A That would be a marked Chevy Caprice.

2 Q And did you make any particular observation
3 of Mr. Scharf as he was seated in that particular
4 vehicle?

5 A He was seated with his hands on head. His head in
6 his hands. I'm sorry. Like this.

7 Q Indicating that he was seated with his head
8 in hands, covering his face?

9 A Yes, sir.

10 Q Now, did you have a conversation with Mr.
11 Scharf at that time?

12 A I went up to the vehicle, I -- I explained to him
13 that I was asked to drive him back to headquarters and
14 asked him if he would come with me.

15 Q Do you remember if the vehicle door was open
16 or closed where he was seated?

17 A It was open at that time, sir.

18 Q Did you have occasion to see what Mr. Scharf
19 was wearing?

20 A Yes, sir I did. He had a dark t-shirt on, blue
21 jeans and sneakers.

22 Q Now, you had a conversation with him at this
23 time?

24 A Not really. I asked him if he would come with me
25 and he -- he complied with no -- no hesitation.

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Q At any time did he ask to remain at the scene?

A No, sir he did not.

Q At any time did he ask you any questions?

A No, sir he -- not -- not at -- at the scene.

Q Was he cooperative?

A Yes, sir.

Q And he certainly wasn't in any -- any restraints at the time.

A No, sir not at all.

Q Now, specifically did you ask him to follow you to your car?

A I believe so. I believe so, I did.

Q And did he do so?

A Yes, he did.

Q Now, when he got to your car, where did he sit?

A -- at the rear seat on the passenger side.

Q Did that car -- you said it's unmarked, was it a car that had a cage separating the back seat --

A No. No cage in the car at all sir.

Q Now, did you begin the transport?

A Yes, sir I did.

Q Do you recall approximately what time that began?

1 A I think it was about twenty after eight.

2 Q Okay. And for the record, I might as well do
3 this now --

4 MR. BILINKAS: No objection.

5 MR. MELLO: -

6 MR. BILINKAS: No objection.

7 MR. MELLO: Thank you.

8 Q I'm going to show you what's been marked S4
9 for identification, ask you if you recognize that?

10 A Yes, sir I do. That's the report that was written
11 regarding this incident.

12 Q Does that report note the time of transport?

13 A Yes, sir. At 2020 hours I began the transport.

14 Q Now, at the time you began the transport did
15 you have occasion to observe Mr. Scharf's demeanor?

16 A Yes, sir I did.

17 Q Can you tell us what you observed about it?

18 A He -- he seemed to be shaken. He wasn't upset.
19 He was more nervous than anything else to me.

20 Q Did you make any other observations about him
21 or did you hear him say anything?

22 A Well, he was -- it sounded like he was mumbling at
23 first but, then I could hear him reciting Hail Mary's
24 in the back seat. He then stated to me, we were
25 walking and she said for me to go back to the car and

1 get the blanket and she slipped and I didn't see her
2 anymore.

3 Q Now, with respect to what he said, did you
4 ask him any question before he said what he said as you
5 reported here today?

6 A No, sir.

7 Q Now, with respect to your testimony as to
8 what he said, did you note that in your report?

9 A Yes, sir. It's in -- it's about three quarters of
10 the way down the page starting on the right side in
11 quotations.

12 Q All right. Would you read the language that
13 you noted in your report and set off by quotations?

14 A We were walking and she said for me to go back to
15 the car and get the blanket and she slipped and I
16 didn't see her anymore.

17 Q And you set that off by quotation marks?

18 A That's correct, sir.

19 Q Why did you set it off by quotation marks?

20 A Because it's a direct verbatim account of what he
21 said.

22 Q Do you recall if on the ride to headquarters,
23 Mr. Scharf asked any questions?

24 A Yes. After that, he asked if there were going to
25 be doctors or paramedics at the scene to help his wife.

1 Q Anything else that he said?

2 A That's all I can recall, sir.

3 Q Is there anything else noted in your report?

4 A On the transport? No.

5 Q Now, approximately what is the distance,
6 approximately from the look out to headquarters?

7 A It's about five miles.

8 Q Okay. And do you note the approximate time
9 that you arrived at headquarters?

10 A 2030 according to my report, sir.

11 Q Now, other than the conversation that you
12 have related and which you set off in quotation marks
13 and Mr. Scharf's question about the rescue attempt and
14 whether or not medical personnel would be called; did
15 you have any other conversation with him during that
16 ride?

17 A No, sir.

18 Q Now, while -- when you arrived at
19 headquarters what did you and Mr. Scharf do?

20 A We walked into the building, Mr. Scharf was
21 following me. When we walked in immediately to the
22 right of the entrance door was a water cooler and you
23 would make a left turn to walk into our headquarters,
24 straight ahead you would walk out a back door with our
25 court room door to -- to the right. Mr. Scharf asked

1 if he could get a drink of water and I said sure, when
2 you're done just come into headquarters, and I started
3 walking toward our double door. The door was
4 plexiglass and very reflective and I could see Mr.
5 Scharf as he was at the water cooler splashing water
6 into his face while he was looking back to see what I
7 was doing.

8 Q What happened next?

9 A When he came into headquarters, he came in rubbing
10 his eyes.

11 Q What happened next?

12 A I asked him if he would have a seat and he had a
13 seat by the bench and that's pretty much the last of my
14 conversation with him.

15 Q At any time was Mr. Scharf under restraints?

16 A No, sir.

17 Q At any time was Mr. Scharf not free to leave?

18 A No, sir.

19 Q At any time was he under arrest for any
20 reason?

21 A No, sir not at all.

22 Q And at any time during your contact with him,
23 did he ask to go back to the scene?

24 A No, sir he did not.

25 MR. MELLO: If I may just have a minute,

1 Judge.

2 THE COURT: You may.

3 MR. MELLO: Thank you, sir.

4 Q Have you described for us your complete
5 contact with Mr. Scharf --

6 A Yes --

7 Q On the 20th of September 1992?

8 A Yes, sir.

9 Q Following the events as you described them,
10 did you then return to normal or your assigned patrol
11 duties?

12 A Yes, sir I did.

13 Q And with respect to the report that you filed
14 in this matter, can you tell us when that report was
15 compiled?

16 A That's dated 9/21/1992.

17 MR. MELLO: Thank you. I think I'm through.
18 Mr. Bilinkas.

19 THE COURT: Cross?

20 CROSS EXAMINATION BY MR. BILINKAS:

21 Q Good morning, Lieutenant.

22 A Good morning, sir.

23 Q Now, this incident occurred over 18 years
24 ago; correct?

25 A That's correct, sir.

1 Q And will you agree with me that your contact
2 with Mr. Scharf was extremely limited?

3 A Yes, sir.

4 Q Basically, you were ordered to do certain
5 things with him by your superior; correct?

6 A That's correct, sir.

7 Q For instance you were ordered specifically to
8 go to Rockefeller Look Out; correct?

9 A That's correct.

10 Q And when you arrived there, there were
11 numerous cars in the same area that my client and his
12 wife had entered earlier that day; correct?

13 A There were cars throughout the look out.

14 Q Okay. And -- and when you secured the area,
15 were you told by your superiors to attempt to identify
16 the names of the persons who were at the area at the
17 time of this fall?

18 A No, sir I was not.

19 Q To the contrary, you were basically just told
20 to get everybody out; correct?

21 A That's correct.

22 Q And block off the actual parking lot;
23 correct?

24 A That's correct.

25 Q And as you sit here today, you have no idea

1 as to whether or not anyone who was at that look out
2 had any contact with Mr. Scharf while he was up in the
3 parking lot; correct?

4 A Aside from my Officer's and the gentlemen who came
5 in and said that he was flagged down. I have no
6 knowledge.

7 Q Okay. Well, getting to that point you know
8 for a fact that immediately prior to your department
9 responding that my client had had interaction with
10 another person; correct?

11 A That's correct.

12 Q So, immediately after whatever happened at
13 that cliff face, my client had a conversation with
14 another individual; correct?

15 MR. MELLO: That I'm going to object to,
16 Judge.

17 MR. BILINKAS: And the basis?

18 MR. MELLO: I'm just waiting for the Judge.

19 THE COURT: -- objection?

20 MR. MELLO: Yes, sir. You see, Mr. -- Mr.
21 Bilinkas asked the question, you are aware sir, that
22 immediately after whatever happened on the cliff my
23 client had contact with some person. Now, the problem
24 with that is what we can tell is Mr. Scharf had contact
25 with a person. What we cannot tell is whether that was

1 immediately after the fall.

2 THE COURT: All right.

3 MR. BILINKAS: I'll rephrase.

4 THE COURT: The question is a little
5 confusing. It's -- it's really a combination of
6 questions. If you could break it down --

7 MR. BILINKAS: Certainly.

8 THE COURT: And ask another question.

9 MR. BILINKAS: Certainly.

10 Q Lieutenant, you were at Police headquarters
11 when this person came in and told your department about
12 an incident at Rockefeller Center; correct?

13 A At Rockefeller Look Out. Correct.

14 Q I knew I was going to say that. Now, you
15 never put that in any official Police report that you
16 heard that conversation; correct?

17 A That's correct.

18 Q Okay. And that conversation was had
19 directly, based on your observations with Pagan;
20 correct?

21 A That's correct.

22 Q And was he the person in control at the
23 station at that point?

24 A Yes, sir he was the senior Officer on duty.

25 Q And -- and were you standing right next to

1 him when he had this conversation?

2 A He was standing behind our desk and I was on the
3 same side of the desk as the person who came in on my
4 way to the door to leave. So, we were within five feet
5 of each other. All three of us.

6 Q Okay. And -- and can you describe that
7 person?

8 A I would say late 30's, early 40's, olive
9 complected, dark hair wearing a jacket, open collar.

10 Q How tall?

11 A I'm going to say about six feet.

12 Q And can you -- can you recall exactly what he
13 said to Pagan?

14 A He said that -- exactly word for word? No. But,
15 I'm pretty sure I was -- you know, I -- a guy just
16 flagged me down in the Rockefeller Look Out and said
17 his wife had fallen from the cliff.

18 Q And -- and did Pagan ask him any questions --
19

20 A I don't --

21 Q At that point?

22 A I can't answer that because he threw me the keys
23 to the -- the SUV and told me to pull the SUV up for
24 him.

25 Q Okay. So, you left immediately after that
initial statement?

1 A That's correct.

2 Q And would you agree with me that it's common
3 Police procedures in your department to get a persons
4 name, address and telephone number of someone reporting
5 an incident like that?

6 A Yes, sir.

7 Q And will you agree with me because according
8 to you you've reviewed all the reports that no one in
9 your entire department including Pagan ever got that
10 persons name and address or telephone number?

11 A Yes, sir.

12 Q And would you say that that's a screw up from
13 a Police standpoint?

14 MR. MELLO: I'm -- I'm going to object to
15 that and I think it's a --

16 THE COURT: Sustained.

17 MR. MELLO: Beyond the purpose of the
18 hearing.

19 Q Now, after that original statement you go and
20 go get a truck and you immediately go to Rockefeller
21 Look Out; correct?

22 A That's correct.

23 Q And Pagan is with you or in a different
24 vehicle?

25 A Pagan is in the truck, I'm in a -- in my patrol

1 car.

2 Q Okay. And when you say patrol car, it was
3 unmarked; correct?

4 A That's correct. It was an old style Chevy
5 Caprice, the square model, not the bubble car. It had
6 been the Lieutenants vehicle up unto a point and he got
7 a new car and it went into patrol for a little while.

8 Q Did it have a radio inside?

9 A It had a radio -- it was fully equipped, it just
10 didn't have a cage.

11 Q So, will you agree with me that anyone
12 sitting in that vehicle would be made aware of the fact
13 that this was not a civilians car, so to speak;
14 correct?

15 A Correct.

16 Q Anyone sitting in the back of that car would
17 know that it was a Police vehicle irrespective of
18 whether or not it had a cage; correct?

19 A Correct.

20 Q So, you get to the scene, you immediately
21 secure the area; correct?

22 A Yes, sir.

23 Q And after you do that, you're ordered by
24 Pagan to transport my client to the station; correct?

25 A That's correct.

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Q And -- and so there's no misunderstanding that was an order by a superior; correct?

A Yes, sir.

Q And had you said I'm not going to do that, he should stay there, in all likelihood you could have been disciplined?

A Yes, sir.

Q So, you're ordered to take my client to the station; correct?

A That's correct.

Q And when you first saw him, he was in another patrol car; correct?

A That's right.

Q And -- and who's car was that?

A I want to say Sergeant because he is a Sergeant right now, but Patrolman Tameo.

Q Okay. And Tameo's car was a regular Police car; correct?

A Yes, it was. Yes.

Q And -- and Tameo was there with Mr. Scharf; correct?

A He was in the vicinity of him. Yes.

Q When you say the vicinity, he was right at his car; correct?

A Correct.

1 Q Making sure Mr. Scharf didn't wander away or
2 attempt to go back to the scene or anything like that;
3 correct?

4 MR. MELLO: Objection to the form.

5 Q To your knowledge?

6 THE COURT: Sustained. Change the question,
7 please.

8 Q When -- what were the conditions of Mr.
9 Scharf when you first observed him?

10 A He was --

11 Q Where was he?

12 A He was seated in the rear of Patrolman --
13 Patrolman Tameo's patrol car with his hands covering
14 his face with the door open.

15 Q And -- and will you agree with me that
16 someone covering his face is indicative of someone who
17 was upset? At that point.

18 MR. MELLO: I think I can object to that.

19 THE COURT: -- over ruled.

20 MR. MELLO: Okay.

21 THE COURT: Can you answer the question?

22 A Yes, I can. And I -- I wouldn't agree with that.

23 Q When he had his hands over his face to cover
24 his entire face; correct? Both hands?

25 A That's correct.

1 Q And -- and it's your sworn testimony as you
2 sit here today that through those hands you could tell
3 that he was not upset at that point.

4 MR. MELLO: That wasn't the testimony, Your
5 Honor. The question was, is it -- you'd agree with me
6 it's indicative of someone who is upset? And the
7 Officer said, I wouldn't agree with you.

8 THE COURT: Sustained.

9 Q You testified that Mr. Scharf had both hands
10 over his face; correct?

11 A That's correct.

12 Q Will you agree with me that when you saw that
13 you couldn't see the expression on his face; correct?

14 A That's correct.

15 Q And where was Sergeant Tameo at that point?

16 A Standing outside the car.

17 Q In close proximity to my client; correct?

18 A He was in close proximity to the car and yes your
19 client was in the car so, I would have to say yes to
20 him as well.

21 Q Is there any doubt on your mind that Mr.
22 Scharf was -- was not allowed to roam away from that
23 area? Any doubt in your mind when you approached him
24 in Tameo's vehicle?

25 A I would think that he would have been allowed to

1 roam but, not back toward the scene for his own safety
2 and for the safety of the people there.

3 Q How about leaving the area? Leaving
4 Rockefeller Look Out? Was he at liberty to leave the
5 area at that time?

6 A He was at liberty to do what he wanted except
7 return back to that scene to where there was an active
8 rescue in place.

9 Q So, as you sit here today it's -- it's your
10 testimony that at that point, if my client wanted to
11 get up and leave that area that you or any other
12 Officer would not have stopped him?

13 A No, sir I wouldn't have stopped him. He wasn't
14 under arrest.

15 Q And at that point, after you secured the area
16 you're ordered to take him back to the station;
17 correct?

18 A That's correct.

19 Q Is there any reason why he didn't take his
20 car to your knowledge?

21 A Not to my knowledge, no.

22 Q Well, while you were there was anyone told to
23 secure his vehicle?

24 A Not to my knowledge, no.

25 Q Do you have any idea why you were told to

1 drive him as opposed to him driving his own car?

2 A Luck of the draw, I guess.

3 Q Okay. And you then place him in your car;

4 correct?

5 A I didn't place him. He got in on his free will

6 and accord.

7 Q Okay. So, there's no misunderstanding you

8 told him to get in his -- in your car?

9 A I -- I requested that he come with me and I would

10 drive him to headquarters. Yes.

11 Q And were you in uniform?

12 A Yes, I was.

13 Q And -- and will you agree with me that when a

14 normal citizen is told to do something by a Police

15 Officer that in light of the fact that you have your

16 uniform on that he would follow those directions?

17 MR. MELLO: Objection to what the normal

18 person would do.

19 THE COURT: Sustained.

20 Q Well, you're in your uniform; correct?

21 A That's right.

22 Q You walk over to my client who's in another

23 patrol car; correct?

24 A That's correct.

25 Q And you tell him to get into your car;

1 correct?

2 A I asked him to get into my car. Yes.

3 Q And that was a direct order that you received
4 by your superior; correct?

5 A Yes.

6 Q And who was that superior?

7 A Sergeant Pagan.

8 Q And Pagan tells you to take him where?

9 A To headquarters.

10 Q And on the way to headquarters, correct me if
11 I'm wrong, you indicated that he appeared to be
12 nervous?

13 A That's correct.

14 Q And -- and can you -- and he appeared to be
15 slightly shaken; correct?

16 A That's correct.

17 Q And at some point, he started mumbling;
18 correct?

19 A That's correct.

20 Q And did you know what he was saying?

21 A He was reciting Hail Mary's.

22 Q And when you first heard him mumbling did you
23 know what he was saying?

24 A At first, right off the bat, no I did not.

25 Q Do you know whether he was making sense or

1 saying something other than the Hail Mary before you
2 were able to discern what he exactly was saying at that
3 point?

4 A I couldn't tell what he was saying until I was
5 able to -- discern that he was reciting Hail Mary's.

6 Q And he's praying at that point; correct?

7 A Yes, I guess.

8 Q Well, when you say you guess, the Hail Mary
9 is a prayer, you know that right?

10 A I'm not Roman Catholic, I'm Presbyterian. I know
11 what Hail Mary's are but I don't practice and recite
12 Hail Mary's.

13 Q Okay. Is there any doubt in your mind that
14 when he was in the back of your car as you described
15 slightly shaken that he was praying?

16 A I would believe he was praying. Yes.

17 Q Now, you testified that he made statements
18 with regards to the incident; correct?

19 A That's correct, sir.

20 Q And in your report 18 years ago you put we
21 were walking and she said for me to go back to the car
22 to get a blanket and she slipped, I didn't see her
23 anymore. Will you agree with me that that statement
24 has a number of parts to it?

25 A Yes.

1 Q And one part is that he and his wife were
2 walking somewhere; correct?

3 A Correct.

4 Q And another part is that there was a
5 conversation with regards to going back to the car and
6 getting a blanket; correct?

7 A Yes.

8 Q And another part that she slipped?

9 A Yes.

10 Q And finally, the last part that he didn't see
11 her anymore; correct?

12 A That's correct, sir.

13 Q Now, after he was praying in the car at some
14 point in time he expressed concern for his wife;
15 correct?

16 A I don't know if I would call it concern. He asked
17 if there were going to be doctors or paramedics there.

18 Q Isn't it a fact that he was asking you if
19 doctors and paramedics were responding to the scene;
20 correct?

21 A That's correct.

22 Q And as you sit here today, you don't believe
23 that that had anything to do with concern for his wife
24 and what her condition may be?

25 A His demeanor in general didn't reflect concern for

1 his wife to me.

2 Q But, his specific words were are there
3 doctors or paramedics responding to the location;
4 correct?

5 A Yes.

6 Q And he also asked that people were going to
7 be able to you know, go and rescue her, repel down and
8 -- and find her; correct?

9 A I'd have to check. I can't recall that. Yes. If
10 anyone was going to climb down to get her and get her.

11 Q Do you know at what point my client was told
12 that his wife was dead?

13 A No, I do not.

14 Q When you got to headquarters, where did you
15 park your car in relationship to the door that you and
16 he entered?

17 A Right in the -- circle in front of the door.

18 Q Okay. And where's this water fountain that
19 you're talking about?

20 A When you enter the building there's a small foyer
21 that's really an extension or a covered entrance. As
22 soon as you walk through the inside door there's a
23 water fountain directly to your right.

24 Q Okay. And you had walked in ahead of him;
25 correct?

1 A That's correct.

2 Q Okay. And -- and you basically had driven
3 him to that station; correct?

4 A That's correct.

5 Q And you -- you were walking ahead of him;
6 correct?

7 A Correct.

8 Q And when he stopped to take a drink of water,
9 did you think it was unusual after he had finished to
10 look in the direction of where you were about to enter
11 the station?

12 A I thought it was unusual that he was splashing
13 water into his face while he was doing that.

14 Q You noted that as unusual?

15 A That's correct.

16 Q Now, did you ever indicate anywhere in your
17 report that you believed that that conduct, splashing
18 the water in his face was unusual?

19 A No. But, I did note it in my report that he had
20 done that.

21 Q Just that he has splashed water; correct?

22 A Correct.

23 Q Now, when Mr. Scharf was brought into Police
24 headquarters, where was he placed?

25 A There's a bench in front of our desk. It's in an

1 open area.

2 Q And did anyone talk to him or attend to him?

3 A I don't know. Basically, after I brought him into
4 headquarters, my interaction with him was over.

5 Q Will you agree with me that once you took
6 control of Mr. Scharf and placed him in your car and
7 drove him to Police headquarters, that basically there
8 was no way for him to leave the station at that point?

9 A He could have left the --

10 MR. MELLO: Objection. I'm going to --

11 A Station. He could have walked right out the
12 front.

13 MR. MELLO: I'm going to object --

14 A I'm sorry.

15 MR. MELLO: First of all, let me just say
16 this, I'm going to object to the term control. With
17 that objection in mind the Officer is about to testify
18 that he could have gotten up and walked out.

19 THE COURT: All right. Sustained. Ask
20 another question.

21 Q You brought him to Police headquarters;
22 correct?

23 A That's correct.

24 Q And you brought him inside the building;

25 correct?

1 A That's correct.

2 Q And although, he could have walked out the
3 front door, did he have a car?

4 A No, he did not.

5 Q They didn't even have cell phones back then;
6 correct?

7 A There were cell phones but they were very large
8 and bulky if I remember correctly.

9 Q To your knowledge you never saw him with a
10 cell phone; correct?

11 A That's correct.

12 MR. BILINKAS: Nothing further.

13 MR. MELLO: Just very briefly if I might,
14 Judge?

15 RE-DIRECT BY MR. MELLO:

16 Q Mr. Bilinkas asked you to remember questions
17 about that point in time when you and Mr. Scharf
18 entered Police headquarters; correct?

19 A That's right, sir.

20 Q And I want to focus you just for a moment or
21 two on that. I believe your testimony was that you
22 entered Police headquarters and Mr. Scharf was behind
23 you?

24 A That's correct.

25 Q It is true, is it not that you testified Mr.

1 Scharf certainly was not under arrest?

2 A That's correct, sir.

3 Q That Mr. Scharf was free to leave
4 headquarters at any time?

5 A That's correct.

6 Q Had Mr. Scharf been under arrest in any
7 circumstance of any kind where you have effected a
8 criminal arrest, would you enter headquarters with an
9 unrestrained person behind you --

10 A Absolutely not.

11 Q That was --?

12 A Absolutely not. And I would not have transported
13 him in the vehicle that I had, it would have been a
14 caged vehicle.

15 Q Now, you did note in your report certain
16 observations. Namely, that you observed Mr. Scharf to
17 have his hands over his face; correct?

18 A That's correct, sir.

19 Q You noticed and noted that he appeared to
20 mumble a prayer you recognized as a Hail Mary?

21 A That's correct.

22 Q And though not Catholic and recognizing it to
23 be a Catholic prayer, you recognize that by virtue of
24 your life experience as a prayer?

25 A That's correct, sir.

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Q What you can tell us is no more and no less than those are the words he mumbled to himself?

A Yes, sir.

Q Now, with respect to the statement that you have recorded -- you recorded a statement in your report that evening; correct?

A Yes, sir.

Q And you set it off in quotes; correct?

A Yes, sir.

Q And as Mr. Bilinkas says, it exists as follows, we were walking; correct?

A Yes, sir.

Q She said for me; correct?

A Yes, sir.

Q To go back to the car; correct?

A Yes, sir.

Q And get the blanket; correct?

A Yes, sir.

Q And she slipped; correct?

A Yes, sir.

Q And I did not see her anymore; correct?

A Yes, sir.

Q Okay. And you have quoted those words in your report?

A Yes, sir I have.

1 Q And with respect to his demeanor -- and it is
2 true, is it not that you have truthfully reported that
3 he mumbled a prayer to himself? It is true, is it not
4 that he asked whether or not medical personnel would be
5 at the scene; correct?

6 A Yes, sir.

7 Q And it is true, is it not that you noted --

8 MR. BILINKAS: Objection.

9 THE COURT: Your objection?

10 MR. BILINKAS: Leading again, Judge.

11 THE COURT: Sustained.

12 Q That you found his demeanor inappropriate to
13 the situation?

14 A Yes, sir.

15 Q Why is that?

16 A It's not how I would have reacted if my wife had
17 slipped and fallen off a cliff.

18 Q In your experience as a Police Officer, have
19 you had occasion to observe people under tragic
20 circumstance?

21 A Unfortunately, more often than not.

22 MR. MELLO: Thank you.

23 THE COURT: Anything further?

24 MR. BILINKAS: No, sir.

25 THE COURT: You may step down. Thank you,

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Lieutenant.

THE WITNESS: Thank you.

THE COURT: Counsel?

(AT SIDEBAR 11:44:28 to 11:44:41 - INAUDIBLE)

THE COURT: We'll resume at 1:30.

(BREAK IN HEARING)

THE COURT: Call your next witness.

MR. MELLO: The next witness will be Ronald
Karnick. I believe I showed --.

THE COURT: Good afternoon. Please stand,
face the court clerk.

COURT CLERK: Raise your right hand.

R O N A L D K A R N I C K, WITNESS, SWORN.

COURT CLERK: Please state your name for the
record.

THE WITNESS : Ronald Edward Karnick. K-A-R-
N-I-C-K.

THE COURT: Please have a seat.

MR. MELLO: Ready if you are, sir.

THE COURT: Ready.

MR. MELLO: Thank you, sir.

DIRECT EXAMINATION BY MR. MELLO:

Q Good afternoon, Mr. Karnick.

A Good afternoon, sir.

Q If you would, we're about to discuss an

1 investigation into the death of one Jody Ann Scharf on
2 September 20, 1992. And we'd like to discuss the role
3 that you played in that investigation, all right?

4 A Yes, sir.

5 Q And what I'd like you to do is, I'd like you
6 to concentrate on listening carefully to any question
7 that's asked by myself or Mr. Bilinkas on behalf of the
8 defendant. Give us your most honest and complete
9 answer. And if you would, keep your voice up so that
10 everyone can hear. If you'd speak into the microphone
11 it would help.

12 A Could I ask you to also speak a little louder? My
13 hearing isn't as good as it used to be.

14 Q Okay. Are you having trouble hearing me at
15 this point?

16 A A little bit.

17 THE COURT: The top of that podium is not
18 secured.

19 MR. MELLO: Yes, sir.

20 Q If you would, you tell me if you cannot hear
21 me. All right?

22 A Yes, sir. Yes, sir.

23 Q And please give Mr. Bilinkas the same
24 courtesy. Now, let's begin if you would by detailing
25 your experience in law enforcement.

1 A I've been a Police Officer for 30 years, 1967 I
2 started the job. I was 15 years on patrolman and 15
3 years I was in the Detective Bureau until my retirement
4 in 1997.

5 Q Now, as of September of 1992 how long had you
6 been a detective with the Palisade Interstate Parkway
7 Police?

8 A I would imagine about ten years.

9 Q And I believe you testified that you retired
10 effective in 1997?

11 A Yes.

12 Q Now, sir if you would I'm going to ask you to
13 reflect on a date in the past that is, September 20,
14 1992; understood?

15 A Yes, sir.

16 Q I'm going to ask you if you were employed by
17 the Palisade Interstate Parkway Police on that date?

18 A I was.

19 Q Were you, as you have seemed to indicate in
20 your testimony thus far, assigned to the Detective
21 Bureau on that date, September 20, 1992?

22 A I was.

23 Q I'd like to ask you if on that date,
24 September 20, 1992 you worked a shift as a detective in
25 that department?

1 A No, sir. I was off duty.

2 Q Did there come a point in time when you were
3 required to report for duty?

4 A Yes, sir.

5 Q I'm going to specifically refer your
6 attention to the evening of September 20, 1992. Were
7 you asked to report for duty that particular evening?

8 A Yes, sir. I was.

9 Q Do you recall the approximate time you were
10 called to report for duty?

11 A It was approximately 20 -- 25 hours -- 8:25 p.m.

12 Q And do you recall the manner by which you
13 were so notified? That is to say, who notified you to
14 report for duty?

15 A The Police desk called me. I believe it was
16 Patrolman Elliot at the time.

17 Q Now, as you reported for duty on that date,
18 fair to say you would then become involved into the
19 investigation of a death of a young woman named, Jody
20 Ann Scharf?

21 A Yes.

22 Q And in that regard, did you have occasion to
23 prepare a report?

24 A Yes, I did.

25 Q And was that report made contemporaneous with

1 the events that you are about to testify to?

2 A Yes, sir.

3 Q I'm going to show you what's been marked SM5.

4 Counsel, it's the report. If you would, just take a

5 moment to examine that exhibit and tell us if you

6 recognize that exhibit?

7 A Yes, sir that's my report.

8 Q Now, after being notified by headquarters to

9 report for duty, did you in fact immediately do so?

10 A Yes, sir.

11 Q Tell us what you did that evening as you

12 responded to headquarters?

13 A Whenever I got to headquarters, I picked up my

14 patrol vehicle, it's an unmarked car, responded to the

15 scene, which was the Rockefeller Look Out.

16 Q Now, the car that you drove I think, you said

17 was an unmarked car?

18 A Yes.

19 Q All right. And that --

20 A That was the --

21 Q Was your assigned vehicle?

22 A That was the vehicle assigned to the Detective

23 Bureau. Yes.

24 Q And you indicated you responded to

25 Rockefeller Look Out?

1 A Yes.

2 Q Would it be fair to say that at the time you
3 have reported for duty, you have been advised that a
4 woman had tragically fallen off the cliffs in the
5 Rockefeller Look Out, Englewood Cliffs area?

6 A Yes.

7 Q And that of course is part of the sector that
8 the Palisade Interstate Parkway Police is responsible
9 to patrol and oversee?

10 A Yes.

11 Q Now, upon your arrival at Rockefeller Look
12 Out, did you have occasion to see other Police
13 Officers?

14 A Yes, I did.

15 Q Can you tell us the first Police Officer that
16 you encountered upon your arrival at Rockefeller Look
17 Out?

18 A That would have been Officer Abbott, Paul Abbott.

19 Q Now, where do you recall seeing Officer
20 Abbott when you first encountered him?

21 A He was approximately 50 feet north of the
22 Rockefeller Look Out parking area.

23 Q Now, when you say north of the area tell us
24 specifically where you mean north of the parking area.

25 A The Rockefeller Look Out has numerous paths that

1 go north and south into wooded areas along the cliffs
2 edge and the parkway itself. The parking area stops
3 and then the paths pick up and about 50 feet north of
4 that is where the -- I encountered Officer Abbott.

5 Q Now, you're referring to a path that
6 traverses a wooded area; correct?

7 A Yes.

8 Q And that path eventually leads to the cliff
9 edge; correct?

10 A Well, it goes passed the cliffs edge. It goes all
11 the way north up passed the state line.

12 Q All right. Where was Abbott when you saw
13 him?

14 A He was about 50 feet north of the parking area.
15 There was a repelling team there, also.

16 Q All right. Was he in the woods?

17 A It was a wooded area. Yes.

18 Q Was he at the cliff edge?

19 A I believe he was on the other side of the fence
20 towards the cliffs edge. Yes.

21 Q Okay. So, he's not north of the parking lot
22 somewhere in the direction of the parkway going north?

23 A Well, the path runs north from there and it runs
24 parallel with the parkway. And all it is -- all it is
25 is a foot path. That's all it is.

1 Q Okay. When you enter the parkway from south
2 -- the look out from south to north; understood? Do
3 you understand?

4 A You talking about driving the --

5 Q You enter the park -- you enter the look out
6 from south to north.

7 A Are you talking about walking or driving?

8 Q Driving.

9 A The entrance is south of the -- on the south end
10 of the look out and the exit is on the north end.

11 Q You traverse the look out from south to north
12 where there is an northern exit; correct?

13 A Yes.

14 Q And what I'm trying to have you identify with
15 some degree of specificity is precisely where we see
16 Abbott when you first encounter him? Now, you've
17 indicated that he is approximately in your estimation
18 50 feet north of the north end of the lot; correct?

19 A Yes.

20 Q Now, in the north end of the lot there is a
21 path is there not that will lead to the cliff edge --?

22 A Yes.

23 Q And of course, before the cliff edge is a
24 restraining fence?

25 A Yes.

1 Q And at this time, are there any emergency
2 vehicles at that location?

3 A They're in the north end of the parking lot.

4 Q When you spoke with Abbott was he in the
5 vicinity of the cliff edge where a repel site was being
6 set up?

7 A Yes, he was.

8 Q Okay. Now, are you familiar with that
9 particular area of Rockefeller Look Out and that
10 particular area of the cliff face?

11 A Yes.

12 Q At that point, where the repel site was being
13 set up is it fair to say that there is at the edge of
14 the cliff a naturally formed if you will, stone seat?

15 A It actually is a flat rock and it's right at the
16 cliffs edge.

17 Q Okay. And is there a higher point in the
18 rock that could be said to form a seat?

19 A I believe -- I believe there was.

20 Q And had you seen that prior to this evening?

21 A Pardon?

22 Q Had you seen this prior to that evening?

23 A Yes.

24 Q All right. Now, you now see Abbott at that
25 particular point; correct?

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A Yes.

Q You have a discussion with him?

A Yes.

Q Does he advise you of the situation at that point?

A Yes, he did.

Q Now, did he inform you that he was at the point where he was told that a woman had fallen from the cliffs?

A Yes.

Q After being briefed by Abbott upon your arrival at the location you've described, is it fair to say that a rescue and/or recovery attempt was being made by Police Officers?

A Yes, it was.

Q And would those Police Officers among others be repeller's Pagan and Cioffi?

A Yes.

Q Now, as that activity is taking place -- as that activity is taking place, did you have occasion to go to another area at the cliffs?

A No. I stayed at the site for a little while.

Q Okay. Does there come a point in time when you leave the site?

A Yes.

1 Q Where do you go?

2 A From there, I went north to -- back to my
3 headquarters.

4 Q Now, can you tell us what occurred when you
5 arrived at headquarters? Tell us the very first thing
6 that occurred.

7 A I met Mr. Scharf, was told he was the victims
8 husband.

9 Q Now, first of all do you see Mr. Scharf in
10 court?

11 A Yes, I do.

12 Q Would you point him out, please?

13 A In the orange suit.

14 MR. BILINKAS: --

15 MR. MELLO: Sir, would you like --

16 THE COURT: The record will identify the
17 defendant, thank you.

18 Q Now, when you encountered Mr. Scharf, do you
19 recall where he was in Police headquarters?

20 A I believe he was sitting in the desk room. At the
21 time, we had a bench inside.

22 Q Was he at that time, in any manner, in any
23 way, under restraints?

24 A No, he wasn't.

25 Q Do you recall what he was wearing at that

1 time?

2 A The only thing I can recall, he was wearing casual
3 clothes.

4 Q Did you have a conversation with Mr. Scharf?

5 A Yes, I did.

6 Q Did you at that time identify yourself as a
7 Police Officer?

8 A Yes, I did.

9 Q Did you identify yourself as a Detective with
10 the Palisade Interstate Parkway Police?

11 A Yes, I did.

12 Q Were you in uniform or not?

13 A No, I was not. Civilian clothes.

14 Q Did you have that conversation with Mr.
15 Scharf, at the bench or in any other location?

16 A We had the conversation in my office, which is off
17 the Police -- Police desk room.

18 Q Would it be fair to say it's right next to
19 it?

20 A Yes.

21 Q Or was at that time?

22 A It was right off that area where he was sitting.

23 Q Now, can you tell us if you at that time
24 ascertained his name?

25 A Yes.

1 Q He told you his name was Stephen Scharf?

2 A Yes.

3 Q Did he give you an address?

4 A Yes.

5 Q What was his address?

6 A I believe it was 27 Knob Hill Road in Washington
7 Township which was located in Morris County.

8 Q Did you at that time begin to have a
9 conversation with him?

10 A Yes, I did.

11 Q Did you ask him to provide you with any
12 information?

13 A Yes.

14 Q What information did you ask him to provide?

15 A I had asked him what had happened with like what
16 had taken place that -- that evening.

17 Q Did he tell you what had taken place in his
18 words?

19 A Yes, he did.

20 Q Did he provide you with any written document?

21 A Yes. After I -- we had spoken I asked him if he
22 would give me a written statement as to what had
23 happened.

24 Q All right. Now, did you memorialize the
25 conversation that you had with Mr. Scharf on the 20th

1 of September 1992 in your report?

2 A Yes, I did.

3 Q If you would, would you tell us what -- and I
4 want you to be specific, what Mr. Scharf told you at
5 Police headquarters on September 20, 1992?

6 A When we spoke he stated that there were -- he and
7 his wife Jody were going to New York to see a comedy
8 show. He also said that they wound up on the
9 Rockefeller Look Out, which was there spot. They had
10 been drinking in the vehicle, they got out of the
11 vehicle and went north about 50 feet into the wooded
12 area, crawled through a fence and was sitting at the
13 cliffs edge, hugging and kissing, making out. He also
14 stated that he was going to go -- he told his wife that
15 he was going to go back to the vehicle to get a blanket
16 and some wine. She had said no, don't leave. She got
17 up, he got up and he stated that the next you knew, she
18 -- she fell forward and that he had called her name
19 out, tried to call for her and there was no answer.

20 Q Now, as you related the statement that he
21 gives you verbally on that date, he tells you that they
22 walked through the woods to a location where they came
23 to a fence; correct?

24 A Yes.

25 Q Does he tell you they went through the fence?

1 A Yes.

2 Q Can you describe that fence for us?

3 A The fence is I guess, is about four and a half
4 feet tall. It's a three cable fence and it goes from
5 the beginning of the wooded area, which is down in Fort
6 Lee up through -- up to the New York State line.

7 Q Now, he indicated to you that they went
8 through that fence as you described it and they went to
9 a location; correct?

10 A Yes.

11 Q How did he describe the location?

12 A Flat rock about 50 feet north of the look out.

13 Q Now, he told you they were doing what at that
14 location?

15 A That they were hugging and kissing. She was
16 sitting on his lap.

17 Q You tell us that he told you that at some
18 point, he got up to leave that location; correct?

19 A Yes.

20 Q Did he tell you why he got up to leave?

21 A He said he was uncomfortable and he was going to
22 go back to the vehicle to get a blanket and the wine.

23 Q Does your report note what he then says next?

24 A Report shows that -- just what I had stated.

25 Q All right. I'm asking you, after he states

1 that he was uncomfortable and got up to get wine and a
2 blanket, what happens next as he said?

3 A He said that Jody had gotten up when he got up,
4 turned around and she fell forward.

5 Q Now, you referred earlier to a written
6 statement?

7 A Yes.

8 Q First of all, I'm going to ask you
9 approximately what time does the conversation you just
10 described take place?

11 A It was approximately -- hours.

12 Q Just take a moment and examine that which has
13 been marked SM6. Have you reviewed that document?

14 A Yes, sir.

15 Q Okay. What is that document?

16 A It's a -- an affidavit that Mr. Scharf had filled
17 out.

18 Q Does it bare a name?

19 A Yes.

20 Q What is it?

21 A Stephen Scharf.

22 Q Age? Age?

23 A 41.

24 Q Does it show an address?

25 A Yes, it does.

1 Q What's the address?

2 A 27 Knob Hill Road, Hacketstown, New Jersey.

3 Q Does it show an occupation?

4 A Yes. Engineering -- supervisor.

5 Q And does it show phone numbers?

6 A It has two phone numbers.

7 Q All right. Would you tell us the first?

8 A First phone number is 908-852-6393. --

9 Q And the -- the second?

10 A Second one is a business number 201-785-7298.

11 Q Does it show the date of the statement?

12 A Yes. 9/20/92.

13 Q Now, the information that you described thus
14 far on that document, who put that information on the
15 document?

16 A Mr. Scharf gave -- gave this statement to me in
17 his own hands.

18 Q Now, there is a time noted on the statement.

19 A Yes.

20 Q What is the time?

21 A 2211.

22 Q Do you recall who put the time in?

23 A I did. It's my writing.

24 Q Now, Mr. Scharf then wrote this statement
25 out.

1 A He wrote the statement first and then I put the
2 time in afterwards.

3 Q Okay. Would you read the statement into the
4 record?

5 A Statement reads, Jody and I were kissing and
6 hugging on the flat rock by the trail overlooking the
7 river about, I guess 7:30 and I was uncomfortable.
8 When I asked Jody if -- when I asked Jody if or told
9 her I was going to get the blankets and the wine. She
10 said no don't go. As I got up to get the wine and
11 blankets, she got up then fell forward and I didn't see
12 or -- see her anymore. She didn't answer me.

13 Q Was that document signed?

14 A Yes, it is.

15 Q Was it signed by Mr. Scharf?

16 A Yes.

17 Q Was it signed by Mr. Scharf in your presence?

18 A Yes.

19 Q And if you would just give us a brief
20 description of the room that you were in when the
21 conversation you had with Mr. Scharf and the statement
22 that Mr. Scharf provided you were given?

23 A The room was a regular room. It had three --
24 three desks inside it and one chair for a person to sit
25 in near the door way.

1 Q And when you conversed with Mr. Scharf and
2 when Mr. Scharf provided the written document that
3 you've identified and read into the record, was he in
4 any way under restraint?

5 A No, he wasn't.

6 Q Was he at all times free to leave?

7 A Yes, he was.

8 Q Was there in any way at that time a thought
9 to arrest Mr. Scharf for anything?

10 A No, sir.

11 Q Now, at this time after you've gathered the
12 information regarding the fall of Jody Scharf from the
13 cliffs as you've described it for us, can you tell us
14 if you remain at headquarters or if you pursue any
15 other duties?

16 A When I finished interviewing Mr. Scharf and made
17 out his statement, I left headquarters and responded to
18 the lower road where the rescue team was coming down
19 from the cliffs.

20 Q All right. Now, when you left Mr. Scharf was
21 he in any way restrained?

22 A No, sir.

23 Q Was he at all times free to leave?

24 A Any -- yes. He -- left any time he wanted. He
25 was told he could use the -- the restroom or -- he

1 wanted, which was at the end of the hall.

2 Q Was he in any way monitored by anyone?

3 A No, sir.

4 Q Now, when you left -- when you left Mr.
5 Scharf at headquarters, did he ask at any time to go to
6 the site?

7 A No, not that I recall.

8 Q So, now you go down to what you've described
9 as the lower roadway?

10 A Yes.

11 Q Can you give us an idea of what you mean by
12 the lower roadway?

13 A The lower roadway runs north and south from the --
14 from Alpine to Edgewater. It's more or less a scenic
15 drive which is closed at night. It's a small road,
16 just enough for two cars to pass each other.

17 Q Fair to say that's kind of a roadway that
18 cuts into the mountain and traverses along parallel --

19 A Yes. A --

20 Q With --

21 A Scenic route.

22 Q Okay. Now, after you responded to the lower
23 roadway -- and would that be to the location where
24 emergency personnel, medical personnel and so forth had
25 been set up?

1 A Yes.

2 Q Okay. Do you receive any notification with
3 respect to what is the recovery, not rescue but,
4 recovery of the body of Jody Ann Scharf?

5 A When the recovery team came off the cliffs down to
6 the roadway, that's when the remains were hooked up to
7 the machinery from the paramedics and she was
8 pronounced dead by the medical examiner, through the
9 paramedics.

10 Q Did you note the approximate time in your
11 report that the rescue/recovery team reached the lower
12 roadway with the body of Jody Ann Scharf?

13 A 23 -- 2330 hours. 11:30 p.m.

14 Q Did you note in your report the approximate
15 time Jody Ann Scharf was pronounced dead?

16 A 2340 hours.

17 Q And was that done by paramedics in
18 consultation telephonically with the medical examiner
19 --

20 A Yes.

21 Q Doctor Clayton (phonetic)? And did you
22 happen to note the approximate time that the body of
23 Jody Ann Scharf was removed to the medical examiners
24 office?

25 A It was 2350. -- the scene was cleared and the

1 remains were turned over to the livery service, which
2 was going to take the remains to the medical examiners
3 office.

4 Q Now, did you return to headquarters following
5 the events that you described?

6 A Yes, I did.

7 Q At headquarters, would you again see Mr.
8 Scharf?

9 A Yes.

10 Q Are you aware of how Mr. Scharf was made
11 aware his wife was dead?

12 A When I returned he had asked me if she was alive
13 and I told him no she didn't make it.

14 Q And can you describe him at that moment in
15 time?

16 A To me he seemed a little upset. Not overly upset
17 but, he seemed upset over it.

18 Q At that time, when you had that conversation
19 notifying him that his wife was dead; did he ask you
20 any questions?

21 A Excuse me?

22 Q Did he ask you any questions at that time?

23 A No.

24 Q Can you tell us if you are aware of a Police
25 Officer assigned to the County Police named Desimone

1 (phonetic)?

2 A Yes, sir.

3 Q Is that also an emergency response person?

4 A He was assigned to the medical examiners office.

5 Q All right. And are you aware of any
6 conversation between that Police Officer and the
7 prosecutors office?

8 A Yes. Officer Desimone came with me -- he was at
9 the scene, at the recovery scene; he came to
10 headquarters with me.

11 Q All right. Now, did you have a conversation
12 with any member of the prosecutors office at
13 headquarters?

14 A Yes, I did.

15 Q Do you recall who that person was?

16 A That was Investigator Roger Kane (phonetic).

17 Q Now, with respect to the conversation that
18 you had with Roger Kane of the prosecutors office, what
19 is the next event in this investigation as it involved
20 you?

21 A I explained to Investigator Kane what had
22 transpired that evening and with Mrs. Scharf falling
23 off the cliff and Mr. Scharf. He stated that there
24 wasn't much they can do that evening and he asked if we
25 could check Mr. Scharf's body for any marks or

1 scratches or anything and also the vehicle for any --
2 anything that may pertain to the case.

3 Q And as a result of that conversation, what if
4 any conversation did you have with Mr. Scharf?

5 A I explained to Mr. Scharf what we wanted to do and
6 that we wanted to you know, look at his upper body for
7 any marks or anything and to search his vehicle for
8 anything that may pertain to the case.

9 Q Did Mr. Scharf cooperate in that regard?

10 A Yes, sir he did.

11 Q And did you advise him that he had a right
12 not to cooperate in that --?

13 A Yes, sir. I had him sign two consent forms, which
14 I -- I typed out certain things on it.

15 Q All right. If you would, I'm going to ask
16 you to examine what's been marked SM7. --. Have you
17 reviewed that document?

18 A Yes, sir.

19 Q Do you recognize that document?

20 A Yes, sir.

21 Q What do you recognize that document to be?

22 A It's the consent to search form, Mr. Scharf to --
23 for us to take photos and check his body for any marks.

24 Q Okay. Would you paillasse read that document
25 into the record?

1 A It says consent to search and it say, I, Stephen
2 Scharf hereby authorize Detective Ronald Karnick who
3 has identified himself as a law enforcement officer and
4 any other persons he may designate to assist him to
5 conduct a complete search of Stephen Scharf for any
6 marks on his body and to photograph same. I further
7 authorize the same officers to remove any and all
8 papers, property and effects that which they may
9 consider pertinent to the criminal investigation. I
10 give this consent to search freely and voluntarily
11 without fear, threat, coercion or promises of any kind.
12 And with full knowledge of my constitutional right to
13 refuse to give my consent to search, which I hereby
14 waive. I am also fully aware that if I wish to
15 exercise this right it would be respected. This
16 consent to search is given by this 21st day of
17 September 1992 at 0120 a.m. Signed by Mr. Scharf,
18 witnessed by myself and the address was the Palisades
19 Interstate Parkway Police Department.

20 Q And did he sign that document in your
21 presence?

22 A Yes, he did.

23 Q Did you sign it in his?

24 A -- my presence.

25 Q I refer to the second consent to search. I'm

1 going to show what's been marked SM8. Have you
2 examined that document?

3 A Yes, sir.

4 Q Do you recognize that document?

5 A Yes, sir.

6 Q What do you recognize it to be?

7 A It's another consent to search form. This was to
8 search the vehicle.

9 Q And would you read that document into the
10 record, paillasse?

11 A Consent to search. I, Stephen Scharf, hereby
12 authorize Detective Ronald Karnick who has identified
13 himself as a law enforcement officer and any other
14 persons he may designate to assist him to conduct a
15 complete search of the property and premise located at
16 Rockefeller Look Out parking area. A Ford Taurus, four
17 door, color, white. Including vehicles effects, I
18 further authorize the same officer to remove any and
19 all papers, property and effects which may -- they may
20 consider pertinent to their criminal investigation. I
21 give this consent to search freely and voluntarily
22 without fear, threat, coercion or promises of any kind
23 and with full knowledge of my constitutional rights to
24 refuse to give my consent to search, which I hereby
25 waive. I am also fully aware that if I wish to

1 exercise this right it would be respected. This
2 consent of search is given to me this 21st day of
3 September 1992 at 1 -- 0120 a.m. It is signed by Mr.
4 Scharf, witnessed by myself. The address Palisades
5 Interstate Parkway Police Department.

6 Q In fact, it was signed by Mr. Scharf in your
7 presence?

8 A Yes.

9 Q You signed it in his presence?

10 A Yes.

11 Q Both documents have a line X'd out. Is that
12 non-pertinent information?

13 A Yes.

14 Q And was that X'd out by you?

15 A Yes.

16 Q And was that done as you had this consent to
17 search executed by Mr. Scharf?

18 A Yes.

19 Q After you had Mr. Scharf review the consent
20 to search form respecting or, regarding photographing
21 him and he had the opportunity to review that document,
22 did you take photographs of him?

23 A Yes.

24 Q Okay. Do you remember how many?

25 A I believe it was two photos of him. Front and

1 back.

2 Q I'm going to show you what's been marked S2
3 and SM2 and SM3. First of all, SM2, what does that
4 photograph depict?

5 A Is this SM2?

6 Q Yes.

7 A Mr. Scharf lifted his shirt up and showed his
8 upper torso, which was a front photograph.

9 Q Does that photograph accurately depict that
10 view of Mr. Scharf as you took that photo on that day?

11 A Yes.

12 Q SM3 for identification; do you recognize that
13 exhibit?

14 A Yes, sir.

15 Q What do you recognize that exhibit to be?

16 A Mr. Scharf, his shirt raised up and the picture
17 was taken at his -- of his back.

18 Q And does that photograph accurately and --
19 depict that view of Mr. Scharf as you took that
20 photograph on the --?

21 A Yes.

22 Q After you took the photographs, did you
23 observe any marks, bruises or marks of any like kind on
24 the person of Mr. Scharf?

25 A No, sir. None.

1 Q I'm now going to direct your attention to
2 that point in time when you have photographed Mr.
3 Scharf and you have not observed any marks, bruises or
4 marks of a like kind on his person; all right?

5 A Yes.

6 Q Did you have a conversation with him at that
7 point?

8 A Yes.

9 Q What if anything did he say to you?

10 A He volunteered that he would also take a polygraph
11 test, a lie detector test if we wanted.

12 Q Did you bring that subject up or did he?

13 A He did.

14 Q After the conversation that you have just
15 described where he volunteers to take a polygraph test,
16 did you have occasion to have any conversation with any
17 law enforcement personnel in Morris County?

18 A Yes, I did.

19 Q And first of all, can you tell us if you
20 recall the approximate time that conversation would
21 have taken place?

22 A 2:20 a.m.

23 Q And did you make notes with respect to some
24 of the issues here?

25 A Yes, I did.

1 Q Okay. I'm going to show you what's been
2 marked S11. And I'm going to ask you if -- if you
3 recognize that document?

4 A Yes, sir it's mine.

5 Q Okay. And who was the person that you spoke
6 to from Morris County?

7 A That was Sergeant Ducker (phonetic).

8 Q Did you happen to note that in your brief
9 notes here?

10 A Yes, I did.

11 Q Okay. And did you note a time -- denoting
12 the time you spoke with him?

13 A 2:20 a.m.

14 Q And the time that you had this conversation
15 was obviously after all that you testified to thus far?

16 A Yes.

17 Q At that time, were you advised by Sergeant
18 Ducker as a history of domestic violence of Mr. Scharf?

19 A Yes.

20 Q Did he tell you in fact that and I want to
21 make sure that it's accurately reported, that there
22 were "a couple of incident"; is that accurate?

23 A He mentioned numerous complaints.

24 Q Numerous?

25 A Numerous.

1 Q Okay. And did he indicate anything else
2 about those complaints?

3 A He did state that there were numerous complaints
4 and that there were nothing -- nothing violent. And
5 that there were no more -- no more complaints. --

6 Q Did -- did he indicate to you that there were
7 no recent complaints?

8 A What?

9 Q Did he indicate to you that there were no
10 recent complaints?

11 A Yes.

12 Q So, in short there were a number of
13 complaints. He classified them as not serious and
14 nothing recent?

15 A Yes.

16 Q And did you record that information in your
17 report?

18 A Yes, I did.

19 Q Were you provided with any information
20 regarding Mrs. Scharf filing for divorce?

21 A He had mentioned that she was supposed to file for
22 divorce that past summer.

23 Q Now, that information regarding divorce and
24 domestic violence comes to you long after you've
25 interviewed Mr. Scharf?

1 A Yes. In fact, Mr. Scharf had already gone.

2 Q Mr. Scharf had left?

3 A He left -- he had left headquarters already.

4 Q Okay. Well, tell us how he left.

5 A When -- after we had taken the photos and the
6 consent forms we were done with him, no more we could
7 do and had asked him if he could get a ride home and he
8 made a phone call from my desk and he called someone to
9 pick him up.

10 Q Okay. Might you know who that person was?

11 A No, I don't.

12 Q Quite obviously, he was then and always was
13 free to leave?

14 A Yes.

15 Q And he in fact did?

16 A Right.

17 Q Now, with respect to your role in this
18 activity at this time; in addition to what we've
19 discussed, I want to focus on the document where Mr.
20 Scharf consented to a search of his car; all right?

21 A Yes.

22 Q Now, that document was executed at 0120, 1:20
23 a.m.; correct?

24 A Yes.

25 Q And after you received that consent to search

1 his car did you in fact proceed to conduct a search of
2 his car?

3 A Yes, I did.

4 Q And can you tell us if you note in your
5 report the time that you responded to the look out to
6 conduct a search of Mr. Scharf's Ford Taurus?

7 A 0148 hours.

8 Q And quite obviously that is before you speak
9 to Sergeant Ducker of Morris County?

10 A Yes.

11 Q And by the way, Morris County that's
12 Washington Township PD --

13 A Yes.

14 Q Just to be complete. Now, when you responded
15 to the look out and encountered Mr. Scharf's white Ford
16 Taurus; did you first photograph?

17 A Yes.

18 Q Did you take an exterior photograph?

19 A I believe I did. Yes.

20 Q And did you take some interior photographs?

21 A Yes.

22 Q Okay. Do you note in -- strike that. Do you
23 then conduct a search of that vehicle?

24 A Pardon?

25 Q Do you then, after photographing the exterior

1 and the interior of that vehicle, conduct a search?

2 A Yes.

3 Q Okay. And did you note that which you found
4 in your report?

5 A Yes, I did.

6 Q Okay. Referring to your report would you
7 tell us what you found in that car at that time?

8 A At 0148 hours I responded to the look out, photo'd
9 the vehicle and searched same. I removed a Coleman
10 cooler with one full bottles -- Bartles and Jaymes wine
11 cooler and one empty bottle of Bartles and Jaymes wine
12 cooler. There was one wine glass, one knife and a
13 piece of wax paper. One Walkman portable tape player,
14 one red nylon bag with a blue nylon bag inside, which
15 -- with a box of wine crackers, corkscrew, two white
16 towels, one candle, I have an Army type blanket which
17 was green and a Stanley claw hammer and one grey
18 jewelry box with a gold colored cross. All items are
19 to be held for further investigation.

20 Q Did you secure those items at that time in
21 evidence?

22 A Yes, I did.

23 Q And was the vehicle thereby and thereafter
24 authorized for release?

25 A Yes.

1 Q And in fact, are you aware that Mr. Scharf on
2 9/21 -- in the morning of 9/21 in fact recovered that
3 vehicle?

4 A Yes.

5 Q And for purposes of completeness -- I'm going
6 to ask you to identify this document, it's marked SM10.
7 Do you recognize that document?

8 A Yes, sir. I made it out. It's a property report
9 that we use.

10 Q All right. Is that an inventory of the items
11 that you found as you described them?

12 A It's an inventory of the items that I had taken
13 out of the vehicle. Yes.

14 Q And does it indicate the location where each
15 of those items were found?

16 A Yes, it does.

17 Q And were those notations all in your
18 handwriting?

19 A Yes.

20 MR. MELLO: In order to save some time Judge,
21 Mr. Bilinkas any objection --

22 THE COURT: Any objection?

23 MR. MELLO: Thank you. And while I'm at it,
24 I'd like to move that which is now been marked as the
25 inventory SM10 Your Honor.

1 THE COURT: Any objection?

2 MR. BILINKAS: Not for the purposes of this
3 hearing, Judge.

4 MR. MELLO: And both consents, which would be
5 SM7 and 8.

6 THE COURT: Any objection?

7 MR. MELLO: The photographs of Mr. Scharf,
8 two and three.

9 MR. BILINKAS: No objection.

10 THE COURT: Okay.

11 MR. BILINKAS: For purposes of the hearing,
12 Judge.

13 THE COURT: Sure.

14 MR. MELLO: And the statement, handwritten
15 statement, SM6.

16 MR. BILINKAS: No objection.

17 THE COURT: All right. Once again, for
18 purposes of this hearing, all of those items will be
19 received in evidence.

20 MR. MELLO: Thank you, sir. --. And -- and
21 there's one other form.

22 MR. BILINKAS: No objection.

23 MR. MELLO: Also, what is it? SM9 Your
24 Honor.

25 THE COURT: All right. In evidence.

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MR. MELLO: Thank you, sir.

Q Very briefly, can you just describe SM9?

A That's a form we use for accident reports or injuries or deaths.

Q And does that pertain to this case?

A Yes.

Q It of course involves the death of Jody Ann Scharf?

A Yes.

Q And was it prepared by you?

A Yes, it was.

Q And does it give a narrative of the incident?

A Yes.

Q All right. Would you please read that?

A Narrative of incident. Above victim was with husband, both crawled through fence and were kissing at cliffs edge, victim got up and fell toward death.

Q Okay. And that was put into this -- by you?

A Yes.

Q And it was signed by you?

A Yes.

Q And it also notes certain notifications to medical examiner, prosecutors office, et cetera?

A Yes.

Q And your report that you have in front of

1 you, your narrative report, that report notes that it
2 was prepared on 9/21/92 --

3 A Yes.

4 Q Contemporaneous with these events; correct?

5 A Yes.

6 MR. MELLO: I think that's all I have,
7 Judge. If I could just have one moment. Thank you,
8 sir.

9 THE COURT: Okay. Cross exam.

10 CROSS EXAMINATION BY MR. BILINKAS:

11 Q Sir, these circumstances occurred over 18
12 years ago; correct?

13 A Yes, sir.

14 Q Prior to you testifying here today, it's been
15 approximately 18 years since you've last looked at your
16 report; correct?

17 A Yes.

18 Q Would -- would you agree with me that all the
19 time references helped you refresh your recollection as
20 to actually what happened?

21 A Yes. I went over my reports.

22 Q Okay. And with regards to specific times,
23 will -- will you agree with me that prior to you
24 reviewing your report you couldn't recall what specific
25 time anything was done; correct?

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A Right.

Q Again, it's 18 years. It's understandable;
correct?

A Yes.

Q Now, when you do a Police report is it an
important for you to list the sequence of events
regarding your investigation?

A Yes.

Q And with regards to your specific report you
make specific references to exact times that you did
certain things; correct?

A Yes.

Q And was that a -- a policy of yours at that
time -- be able to accurately document what you did at
what specific time?

A Yes.

Q Now, with regards to the taking of the
written statement that's been introduced into evidence
here, can you show me --

MR. MELLO: Sorry?

MR. BILINKAS: Does he have all the exhibits?

MR. MELLO: He has -- I think he does have
them all. He certainly --

MR. BILINKAS: May I approach Judge?

THE COURT: You may.

1 MR. MELLO: He certainly has the written
2 statement.

3 Q Can you --

4 A Which one are you looking for?

5 Q I'm asking you to take a look at your
6 specific statement.

7 A Okay.

8 Q Your -- your typed out official Police report
9 statement --

10 MR. MELLO: Oh, I'm sorry. I thought you
11 mean the written statement that Mr. Scharf gave.

12 MR. BILINKAS: Well, I'm first referring to
13 the --

14 MR. MELLO: Report?

15 MR. BILINKAS: The report.

16 MR. MELLO: Thank you.

17 Q Okay. I'm asking you to refer to your
18 report. It's SM5. That's your official report;
19 correct?

20 A Yes.

21 Q And can you tell me where in this official
22 report there is any mention of you taking a written
23 statement from Mr. Scharf?

24 A I don't have it in there.

25 Q Excuse me?

1 A It's not in there.

2 Q Now, with regards to this official report,
3 isn't it a fact that you put specific dates when you do
4 each and every task?

5 A I try to.

6 Q Okay. Is there any date referenced to any
7 statement that you took either written or oral from Mr.
8 Scharf?

9 A Just the statement that he had given me. The
10 affidavit.

11 Q Well, I'm talking about your report. Can you
12 tell me whether or not if anywhere in your report
13 there's a reference to the time that you took either a
14 oral or written statement from my client?

15 A I -- I just have what he had told me verbally.

16 Q And -- and with regard to that specific
17 statement that you've indicated what he told you
18 verbally, there is not time referenced as to when he
19 told you those statements; correct?

20 A Correct.

21 Q Now, your direct testimony was and correct me
22 if I'm wrong, that on the day in question, after you
23 responded to the scene you left the scene and came back
24 to headquarters and took the various statements from my
25 client; correct?

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A Yes.

Q Now, isn't it a fact that in your official report, your report indicates in paragraph one that after talking to Abbott, where he informed you of the incident you state specifically, I left the area and responded to the lower drive and awaited the team to bring the body down. Isn't it stated exactly as I've just said?

A Yes.

Q So, would you agree with me that as far as your report is concerned, the report indicates that after you got the information from Abbott you didn't go to Police headquarters but, went and responded to the lower drive and awaited the team to bring the body down?

A That's what the report sounds like. Yes.

Q Now, 18 years later you have a specific recollection of going back to headquarters; is that your testimony?

A Yes.

Q Now, are there any official documents as to when you arrived at headquarters back then?

A I don't know if they kept any. I have no idea.

Q Well, I mean back at that time, don't you call in and say your responding to headquarters or when

1 you get to headquarters you indicate to the people
2 inside, the dispatcher that you've arrived with
3 whoever?

4 A There was a time sheet that the desk officer used
5 to keep. He would mark the times --

6 Q As people --

7 A In and out of headquarters --

8 Q Radioed in?

9 A With the names. When you walked into
10 headquarters.

11 Q And do you know where that time sheet is?

12 A I have no idea.

13 Q But, you agree with me that that time sheet
14 would indicate the specific time that you responded
15 back to headquarters; correct?

16 MR. MELLO: Objection. How would he know
17 that? How would he know what some other person did?

18 THE COURT: Sustained.

19 Q Now, you indicated that you took a statement
20 from my client, a written statement; correct?

21 A Yes.

22 Q Now, with -- with regard to that statement
23 you brought Mr. Scharf into the Police headquarters;
24 correct?

25 A He was --

1 MR. MELLO: Objection. That's not the
2 testimony.

3 A In the headquarters already.

4 MR. MELLO: Testimony was he was there
5 already.

6 MR. BILINKAS: I'll withdraw that.

7 MR. MELLO: Thank you.

8 Q When you entered Police headquarters, Mr.
9 Scharf was out in the lobby; correct?

10 A He was in the desk room from what I can recall.

11 Q And when you say the desk room, is that
12 within the Police Department?

13 A Yes.

14 Q Okay. And when you saw him there did you
15 take him to a different room within the Police
16 headquarters?

17 A Yes.

18 Q And that was your office; correct?

19 A Yes.

20 Q And in that office, there was just you and
21 him; correct?

22 A At that time, yes.

23 Q And what specifically did you ask him to do?

24 A In the beginning I asked him to give me a -- tell
25 me what had happened. Which he did.

1 Q Okay.

2 A And after that I asked him if he would put it in
3 writing for me. Which he also did.

4 Q And -- now, when you say you asked him, did
5 you indicate to him like you did with regards to the
6 consent forms that he didn't have to give you a
7 statement?

8 A No, I didn't.

9 Q Did you give him his Miranda warnings in
10 indicating that he had a right to remain silent?

11 A There was no need for me to do that. He wasn't
12 under arrest. He wasn't brought to headquarters for
13 any charges.

14 Q Do you know why he was brought to
15 headquarters?

16 A We -- we've had some bad experiences with cliff
17 cases, people involved it, witnesses. Try to get them
18 out of the way. We've had people try to climb down the
19 cliffs for their friends or loved ones and other people
20 cause problems with the Police Officers. They have
21 enough problems at the scene.

22 Q And can you tell me --

23 A So, he was brought to headquarters for safe
24 keeping.

25 Q Can you tell me how long he was at

1 headquarters before you returned and took the
2 statement?

3 A I don't know how long he was there.

4 Q Now, your testimony is that you asked him to
5 put everything in writing; correct?

6 A I asked him to give me a statement as to what had
7 taken place.

8 Q And you asked him to sign an affidavit;
9 correct?

10 A Yes.

11 Q Do you normally require the people to swear
12 to its contents?

13 A We ask them to put it in writing.

14 Q Okay. Now --

15 A He's not sworn in.

16 Q You indicated that everything other than the
17 time was put in that written statement by my client;
18 correct?

19 A I put the time in.

20 Q Okay. And as you sit here today, are you 100
21 absolutely sure that that time is in your handwriting?

22 A Yes, it is.

23 Q Again, so there's no misunderstanding I'm
24 referring to SM6 where it says time; correct?

25 A Yes.

1 Q -- do me a favor and just write in the lines
2 20 -- 2211 hours.

3 MR. MELLO: Can I see that please? Looks
4 just like it to me. I hope this isn't a handwriting
5 comparison but.

6 MR. BILINKAS: Judge?

7 MR. MELLO: I let it go for whatever reason
8 but.

9 MR. BILINKAS: I don't -- I don't know why
10 the prosecutors making a statement.

11 THE COURT: Well, what --

12 MR. MELLO: Well --

13 THE COURT: What is the point?

14 MR. MELLO: What's the point?

15 MR. BILINKAS: My -- my point --

16 MR. MELLO: The -- the point of asking the
17 question --

18 MR. BILINKAS: Judge, if I -- first of all, I
19 don't think it's appropriate for the prosecutor --

20 THE COURT: Yea. But, what is the point of
21 having --

22 MR. BILINKAS: My point is I have his notes
23 where he writes the number two and other numbers and --
24 and it looks totally different than the time on this
25 particular form. And again, I'll show the Court SM6,

1 where you can look at that time and I'll show the Court
2 SM11, which reference to numerous two's to the left.

3 MR. MELLO: And there are two's that look
4 just like it and it looks just like that's on the form
5 as he just wrote it.

6 THE COURT: Again, I -- I know what point
7 you're trying to make but, counsel this is 18 years
8 late.

9 MR. BILINKAS: Well, and also Judge so the
10 record is clear we never knew who had my client draft
11 this statement. This witnesses name is never mentioned
12 on the statement nor is it ever mentioned in his report
13 or any other report that was received by the
14 prosecutor. So, that's why I'm getting into this line
15 of questioning.

16 MR. MELLO: Actually, Judge that could have
17 been an easy question to ascertain and second, if you
18 look at the report and his notes on the report, and you
19 look at the written statement they're almost precisely
20 identical.

21 THE COURT: All right. Let's move on.

22 Q Now, you'll agree with me that after you
23 talked to the prosecutors office that Stephen Scharf
24 was a suspect in a criminal investigation; correct?

25 A I don't -- I wouldn't go that far to say that.

1 No.

2 Q Well, was the prosecutors office, the
3 criminal section of the prosecutors office asking you
4 to do certain things with regards to an investigation?

5 A Yes, it did.

6 Q And with regard to those consent forms that
7 the prosecutor asked you to have my client sign, do
8 they not specifically make reference to a criminal
9 investigation?

10 A Yes, they do.

11 Q With regards to the examination of my client
12 and the taking of photographs, will you agree with me
13 that that was something the prosecutor had you do as
14 part of a criminal investigation?

15 A It's a possibility. Yes.

16 Q When you say possibility, isn't it a fact
17 that on the form, the consent form that you had my
18 client sign, there's a specific mention of a criminal
19 investigation; correct?

20 A --.

21 Q And who did you talk to from the prosecutors
22 office?

23 A Investigator Kane.

24 Q Now, your report indicates that before you
25 went back to the station you went to the lower level;

1 correct?

2 A Right.

3 Q And did you meet Sergeant Pagan when he
4 brought the body down?

5 A He was part of the team. Yes.

6 Q And did you and -- and the other team members
7 discuss what had gone on up to this point?

8 A Not that I recall. No.

9 Q You don't recall Sergeant Pagan telling you
10 that there was a problem with regards to the way the
11 body was positioned in relationship to my clients
12 statement?

13 A No, I don't recall that.

14 Q Now, at some point in time after you talk to
15 the prosecutors office -- and does your report indicate
16 exactly when you did talk to the prosecutors office?

17 A I don't think it did. I'd have it in my notes.

18 Q Does it -- does it -- do your notes indicate
19 when you talk to the prosecutors office?

20 A Yes.

21 Q Okay. And when did you talk to the
22 prosecutors office? You can look at your notes.
23 Strike that, I have them. Where do your notes indicate
24 that you spoke to the prosecutors office?

25 A Right here. 0045, Roger Kane.

1 Q What's that number?

2 A 00.

3 Q And at some point you talked to someone from
4 Washington Township; correct?

5 A Yes.

6 Q And he gave you certain information with
7 regards to my client and his relationship with his
8 wife; correct?

9 A Yes.

10 Q Specifically told you something about a
11 divorce just recently being filed; correct?

12 A Yes.

13 Q And allegations of domestic violence?

14 A Yes.

15 Q Correct? Now, will you agree with me at that
16 point you're suspicious of his wife's death under these
17 circumstances?

18 A At that time, yes.

19 Q And will you agree with me that at that point
20 if you attempted to question him you would have advised
21 him of his Miranda rights?

22 A At that point, yes.

23 MR. MELLO: Objection to the question.

24 THE COURT: I'm sorry?

25 MR. BILINKAS: He said, at that point, yes.

1 MR. MELLO: Objection to the -- no.
2 Objection to the question. It's not -- that's a
3 determination to be made by the Court.

4 MR. BILINKAS: Judge, my specific position is
5 there are no time frames with regards to the taking of
6 the statement. There's not even a reference with
7 regards to this person taking a written statement and
8 had he had this information prior to that statement,
9 Judge I think it would have an impact on the --

10 THE COURT: But, you don't know when the
11 information --.

12 MR. MELLO: It's not -- and it's not -- it's
13 not relevant. What is relevant is what a Police
14 Officer must do and even if a Police Officer has
15 suspicions and even if a person is "a suspect" that
16 does not trigger Miranda. Miranda is triggered by
17 custody.

18 MR. BILINKAS: Custody Judge -- my response
19 is specifically, if he had that information -- the --
20 the statements about him being free to leave and just
21 walk out of there you know, I -- I think would be less
22 powerful from the state's standpoint and something the
23 Court should consider with regards to whether or not
24 these statements --

25 THE COURT: But, how do you fix a time line?

1 MR. BILINKAS: How do I fix a time line?

2 THE COURT: Yes.

3 MR. BILINKAS: Again, by going over what's in
4 the report versus what's not -- what is not -- what is
5 not in the report. His report specifically says that
6 he didn't go back to the station until after the body
7 was recovered and the woman was pronounced dead. Under
8 those circumstances Judge it's a much different
9 situation with regards to him being investigated and I
10 believe that Miranda should have been given him.

11 MR. MELLO: The problem with that is a really
12 simple answer. The statement that is given by --

13 MR. BILINKAS: Judge, if -- if we could have
14 this --

15 MR. MELLO: Mr. Scharf --

16 MR. BILINKAS: If we could have this witness
17 --

18 THE COURT: All right. Could you step
19 outside for a moment?

20 THE WITNESS: Sure.

21 THE COURT: Okay.

22 MR. MELLO: First of all my position is this.
23 First of all, there is a report. The report is a
24 narrative, the Officer has testified to his
25 recollection of chronologies. He has his report and he

1 has notes. Notes contain certain times, reports --
2 contain certain times. Most significantly though, is
3 the statement given by Mr. Scharf, which notes the time
4 2211, eleven minutes passed ten. That's the time the
5 statement is given. It also is true that in the report
6 the reportage of that which Mr. Scharf states is almost
7 identical to the statement that you have in evidence
8 before you.

9 Now, with respect to Miranda you can ask a
10 Police Officer if he was suspicious, you can ask him if
11 he was a suspect and you can ask that question until
12 the cows come home. But, if he's not in custody
13 Miranda is not triggered and we all know that. And
14 this kind of parsing of the report doesn't change that
15 fact. And to say, if you knew this at another time
16 what would that mean to you? Is not relevant to this
17 inquiry.

18 THE COURT: Is there any way through those
19 reports to determine when that information concerning
20 the marital status and the --

21 MR. MELLO: Yes.

22 THE COURT: DV incident?

23 MR. MELLO: Yes. In his notes -- in his
24 handwritten notes --

25 THE COURT: If you don't know what time it

1 was.

2 MR. MELLO: It says 0220.

3 THE COURT: Okay.

4 MR. MELLO: Two hours, twenty minutes passed
5 midnight.

6 THE COURT: Which would have been --

7 MR. MELLO: The statement given by Mr. Scharf
8 --

9 THE COURT: Which would have been after that
10 statement.

11 MR. MELLO: Long after.

12 THE COURT: So, what's the point?

13 MR. BILINKAS: The point is Judge number one,
14 we just got a copy of these -- notes --

15 THE COURT: But, he got the information four
16 hours later.

17 MR. BILINKAS: And I don't believe that
18 that's true, Judge.

19 THE COURT: Well, according to that
20 information.

21 MR. BILINKAS: When you say according to
22 that, we just got last week --

23 THE COURT: I'm just saying that if you look
24 at --

25 MR. MELLO: These went out before last week.

1 Let's be clear about that.

2 THE COURT: You look at a time line --

3 MR. MELLO: Let's be clear about that. These
4 notes went out last week.

5 THE COURT: Ten o'clock is the statement and
6 did you say two o'clock?

7 MR. MELLO: The -- the notes indicate that
8 the information from Morris County was received at
9 0220, 2:20 a.m. The statement --

10 THE COURT: There's a four hour difference.

11 MR. MELLO: By Mr. Scharf is 2211. Eleven
12 minutes after ten.

13 THE COURT: Counsel, unless you're able to
14 provide some additional information, information that's
15 received four hours later as to a statement that was
16 made earlier, I don't know where you're heading with
17 this line of questioning.

18 MR. BILINKAS: I'm just --

19 THE COURT: You can return to it if you get
20 another basis to pursue it. But, I'm going to sustain
21 the objection. Let's move on.

22 MR. BILINKAS: Does --

23 THE COURT: Let's bring the witness back on.

24 MR. BILINKAS: Judge, while he's coming in
25 does the prosecutor have the original of defendants

1 statement? I would ask that I have the opportunity --

2 MR. MELLO: I don't have it here, but I will
3 make that available to Mr. Bilinkas.

4 THE COURT: All right. Please return to the
5 witness stand. You may continue.

6 CROSS BY MR. BILINKAS:

7 Q Sir, you indicated that you were called from
8 being off duty at 8:25; correct?

9 A Yes.

10 Q And can you tell us why they called a
11 detective who was off duty to come in and deal with
12 this case?

13 A It was the policy of the department. Anytime
14 there was a fatal accident or a cliff case, even an
15 arrest a detective would be called in.

16 Q And -- and was there a detective on duty at
17 this time?

18 A Me.

19 Q Okay. Now, I indicated that this area, this
20 cliff base that Ms. Scharf had fallen from was along a
21 hiking path that went all the way up to the state line.

22 A Yes.

23 Q And you indicated that you're familiar with
24 this specific area?

25 A Yes.

1 Q Have you been -- been on that hiking path?

2 A When I was working up there, yes.

3 Q Now, isn't it a fact that there are numerous
4 items strewn around that area, which would indicate to
5 you that that exact spot is frequented by people?

6 MR. MELLO: I think we're getting a bit afar
7 afield of -- of Miranda.

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

10 MR. MELLO: Certainly trial testimony but.

11 Q Now, you mention on direct something about a
12 stone seat. Had you ever seen that stone seat prior to
13 this evening in question?

14 A I've been passed that area, yes. I wouldn't call
15 it a stone seat.

16 Q But, it's something where there's a ledge
17 where people could lean their back on and look over the
18 river; correct?

19 A No, it's not that high.

20 Q Isn't it in fact at least --

21 A Something you could sit on.

22 Q Isn't it in fact at least 18 inches?

23 A Around that. Yes.

24 Q Now, did you take the written statement from
25 Mr. Scharf before or after you told him that his wife

1 was dead?

2 A I took it before. We didn't know -- I didn't know
3 -- if she was alive or dead at the time. It was just
4 assuming.

5 Q Who was assuming?

6 A I was.

7 Q And you indicate and correct me if I'm wrong
8 that when you did tell him about the death, he seemed
9 upset?

10 A Yes, he seemed a little upset.

11 Q Now, when you talk to the prosecutor and --
12 and what office were you talking to?

13 A In the Detective Bureau. My office.

14 Q And it was the Bergen County Prosecutors
15 Office?

16 A Pardon?

17 Q The Bergen County Prosecutors Office you
18 talked to?

19 A Yes.

20 Q And so, as of that moment and correct me if
21 I'm wrong, the Bergen County Prosecutors Office was
22 asking you to do something regarding a criminal
23 investigation; correct?

24 MR. MELLO: Objection to the form.

25 THE COURT: Sustained. Ask another question.

1 Q The Bergen County Prosecutors Office was
2 asking you to get consent from my client for the taking
3 of photographs number one and to search is car;
4 correct?

5 A Yes.

6 Q And -- and were -- were there any discussions
7 that if he didn't consent that they would get a warrant
8 to do both of those items?

9 A No. No, there was no.

10 Q My client agreed to allow you to do both
11 those things you requested; correct?

12 A Yes, sir.

13 Q And when you searched his body and I assume
14 you did -- did it very carefully to make sure that you
15 saw anything that you thought may be relevant?

16 A He just lifted his shirt up and we looked around
17 his upper torso, front and back. That was it. We
18 didn't have him take his shirt off or anything else.

19 Q Are -- are you attempting to say you didn't
20 look at him or examine him closely to determine whether
21 or not there was any evidence of a struggle?

22 A From where I was sitting I could see if there was
23 any marks, scratches or anything.

24 Q And isn't it a fact that there were no
25 scratches or marks?

1 A That's correct. There were none.

2 Q And specifically, with regards to his face
3 you were within a foot away from him -- a foot or so
4 and there was no marks on his face; correct?

5 A Correct.

6 Q Now, at some point you indicated that my
7 client volunteered to take a polygraph; correct?

8 A Yes.

9 Q Before he volunteered did you give him any
10 indication that the statements that he had give you,
11 you didn't believe him?

12 A No.

13 Q Did you tell him anything with regards to his
14 statement?

15 A No.

16 Q Do you have any idea why he suggested that he
17 should take a polygraph?

18 A I have no idea why he volunteered it.

19 Q Now, after you took the statement did you
20 drive him back to his car?

21 A No, sir.

22 Q What was done with his car?

23 A His car in the Rockefeller Look Out, where he had
24 left it.

25 Q And why didn't you drive him back and let him

1 leave in the vehicle that he came in?

2 A When I took the statement the -- there was still
3 the -- the rescue team was still brining the -- Mrs.
4 Scharf down from the cliffs. The area was still with
5 the emergency vehicles and that.

6 Q They brought Mrs. Scharf down from the bottom
7 of the cliff; correct?

8 A Yes.

9 Q They went nowhere near the Rockefeller Look
10 Out with her body after they retrieved it; correct?

11 A Right.

12 Q And your reason why you didn't let him use
13 his car and drive home was what?

14 A We -- the incident was still under investigation.

15 Q Criminal investigation?

16 A No, it was --

17 MR. MELLO: Objection.

18 A Just investigation as to what had taken place that
19 night.

20 Q Well, when you searched his car and found a
21 claw hammer, did that appear suspicious to you at all?

22 A At the time it did, yes.

23 Q And did you communicate that to anyone in the
24 prosecutors office?

25 A Yes.

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Q Who? When?

A It was in my reports that it was found in there.

Q So, you'll agree with me that prior to my client having any contact with the Bergen County Prosecutors Office, you would inform them of his statement; correct?

A Yes.

Q The information that you got from Washington Township; correct?

A Yes.

Q Specifically, divorce complaint, domestic violence; correct?

A Yes.

Q And that when you searched the car, you found a claw hammer; correct?

A Yes.

MR. BILINKAS: If I could just look through my notes, Judge?

THE COURT: You may.

MR. BILINKAS: I think I'm done.

Q Was the car locked when you went to search it?

A No, sir. It was open.

Q Okay.

MR. BILINKAS: Nothing further, Judge.

1 MR. MELLO: No re-direct. Thank you, Judge.

2 THE COURT: No? You may step down. Thank
3 you. Next witness?

4 MR. MELLO: Yes, sir. James Lynam, please.

5 THE COURT: All right. Please step up, face
6 the court clerk.

7 COURT CLERK: Raise your right hand.

8 J A M E S L Y N A M, WITNESS, SWORN.

9 COURT CLERK: State your name for the record.

10 THE WITNESS: James Lynam.

11 THE COURT: Please have a seat. You may
12 begin.

13 DIRECT EXAMINATION BY MR. MELLO:

14 Q Sir, would you please begin your testimony by
15 relating to us your background in law enforcement?

16 A I became a Police Officer in January of 1976,
17 worked for the Palisades Interstate Park Commission for
18 the Police Department in a uniform capacity and in a
19 plain clothes capacity. 1994, I then went to the
20 Bergen County Police Department where I functioned as a
21 Patrol Officer and as a detective, and I retired in
22 2006.

23 Q Now, if you would can you tell us by whom you
24 were employed in September of 1992?

25 A I was employed by the Palisades Interstate Park

1 Commission.

2 Q And at that particular time, September of
3 1992 in the course of your employment can you describe
4 for us your general assignment within that department?

5 A I was -- I worked in the capacity of detective in
6 plain clothes and I drove an unmarked car.

7 Q Now, I'm going to direct your attention to
8 September 21st, 1992; all right?

9 A Yes, sir.

10 Q And I'm going to ask you if you had occasion
11 to report for duty on that date with the Palisade
12 Interstate Park Police?

13 A Yes, I did.

14 Q Can you tell us at that time, were you
15 assigned to the Detective Bureau?

16 A Yes, I was.

17 Q And did you of course report in that capacity
18 on that date?

19 A Yes, I did.

20 Q Did you have a conversation with any superior
21 on that date?

22 A Yes, sir. I --

23 Q And who was that?

24 A That would be first, the Chief of Police and in
25 addition to Detective Karnick.

1 Q All right. Now, with respect to your
2 conversation with Detective Karnick, can you tell us if
3 Detective Karnick briefed you with respect to an
4 investigation regarding a fall from the cliffs at
5 Rockefeller Look Out the night before, on September 20,
6 1992?

7 A Yes, he did brief me. I was directed by the Chief
8 of Police to insert myself into that case in capacity
9 of investigator.

10 Q And Detective Karnick apprised you of that
11 which he had learned up until that point in time?

12 A Yes, sir.

13 Q And with respect to the information that
14 Detective Karnick provided you, did he provide you with
15 a synopsis or summary report of his activities that
16 September 20 and early morning hours of the 21st?

17 A Yes, he did.

18 Q I'm going to show you what's been marked SM5.
19 Do you recognize that exhibit?

20 A Yes, I do.

21 Q And was that the report prepared by Detective
22 Karnick regarding his activities into the inquiry of
23 the death on the cliffs; the death of Jody Ann Scharf
24 on September 20, 1992?

25 A Yes.

1 Q And you will note that within the body of
2 that report, amongst the information that is provided
3 on page one, there is a summary of an interview of Mr.
4 Scharf, Stephen Scharf by Detective Karnick?

5 A Yes, I see -- I see it.

6 Q And you were made privy to the information in
7 that report regarding the conversation between Karnick
8 and Scharf?

9 A Yes, I was.

10 Q All right. Now, were you also at this time
11 at this briefing made aware of a written statement that
12 had been taken from Mr. Scharf by Detective Karnick?

13 A Yes.

14 Q I'm going to show you what's been marked SM6.

15 A Okay.

16 Q Do you recognize that exhibit?

17 A Yes, I do.

18 Q Okay. And is that the written statement that
19 Mr. Scharf provided to Mr. Karnick on September 20,
20 1992?

21 A Yes, it is. This signature is of the person
22 making an affidavit.

23 Q Now, with respect to that particular
24 statement and the reportage of that statement, you were
25 not present for those events of course, but that

1 information was relayed to you as the detective now
2 coming into this picture?

3 A Yes, sir.

4 Q And would it be fair to say that in addition
5 to the information that is provided in that statement,
6 hand written and in that report that you were made
7 aware of certain other information that came from
8 Morris County?

9 A Yes.

10 Q And would it be fair to categorize that
11 information in summary fashion as it suggested that
12 there was some history of domestic abuse by Mr. Scharf
13 and that Mrs. Scharf had filed for divorce in the
14 recent past?

15 A Yes, sir.

16 Q And would it be fair to say that as you're
17 now being briefed, this becomes part of your
18 information brief as the detective who is now assigned
19 to this task?

20 A Yes.

21 Q Now, it is also true is it not that in the
22 reportage by Mr. Karnick, Mr. Karnick refers to a
23 search of Mr. Scharf's vehicle; correct?

24 A Yes, sir.

25 Q And in that search a claw hammer was

1 recovered in a bag which was in another bag?

2 A Yes.

3 Q And similarly is it fair to say that that
4 becomes part of the information based you have on
5 September 21st, 1992?

6 A Yes.

7 Q And I'm going to show you two Polaroids that
8 were taken by Detective Karnick of Mr. Scharf and they
9 are for the record SM2 and three. Two is front view of
10 Mr. Scharf, three is a rear view.

11 A Okay.

12 Q And did you also view those photographs as
13 part of your particular tasking to this case?

14 A Yes.

15 Q Now, in addition to all that we've discussed
16 thus far regarding your information base, did Detective
17 Karnick advise you that Mr. Scharf had volunteered to
18 take a polygraph test?

19 A Yes, he did.

20 Q Now, with respect to that information on the
21 21st of September 1992, what action did you take?

22 A I asked him if he was still willing to --

23 Q Well, before that --

24 A Submit.

25 Q I'm going to ask you, did you contact any law

1 enforcement agency to arrange such a test?

2 A Yes. I contacted, at that time Investigator
3 Hornyak of the Bergen County Prosecutors Office and --
4 and was told to try to set the polygraph up for the
5 following day.

6 Q All right. Now, is it fair to say that at
7 the time Investigator Joseph Hornyak of the Bergen
8 County Prosecutors Office was an individual who was
9 tasked to run polygraph for lie detector tests?

10 A Yes, he was.

11 Q And in that regard you had that information
12 and called him to arrange for such a test?

13 A Yes.

14 Q But, that was in the light of being provided
15 the information by Detective Karnick that Mr. Scharf
16 had volunteered to take such a test?

17 A Yes.

18 MR. BILINKAS: Objection. Leading.

19 THE COURT: Sustained.

20 Q Now, do you recall approximately what time
21 you called Investigator Hornyak to arrange this
22 polygraph?

23 A Approximately -- maybe, 0900.

24 Q Did you note that report if you recall -- did
25 you note that time if you recall in your report?

1 A Yes.

2 Q May I show you that to refresh your
3 recollection of the precise time of which you did that?

4 A Yes.

5 Q I'm going to show you what's been marked S12
6 and 13. They're actually two pages of one report.

7 Would you please examine that document --?

8 A It's a report I submitted to the Chief of Police.

9 Q Does it note the time that you contacted
10 Investigator Hornyak?

11 A Yes, it does.

12 Q What time was that?

13 A 0910 hours.

14 Q Now, at the time that you contacted --
15 Investigator Hornyak to arrange for the polygraph, had
16 you met Mr. Scharf?

17 A No. He -- I don't believe so. He was in
18 headquarters at the time.

19 Q Okay. Now, what is the next thing that you
20 did in this matter? After you called Hornyak?

21 A I went -- I went to the scene, photographed what I
22 could.

23 Q All right. Does your report note what time
24 you went to the scene?

25 A Yes.

1 Q What time was that?

2 A 0930 hours.

3 Q Now, do you recall that event?

4 A Yes.

5 Q By the scene, you are referring to what?

6 A The Rockefeller Look Out, specifically the north
7 end where the car was.

8 Q And you said that you took some photographs?

9 A Yes.

10 Q What did you photograph?

11 A I photographed the car. I photographed the --
12 there's that warning, hazard sign ahead of the car on
13 -- on the concrete posted. And I photographed -- I
14 photographed the scene where the defendant -- check
15 that. I photographed the location where Mr. Scharf and
16 his wife were.

17 Q All right. And in addition to photographing
18 that location, did you photograph any other part of
19 that location?

20 A Yes, I photographed the spot where they were and
21 while looking down below, approximately ten feet down
22 on another ledge was -- I saw two items which I also
23 photographed.

24 Q And what did they appear to be?

25 A A make up kit and a credit card.

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Q Did you retrieve those items?

A I did not.

Q Why was that?

A They were -- it was -- it would have been too hazardous for me to do so.

Q Were you made aware of the recovery of a pocketbook from that ledge the night before?

A Yes.

Q And that was retrieved by Sergeant Pagan; correct?

A Yes, it was.

Q Now, I'm going to ask you if that morning after you photographed -- took photographs of the scene as you described it, did you return to headquarters?

A Yes, I did.

Q Okay. When you return to headquarters, did you now receive any information from any Police agency?

A I received a call from an Officer Herringburg (phonetic), a Lieutenant Herringburg of the Morris County -- check that. Of the Washington Township in Morris County Detective Bureau.

Q Okay. And what did he advise you of?

A He advised that there had been two prior domestic violence cases filed against Mr. Scharf.

Q Did he inform you as to any divorce action?

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A Yes.

Q What did he tell you?

A A divorce was pending.

Q What other information did you receive if any, from Lieutenant Herringburg?

A He had -- Lieutenant Herringburg told me that he spoke to --

MR. BILINKAS: Objection, Judge. Again, it's hear say and --

THE COURT: Sustained.

MR. BILINKAS: I think it's beyond the scope of this Miranda at this point.

THE COURT: The objection is sustained.

MR. MELLO: Understood.

Q Now, after you receive this information did you have occasion to meet an individual Stephen Scharf?

A Yes.

Q Do you see him in court?

A Yes, I do.

Q Would you point him out, please?

A He seated at the table to the left in an orange jumpsuit.

MR. BILINKAS: Stipulate my client for the record.

MR. MELLO: Thank you.

1 THE COURT: -- the defendant will be
2 identified by the record.

3 Q Now, do you recall where he was and what he
4 was doing?

5 A Yes. He was standing before the Police desk for
6 the purpose of retrieving his car.

7 Q And do you know how he arrived at Police
8 headquarters?

9 A He was taken there by his aunt. Her name is
10 Dolly.

11 Q And do you know the purpose for which he had
12 reported to headquarters?

13 A He was -- the purpose was to sign a release for
14 his vehicle and then to go pick it up.

15 Q I'm going to show what's been marked SM16.

16 A Okay.

17 Q Do you recognize that exhibit?

18 A Yes.

19 Q What do you recognize it to be?

20 A It's the Police abandoned vehicle report.

21 Q All right. Does it show a date and time that
22 the vehicle was recovered?

23 A Yes, it does.

24 Q What's that?

25 A 9/21/92 at 1018 hours.

1 Q And it was -- who was it recovered by?

2 A The owner.

3 Q Okay. And that would be the vehicle -- Ford

4 Taurus?

5 A Well -- yes, it was.

6 Q Now, at the time that you observed Mr. Scharf

7 at headquarters and Mr. Scharf is there to recover his

8 vehicle; do you have a conversation with him?

9 A Yes. I asked him if he would --

10 Q All right. Do you introduce yourself?

11 A Yes.

12 Q Do you identify yourself as a detective with

13 the department?

14 A Yes.

15 Q What's the conversation that you had with him

16 at that time?

17 A If he was still willing to take a polygraph test.

18 Q What if anything did he say to you?

19 A He said that he would.

20 Q What if anything did you say in reply to

21 that?

22 A We -- I asked him to report -- you know, if he

23 could report to the -- to the County Prosecutors Office

24 for the purpose of the polygraph.

25 Q And did he agree to that?

1 A Yes.

2 Q Okay. Did you advise him where to report?

3 A Yes.

4 Q Now, what was the date and time that the
5 polygraph was set for?

6 A Polygraph was set for September 22nd at
7 approximately 1000 hours.

8 Q That would be ten a.m.?

9 A Yes.

10 Q Now, if you would I'd like to discuss with
11 you the events of September 22nd. Understood?

12 A Yes.

13 Q And directing your attention specifically to
14 the morning of September 22nd. Did you have occasion
15 to meet with Stephen Scharf on the morning of September
16 22nd, 1992?

17 A Yes.

18 Q Can you tell us first, where that meeting
19 took place?

20 A 29 Linden Street Hackensack.

21 Q Can you tell us who was present at that
22 meeting?

23 A Myself and Investigator Terry Alva (phonetic) of
24 the Bergen County Prosecutors Office.

25 Q Can you tell us at approximately what time

1 that meeting took place?

2 A Maybe, 10:57. I'm not sure.

3 Q Did you prepare notes with respect to this
4 meeting?

5 A Yes, I did.

6 Q And were those notes made contemporaneous
7 with the conversation?

8 A Yes.

9 Q I'm going to show you what's been marked S20.

10 A I see it.

11 Q Do you recognize that document?

12 A Yes.

13 Q Okay. You -- you recognize that document as
14 what?

15 A As handwritten notes that I took during our
16 interview with Mr. Scharf.

17 Q Now, present at that interview would be you,
18 Mr. Scharf and Investigator Alva of the BCPO; correct?

19 A Yes.

20 Q And these notes you were writing as you had a
21 discussion with him?

22 A Yes.

23 Q And what time did the interview begin?

24 A 9:56.

25 Q Now, with respect to the conversation that I

1 am about to discuss with you, in addition to the notes
2 that you have in front of you, was a report prepared?

3
4 A Yes.

5 Q I'm going to show you what's been marked S21.
6 MR. BILINKAS: Counsel, is that October 19th
7 memo?

8 MR. MELLO: October --?

9 MR. BILINKAS: Yea.

10 A Okay.

11 Q Do you recognize that exhibit?

12 A I do.

13 Q What do you recognize that exhibit to be?

14 A It's a report prepared by Investigator Alva.

15 Q And did you participate in the preparation of
16 that report?

17 A Yes.

18 Q And was that report -- drafted by
19 Investigator Alva, a collaboration of you and he?

20 A Yes, it was.

21 MR. MELLO: Now -- Judge, may we approach for
22 one brief moment?

23 THE COURT: You may.

24 MR. MELLO: Thank you, very much.

25 (AT SIDEBAR 3:36:23 - 3:37:05 - INAUDIBLE)

THE COURT: All right. We're going to

1 adjourn at this time and resume at nine a.m. tomorrow
2 morning.

3 MR. BILINKAS: Thank you, Your Honor.

4 (HEARING CONCLUDED)

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Certification

I, Kerry Lang, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CD No. 1, from index number 9:25:36 to 11:44:49 and 1:41:28 to 3:37:21, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

/s/ Kerry Lang
Kerry Lang AOC#614

Date 6-24-13

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