

SUMMONS

DULY SERVED
DATE 10/8/15
JOSEPH O'RYAN, SHERIFF
UNION COUNTY, NEW JERSEY
BY [Signature]
Sheriff's Office

Attorney(s) James Knight, Jr. Prose
Office Address Union County Jail, 15 Elizabethtown Plaza
Town, State, Zip Code Elizabeth, N.J. 07208

Superior Court of
New Jersey

Telephone Number _____
Attorney(s) for Plaintiff James Knight, Jr. Prose

Union COUNTY
Law DIVISION
Docket No: 1300.3381

James Knight, Jr.
Plaintiff(s)

UNN-L- 2880-15

CIVIL ACTION

SUMMONS

Vs.
Edward Duarte, Det N. Carvalho, Po. Romeo,
Zoila Nova, Sgt. C. Sylvester, Po. L. Carder, Neri Quinones
Det. Ed. Rivera, Po. R. Crawford, David Oliva,
Det. T. Robertson, Po. M. McLaughlin, Gregory Morris
Defendant(s)

UNN-L- 2880-15

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

Clerk of the Superior Court

DATED: _____

Name of Defendant to Be Served: Det. Nuno, Carvalho
Address of Defendant to Be Served: 200 East Fourth St. Plainfield, NJ

UNION COUNTY SUPERIOR COURT
2 BROAD STREET
ELIZABETH NJ 07207

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (908) 659-4810
COURT HOURS 8:30 AM - 4:30 PM

DATE: AUGUST 14, 2015
RE: KNIGHT VS DUARTE ET AL
DOCKET: UNN L -002880 15

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 3.

UNN-L- 2880-15

DISCOVERY IS 450 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS
FROM SERVICE ON THE FIRST DEPENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON JAMES HELY

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001
AT: (908) 659-4820.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.

PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE
WITH R.4:5A-2.

ATTENTION:

JAMES KNIGHT JR
15 ELIZABETHTOWN PLAZA
C/O UNION CO JAIL -212587
ELIZABETH NJ 07202

JUTAN

NEW JERSEY JUDICIARY

James Knight, Jr.
Plaintiff☒ FILING FEE WAIVER REQUEST☐ FEE WAIVER REQUEST FOR
TRANSCRIPT(S)

VS.

Zoila Nova

Det. T. Robertson (P.L.F.P.D.)

Defendant

Edward Duarte

Based on Inability to Pay

UNN-L-2880-15

UNN-L-2880-

Applicant's Name:		
Last: <u>Knight, Jr.</u>	First: <u>James</u>	MI: _____
Home Address:		
<u>Union County Jail</u>		
Street: <u>15 Elizabethtown Plaza</u> Apt No.: _____		
City: <u>Elizabeth</u>	State: <u>NJ</u>	Zip: <u>07202</u>

Docket Number:

1300331

Home Phone #:

()

Number of Dependents

RECEIVED / FILED
Superior Court of New Jersey
AUG 12 2015
CASE MANAGEMENT
UNION COUNTY

I, James Knight, Jr., am over the age of 18 and request no court fees charged as I am without funds to pay the fee. I am a (check one) ☒ Plaintiff ☐ Defendant in the following court:

☒ Civil ☐ Special Civil Part ☐ General Equity ☐ Probate ☐ Family ☐ Municipal Appeal

The following are facts about my financial condition. My income before taxes is:

Salary (per month): \$ <u>0</u>	Other Income (per month): \$ <u>0</u>
Specify source of other income, including six months of prisoners' account statements in accordance with N.J.S.A. 30:4-16.3 (per month): <u>0</u>	

The following is a complete list of everything I own and owe, as far as I know:

Own	Amount \$	Owe (per month)	Amount \$
Money in any bank accounts	<u>0</u>	Rent/mortgage	<u>0</u>
Automobiles	<u>0</u>	Food	<u>0</u>
Real estate	<u>0</u>	Utilities	<u>0</u>
Insurance with cash value	<u>0</u>	Alimony/child support	<u>0</u>
Money owed to me	<u>0</u>	Auto payment	<u>0</u>
Other (specify)	<u>0</u>	Other (specify)	<u>0</u>
TOTALS	<u>0</u>	TOTALS	<u>0</u>

Please attach documents as to income (pay stubs, welfare documents, unemployment documents, last bank statement, etc.)

I certify the statements made by me in this document are true and that my proposed pleading is attached. I understand that if I give any false information, I may be punished by the court.

I am signing this statement to explain to the court why I am unable to pay any court fees in this lawsuit. (Rule 1:13-2(a))

Transcript(s) Fee Waived: ☐ Yes ☐ No Fee Waived: ☒ Yes ☐ No

Signature (Applicant): <u>James Knight, Jr.</u>
Date: <u>8/4/15</u>
(Print Name) <u>James Knight, Jr.</u>

Signature (Judge):
Date:
(Print Name)

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS) Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule</i> 4:5-1 Pleading will be rejected for filing, under <i>Rule</i> 1:5-6(c), if information above the black bar is not completed or attorney's signature is not affixed		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: ☐ CK ☐ CG ☐ CA CHG/CK NO.: AMOUNT: OVERPAYMENT: BATCH NUMBER:	
	1. ATTORNEY / PRO SE NAME <i>James Knight, Jr</i>		2. TELEPHONE NUMBER	
	4. FIRM NAME (if applicable)		3. COUNTY OF VENUE <i>Union</i>	
	6. OFFICE ADDRESS <i>Union County, NJ 15 Elizabethtown Plaza Elizabeth, N.J. 07202</i>		5. DOCKET NUMBER (when available) <i>UNN-L-2880-1350331</i>	
	9. NAME OF PARTY (e.g., John Doe, Plaintiff) <i>James Knight, Jr</i>		7. DOCUMENT TYPE <i>Complaint</i>	
11. CASE TYPE NUMBER (See reverse side for listing) <i>005</i>		10. CAPTION <i>Det. N. Carvalho, Po. L. Carden, David Oliva, Edward Duarte, Sgt. C. Sylvester, Gregory Morris, Zella Nova, Po. A. Crawford, Neri Quinons, Det. Ed. M. Rivera, po. M. McLaughlin, Det. T. Robertson, po. Romeo.</i>		
12. HURRICANE SANDY RELATED? ☐ YES ☒ NO		13. IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☒ NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
14. RELATED CASES PENDING? ☐ YES ☒ NO		15. IF YES, LIST DOCKET NUMBERS		
16. DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? ☒ YES ☐ NO		17. NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) ☐ NONE ☒ UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE				
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION				
18. DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? ☐ YES ☒ NO		IF YES, IS THAT RELATIONSHIP: ☐ EMPLOYER/EMPLOYEE ☐ FRIEND/NEIGHBOR ☐ OTHER (explain) ☐ FAMILIAL ☐ BUSINESS		
19. DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? ☐ YES ☒ NO				
20. USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION				
21. DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? ☐ YES ☒ NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
22. WILL AN INTERPRETER BE NEEDED? ☒ YES ☐ NO		IF YES, FOR WHAT LANGUAGE? <i>Spanish</i> NO		
23. I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule</i> 1:38-7(b).				
24. ATTORNEY SIGNATURE: <i>James Knight, Jr</i>				

James Knight Jr #212587
Name
15 Elizabeth Town Plaza
Address
Elizabeth, New Jersey 07202
Telephone Number

James Knight Jr Plaintiff
Edward Duarte v.
Zoila Nova
Det. Ed. M. Rivera
See other → Defendant (s)
Next page.

RECEIVED / FILED
Superior Court of New Jersey
AUG 12 2015
CIVIL CASE MANAGEMENT
UNION COUNTY
RECEIVED / FILED
Superior Court of New Jersey
AUG 11 2015
CIVIL CASE MANAGEMENT
UNION COUNTY

Superior Court of New Jersey
Law Division UNION County
Docket No 13003381
(to be filled in by the court)

UNN-L-2880-15
CIVIL ACTION
Complaint

Plaintiff, James Knight Jr, residing at
(your name)
Union County Jail, Elizabeth town - City of Elizabeth
(your address) Plaza (your city or town)
County of UNION
(your county)

State Of New Jersey, complaining of defendant, states as follows:

approx. 1306 hr.
1. On Oct. 5, 2013, All of the above was involved Defendant
(name of person being sued)

(Summarize what happened that resulted in your claim against the defendant. Use additional pages if necessary.)

This is a civil complaint involving multiple violations
of Plaintiff Constitutional Rights of the United States. ON
part of defendant, Plaintiff 1st, 4th, 5th, 6th, 8th, 14th Amendment
Rights as well as local and state laws have been violated.
Plaintiff brings this action on an attempt to obtain a solution - CONTINUE
ON 7 of 9

Civil Action
Complaint

James Knight, Jr. Plaintiff

V.

Defendant(s)

Det. T. Robertson Edward Duarte
Det. N. Carvalho Zoila Nava
Sgt. C. Sylvester Det. Edward M. Rivera
PO. A. Crawford
PO. M. McLoughlin
PO. Romeo
PO. L. Carden

UNN-L-2880-15

David Oliva (Witness)

Gregory Morris (Witness)

Neri Quinones (Witness)

Continue from page 7 of 9 (Summarize what Happen)
to his problems through the courts. This court has
jurisdiction over the subject matter and venue is
proper.

This action is filed pursuant to 42 U.S.C.
1983, 1985, 1331, 1334, and 18 U.S.C. 242⁵. The
New Jersey Discrimination act > Plaintiff
has exhausted all available administrative
remedies. F.B.I. Complaint and other
government against a person is also in violation
of the Klu Klux Klan act of 1871. Citing, Brisco
V. LaHue 460 U.S., Monroe V. Pape 365 U.S.,
Swift V. Lunch (Federal Remedies act) N.J.S.A.
2C 130-2 official misconduct.

Wherefore plaintiff deposes and says:

Lolla Nova 300 Park Ave. 2;
Edward Duarte Plainfield, N.J. 07064

"Plainfield Police"
200 East Fourth St. Plainfield, N.J.
Plainfield, N.J.
(defendant's address)

The defendant in this action resides at

In the County of Union, State Of New Jersey.
(name of county where defendant lives)

2. Plaintiff is entitled to relief from defendant under the above facts.
3. The harm that occurred as a result of defendant's acts include:

(list each item of damage and injury),

1. Plaintiff has been singled out because of clothes
he had on; and a photograph taken of his arrest
on second street; Applique Aram. The witness
statements ~~are~~ falsified by people that know the
victim son.
2. _____
3. _____

Wherefore, plaintiff requests judgment against defendant for damages, together with attorney's fees, if applicable, costs of suit, and any other relief as the court may deem proper.

Dated: 8/6/15 Signature: James Knight Jr

UNN-L- 2880-15

CERTIFICATION OF NO OTHER ACTIONS

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made

a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Dated: 8/6/15 Signature: James Knight Jr

OPTIONAL: If you would like to have a judge decide your case, do not include the following paragraph in your complaint. If you would prefer to have a jury to decide your case, please sign your name after the following paragraph.

JURY DEMAND

The plaintiff demands trial by a jury on all of the triable issues of this complaint, pursuant to New Jersey Court *Rules* 1:8-2(b) and 4:35-1(a).

Dated: 8/6/15 Signature: James Knight Jr

1. ON 05 Oct. 2013 at approximately 1306 hours Plaintiff was walking up west 2nd St. in Plainfield towards Park Ave. in the 200 Block. A guy came running from out of the PNC Bank drive through almost knocking Plaintiff down. Words was passed between guy and Plaintiff because that person had a lot of blood on ~~him~~. That person turn around and took a swing at Plaintiff with a iron pip he had in his hand.
 2. As this person fell down to the ground, after Plaintiff kick him down, and Plaintiff hat came off. Plaintiff looked up because he heard someone screaming something in Spanish, and another guy came running from behind the bank pulling a gun out of his pants, so Plaintiff reached for what he thought was his hat, but without looking Plaintiff grabbed the guy hat he was fighting.
 3. Then Plaintiff ran into the appliance store that sit behind the bank, because Plaintiff didn't want to get shot by the guy that was running towards Plaintiff. Plaintiff then ask the store owner to call the police, because the guy Plaintiff was fighting outside your store my be the brother of the guy with the gun, that was running and screaming something to Plaintiff from behind the bank.
 4. At this time the guy that had the gun came in side the appliance store pulling his gun from out of his pants; But the store owner told him to get out of his store with that gun, because he is already on the phone with the police. At that point the guy left the store. And the store owner told the Plaintiff to go to the back of the store until the police come.
- Plaintiff went up on a staircase to a second floor, because Plaintiff didn't want to get

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UNN-L-2880-15

shot. It was dark up there, and Plaintiff wasn't going to come out until he was sure that the police was here. Even when the police came and they announced they were plainfield police, Plaintiff still didn't move until Plaintiff seen a flashlight. As Plaintiff begins to stand up, the police gave orders for Plaintiff to put his hands in the air.

5. Plaintiff was approached at this point and put in hand cuffs. The grey hat Plaintiff pick up off the ground when Plaintiff was outside of the store ~~fighting~~ fighting with the guy, was lying on the floor. When the officer ask Plaintiff is this your hat, Plaintiff told him that Plaintiff had picked up the wrong hat outside.

6. At that point Sgt. C. Sylvester, push that hat on ~~my~~ Plaintiff head. And Plaintiff ask Sgt. C. Sylvester, why would you put that hat on Plaintiff head if he told you that is 'nt his?

Plaintiff was then walked out the appliance store. As Plaintiff and officer A. Crewford, exit the store, there were a grape of people standing outside.

Plaintiff heard one of them say, yes that looks like him. Plaintiff then ask the officer, what did he mean that Plaintiff looks like him.

Officer A. Crewford, then said to pay him no attention and get in the car.

When ~~me~~ Plaintiff and Officer A. Crewford, reached the station, Plaintiff was ask some questions, by a female officer about Plaintiff I.D. and home address.

The female officer stated that she was going to run Plaintiff name in the system, and if nothing comes up she would release Plaintiff.

(Statement of Claim)

7. Plaintiff was taken to police station, because of on lookers seen plaintiff come out of Appliance Arama store with that hat on plaintiff head, that belongs to the guy that plaintiff was fighting.
8. After about 45 min, Det. T. Robertson came to ask plaintiff if he could talk to plaintiff about what happen today. Plaintiff stated yes you can. So plaintiff was taken to a room on the second floor of the police station, and plaintiff began to tell what happen to plaintiff on second Street in front of the Appliance store.
9. Plaintiff told defendant Det. T. Robertson, that plaintiff had just left home to go to Labor Ready, on the corner of second and Park Ave. to give them plaintiff new address; so that plaintiff could receive plaintiff W-2 form at plaintiff new address. But plaintiff never made it to Park Ave.

Plaintiff went on to say as soon as plaintiff reached the front of ~~Appliance~~ Appliance Arama, and the drive thru. of the PNC Bank.

A guy came running from behind the with a piece of iron pip in his hand. This guy almost knocked down plaintiff, and a few words was passed between plaintiff and this guy, and plaintiff and guy began to fight. In the process another guy came running from behind the bank screaming something in Spanish that plaintiff couldn't understand.

But when plaintiff seen this guy with a gun, plaintiff reached to pick up plaintiff hat. But in a rush plaintiff grabbed the wrong hat.

When plaintiff got to this part of what happen, plaintiff was cut off by defendant Det. T. Robertson. Det. T. Robertson stated that he wanted to know what happen on Park Ave. this morning.

Plaintiff inform defendant that plaintiff didn't know anything about Park Ave.

10. That's when defendant ask plaintiff if he was on Park Ave. yesterday. Plaintiff stated, NO.

Then plaintiff was ask by defendant if plaintiff was on Park Ave. anytime this week. Plaintiff stated I don't know, why all the questions about Park Ave.?

Defendant stated because a woman was assaulted this morning.

Plaintiff then said what is that got to do with plaintiff. Plaintiff was told that plaintiff is on video on Park Ave. this morning by defendant. Plaintiff told defendant that is a lie, because plaintiff had just left home walking towards Park Ave. on second st. and plaintiff made it as far as the appliance store and the back of the PNC bank drive through.

11. Plaintiff was told by defendant Det. T. Robertson. that a ~~group~~ group of people chased a man with the same cloths on as you, and what are the odds of that happening?

Plaintiff informed defendant. What that got to do with plaintiff. Plaintiff stated, the ~~people~~ people that make clothes only made one set of clothes just for me I guess.

12. Defendant ask me where did I live, my address. After plaintiff stated that his address was 120 Elmwood St.

Defendant stated, yeh! you did it.

That's when plaintiff look at him and said. Plaintiff is finsh talking to defendant.

Defendant says okay. Just remember defendant tried to help you.

Defendant says oh yeh by the way, where did that blood come from on your T-Shirt.

(Statement of Claim)

Plaintiff states, what blood? Plaintiff went on to say it must have come from the guy plaintiff was fighting, because he a lot of blood on him when he came running from behind the bank with that piece of iron pipe in his hand.

13. Defendant says okay, I'll just let the DNA on your clothes convict you then.

Plaintiff then ask if he's being charged with anything, and defendant said he will let me know.

14. After defendant walk plaintiff back to lock-up.

Officer A. Crawford, "ask me to take off my shirt, T-shirt, pants, belt, shoes.

Plaintiff looked at him and said fore what? defendant stated because there is blood on your clothes.

Plaintiff went on to say, what do plaintiff have to put on after giving up all his clothes? Defendant states I give you a paper suit to put on.

15. A hour later, Plaintiff called out to the female officer in lock-up.

Plaintiff ask why it was taking so long to release me. Plaintiff was told that they would let me know something in a few mints.

30 more mints went by. That's when Det. T. Robertson, defendant came to ~~the~~ plaintiff cell to inform plaintiff that he is being charged with aggravated assault (2^{ed} degree), aggravated assault (3^{ed} degree), Possession of a weapon (2^{ed} degree), Possession of a weapon for unlawful purpose (3^{ed} degree), Robbery (1st degree), and Attempted Murder (1st degree).

16. Plaintiff looked at defendant, Det. T. Robertson and said hold up, where is all this coming

(Statement of Claim)

from? Plaintiff went on to say that he was involved in a fight, and that it was a fist fight on West Second St. Plaintiff did not have a gun, nor did plaintiff possess one, Plaintiff didn't rob anyone, or try to murder anybody.

Plaintiff went on to say, plaintiff assumed that the guy he was fighting with said all of this happen to him.

That's when Defendant Det. T. Robertson, look at ~~me~~ plaintiff and said that you are being charged with the Park Ave. crime on the defendant Zoila Nova.

17. Plaintiff looked at defendant Det. T. Robertson, and said are you serious? Because plaintiff ~~don't know anyone by that name.~~

don't know anyone by that name. Nor have plaintiff been on Park Ave. today.

18. Plaintiff was sent to Union County Jail Oct. 8, 2013 and first appearance was on 11, December 2013. That court appearance was rescheduled for Jan. 2013. Both court dates was with the Honorable John Triarsi. Nothing happen on either one of those court dates.

Seven months passed and plaintiff did hear anything from the court or Plaintiff public defender.

19. So plaintiff started sending letters to his public defender. After plaintiff didn't get a responds from Mr. Gaffney, lawyer (Two letters)

Plaintiff sent letters to lawyer Bass, Public defender office Mr. Peter A. Liguori.

After two week had passed and plaintiff didn't get a responds from him. Plaintiff then wrote Mr. Joseph Krakora, Nor did plaintiff get a responds from him Mr. Krakora is at the top of their letter head.

(Statement of Claim)

20. So then plaintiff wrote Honorable John Triarsi, Court to let him know about plaintiff situation, and that plaintiff has been here in jail since Oct. 8, 2013. Today's date is March, 6, 2014 and plaintiff has'nt been indicted, Nor has anything has been done with plaintiff case. Two weeks passed and plaintiff did not get a responds.

So then plaintiff wrote a letter to Honorable Judge Cassidy, because plaintiff was informed that she was the head Judge of the superior court of Union County. Two weeks passed, and plaintiff did not get a responds.

That's when plaintiff wrote a letter to the Ethics Committee in Cranford, N.J.

21. March 24, 2014 plaintiff lawyer Mary Gaffney, came to see plaintiff. Saying that plaintiff case must have falling through the cracks. Plaintiff ask why is he just sitting in jail and nothing is being done about these charges they have on him?

Ms. Gaffney, states that everytime she calls the prosecutor office, they tell her that Plainfield keep telling them that they don't have anything on plaintiff.

So plaintiff stated to her, the plaintiff is just sitting while they are trying to build a case on plaintiff? At this point plaintiff still has'nt been indicted. Lawyer claims she was going to ~~file~~ filed a motion to dismiss, to give her two weeks.

22. The very next day, March 25, 2014 plaintiff recieved a letter from the public defender office. From another lawyer name Andrew Murray, stating that he would be representing me in my months to follow.

~~to follow~~

23. April 4, 2014 Mr. Andrew Murray came to see plaintiff for the first time. After talking to him about the case. Plaintiff ask him if he was aware that plaintiff has been in jail and nothing has been done with this case.

Mr. Murray acknowledges what plaintiff said, and added. That he see that they have not indicted on these charges yet.

Plaintiff informed him that Ms. Gattney plaintiff's other lawyer told plaintiff on the 24, March, 2014 that she was going to put in plaintiff motion to dismiss. Mr. Murray stated that he did not know anything about that. But he stated that he would talk to her about it, because he said that they a co-workers. Plaintiff was told to give him two weeks, by Mr. Murray. Plaintiff did not hear from Mr. Murray, again until April 25, 2014.

24. On that day Mr. Murray, came to let plaintiff know that plaintiff a court date with Judge McDaniel, on April 28, 2014.

Mr. Murray, inform me not to ask any question about what is going on, or say anything in court that day.

This is the day the courts gave plaintiff indictment papers.

But plaintiff notices that the indictment papers had the name James J. Knight on them. So plaintiff pointed it out to Mr. Murray, and he got upset about it.

And said in a nasty tone, What do you mean that the name on this is wrong?

Plaintiff state to Mr. Murray, my name is James Knight Jr look on my charges.

(Statement of Claim)

25. Mr. Murray, again inform me not to say anything when the officers bring us out of that room into the court room. He said he will deal with the name on the indictment later.

26. During this time the only evidence that was sent to the lab. to be tested was a gun, that they say was found at the victim's store.

The lab. results says it was two people DNA found on that gun. One belonging to the victim Zoila, and a unknown female donor being the minimum of the two.

Nothing about a male DNA was ever in this first report. The victim DNA was also found on the magazine inside the gun.

A minimum of two individuals DNA was found on the release knob of the gun. With the major DNA belonging to the defendant Zoila Nova, And the minimum belonging to unknown female.

27. Plaintiff lawyer Mr. Murray, walked back into the courtroom, and return 5 min. later to the side room where plaintiff was sitting.

To let plaintiff know that the prosecutor has offered a plea offer of 25 yrs. with 85% if plaintiff would plead guilty to attempted arm robbery. Plaintiff told him why would plaintiff plea guilty to something he didn't commit. All of this happen April 28, 2014.

28. Plaintiff had never seen any discovery, or receive any discovery until May 8, 2014.

On May 13, 2014 is when plaintiff receive the lab reports from the testing of the gun. Along with copies of a video photos of a person, that the prosecutor say is plaintiff. Along with copies of a person walking towards defendant store, and running from that same store 2 min. later.

Look at the time on the photos.

(Statement of Claim)

29. The defendant Zoila Nova, gave plaintiff police three different accounts of what happen that day. See police reports and time of of the assault. Then look at the time on the copyys of the video. A hour from 12:54 or 12:56, would be ~~12:54~~ 1:54 or 1:56 during the day.

The time on the police report was ~~12:54~~ 1:30 p.m.

30. Defendant Zoila Nova, also stated that the person that assaulted her, Had on a black zip up hoody, with the hood up.

So how would the defendant know if that person had short hair or not if the hood was all the way up?

At this point and time, the defendant Zoila Noila, had not picked anyone from any photos. Nor had plaintiff ever been tested to see if he had shot a gun.

plaintiff was lock up for this crime, because three people said they chased a man from the crime scene; All giving different accounts of what happen; or what the person (plaintiff) was wearing.

But because plaintiff had on some of the same clothes as the person they were chasing, plaintiff was arrested for it.

Because plaintiff Never ran from anyone that day except the guy that came at plaintiff with that gun. When plaintiff was fighting his brother or friend.

When that happen, their were only two cars in the bank drive thru.

Plaintiff asked his lawyer to get a court order for the bank video. Because the person that plaintiff was fighting, and the guy with the gun came pass the bank camre; But plaintiff lawyer Never did.

(Statement of Claim)

ask for a court order for the bank video.

This would have proved what plaintiff has been saying all along was true.

Plaintiff also hold plainfield police responsible in their investigation in this crime, because their department could have gotten the bank video and also tested the plaintiff for gunshot residue on hands and clothes, but did not.

31. Defendant Zoila Nova, was in the hospital 6 to 7 days. And when she was released.

Plainfield Police ask her to come to the station, to look at some photos I.D.

Because defendant made a ~~statement~~ statement that she could identify the person if she seen him again.

32. When defendant Zoila Nova, went to the police station. Det. Ed. M. Rivera, was in charge of the photo lineup. See transcript of Zoila Nova, page #2 number #20 answer of defendant.

The defendant looked at all of the photos and said no to all of them, and on page #8, at question and answer to question #11, an #12 defendant says: I can't distinguish.

Also on page #8 question number #13 by Det. Ed. Rivera, and #14 (Can't what?)

Also on page #13 question and answer defendant says in her answer of question #10 an #11 NO SEE, DON'T KNOW.

Not only did the defendant Zoila Nova, say on page #7 from questions and answer #2 thru #11.

ON page #8 question number #19 is when defendant Det. Ed. M. Rivera, began to coerce defendant Zoila Nova, to pick a photo. The answer on page #8 ~~2nd~~ defendant Zoila Nova clearly

(Statement of Claim)

States that she do not know who the person was. Because defendant Det. Ed. M. Rivera ask defendant Zoila Nova, on page #8 question #19 what do you think of number five? Don't know. Page #8 of defendant Zoila Nova, answer #25 (yes, I think.)

Page #9 shows that Det. Ed. M. Rivera has clearly coerced this woman to pick someone.

33. If you look at the photo Display Statement form which #4 pages long, with #19 questions: That defendant Det. Ed. M. Rivera, ask defendant Zoila Nova, in question #7 How certain are you that this is the person that you saw. And the defendant Zoila Nova, answer to that question was; I'm not that certain. This statement along with the photo lineup, was all done on Oct. 15, 2013. This shows that, Plainfield Police didn't have enough evidence to lock me up for a crime that I had no knowledge of.

34. Since I have been locked up, the prosecutor has been build a case to take ~~me~~ plaintiff to trial.

For one he was informed that plaintiff DNA was already in the system. But he refused to run the DNA that was found, to show that plaintiff had nothing to do with that crime.

So the prosecutor went before Honorable F. R. McDaniel, to get a court order for a Buccal Swab from plaintiff. Then they stated that they ran the DNA that was found on the grip of the gun against plaintiff DNA Swab.

The results was that a minor amount of plaintiff DNA is on the grip of the gun, and nowhere else on the gun.

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35. The first test done on the gun shows that the two people DNA That was found on the gun was the defendant Zoila Nova, ~~and~~ a UNKNOWN female #1, and a female donor.

Page 2 of 4 Laboratory Report #1 under conclusions, states, no conclusions can be reached regarding minor contributors to the DNA obtained from the barrel release knob of the gun. Page 4 ~~of~~ 4 Item 1A-1 is the only row with a (Y) in it.

36. Laboratory Report #2, was completed July 18, 2014. And page 3 of 7 shows that plaintiff is the minor contributor of the grip of the gun. But is excluded as a possible source of DNA obtained from these items.

Also on page 4 of 7 two individuals DNA was found on the inside of the magazine.

The major contributor is defendant Zoila Nova; But plaintiff is excluded as a minor DNA contributor.

Page 6 of 7 shows XX as Female, and XY as male. Item 1A-1 is the only row with a (Y) in it. See Laboratory Results Reports Numbers #1, and #2.

After the prosecutor obtain a court order to get my DNA, did it appear on the grip of the gun, and nowhere else; But the evidence shows that the defendant Zoila Nova, DNA was the magazine inside the gun.

37. ON Oct. 9, 2013 #4 days after the ~~crime~~ crime was committed. The defendant David Oliva, came forward to make a Voluntary Statement.

When ask the question, "Do you know what happened to Zoila?" The defendant responds on page #4 of that statement was, yes, I heard from her son that she was shot and

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hit over the head.

On April, 28, 2015 the victim son Edward Duarte, met with Union County prosecutor's Det. Alex Lopez, and David A. Zeitzoff.

Mr. Duarte, inform the prosecutor's that he obtained a photo of plaintiff on the day he got arrested in front of the store Appliance Arama. He then took photo to the hospital to show it to his mother, before the police had her to come to the police station to do a photo line up. Then the victim son claims that the man that approached him a week ago; Mr. David Oliva. Mr. Duarte, claims he do not know him.

But the defendant David Oliva, made a statement Oct. 9, 2013 that he was informed by the victim son Mr. Duarte, about what had happen to his mother Zaila Nova.

38. Defendant David Oliva, stated that the ~~person~~ plaintiff had on a black jacket.

39. Defendant Zaila Nova, stated that the plaintiff that shot her had on a black zip up hoodie with the hood up. see ~~the~~ police report.

40. Defendant Neri Quinones, stated that the person he was chasing had on a black T-shirt and he chased the plaintiff to the back of the store.

41. Defendant Gregory Morris, stated that the ~~person~~ plaintiff that he seen running from the crime was wearing a dark colored short sleeve shirt.

The only thing these three defendant's have in common is they were outside of Appliance Arama when plaintiff came out in handcuffs. And that plaintiff had on some of the same clothes the guy had on, that plaintiff was fighting with outside

Appliance Arama.

42. April 28, 2015 a photo came the prosecutor office of the plaintiff coming out of Appliance Arama in hand cuffs. The day of plaintiff arrest. This is the hat that plaintiff picked up off the ground by mistake, when plaintiff was fleeing the guy that had the gun outside of Appliance Arama.

Plaintiff informed Sgt. Sylvester and Det. Carvalho, that this hat didn't belong to plaintiff.

But after plaintiff was in hand cuffs, the hat was pushed on plaintiff head by Sgt. Sylvester. But in his police report defendant states that he gave the hat to Det. Carvalho, along with plaintiff to walk down from the second floor. (See Report)

43. ON Nov. 13, 2013 P.O. M. McLoughlin, took the gun to the crime lab. in Westfield, N.J. This was the only evidence sent to the crime lab. Report #1 (See Report)

44. ON June 3, 2014 P.O. M. McLoughlin, took the items in lab. report #2 (See Report)

45. ON Oct. 15, 2013 when defendant Zaila Nova, was released from the hospital.

Det. Ed. Rivera, stated in his line up report that defendant ask to see photo's again. IN the defendant Transcript of Zaila Nova, It was Det. Ed. Rivera, that kept pushing the defendant to look at the photo's again.

46. After plaintiff was charged with the crime that took place on Park Ave. Plaintiff ask to be tested for gunshot residue. But was never tested.

Plaintiff even ask to be put in a line up and that never happen.

The police dept. did decide to take a photo of me, befor plaintiff was shipped to the county.

Jail in Elizabeth, New Jersey.

Plaintiff is sure if plainfield police had preform their job the way they should have; Plaintiff would not have been arrested in the first place.

Plus after mention Plaintiff mention that he live in "Elmwood Gardens", Det. T. Robertson, (Defendant) stated: yah you did it to the plaintiff. And went on to say that everything that comes from out of the projects on the west End is nothing but problems.

47. ~~The~~ Today May 1, 2015, plaintiff recieve a letter the mail from the prosecutor office. That the defendant son Edward Duarte, recieve a photo of plaintiff being arrested and coming out of Appliance Arama in hand cuffs off of one of the witness phone. Defendant "Edward Duarte" obtained a copy of that pictur on to Mr. Duarte, phone and took it to the hospital to shew to Zoila Nova.

Mr. Duarte says that he don't know this witness Mr. David Oliva's. But Mr. Oliva's, mention in his statement on Oct. 9, 2013 that he found out what happen to defendant Zoila Nova, from her son.

But Mr. Duarte, clams that he and Mr. Olivas, just met a few days ago. Plaintiff just recieve the letter May 1, 2015.

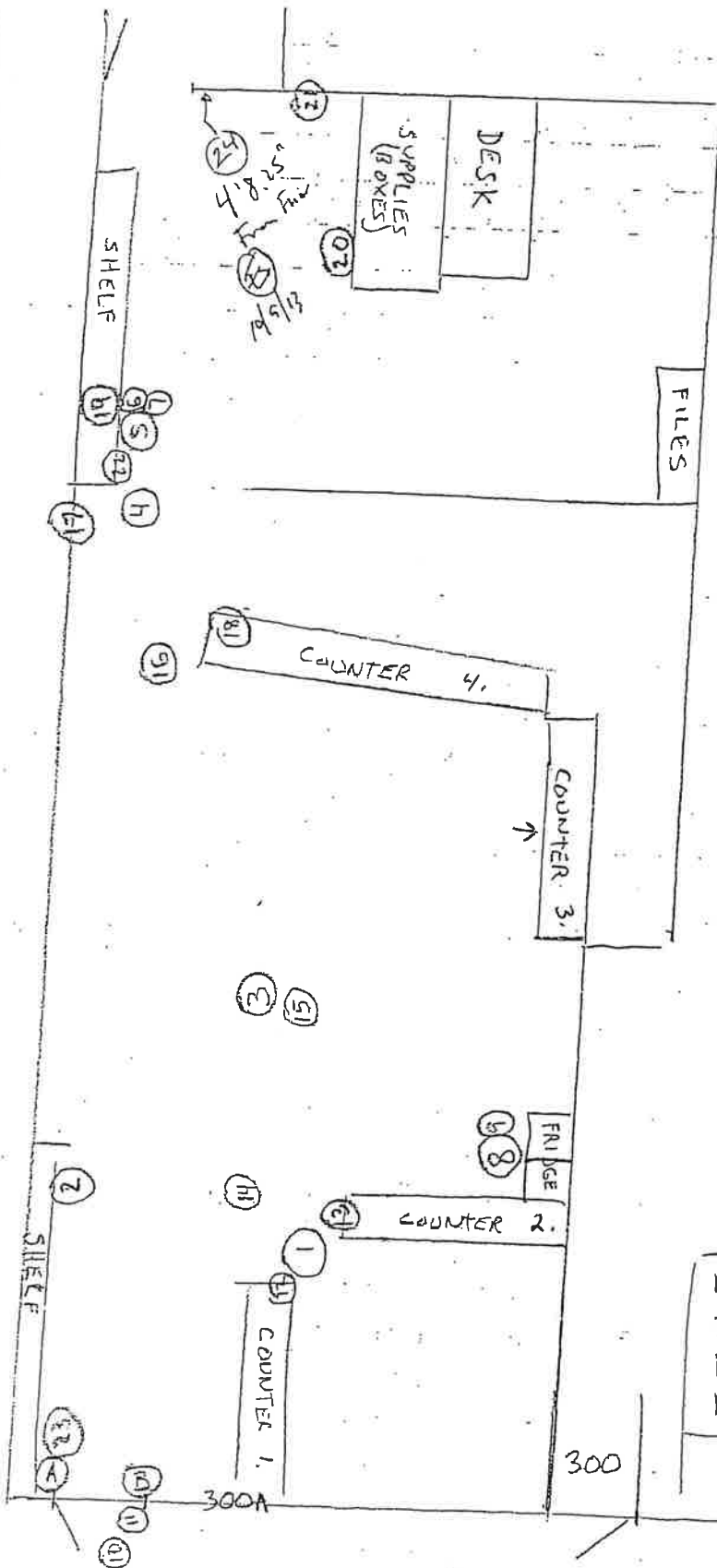
But Mr. Duarte, just met with the prosecutor and made this statement April. 28, 2015.

Plaintiff didn't have white socks, they were Black and Grey. Plaintiff was told to keep them by the that took Plaintiff clothes; Plaintiff did not have Black pants (see witness statement). Plaintiff did not have Black Jacket or Black zip up hoodie (see police report). Plaintiff did not have Black T-shirt (see witness statement). Plaintiff did not have a Black belt (see Property disposition form).

Plaintiff also requested that his attorney Mr. Murray to obtain a copy of the 911 call from Appliance Arama →

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On the crime that took place at that location, Plaintiff found out from his first lawyer, that the shooting took place at counter #3, and the storey the defendant gave about the crime that day does not fit the crime scene. See sketch and police report. The defendant gave an account that everything took place behind counter #3 again on 7-10-15 at a Wade hearing.



#	A	B
1	9' 0"	7' 4"
2	11' 1"	10' 9"
3	22' 0"	21' 0"
4	36' 5"	35' 8"
5	39' 6"	38' 10"
6	39' 6"	38' 10"
7	39' 6"	38' 10"
8	14' 6"	13' 0"
9	14' 6"	13' 0"
10	4' 0"	3' 2"
11	3' 0"	0' 4"
12	7' 8"	5' 3"
13	9' 10"	8' 0"
14	9' 9"	8' 8"
15	22' 0"	21' 0"
16	33' 10"	33' 2"
17	36' 6"	36' 0"
18	34' 8"	33' 10"
19	40' 0"	39' 5"
20	42' 0"	41' 2"
21	44' 3"	43' 8"
22	38' 4"	37' 9"
23	2' 9"	2' 10"

10/5/13 PPL #13-29950
 300A PARK AVE, PLAINFIELD
 ROBBERY/SHOOTING
 NOT TO SCALE - SKETCH BY D. KRILL #33

PARK AVE

000096

48. On Oct. 5, 2013 Plaintiff was hand cuffed, taken to Plt. Police Station, accused, question and charged with a crime he had nothing to do with.

At the time of Plaintiff arrest. There were there people outside of the location where plaintiff came out in hand cuffs.

49. This location was on West 2nd Street.

The crime that Plaintiff was charged with; Took place on Park Ave. At the time of plaintiff arrest Plt. Police was informed by plaintiff, that the hat he had was not his.

50. Before exiting the store in hand cuffs, Sgt. C. Sylvester, Forcefully put that hat on plaintiff head. See photo. But the police report says this item was handed to P. A. Crawford, along with plaintiff and walk out.

51. The three witness recognize the hat that plaintiff had on his head, and it's obvious that was on plaintiff. Looks like the one in the video of a person running on Park Ave; With some of the same clothes on. (See video.)

52. On this day in question plaintiff feels that his freedom was restricted as he has been accused of something he had nothing to do with.

53. Plaintiff did not pass any money, gun, zip up hoodie, or gloves on his person at the time of arrest.

54. Plaintiff was told by Defendant Det. T. Robertson, when he was being question defendant. That Plaintiff was on video on Park Ave. Then Plaintiff was told by defendant, that they had a female eye witness; that seen Plaintiff shot the defendant Zoila Nova. All of these accusations was made against him, while his freedom was being restricted all as a part of speculation, Not facts. These action by the defendant. 1st. 14th amend. Rights U.S. const.

55. Plaintiff request that he be tested for gunshot residue on his hands, by defendant Det. T. Robertson. And Plaintiff was denied this test.

56. The facts of the crime that took place on Park Ave. Oct. 5, 2013 is that the defendant Zoila Nova claims that Plaintiff walked pass her store while she was standing in the door was. Plaintiff ask about phones or phones cards. Defendant claims they did not have them or sale them. Plaintiff kept on walking. This was 12:54 see video footage. Defendant went on to say a hour later Plaintiff return to the store, entered the store and ask for blue oil. Defendant went behind a counter to get the oil, as defendant turn around Plaintiff did not say a word to defendant as Plaintiff stood there pointing a gun at her. Then shot her, beat her in the head with the gun; Then the Plaintiff beat her in the head and back with a ~~chair~~ chair. Defendant claims as the assault was taken place she was knocked to the floor several times. She went on to say, she got off the floor ran out of the store for help, with Plaintiff running out behind her. At no time did defendant say she gave plaintiff money, or that she seen him take it. (see Report)
57. Again look at the time on the video 12:56. A hour from 12:54 would not be 12:56. Because that video shows someone running from that area 2 min. later. (see video)
58. In the police report the defendant claims she could identify the person that shot her. But a few days later when she was released from the hospital. The defendant had problem picking out the person that assaulted ~~and~~ her, and from reading the defendant Transcript of the photo line of plaintiff. You can see that the defendant was coerced into picking out plaintiff photo. see transcript of defendant Page 10 question #10, #11, #12. (Question
59. Plaintiff clothes does not consist of a black zip up hoodie. Nor did plaintiff pass any of

(Statement of Claims)

the items found at the ~~crime~~ crime scene.

There is no factual material evidence to support these charges, only circumstantial evidence.

40. Plaintiff contends that the wrongful arrest, false charging of an indictable criminal offense, in accusation, restriction of freedom without due process, probable cause pursuant to the 1st 14th amendment of the United States Constitution is in direct violation of his civil rights and all of the defendants have acted in concert to deny plaintiff of his Constitutional Right to be free from wrongful Imprisonment in violation of the 8th Amend U.S. Constitution.

Plaintiff is still incarcerated and has been denied a speedy trial, and also a motion to dismiss for lack of evidence indictment. From Oct. 5, 2013 to April 25, 2015 Plaintiff was told by his lawyer repeatedly that the prosecutor office has'nt receive anything from Plainfield Police yet. But on April 28, 2015 Plaintiff appeared before the Honorable Frederic McDaniel. Also Plaintiff received that same day a copy of an indictment with the name James J. Knight. Plaintiff informed his lawyer that the name on the indictment was wrong. And Plaintiff was informed not to speak in court by his lawyer Andrew Murray. Mr. Murray stated that he would deal with that later.

Also Plaintiff was offered a plea deal that same day. No discovery had been received by plaintiff or the test results of any evidence. State has failed to produce a Prima Facie case.

41. Compleat investigation by the defendants in which to conclude factual material evidence in which to prove guilt beyond a reasonable doubt. None of the investigations outcome where indictment was possible at the time.

Test was preform on gun; and on Nov. 13, 2013

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the results of laboratory report #1 states; That the DNA from a minimum of two individuals was obtained from one side of the grip of the gun and the magazine.

Unknown female #1 cannot be excluded as a major contributor. This report never said the minor DNA that was found on the grip of the gun belong to a male contributor. (see Lab Report)

The laboratory report #2 states, That the minor DNA that was found on the grip of the gun belong to plaintiff.

The probability of this happening, could be due to the processing of evidence.

The defendant Zaila Namy, DNA was found on the release knob of the gun, and also inside the gun on the magazine. The State produced no material. Factual evidence of plaintiff is oldment.

42. Plaintiff inform his attorney Mr. Murray, that has DNA is already in the system. When Mr. Murray presented Plaintiff with a form to sign from the prosecutor office.

43. Plaintiff just recieved a copy of his grand jury minutes today May 20, 2015. And was shocked to ~~learn~~ learn that Plaintiff was indicted on March 20, 2014. But didn't learn anything about the indictment until April 28, 2015 ~~the~~ the day plaintiff had to appear before Honorable Judge McDaniel.

But Plaintiff was told by his attorney Marry Gaffney, March 10, 2014 and March 25, 2014. Their was no indictment ~~and~~ filed.

~~44~~ 44. On March 26, 2014 Plaintiff recieved a letter from his new lawyer Andrew Murray, stating that he would be representing Plaintiff in the up coming months. But Mr. Murray didn't come to see Plaintiff until April 4, 2014. And at that time plaintiff was also informed by Mr. Murray, that their was no indictment yet.

45. Plaintiff has very limited access to law maternal or an adequate defense yet he maintains that under the United States Constitution, which guarantees due process equal protection of the laws as...

(Statement of Claims)

protection and freedom from cruel and unusual punishment. Just so happen that plaintiff had on clothes to somewhat the person that committed the crime on Park Ave. Do not mean Plaintiff committed that crime.

66. Plaintiff realleges all the allegations of the paragraphs 1 thru 74 and interers that his constitutional rights have been violated by the defendant as set forth in this complaint.
67. This complaint is also brought pursuant to New Jersey Civil Rights act (N.J.S.A. 10:6-2 and article 1 section 1 and article 1 section 7 of the New Jersey State Constitution.
68. Plaintiff has been at all times maiteral here to a lawful citizen of the United States of America, who presently resides in Plainfield.
69. The individual defendants here in were at all times relevant here to employees at the Plainfield Police Department and were acting under the color of state law and municipal law.
70. Defendants are "persons" within the meaning of New Jersey Civil Rights act (N.J.S.A. 10:6-2 and acted under color of state and municipal law.
71. All allegations (in this complaint) is thus verifi-able through records, reports, statements, documents, ect. Material Factual evidence.
72. Plaintiff here by interers that his Constitutional rights have been violated in very deminished capacity in which he suffers mental anguish, lost of freedom from being confined, sleepless nights, emotional distress, Restriction of rights to be with family and free world people in violation of his Constitutional Rights.
73. Plaintiff also holds prosecutor Grace H. Park, responsible. For she has the responsibility within her jurisdiction to apply the proper corrective in disciplining her officers, yet she willingly falled to act.

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74. Where a county prosecutor willfully refuses to act without just cause or excuse, he/she is guilty of breach of duty rendering him liable to indictment for inaction and neglect in carrying out his duties without regard to whether his action and neglect resulting from corruption. (State v. Winne, 12 N.J. 152, 96 A.2d 43 (1953).)

This Court has Jurisdiction over the subject matter and venue is proper.

Wherefore Plaintiff request the following Relief:

- A) Adjudge and declare that the defendants did violate plaintiff's Constitutional Rights with deliberate indifference, Thus plaintiff is stating these iniquities thus inflicted upon him has caused unnecessary, unjustified charging of an indictable offense, incarceration, Mental anguish, deprivation of freedom as claims upon which relief can be granted.
- B) Punitive damages in the amount of \$500,000 from each defendant in their individual and official capacity.
- C) Monetary damages in the amount of \$500,000
- D) \$500.00 a day plaintiff spends in captivity from each defendant.
- E) Reasonable attorney fee and cost of suit as well as any other relief the courts deem Just.

Date 8/6/15

James Knight Jr.
James Knight Jr. Prose

GRACE H. PARK
Acting Prosecutor of Union County
32 Rahway Avenue
Elizabeth, New Jersey 07202
(908) 527-4500
Attorney for the State of New Jersey

THE STATE OF NEW JERSEY,

v.

JAMES KNIGHT, JR.

Defendant.

:

:

:

:

:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – UNION COUNTY

Prosecutor's Docket No. 13003381

Indictment No. 14-03-00210

Criminal Action

AFFIDAVIT IN SUPPORT OF
STATE'S MOTION FOR
BUCCAL SWAB

STATE OF NEW JERSEY)
)ss:
COUNTY OF UNION)

DETECTIVE DANIEL GALLAGHER, of full age, being duly sworn according
to law, upon his oath deposes and says:

1. I have been employed as a Detective in the Union County Prosecutor's Office
since 2012. My current title is Special State Investigator/Acting Union County Detective.
Since being hired, I have been assigned to the Criminal Case Control Unit. During my tenure
with the Union County Prosecutor's Office I have conducted many formal, typewritten
statements and hundreds of field interviews with victims and witnesses of crimes varying from
Aggravated Assault to Criminal Sexual Contact. I have also collected, transported, and
inventoried evidence from numerous agencies involving numerous crimes. Additionally, as a
Detective with the office, I am constantly and critically involved with prosecuting attorneys

during trial preparation. I have testified in Municipal Court, Grand Jury, and Superior Court. Prior to my employment with the Union County Prosecutor's Office, I was employed as a Patrolman with the Morris Plains Police Department. In September 2009, I was hired as a Patrolman with that agency and I graduated from the Essex County College Police Academy in February 2010. During my two years with the Morris Plains Police Department, I was assigned to the Patrol Division where I participated in hundreds of various calls for service including but not limited to: domestic violence, simple assault, stolen property, theft of services, burglaries, shoplifting, and terroristic threats. Also, during my employment with the Morris Plains Police Department, I was awarded in the spring of 2012 the Bishop McLaughlin Police Officer of the Year Award for my involvement in the investigation of two residential burglaries and the apprehension of a suspect. During my employment with the Morris Plains Police Department and the Union County Prosecutor's Office, I have attended numerous training seminars, including: Criminal Procedure Update, Internal Affairs Policy and Procedure, Investigator Safety and Security, Interview and Interrogation, Gang Awareness, Intercept of Secure Communications, Drug Law Enforcement Training Program, Methods of Instruction, FBI Interview and Interrogation.

2. I am the Special State Investigator/Acting Union County Detective assigned to *State v. James Knight*. I have reviewed the entire Union County Prosecutor's Office file submitted in this case.

3. On October 5, 2013, at approximately 1:00 p.m., defendant walked into "Variededes Alondras," in Plainfield, New Jersey and asked to see a bottle of cologne. Zoila Nova was working in the store that day and she turned to get him the bottle of cologne. When she turned to face him again, defendant had a gun pointed at her.

4. She thought at first that the gun was fake and reached for it. In response, defendant fired a shot into her left chest. He attempted to fire additional shots but the gun jammed. He then pistol-whipped her and beat her over the head with a chair.

5. Ms. Nova ran away from him out of the store and defendant followed. Several individuals saw them running out of the store and chased defendant to a nearby Appliance Arama. He was apprehended by Plainfield Police in the Appliance Arama with blood on his clothing. The gun was recovered from the victim's store and submitted to the Union County Prosecutor's Office Forensic Laboratory for further testing.

6. After the gun was submitted to the Laboratory, Senior Forensic Chemist Donna M. Hansen conducted testing on it for biological material. Among other samples found, she found DNA on the gun from a major female contributor and a minor male contributor.

7. In furtherance of my investigation, I am seeking to take a buccal swab from defendant to obtain a saliva sample. Said sample will be compared to the DNA recovered from the gun. I further request that said law enforcement be authorized to use reasonable force if necessary to carry out the Order of the Court.


DANIEL GALLAGHER
Special State Investigator/Acting Union
County Detective

Sworn to and Subscribed

before me this 2ND day

of May, 2014.


David A. Zeitzoff
Attorney-at-Law
for the State of New Jersey



State of New Jersey

OFFICE OF THE PUBLIC DEFENDER
UNION REGION
PETER A. LIGUORI
DEPUTY PUBLIC DEFENDER
65 JEFFERSON AVENUE, 3RD FLOOR
ELIZABETH, NJ 07201

CHRIS CHRISTIE
Governor

JOSEPH E. KRAKORA
Public Defender

TEL: (908) 820-3070 FAX: (908) 820-3958
E-Mail: The Defenders@OPD.STATE.NJ.US

March 26, 2014

Mr. James J. Knight, #212587
UCJ
Elizabeth, NJ 07202

Re: State v. James J. Knight
Ind. No.: 14-03-0210

Dear Mr. Knight:

Please be advised that I have recently been assigned to represent you on your pending charges in Union County Superior Court. It is important that we discuss your case as soon as possible.

At my next available opportunity, I will visit with at you at the jail to discuss the background of your case and the preparation of your defense.

It is very important that this office know of any changes to your address or telephone number. If the court contacts you or if you receive a notice to appear in court, please appear in court on the date specified, or a bench warrant may issue for your arrest. If you have any questions concerning court appearances, please call this office.

Finally, if you receive any legal correspondence from the Union County Prosecutor's Office concerning forfeiture of property (car, home, monies), you must respond in writing to such complaints seeking forfeit or your risk having a court issue an order of default forfeiting property seized from you at the time of arrest.

I have prepared an explanation of some of the formal criminal procedures that may involve you in the coming months. I look forward to working with you on your case.

Very truly yours,

Andy Murray
ANDY MURRAY
ASST. DEPUTY PUBLIC DEFENDER

AM:njw
Enclosure

05 Oct 13 @ 1306 Hours

On the above date and time, while assigned to district 105, Central Communication dispatched via police radio reporting a woman who was stabbed in the area of Depot Park then a man with a gun at Appliance Arama(215 West 2nd St.). I responded traveling north bound on Park Ave. In the area of Depot Park I was flagged down by numerous citizens relating there was an injured woman in 300A Park Ave. with a gun in the building. I exited my police vehicle to administer first aid to the injured woman and secure the scene. The victim, later identified as Zoila Nova, was sitting on a chair just in the entrance of the store holding a white towel on her head that was covered in blood. The victim also suffered a single gun shot wound to her upper left chest/shoulder area. Nova was alert but in pain. I notified Central with the location of the victim requesting the Plainfield Rescue Squad and a Paramedic unit respond. I then went further into the store locating the gun which was on the floor with the barrel of the gun facing west with one shell casing stuck in the extractor port. The gun was a High Standard Dur-Matic LR22 serial number 2079557. The gun was then secured on scene as it was found then later processed and tagged by the Union County Sheriff's I.D. unit. At this point Det. Robertson, P.O. Kennovin, Det. Black, and Det. Mulligan arrived on scene to assist with crowd control. Plainfield Rescue Squad arrived and Mercy 6 arrived on scene at approximately 1314 hrs. They transported the victim to Robert Wood Johnson Medical Center. P.O. Carden followed the Rescue Squad and Mercy-6 to the hospital (see P.O. Carden supplement for further details). The suspect, James Knight Jr., was apprehend by Sgt. Sylvester and P.O. Carvalho at Appliance Arama (see Sgt Sylvester and P.O. Carvalho supplements for further details). I the was told by Det. Robertson to secure the crime scene at 1320 hrs. The crime scene log is the following:

Det. Roberston and P.O Kennovin entered at 1334 hrs and exited at 1335 hrs

Officer T. Anastasatos from Union County Sheriff Office I.D. arrived at 1358 hrs and entered at 1410 hrs

Sgt M. Caspersen arrived and entered the scene at 1431 hrs

Lt. K. O'Brien entered the scene at 1436 hrs and exited at 1438 hrs

Sgt. D. Krill from Union County Sheriff Office I.D. entered at 1455 hrs

Sgt. C. Sylvester entered the scene at 1458 hrs and exited at 1459 hrs

Sgt. M. Richards entered the scene at 1523 hrs

P.O. H. Noriega entered the scene at 1647 hrs

At 1647 hrs I turned over the scene to P.O. Noriega to continue to crime scene log. Refer to supplements for further details. Union County Sheriff Office I.D. processed the scene, tagged and took custody of the evidence at the scene.

Charges pending C.I.B investigation.

The notes from the scene were tagged and placed in evidence locker number 3 by this writer.

000012

The undersigned officer responded to the 300 block Park Avenue to assist D-105 P.O. A. Romeo with an aggravated assault incident. Upon arrival to the crime scene I was instructed by D-153 Sgt. D. Belle to follow the Plainfield Rescue Squad who was transporting the victim, being followed by members of JFK Mercy-Six Trauma team. We went to Robert Wood Johnson Hospital in New Brunswick N.J. where the victim was further treated.

Upon arrival to the hospital the victim identified as Zoila Nova 08 July 61 was treated inside the trauma room by hospital staff. The attending physician Dr. Ahmed later stated that the victim suffered one gunshot entry wound to the left chest (clavicle) area and exit wound out the left back missing vital internal organs. There was also an injury (bruise) to the back of her head. A cat scan was done with negative results and she was later listed in stable condition.

The victim's family later arrived at the hospital and I spoke with the step-daughter identified as Juana E. Polanco 06 Sept 85 who also translated. The victim Nova stated that earlier in the day a black male entered the store inquiring about purchasing a cell phone. Nova told him that they did not sell any phones and the black male left the store. Approximately one hour later the same black male tall, around 50 years old came back inside the store and asked about purchasing perfume. Nova was alone at this time. They went to the rear of the store where the actor saw there was no video camera coverage. Then without saying anything the actor picked up a chair and swung it at Nova striking her several times in the back of her head. The victim fell to the floor and attempted to fend off the actor using her hands. The actor then pulled out a handgun and shot Nova once in the chest before fleeing the store on foot. Nova then attempted to get up and follow the actor outside and get help.

There was other video cameras inside the store, which the victim stated did not work at this time. Nova further related that she can identify the actor involved.

I collected the following clothing items as evidence from the victim: One white T-shirt, one pair blue jeans with black belt, one multi-colored blouse, one pink shirt, one tan bra with brown undershirt. Keys and several pieces of jewelry was also collected. All items were properly tagged and later turned over to Det. Robertson for further investigation.

OFFICER SIGNATURES

Reporting Officer: _____
CARDEN, L POLICE OFFICER

Date: _____

Approving Officer: _____
HAFEKEN JR, E SERGEANT

Date: _____

18
ST/SHC
18
HAF
FIRST

000010

05 Oct 2013 @ 1306hrs.
Saturday

On the above date and time, while assigned to the Plainfield Police Division's Criminal Investigation Bureau's Narcotic/VICE section, I was sitting in line up when central communication dispatched a call of a women being stabbed in the three hundred block of Park Avenue. Members of my unit and I immediately ran out of line up to respond to the call. Upon exiting our office, I observed Sgt. Dave Belle operating a marked patrol car traveling westbound on East 4th Street towards me. Sgt. Belle then stopped his vehicle by me, and Sgt. Christopher Sylvester and I entered the vehicle. We then traveled west on West 4th Street and north on Park Avenue. While traveling north on Park Avenue, central communications advised police personel via two way radio that there was an individual inside Appliance Arama possessing a hand gun. Upon obtaining this information we immediately responded to 215 West 2nd Street, Appliance Arama.

Upon our arrival, I observed numerous individuals standing outside of the store. The individuals were shouting and pointing at Appliance Arama. I then cautiously approached the store, and heard the crowd yell "he's in there". I then entered Appliance Arama, and was met by several employees. It should be noted that Sgt. Sylvester and Belle were with me. Once inside, the employees pointed towards the rear of the store, and related that the male ran into the rear storage area of the store through a door located on the south wall of the building. The employees also related that the male was chased into the store by a group of individuals. Furthermore, one of the employees related that there is no exit located in the rear of the building. Sgt. Sylvester, Belle and I entered the door way which led to a storage area and systematically checked the first floor for the suspect, while shouting " Plainfield Police" with negative results. I then climbed up a steep set of stairs which led to the second floor, while continuously shouting "Plainfield Police". Upon reaching the top of the stairs, I began canvassing the area with a flashlight. It should be noted that the second floor had no lighting and it was completely dark. Furthermore, I was shouting "Plainfield Police, Is anyone up here". While canvassing, I observed the top of a black males head, later identified as James Knight Jr. laying down behind some boxes in a manner to conceal him self. I fixated my flashlight light on Knight and yelled "Police, show me your hands" numerous times with my department issued handgun also pointed at knight. It should be noted that Knight was laying down in the south east part of the second floor. After several commands for Knight to show me his hands, he got up on his knees and stated " I didn't do nothing, they were chasing me!". It should be noted that at this point Knight's hands were still down where I could not see them. Furthermore, he seemed to be moving an object or objects. Sgt. Sylvester who was also shouting to knight for him to show us his hands, began to carefully approach him. Upon approaching Knight, he placed him in hand cuffs and patted him down. It should be noted that I was still standing by the stairs during this process providing cover. I then assisted Sgt. Sylvester stand Knight up. Upon him standing up, I noticed that the front of his shirt had blood on it in numerous locations.

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ON 05 OCTOBER 2013 T ; WRITER RESPONDED TO THE ARI OF THE 200 BLOCK OF WEST 2ND STREET BECAUSE IT HAD BEEN CALLED OUT VIA POLICE RADIO THAT A BLACK MALE WAS BEING CHASED THAT WAS INVOLVED IN AN AGGRAVATED ASSAULT. THE BLACK MALE WAS INSIDE OF APPLIANCE ARAMA AND MEMBERS OF THE NARCOTIC BUREAU HAD APPREHENDED THE MALE WHO WAS LATER IDENTIFIED AS MR JAMES KNIGHT. MR KNIGHT WAS TURNED OVER TO THIS WRITER AND I TRANSPORTED MR KNIGHT TO POLICE HEADQUARTERS. ON THE WAY INTO HEADQUARTERS MR KNIGHT WANTED TO EXPLAIN WHAT HAD JUST TAKEN PLACE AND AT THAT TIME I READ MR KNIGHT HIS MIRANDA RIGHTS. MR KNIGHT HAD BLOOD ON HIS CLOTHES SO THIS WRITER TOOK MR KNIGHTS CLOTHES PROPERLY TAGGING THE CLOTHES AND PLACING EVERY ITEM INTO A BROWN PAPER BAG. MR KNIGHT WAS GIVEN A PAPER SUIT TO WEAR. AFTER TAKING THE CLOTHES I TURNED THE ITEMS OVER TO THE CASE DETECTIVE IN THE CRIMINAL INVESTIGATION BUREAU.

OFFICER SIGNATURES

Reporting Officer: _____

Date: _____

CRAWFORD, A POLICE OFFICER

Approving Officer: _____

Date: _____

PASSARELLI D LT. LIEUTENANT

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5 October 2013

On this date, while working as a member of the Plainfield Criminal Investigation Bureau, I was conducting an interview on an unrelated case at police headquarters. At approximately 1306 hours, Plainfield Central Station Dispatch had advised officers that a female victim was stabbed in the area of the 300 block of Park Avenue, Plainfield, NJ. Further, a male with a gun had ran from the area and into Appliance Arama, 215 West Second Street, Plainfield, NJ. I left police headquarters and responded to the area of the 300 block of Park Avenue and met with patrol units. I was informed that the victim (Zoila Nova) had been shot inside her store (Alondra's Vanidades) located at 300 A Park Avenue, Plainfield, NJ) and then exited. The suspect exited the store after her and then ran north bound on Park Avenue with numerous onlookers and witnesses chasing him. Miss Nova was currently inside the Plainfield Rescue Squad's ambulance being treated and patrol officers had the crime scene secured. I then spoke to Miss Nova while she was being treated. Miss Nova stated the following: While inside her shop and black male entered carrying a small backpack. The suspect asked for cologne and Miss Nova went to get it. When she turned to hand him the cologne the suspect was pointing a gun at her and he shot her in the chest. The suspect began to pistol whip her and the gun fell to the floor. Miss Nova was able to flee the store and the suspect ran towards the train bridge. Miss Nova described the suspect as an older black male, tall, wearing a black jacket and white tee shirt. Further, Miss Nova gave this writer verbal permission to search her store for evidence. Miss Nova was taken to Robert Wood Johnson Hospital for treatment. Officer Lonnie Carden followed ambulance to the hospital. I was then informed that officers had detained the suspect inside the Appliance Arama who fit the physical description of the suspect and who had suspected blood on his clothing. This individual was identified as James Knight. Knight was detained and taken to police headquarters by Officer Andre Crawford.

In furthering this investigation, I entered the crime scene and spoke to Officer Anthony Romeo. As I walked into the business of 300 A Park Avenue, I observed a key ring containing numerous keys, blood splatter throughout the business and what appeared to be a small caliber handgun on the floor. After ensuring the business was cleared I instructed Officer Romeo to keep the crime scene secure and to start a log reflecting police personnel entering and the times they entered the scene. I then instructed the Plainfield Police Desk Officer (D-119) to notify the Union County Sheriff's Crime Scene Unit and have them respond to process the scene. During this time, I was made aware of numerous witnesses who were standing outside the business and who observed the victim covered in blood and the suspect flee the scene. Arrangements were made to have all the witnesses transported to police headquarters to provide formal statements. I then notified my supervisor, Sergeant Michael Caspersen and requested additional Detectives to assist me in this investigation. I responded to police headquarters to begin taking statements from the witness. For full details regarding police actions taken at the crime scene, the Appliance Arama and Robert Wood Johnson Hospital refer to police reports filed by Officer Romeo, Officer Carden, Officer Hans Noriega, Officer Stephon Knox, Officer Mahasin El-Amin,

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Officer Andre Crawford, Detective Nuno Carvalho and Sergeant Christopher Sylvester, which are attached to this case file.

Once at police headquarters I took a three page typewritten statement from Mr. Marvin Baca with the assistance of Det. Carvalho who translated. Mr. Baca stated that while standing next to Miss Nova's store with his family a woman came out of the store covered in blood and screaming for help. The woman repeated "call the police, call the police". Suddenly a male ran from the store and ran north bound on Park Avenue. Mr. Baca began to chase the male when Mr. Baca's father yelled out that the man had a gun. The man ran behind a build and Mr. Baca lost sight of him. Mr. Baca describes the male he was chasing as a dark complected black male, approximately 5'9" tall, wearing a black short sleeve shirt and black pants. Mr. Baca may have seen an object in the male's hand but wasn't totally sure. Further, Mr. Baca is unsure if he could identify the male if he were to see him again. A copy of Mr. Baca's sworn statement is attached to this case file.

I then took a four page typewritten statement from Mr. Gregory Morris regarding what he observed. Mr. Morris stated that while he was walking on Park Avenue he hear a lady standing next to a store covered in blood and screaming. Next to the lady was a black male who started to run from the area north bound on Park Avenue. Mr. Morris stated that other males who were present in the area began to chase the black male so Mr. Morris called the police. Mr. Morris began to walk to where the males chased the black male into Appliance Arama. Mr. Morris remained on scene until the police arrived and walked the male out. Mr. Morris stated that the male was the same male he observed earlier run from Park Avenue. When asked how certain he was that it was the same male he observed earlier Mr. Morris stated the he was 100 percent certain. When asked if Mr. Morris could identify the male if he were to see him again and Mr. Morris stated "yes". A copy of Mr. Morris sworn statement is attached to this case file. Further, Sergeant David Belle completed an on-scene identification form with Mr. Morris which is also attached to this case file.

I then took a four page typewritten statement from Mr. Neri Quinones with the assistance of Det. Carvalho who translated. Mr. Quinones stated while walking past the store a Hispanic female who is known to Mr. Quinones exited the store covered in blood and was screaming. Suddenly a guy came out of the store and Mr. Quinones began to chase him. Other people who were there began to chase the guy as well. Mr. Quinones stated that he chased the guy on Park Avenue to West Second Street into Appliance Arama and towards the back of the store. Once the police arrived Mr. Quinones was present and observed the police remove the same guy he was chasing earlier from the store. When asked how sure Mr. Quinones was that it was the same guy he was chasing, he replied "100 percent and the guy's shirt was blood". Mr. Quinones describes the guy as a black male, approximately 6'1" tall, skinny, wearing a black tee shirt, blue jeans and having black and white Nike sandals on. When asked if Mr. Quinones could identify the guy he was chasing if he were to see him again, Mr. Quinones replied "yes". a copy of Mr. Quinones' sworn statement is attached to this case file.

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NOTE: While taking statement from the witnesses, I was informed by Sgt. Caspersen that he had located video surveillance footage from a business located at 300 B Park Avenue, Plainfield, NJ., the "La Feria". I was also informed that the video showed Knight walk past the store towards Miss Nova's store wearing the same clothing he was arrested in and carrying a small backpack. Minutes later, the video shows Knight leaving the area without the backpack. Sheriff's Officers located the backpack, which contained a knit cap with eyes cut out and a roll of duct tape, inside Miss Nova's store. The video would be available to the police at a later date.

I then responded to the police front desk and was informed that Det. Michael Lucky was taking a formal statement from Mr. Victor Baryschpolec, an employee at Appliance Arama and who was working at the time of the incident. Victor stated that while inside Appliance Arama a black male ran into the store and stated that he was being robbed. Suddenly a group of Spanish guys attempted to run into the store. Not knowing what was going on Victor and other employees attempted to stop the Spanish guys and closed the door. The Spanish guys were yelling call the police, dial 911. When the police arrived they located the black guy, put him in handcuffs and removed him from the store. Victor also stated that one on the Spanish guys who was chasing the black guy had a handgun which he placed inside his waistband and concealed it with his shirt. Victor described the black guy and the Spanish guy with the gun. When asked if the Appliance Arama has video surveillance cameras, Victor replied "no". A copy of Mr. Victor Baryschpolec's sworn statement is attached to this case file.

At the completion of the statements, I responded back to the crime scene to assist Union County Sheriffs. Once there I was informed that they were nearly complete and would turn over all evidence that was collected. The business was turned over to landlord Mr. Joseph Livingston. Once at police headquarters the evidence that was collected was signed by this writer and secured into evidence. Also completed was a police report and evidence inventory list filed by Sheriff's Deputy Thomas Anastasatos which is attached to this case file.

In furthering this investigation, I brought Mr. James Knight out of the cell block into the booking area for the purpose of photographing a cut that he had on right index finger. Photographs were taken by Deputy Anastasatos. Knight was then placed back into the Plainfield Municipal Jail.

Myself and Detective George Rivera responded to Robert Wood Johnson Hospital and spoke to Miss Nova who was currently being treated in the emergency room. I asked Miss Nova several questions that were translated by Det. Rivera and were recorded. Miss Nova stated that approximately one hour prior to being assaulted Knight walked by the store and asked Miss Nova if she sold cell phones. Miss Nova informed him that she didn't and he left the area. At approximately 1:00PM, Knight returned and asked for some cologne. When Miss Nova retrieved the cologne and turned to show it to Knight he was pointing a gun at her. At first Miss Nova thought the gun was fake and reached for it. Knight fired the weapon and Miss Nova was struck in the left side of her chest. Knight began to pistol whip

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her and punch her in the face. Miss Nova fell to the floor but was able to get up. Miss Nova stated that Knight then appeared to be shocked and said "oh my God". Knight then grabbed a folding chair and struck Miss Nova in the head with it knocking her to the floor a second time. Miss Nova was able to get to her feet and flee the store. Miss Nova described Knight as a older black male with a big head. When I was done asking Miss Nova questions I gave her my business card and instructed her to call me when she was released from the hospital. We left the hospital and returned to police headquarters.

In furthering this investigation, I placed Knight into an interview room within the detective bureau for the purpose of taking a recorded statement from him. After gathering general information from Knight, I advised Knight of his Constitution Rights and he read and signed the wavier form. I observed Knight signing the form with his right hand and asked if he was right handed. Knight replied "I'm right handed, that's how I broke my nail fighting with that boy". I asked Knight to tell me what happened today. Knight stated that he was walking to "Labor Ready" from his home when he walked past the appliance store. Suddenly three Spanish guys ran from the PNC Bank towards him. One of the guys was tall and covered with blood told Knight to mind his business. Knight told the guy to mind his own business and the two started to fight. Knight claims that he knocked the guy to the ground when a second guy came up to him with a gun. Knight claims he ran because he was only wearing slippers and went into the alliance store and told a worker that three guys with a gun were chasing him. Knight stated that the guy told Knight that he was going to call the police and for him to go to the back of the store. Knight claims he was scared and hid. When asked if he ever reached Labor Ready or was ever on Park Avenue today, Knight replied "no". I inform Knight of my investigation and that he was the suspect in the shooting. Knight claims that he never went into any stores on Park Avenue and claims that the blood on his clothing came from the Spanish guy he was fighting. I informed him that there was blood on one of his slippers that came from the victim and Knight requested to speak to an Attorney. I completed the interview and placed back into the Plainfield Municipal Jail.

In furthering this investigation, I telephoned on-call Union County Assistant Prosecutor Jill O'Malley and briefed her on my investigation and statements taken from witnesses and the suspect. AP O'Malley found that probable cause did exist and approved complaints against James Knight for aggravated assault (first degree), unlawful possession of a weapon (second degree) and possession of a weapon for unlawful purpose (second degree). Bail was set at \$150,000.00 NCA and complaints signed by this writer. Further, AP O'Malley suggested Knight be charged with attempted murder. However, a formal statement from the victim had not been obtained yet and Knight's intent had not been established.

8 October 2013

On this date, I telephoned Robert Wood Johnson Hospital to check on Miss Nova's condition. I was informed that Miss Nova had exploratory surgery and that the bullet went through her body. It was unknown when Miss Nova was going to be released from the hospital.

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In furthering this investigation, I spoke to the victim's son Mr. Edward Duarte and made arrangements to respond to 300 A Park Avenue the following day to locate and collect the projectile. I then telephoned Union County Sheriff's Officer Thomas Anastasatos and made arrangements for him to respond as well. Arrangements were made for 0930 on 9 October 2013.

9 October 2013

On this date, I met with Mr. Duarte and completed a permission to search form. Mr. Duarte signed the permission form and Sheriff's Officers located the projectile in the back (west) wall near the bathroom door. The projectile was removed and turned over to this writer. The store was then turned back over to Mr. Duarte.

Further on this date, this writer telephoned AP Jill O'Malley and requested the weapon that was discarded by Knight be examined for DNA. Later that day the request was approved by Union County Assistant Prosecutor Doreen Yanik. The weapon was properly prepared and the examination forms completed.

Also on this date, I took a four page typewritten statement from Mr. David Oliva who was outside of 300 A Park Avenue during the time of the incident. Mr. Oliva stated the following: While walking south on Park Avenue under the railroad bridge, he observed an individual (Knight) exit the store. As Knight walked towards him, Mr. Oliva noticed that his shirt was covered in blood. Mr. Oliva asked Knight what was going on and Knight turned and looked at him and began to run. Mr. Oliva chased Knight north on Park Avenue, west on West Second Street and into a store (Appliance Arama) where he and others waited for the police. Mr. Oliva describes Knight as a brown complected black male who appeared to him to be Dominican, 38 to 40 years old, tall and skinny. He describes Knight as wearing a black jacket with a black shirt, a gray hat, black sandals with socks and blue jeans. When asked after the police arrived and exited the store with Knight was he present. Mr. Oliva stated that he was and that he was 100 percent certain that Knight was the same individual he observed exit Variededes Alondras. A copy of Mr. Oliva's sworn statement is attached to this case file.

11 October 2013

On this date, I received a telephone call from Mr. Edward Duarte informing me that his mother had been released from the hospital on 10 October 2013. I requested a statement from Miss Nova once she was able to travel. No tentative date was set. The following day I received a second call from Mr. Duarte and arrangements were made to obtain a statement from Miss Nova on 15 October 2013.

15 October 2013

On this date, with the assistance of Detective Ivy Grimmer who translated, I took a six page typewritten statement from Miss Zoila Nova regarding the assault. Miss Nova stated the following: On 5 October 2013 at approximately 1200 noon she was working in her son's store (Variededes Alondras) when a black male walked by the store. This individual was later identified as James Knight. Knight had asked Miss Nova, who was standing in the doorway for a phone. Miss

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Nova informed Knight that she didn't have a phone and Knight left. Approximately one hour later, Knight returned and asked Miss Nova if she had blue cologne. Miss Nova walked to the back of the store and when she turned to show Knight he was standing there pointing a gun at her. Miss Nova asked him "what happened" and Knight shot her in the left side of her chest. Miss Nova stated that he continued to squeeze the trigger but nothing happened. When asked how many times did it appear that Knight squeezed the trigger, Miss Nova stated "about three times". When the gun failed to fire, Knight pistol whipped Miss Nova twice in the head and threw the gun to the floor. Knight then picked up a folding chair and struck Miss Nova in her head three times, knocking her to the floor twice. Miss Nova was able to get to her feet and exit the store. Miss Nova stated that once outside she was covered in blood and began to yell for help. Knight exited the store and ran. Miss Nova described Knights as a light complected black male, skinny and tall, wearing a black hooded sweatshirt with the hood up, a white shirt underneath and carrying a small black cloth backpack with strings. Also, he looked older and had a big round head. When asked if there was any money taken from the register, Miss Nova stated that there was \$60.00 (three twenties) missing. A copy of Miss Nova's sworn statement is attached to this case file. After the statement was completed Miss Nova was shown a six photo photograph array with Knight being number six in the array. The array and questionnaire process was conducted by Detective Ed Rivera which was recorded. Miss Nova chose photograph number six as being the individual who shot and beat her on 5 October 2013. A copy of the six photograph photo array and questionnaire are attached to this case file.

In furthering this investigation I obtained a copy of the video surveillance footage from 300 B Park Avenue, Plainfield, NJ., the La Feria, that captured Knight walk towards Miss Nova's store then leave the area. A copy of the video is attached to this case file. Also requested but not attached to this case file are Miss Nova's medical records and the 911 calls and radio transmissions regarding this incident. Once those items become available they will be forwarded to the Union County Prosecutor's Office.

In furthering this investigation, this writer completed a Union County Prosecutor's Office report of Criminal Investigation (UCP-9), depicting the facts of this case and forwarded same to The Union County Grand Jury.

OFFICER SIGNATURES

Reporting Officer: _____
 ROBERTSON, T DETECTIVE

Approving Officer: _____
 FUSCO, R SERGEANT

Date: _____

Date: 000037

On 05 October 2011, Saturday, at approximately 306 hours, I was assigned to the Plainfield Police Division's Criminal Investigations Bureau Narcotic/VICE Section and was conducting a daily role-call/line-up in the Narcotics Annex building, with Detectives and Officers assigned to the Narcotic/VICE Section. During this time, we monitored a radio transmission given out by central communications, that a woman had been stabbed in the area of Park Avenue and West 4th Street. Due to the close proximity of this location to our Narcotics building, we broke from roll-call/line-up and quickly exited our building, in order to assist at the scene and possibly locate a suspect. As Detective Nuno Carvalho and I exited the building, we observed Sergeant David Belle responding to the location in a marked Plainfield Plainfield Police vehicle, heading west bound in the 200 block of East 4th Street, coming towards us. We flagged Sergeant Belle down, at which time he stopped near us and we entered his vehicle and proceeded to the scene.

While en-route to the scene, Central Communications relayed further information that the incident had occurred near the intersection of Park Avenue and Depot Park, near the train bridge. Central Communications further relayed that several individuals had just chased a male, possibly the suspect of the reported stabbing, into Appliance Arama (215 West 2nd Street), which is in very close proximity to the alleged scene. Central Communications then relayed that there was a male at Appliance Arama in possession of a handgun. We continued north bound on Park Avenue and then west bound onto West 2nd Street, where we immediately observed a large crowd of individuals in front of Appliance Arama on the south sidewalk and east bound lane of travel. The large group of individuals was waving us to come towards them and frantically pointing south bound into Appliance Arama. We exited our vehicle and began to approach the front door of Appliance Arama, at which time several of the individuals in the crowd that were pointing towards inside the store were shouting "He's in there, he went in there!" We then entered Appliance Arama and were met by more individuals, who were waving us inside and pointing south bound towards the back of the store saying, "Back there, he's back there!" I advised Central Communications of our situation and we continued to move south towards the rear of the store. While doing so, we were approached by a male, who advised he was an employee at the store, that a large group had just chased a black male into the store and he ran into the rear storage area. The employee also advised that there was no way out of the building through the rear storage area and that he was definitely back there. We then continued to search towards the rear of the store and entered through a large door located on the south end of the store, which led to the rear warehouse/storage area. I shouted out several loud commands that we were the police and for whoever was in the rear warehouse area to show themselves. After several loud commands and no reply, we began a systematic search of the first floor of the warehouse area, which yielded negative results. Detective Carvalho and I then located a steep wooden staircase, that lead to a dark second floor storage area. I again shouted several loud commands that we were the Police and for anyone who was in the second floor storage area to announce and show

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themselves. Again, I received no reply, at which time Detective
*Carvalho proceeded up the staircase to the second floor storage area,
with me closely behind him. As we reached the second floor storage
area, Detective Carvalho illuminated the area with a flashlight. It
was at this time, that we observed a black male, later identified as
James Knight, lying down between several piles of old debris, in an
obvious attempt to hide from us. We both drew our department issued
handguns, pointed them in Knight's direction and shouted loud
commands for him to show us his hands and put his hands in the air.
Knight got up to his knees and immediately began shouting, "I didn't
do nothing, they was chasing me!" At this point, Knight had not yet
shown us his hands and I could see that he was attempting to shove,
what appeared to be, a baseball hat under a pile of debris behind
him. I shouted again for Knight to show his hands, at which time he
complied. At this point, I could see that Knight's clothing appeared
to have several blood spots on them. At this time, with Detective
Carvalho in the cover position, I approached Knight and secured him
in handcuffs for safety reasons. I then conducted a pat down search
of Knight, which yielded negative results for weapons or contraband.
I then turned around and retrieved a grey colored baseball cap from the
area I observed Knight attempting to shove it under the debris. I
asked Knight why he was trying to hide the baseball hat and he
replied, "That ain't my hat, I didn't have that hat." I advised
Knight that I saw him shoving the hat under the debris with his hands
and he said, "that ain't my hat man, it ain't mine." While saying
this, Knight continuously attempted to distance himself from the hat
and insisted it did not belong to him. Detective Carvalho then
walked Knight and the hat down to the first floor and turned them
over to Police Officer Andre Crawford. I conducted a search of the
immediate surrounding area where we located Knight, with Detectives
Christopher Fortunka, Carvalho and Police Officer Michael Metz, but
located no further contraband. I then cleared the scene, after
learning that Police Officer Crawford had transported Knight into
police headquarters.

OFFICER SIGNATURES

Reporting Officer: _____
SYLVESTER, C SERGEANT

Date: _____

Approving Officer: _____
SYLVESTER, C SERGEANT

Date: _____

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UNION COUNTY PROSECUTOR'S OFFICE

32 RAHWAY AVENUE

ELIZABETH, NEW JERSEY 07202-2155

(908) 527-4500

FAX: (908) 289-1267

GRACE H. PARK
Acting Prosecutor of Union County

THOMAS K. ISENHOUR
First Assistant Prosecutor

ANN M. LUVERA*
Deputy First Assistant Prosecutor

* CERTIFIED CRIMINAL ATTORNEY

April 28, 2015

Andy Murray, Esq.
Assistant Deputy Public Defender
65 Jefferson Avenue
Elizabeth, New Jersey 07201

RECEIVED
MAY 01 2015
PUBLIC DEFENDER

Re: *State v. James Knight*
Prosecutor's Docket No. 13003381
Indictment No. 14-03-00210

Dear Mr. Murray:

In complying with the State's continuing discovery obligations, this letter serves to inform you that on April 28, 2015, Edward Duarte, 300 Park Avenue, Plainfield, New Jersey, date of birth February 1, 1979, met with Union County Prosecutor's Office Detective Alex Lopez and I. He told us the following:

- On the date of the incident, he was working landscaping in Basking Ridge. Around midday, he received several calls on his cell phone, which he did not answer due to the loud noise of the landscaping machines. Finally, he was called and told that there was an emergency, so he went to Plainfield. He saw that the streets were closed off and that his mom was at the hospital. Before he went to the hospital, he went to the Appliance-A-Rama where the defendant was led out. He did not see the defendant being led out, but saw that there was a picture of the defendant from there. He obtained a copy of the picture on his phone and went to his mother, Zoila Nova, at the hospital. He showed her the picture at the hospital and she said it was the person who shot her.
- He further related that a person approached him last week. He did not know the person's name, but that he appeared to be Columbian and he said that he was one of the people who had followed the defendant from Mr. Duarte's store to the Appliance-A-Rama.

Andy Murray, Esq.

Page 2

April 28, 2015

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- He gave David Oliva's new address as 1726 Acosta Street, Dallas, Texas.

Very truly yours,

GRACE H. PARK

Acting Prosecutor of Union County


By: DAVID A. ZEITZOFF
Special Deputy Attorney General/
Acting Assistant Prosecutor

DAZ/cm

c File

Order prepared by the Court

THE STATE OF NEW JERSEY

State,

v.

JAMES KNIGHT

Defendant

SUPERIOR COURT OF NEW JERSEY,
LAW DIVISION – CRIMINAL PART,
UNION COUNTY

INDICTMENT NUMBER: 14-03-00210
CASE NUMBER: 13003381

ORDER

FILED

JUL 27 2015

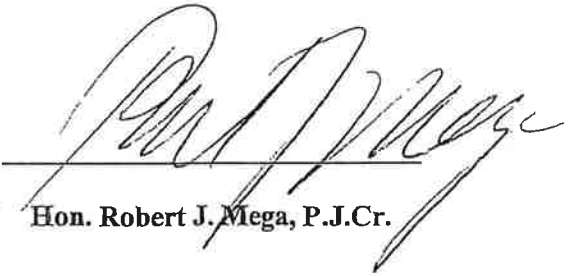
ROBERT J. MEGA, J.S.C.

THIS MATTER having been opened to the Court upon notice of motion by Defendant, James Knight, represented by A. Hammond Murray, Esq., and upon notice to the State of New Jersey, represented by David Zeitzoff, Esq., Assistant Prosecutor, and the Court having considered the motion and opposition and for good cause appearing;

IT IS on this 27th day of July, 2015:

ORDERED, that Defendant's motion to suppress evidence of Ms. Zoila Nova's out-of-court identification is hereby **granted** for reasons set forth on the record.

DATE: July 27, 2015


Hon. Robert J. Mega, P.J.Cr.

The motion was:

X Opposed ___ Unopposed

THE STATE OF NEW JERSEY

State,

v.

JAMES KNIGHT

Defendants

SUPERIOR COURT OF NEW JERSEY,
LAW DIVISION – CRIMINAL PART,
UNION COUNTY

INDICTMENT NUMBER: 14-03-00210-I
CASE NUMBER: 13003381

OPINION

FILED

JUL 27 2015

ROBERT J. MEGA, J.S.C.

WITNESS CREDIBILITY

Ms. Zoila Nova testified at the Wade hearing held on July 10, 2015 as to the events of October 5, 2013 and her subsequent out-of-court identification of Defendant James Knight. Ms. Nova displayed firsthand knowledge of the events of October 5, 2013 as well as of the identification process. At times, Ms. Nova was overcome with emotion as she recounted the events, requiring moments to collect herself. Her emotion did not inhibit her recollection as Ms. Nova testimony presented a reasonable account of the events in question. She also testified without an intent to deceive. In fact, the Court makes particular note of Ms. Nova's answers to questions concerning her view of her assailant's face. Ms. Nova truthfully answered that she did not have much of an opportunity to view her attacker's face as the face was obscured by a baseball cap and a hooded sweatshirt. She also indicated that throughout the assault, she focused on the gun as it was used to hit her.

At times, Ms. Nova did appear reluctant to answer questions posed to her on direct and on cross-examination. On direct examination, Ms. Nova became distraught and refused to look in the direction of Defendant when asked to identify the Defendant. After prompting by the Court, Ms. Nova eventually looked and pointed at Defendant to identify Defendant as her

attacker. On cross-examination, Defense Counsel asked Ms. Zoila questions regarding a photograph. Ms. Zoila avoided answering the questions until prompted to answer by the Court.

Her reluctance to answer questions posed to her does not invalidate Ms. Zoila's testimony. It was clear to the Court that the events of October 5, 2013 were traumatic for Ms. Zoila and the emotion she displayed was a reasonable response to questions which forced her to recall the events. When considering the whole of Ms. Zoila's testimony, the Court finds that she testified truthfully as to her firsthand knowledge and recollection of the events. Accordingly, the Court finds Ms. Zoila credible.

PROCEDURAL HISTORY

On March 20, 2014, a Union County Grand Jury returned Indictment No. 14-03-00210-I charging James Knight (hereinafter "Defendant") with the following: first-degree Attempted Murder, in violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:11-3 (Count One); first-degree Armed Robbery, in violation of N.J.S.A. 2C:15-1 (Count Two); second-degree Aggravated Assault, in violation of N.J.S.A. 2C:12-1b(2) (Count Three); third-degree Aggravated Assault, in violation of N.J.S.A. 2C:12-1b(2) (Count Four); second-degree Unlawful Possession of a Weapon, in violation of N.J.S.A. 2C:39-5(b) (Count Five); and second-degree Possession of a Weapon for an Unlawful Purpose, in violation of N.J.S.A. 2C:39-4(a) (Count Six).

On May 2, 2014, the State filed a Notice of Motion to take Defendant's buccal swab. On May 2, 2014, Hon. Frederic R. McDaniel, J.S.C., granted the State's request, signing an order requiring Defendant to submit to a buccal swab. On May 1, 2015 Defendant filed a motion requesting the suppression of any out-of-court identifications pursuant to United States v. Wade, 388 U.S. 218 (1967). The State consented to Defendant's request for a Wade hearing. Accordingly, this Court conducted a Wade hearing on July 10, 2015.

FACTS

On October 5, 2013, at approximately noon, a man walked to the entrance of "Variededes Alondras," a store located at 300A Park Avenue, Plainfield, New Jersey. Inside, Ms. Zoila Nova worked by herself as the store's only clerk at the time. The man asked if the store sold cell phones. Ms. Nova said no and the man left.

An hour later, the man returned and entered the store. He asked for cologne. Ms. Nova led him to the rear of the store. The man asked to see a bottle of blue cologne located on a shelf behind Ms. Nova. She turned to grab the bottle from the shelf to hand to the man. When Ms. Nova turned back, the man had drawn a gun and pointed the gun at her. At first, Ms. Nova thought the gun was fake and reached for the weapon. The man fired a shot into her left chest. He attempted to shoot the gun additional times, but the gun jammed. He then struck Ms. Nova with the gun before throwing the gun on the ground. Next, he grabbed a chair and beat Ms. Nova over the head with it. Ms. Nova somehow escaped the onslaught and exited the store in an attempt to find help. The man chased after her, following closely.

Several bystanders on the street saw the chase take place. Blood covered Ms. Nova as she screamed for help. One bystander, Mr. Gregory Morris called 911 and reported the situation. Outside the store, the attacker ran down Park Avenue to Second Street and into the Appliance Arama store. Mr. Morris, as well as other individuals including Mr. Marvin Baca and Mr. Neri Quinones, followed the suspect from Park Avenue to Second Street and waited outside Appliance Arama for the police to arrive.

At approximately 1:06 p.m., Plainfield Police Officer Nuno Carvalho and Sergeant Christopher Sylvester were at the Plainfield Police Department Narcotics Annex Building when they received a report of a stabbing in the area of Park Avenue and West 4th Street. As they

exited the Annex to respond, Sergeant David Belle met them in his patrol car. The three officers then proceeded to Park Avenue. On their way, they received an update from dispatch of an armed suspect at the Appliance Arama located at 215 West 2nd Street, Plainfield, New Jersey. Once they heard the transmission, the three officers proceeded to the Appliance Arama.

When the officers arrived, they observed a crowd gathered outside of the Appliance Arama. As the officers approached, several people yelled "He's in there! He went in there!" The officers then entered the store to search for the suspect. Once inside, more individuals waved the officers to the rear of the store and shouted "Back there, he's back there!"

The officers searched the first floor of the store. A store employee informed the officers that a black man, chased by a large group had entered the store and ran into the storage area. The employee told the officers that the rear storage area had only the one entrance so the black man was definitely still in the storage area. The officers proceeded to the storage area to continue their search. They searched the first floor of the storage area to no avail. The officers then searched the second floor of the building.

When the officers reached the second floor, they discovered a completely dark room. The officers shouted "Plainfield Police!" but received no reply. Eventually, they found a man, later identified as Defendant James Knight, lying on the floor among various boxes in an attempt to hide. After several commands from the officers, Defendant stood up and said "I didn't do nothing, they was chasing me!" While he spoke to the officers, Defendant attempted to shove a baseball cap under a pile of debris behind him. Sergeant Sylvester noticed several blood spots on Defendant's clothing. Sergeant Sylvester then decided to place Defendant in handcuffs for safety reasons. Sergeant Sylvester asked why Defendant sought to hide his hat. Defendant replied: "That ain't my hat, man. It ain't mine."

The officers escorted Defendant from the building. Mr. Morris, Mr. Quinones, and Mr. Oliva were present when the police escorted Defendant from the building. All three men stated that they were 100% certain that Defendant was the same man they saw chasing Ms. Nova from her store.

Meanwhile, shortly after being chased by her assailant, Ms. Nova was taken to the local hospital. During her treatment, Ms. Nova lost consciousness. When she awoke, her son Eduardo Duarte had come to visit her. Mr. Duarte had obtained a photo of Defendant as police escorted Defendant from Appliance Arama. Mr. Duarte showed the photo to his mother and asked if Defendant was her assailant. Ms. Nova replied affirmatively.

On October 15, 2013, Ms. Nova arrived at the Plainfield Police Department Headquarters to give a sworn statement and identification. Police Detective Ed Rivera provided Ms. Nova with a photo array. Ms. Nova did not identify any of the men in the array as her attacker. After viewing the array for a second time, she stated that she thought that the photograph of Defendant could be the individual who attacked her. She indicated that she was not certain of her selection.

Police recovered a handgun from Variededas Alondras and submitted the weapon to the Union County Prosecutor's Office Forensic Laboratory for further testing. After Hon. Frederic R. McDaniel, J.S.C., signed an order requiring Defendant to submit to a buccal swab, officers collected a buccal swab from Defendant. Ms. Nova also provided a buccal swab. DNA analysis determined that Ms. Nova's DNA profile matched the DNA recovered from debris from the handgun as well as DNA recovered from Defendant's clothing. Defendant could not be excluded as a minor contributor to the DNA profile found on one side of the grip of the handgun recovered from Ms. Nova's shop.

ANALYSIS

Trial courts should strictly scrutinize the reliability of pretrial identifications. State v. Michaels, 136 N.J. 299, 319 (1994). “Eyewitness identification[s] bear directly on guilt or innocence,” and therefore, it is imperative that courts examine pretrial identifications closely. State v. Henderson, 208 N.J. 208, 219 (2011). Accordingly, where a criminal defendant questions the reliability of a pretrial identification, he or she may request a hearing to determine whether the pretrial identification is admissible at trial under N.J.R.E. 104(a). United States v. Wade, 388 U.S. 218 (1967). A defendant is not automatically entitled to such proceeding, also known as a Wade hearing, when a pretrial identification was made. Henderson, 208 N.J. at 219; State v. Ruffin, 371 N.J. Super. 371, 391 (App. Div. 2004). A Wade hearing is only warranted when a defendant demonstrates the out-of-court identification was sufficiently suggestive. Id.

Generally, in order to meet this burden, a defendant must show *some evidence of suggestiveness* that could lead to a mistaken identification. Henderson, 208 N.J. 208, 219-20 (2011). Such evidence may only take the form of relevant system variables. Id. at 220.

System variables are those factors that remain within the control of the criminal justice system, including:

- (1) whether the lineup or photographic array was blind, double-blind, or non-blind;
- (2) whether law enforcement provided neutral pre-identification instructions indicating that the suspect may not be present;
- (3) the construction of the lineup or photographic array;
- (4) any information or feedback provided to the identifying witness by law enforcement;
- (5) the witness’s level of confidence, which is to be recorded immediately after the identification;
- (6) the number of times the witness in question viewed the suspect during identification procedures;
- (7) whether the identification was a result of a show up, and if so, the instructions given prior to the procedure;
- (8) whether law enforcement asked the eyewitness if he or she

communicated with private actors about the identification, and
if so, what was discussed; and,
(9) any initial identifications made by the eyewitness.
Id. at 289-92.

If a defendant presents some evidence that the system variables were of a suggestive nature, the trial court should conduct a Wade hearing to determine whether the identification is reliable. Id.

During such proceeding, trial courts should consider all relevant system variables and estimator variables in determining the admissibility of the identification. Henderson 208 N.J. at 289. Unlike system variables, estimator variables are factors beyond the control of the legal system. Id.

Examples of estimator variables include:

- (1) private actors;
 - (2) stress;
 - (3) weapon focus;
 - (4) the duration of the event or crime;
 - (5) distance;
 - (6) lighting;
 - (7) characteristics of the witness;
 - (8) characteristics of the perpetrator;
 - (9) memory decay;
 - (10) race bias;
 - (11) the witness's opportunity to view the criminal at the time of the crime;
 - (12) the witness's degree of attention; accuracy of prior description of the criminal;
 - (13) level of certainty demonstrated at the identification; and,
 - (14) the duration between the crime and the identification.
- Id. at 292.

Notably, the list of system variables and estimator variables enumerated in Henderson is non-exclusive: "[t]he factors that both judges and juries will consider are not etched in stone... [T]he scientific research underlying [such factors] will continue to evolve." Id. at 219.

Upon weighing both the system variable and estimator variables at issue in a given case,

the trial court must decide whether the defendant has met his or her burden of showing a very substantial likelihood of irreparable misidentification. Id. at 289; see also Manson v. Brathwaite, 432 U.S. 98, 116 (1977); State v. Madison, 109 N.J. 223, 239 (1988). Ultimately, if a defendant meets this burden, the pretrial identification should be suppressed. Henderson, 208 N.J. at 289. Otherwise, the trial court shall admit the pretrial identification and provide the jury with instructions to assist in its assessment of such evidence. Id.

In the present matter, Defendant argues under State v. Chen, 208 N.J. 307 (2011), that a third-party impermissibly influenced the victim's out-of-court identification of Defendant. Where a defendant alleges that such an identification is unreliable due to the influence of private actors, the defendant must put forth some evidence of highly suggestive circumstances that could lead to a misidentification in order to justify a hearing under N.J.R.E. 104. State v. Chen, 208 N.J. 307, 327 (2011). "[A] private actor's suggestive words or conduct will require a preliminary hearing under Rule 104 in appropriate cases to test the admissibility of identification evidence." Id. at 322. In this limited context, a defendant may introduce the conduct of a private actor, such as that of a co-defendant or a media outlet, to prove that a Wade hearing is warranted. Id. at 327. The New Jersey State Supreme Court provided the following method for analyzing the admissibility of an identification when a non-State actor has interfered:

(1) to obtain a pretrial hearing, a defendant must present evidence that the identification was made under highly suggestive circumstances that could lead to a mistaken identification, (2) the State must then offer proof to show that the proffered eyewitness identification is reliable, accounting for system and estimator variables, and (3) defendant has the burden of showing a very substantial likelihood of irreparable misidentification.

Id.

The Court also noted that out-of-court identifications most likely will be presented to the jury and that only in rare cases will courts bar identification testimony. Id. at 328.

In Chen, the victim of an aggravated assault provided police with a description of her assailant, including that the assailant wore glasses. Id. at 312-13. After meeting with police, the victim sketched a picture of her assailant and showed the picture to her boyfriend. Id. The boyfriend believed the picture resembled a former paramour, Chen. Id. The boyfriend showed the victim multiple photos of Chen. Id. The victim at first was unsure if Chen was her assailant; however, when her boyfriend's sister drew glasses on the picture, the victim identified Chen as her attacker. Id. Police waited twenty-two months before administering a photo array to the victim. Id. at 314. Nevertheless, the victim identified Chen as her attacker. Id. The New Jersey Supreme Court held that an evidentiary hearing should have been held and remanded the case for the trial court to conduct such a hearing. Id. On remand, the trial court determined that the circumstances did not present the rare case in which suggestive procedures so tainted the out-of-court identification as to bar testimony, and the New Jersey Superior Court, Appellate Division upheld the trial court's determination. State v. Chen, 2013 N.J. Super. Unpub. LEXIS 2078 (App. Div. Aug. 20, 2013).

In the present matter, both parties agreed that Defendant has established the existence of highly suggestive circumstances during the identification procedure necessitating an evidentiary hearing under the first prong of the Chen analysis. The Court conducted an evidentiary hearing on July 10, 2015 to consider the admissibility of Ms. Nova's out-of-court identification. Accordingly, this Court now considers the system and estimator variables affecting Ms. Nova's identification.

With regards to the system variables, the State produced various pieces of evidence detailing the procedures followed by Detective Rivera during his interview of Ms. Nova and the subsequent out-of-court identification by Ms. Nova. Detective Rivera was not one of the lead

detectives investigating the matter. He read instructions explaining the nature of the identification procedure to Ms. Nova. See State's Ex. S-4. The instructions explained to Ms. Nova that the photo array may not include a photo of her assailant and that she did not have to choose a photograph. Id. In accordance with Henderson, Ms. Nova looked at an array of photographs. See State's Ex. S-3.

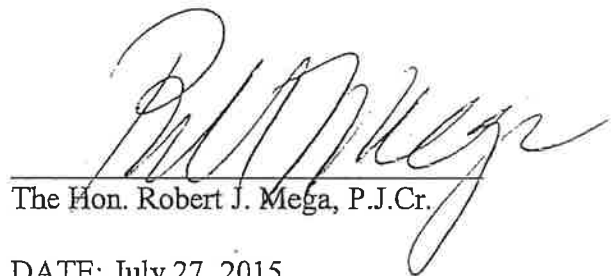
From these exhibits, it would appear as though the State adhered to the procedures outlined in Henderson. However, the Court viewed the video recording of Ms. Nova's out-of-court identification and read the corresponding transcript. See State's Ex. S-1 (DVD) and State's Ex. S-2 (Transcript). During the interview, Ms. Nova indicated that she was not sure that the photographs depicted her assailant. S-2 at 7 and 8. Detective Rivera showed Ms. Nova the array a second time, during which Ms. Nova indicated that the person depicted in photo six was her assailant. Detective Rivera keyed in on photo six which depicted Defendant, asking Ms. Nova multiple times whether or not she was certain the photo was of her assailant. These questions seemed designed to point Ms. Nova towards choosing photo six. Nevertheless, Ms. Nova still indicated that she was "not that certain." State's Ex. S-3. After viewing the video and reading the transcript, the Court finds the manner in which Detective Rivera questioned Ms. Nova was beyond the procedures set out in Henderson and impermissibly tainted the identification procedure.

Turning towards the estimator variables, the Court notes the existence of several factors which call into question the validity of Ms. Nova's identification. Ms. Nova had several encounters with her assailant on October 5, 2013, but these encounters were brief in duration. During her testimony, Ms. Nova admitted to focusing on the gun which was used against her. On cross-examination, Ms. Nova noted that the assailant wore a hooded sweatshirt and a baseball

cap which covered and obscured the assailant's face. Finally, the Court takes into account the nature of the assault. Ms. Nova suffered a gunshot wound and then multiple blows to her head. The beating she received resulted in her eventually losing consciousness. To describe such an event as stressful understates the tragedy which befell Ms. Nova. Accordingly, this Court finds the presence of several estimator variables which present a substantial likelihood of misidentification.

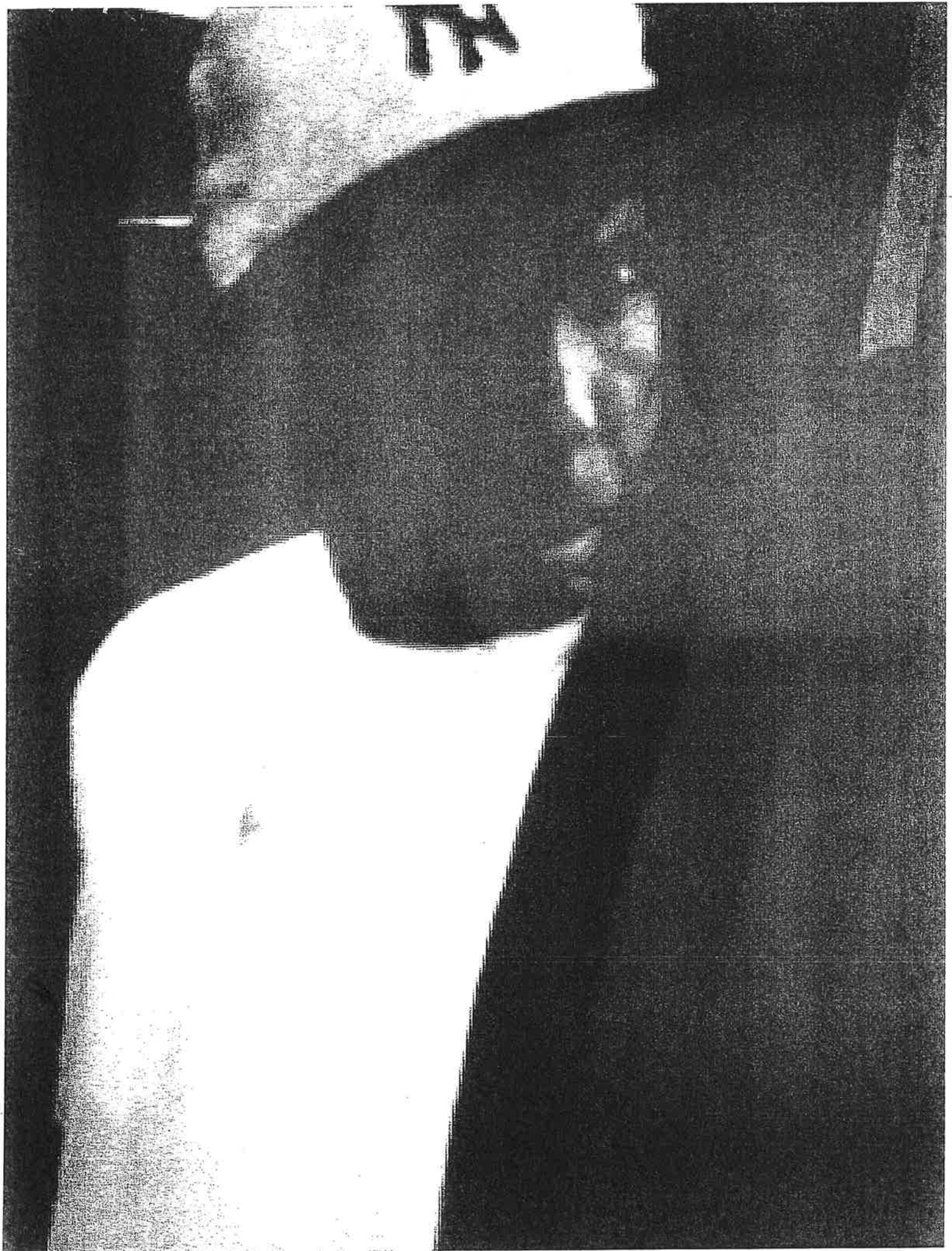
CONCLUSION

Upon considering the relevant system and estimator variables, the Court finds that the out-of-court identification by Ms. Nova presents a substantial likelihood of irreparable misidentification. The Court's findings are strictly limited to the out-of-court identification provided by Ms. Nova on October 15, 2013. Accordingly, Defendant's motion to suppress the out-of-court identification is granted as it applies to the October 15, 2013 identification.



The Hon. Robert J. Mega, P.J.Cr.

DATE: July 27, 2015



Voluntary Statement of David Oliva
Date: 9 October 2013
PLAINFIELD POLICE DIVISION
Criminal Investigation Bureau
Formal Statement



State vs. James Knight

Voluntary Statement of: David Oliva

Date: 9 October 2013

Residence: 8 Chatham Pl., No. Plainfield, NJ.

Time Started: 1110 hours

Statement taken at: Plainfield Police HQ/CIB

Also Present: Det. Carlos Gonzalez

Statement taken by: Detective Thomas Robertson

Case: Agg. Assault, 13-29950

I, **David Oliva**, being of sane mind make the following statement of my own free will, without duress or threats, or promise of reward.

Q. What is your full name, age, and date of birth?

A. David Oliva 29 years old. 1 December 1984

Q. Where do you reside and with whom?

A. 8 Chatham Place, Second Floor, North Plainfield, NJ. I live there with three roommates.

Q. Are you employed, if so, where, in what capacity, and for how long?

A. I'm a landscaper for Edward's Landscaping.

Q. What is your cellular and home telephone numbers?

A. Cell: 908-240-8389

Home: No house phone.

Q. Are you under the influence of any drug or alcohol at this time?

A. No.

Q. Can you read, write and understand English?

A. No.

Q. I'm going to ask you questions in English and Detective Gonzalez will translate those question and your answers back to me in English, will that be alright?

A. Yes.

Q. The Plainfield Police Division is currently investigating an aggravated assault that occurred on 5 October 2013 at approximately 1:06PM in the area of the 300 block of Park Avenue, Plainfield,

David Oliva 10/9/2013 -

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Voluntary Statement of David Oliva

Date: 9 October 2013

NJ. Will you answer my questions truthfully and to the best of your knowledge?

A. Yes.

Q. Were you in the area of the 300 block of Park Avenue, Plainfield, NJ., on 5 October 2013 at approximately 1:06PM?

A. Yes.

Q. Were you alone or with other people?

A. Alone

Q. Can you describe to me what you observed while you were in the 300 block of Park Avenue?

A. I was walking under the bridge when I saw a guy come out of the store. The guy had blood all over his shirt. I looked at him more because I knew the lady from the store. I could see blood on the guy's sandals. I asked him what was going on. The guy realized I was talking to him, turned around and started to run. I ran behind him to the corner of West Second Street and chased him in the store but I stayed outside because the police arrived.

Q. Can you describe the guy you saw who had blood on him?

A. He was brown complected and looked like he was Dominican, he about 38 to 40 years old, tall and skinny. He had a black jacket with a black shirt, a gray hat, black sandals with socks and blue jeans.

Q. Did you know this guy or have you ever seen him before?

A. No, never.

Q. If you were to see his guy again could you identify him?

A. Yes.

Q. When you first saw the guy where was he coming from?

A. He was coming out of a store, I don't know the name.

Q. Was he with other people or by himself?

A. Alone.

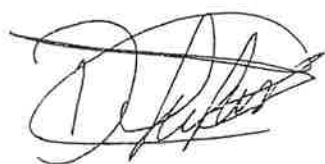
Q. You said earlier that you know the lady who works in the store, do you know her name?

A. Zoila Vera.

Q. Did you see Zoila come out of the store?

A. No.

Q. When the guy came out of the store did you see anything in his hands?



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Voluntary Statement of David Oliva

Date: 9 October 2013

A. No.

Q. When you first saw the guy come out of the store, where were you?

A. I was across the street walking under the bridge. I saw him come out of the store as I was crossing the street.

Q. When you said to him "what's going on" what did he do?

A. He started to walk faster.

Q. That's when you started to run after him?

A. As I was crossing the street that's when he took off and that's when I started to run.

Q. Was there other people chasing this guy?

A. There was one other person behind me chasing him.

Q. When you chased him, the guy went to the corner and made a left at the bank and entered a store?

A. Yes.

Q. The guy didn't go behind the bank then into the store?

A. No.

Q. And only you and one other person were chasing the guy?

A. Yes. Once he was inside the store a lot of people came.

Q. Do you know the name of the store?

A. No.

Q. Were you there when the police brought the guy out of the store?

A. Yes.

Q. Was he the same guy you saw exit the store and the same guy you chased?

A. Yes.

Q. How sure are you that he was the same guy?

A. 100 percent.

Q. At any time while you were outside the store did you see anyone with a gun?

A. No.

Q. When you were waiting outside the store and a lot of people arrived did anyone say they had a



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Voluntary Statement of David Oliva

Date: 9 October 2013

gun?
A. No.

Q. Do you know what happened to Zoila?

A. Yes, I heard from her son that she was shot and hit over the head.

Q. What is Zoila's son's name?

A. Edward Duarte.

Q. Do you wish to add anything to your statement?

A. No.

Q. Has everything that you have told me within this (4) page statement been the truth to the best of your knowledge?

A. Yes.

Q. After having this statement read back to you in Spanish and finding it to be true and accurate, will you sign it and swear to its truthfulness?

A. Yes.

Q. Have you made any corrections or additions?

A. Corrections: 0 D.O
Ans., # Initials

Additions: 0 D.O
Ans., # Initials

Sworn to and Subscribed to before
Me this 9th day of October 2013



ED M. RIVERA
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JAN. 29, 2015
ID #2392848

 9/10/2013
David Oliva Date
Time Ended: 1141 hours

Voluntary Statement of Zoila Nova
Date: 15 October 2013
PLAINFIELD POLICE DIVISION
Criminal Investigation Bureau
Formal Statement



State vs. James Knight

Voluntary Statement of: Zoila Nova

Date: 15 October 2013

Residence: 300 Park Avenue, Plainfield, NJ.

Time Started: 1106 hours

Statement taken at: Plainfield Police HQ/CIB

Also Present: Det. Ivy Grimmer

Statement taken by: Detective Thomas Robertson

Case: Aggravated Assault, 13-29950

I, **Zoila Nova**, being of sane mind make the following statement of my own free will, without duress or threats, or promise of reward.

- Q. In a moment I am going to ask you question regarding an aggravated assault. My question will be in English and Detective Grimmer will translate those questions to you in Spanish and your responses will be translated back to me in English. Will that be alright?
- A. Yes.
- Q. What is your full name, age, and date of birth?
- A. Zoila Nova 52 years old. 8 July 1961
- Q. Where do you reside and with whom?
- A. 300 Park Avenue, Apartment 2B, Plainfield, NJ. I live there with my son Eduardo Duarte.
- Q. Are you employed, if so, where, in what capacity, and for how long?
- A. I work in my son's store "Variededes Alondras" located at 300 A Park Avenue, Plainfield, NJ. I've worked there for 10 months.
- Q. What is your cellular and home telephone numbers?
- A. Cell: 908-405-0052 Home: No phone.
- Q. Are you under the influence of any drug or alcohol at this time?
- A. No.
- Q. Can you read, write and understand English?
- A. No.

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Voluntary Statement of Zoila Nova

Date: 15 October 2013

Q. The Plainfield Police Division is currently investigating an aggravated assault that occurred on 5 October 2013 at approximately 1:06PM while you were inside the business located at 300 A Park Avenue, Plainfield, NJ. Will you answer my questions truthfully and to the best of your knowledge?

A. Yes.

Q. Were you working in your son's store on 5 October 2013 at approximately 1:06PM?

A. Yes, it was around 1 O'clock in the afternoon.

Q. Were you working alone or with someone?

A. I was alone.

Q. Do you recall what time you opened the store?

A. At 11 O'clock in the morning.

Q. Can you describe to me what happened that day? _____

A. The store was already open and he came in and asked for a phone. I told him that I didn't have a phone. About an hour later he came back and he asked me for blue cologne. I turned and went to show him and he had a gun. I asked him "what happened" and he shot me. He kept trying to shot me but the gun wouldn't go off and nothing happened. He then started to hit me with the gun on my head. He walked towards the front of the store, dropped the gun and picked up a chair. He went to hit me in the head with the chair and I put up my hand to block it. He hit me in the hand and then twice in the head. I fell to the floor and every time I would get up he would hit me and said "my God". I was able to get up and I ran outside. I was covered with blood and was yelling for help. He walked out of the store then he ran.

Q. Have you ever seen this person before?

A. No, this was the first time seeing him.

Q. Can you describe this person to me?

A. He was light skinned black, very tall. He was wearing a black hooded zippered sweatshirt with a white shirt under the jacket. He had the hood up. He had a big, round head. He looked older.

Q. If you were to see a photograph of this person do you think you could identify him?

A. Yes.

Q. When he first came to your store, what exactly did he asked you?

A. He asked me for a phone.

Q. Do you recall what time this was?

A. It was a little before 12 noon, maybe 10 minutes before.

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END

Voluntary Statement of Zoila Nova

Date: 15 October 2013

Q. Was he wearing the same sweat jacket?

A. Yes, he was also carrying a little black drawstring backpacks.

Q. Do you recall if he had the little black backpack when he came into the store the second time?

A. Yes., the same bag.

Q. When he first came into the store and asked for the phone, did appear that he was mad or angry?

A. No.

Q. When you told him that he didn't have a phone did he say anything?

A. No, he just left. He never entered the store, he was on the sidewalk. I was standing in the doorway when he asked for the phone.

Q. Did he want to purchase a phone or did he want to use a phone?

A. I don't know. He just said "phone" and I said no.

Q. When he came back the second time, he just asked for the blue cologne?

A. Yes.

Q. When you turned to show him the cologne he already had the gun out?

A. Yes, he had it pointed at me.

Q. Did you see where he took the gun from?

A. No.

Q. Did you see where he had the little black backpack?

A. It was in his hand, he was holding it by the strings.

Q. Were you in the front of the store or in the back of the store?

A. I was in the front when he came and we walked towards the back where the colognes are.

Q. When he shot you, you said the it appeared like he wanted to shoot you again is that correct?

A. Yes.

Q. He continued to pull the trigger?

A. Yes and nothing happened. That's when he hit me in the head with the gun.

Q. How many times after you were shot did he try to shoot you again?

A. About three times.

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Voluntary Statement of Zoila Nova

Date: 15 October 2013

Q. Can you describe the gun?

A. It was small and barrel was long. It was black.

Q. Where were you shot?

A. The left side of my chest. The bullet went through my lung.

Q. Did he say anything to you when he shot you?

A. No, nothing.

Q. Other than "my God" did he say anything else?

A. No, that's it. It looked like he was getting upset with me, because I kept getting up.

Q. How many times did he hit you with the gun?

A. Twice.

Q. Where did he hit you with the gun?

A. On top of my head.

Q. Did he punch you at all?

A. No, just the gun.

Q. You said earlier that after he shot you he dropped the gun to the floor, is that correct?

A. Yes, he dropped the gun when he went to get the chair.

Q. The chair was in the front of the store?

A. Yes.

Q. When he got the chair and hit you with it were you standing or were you on the floor?

A. I was standing.

Q. How many times did he hit you with the chair?

A. The first time hit my hand and my head, the second was to my head and a third time to my back.

Q. Were you knocked to the ground?

A. Yes.

Q. What happened next?

A. He walked towards the cash register ~~was~~ and I was able to get up and leave the store.

Q. Did you see him enter the cash register?

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Voluntary Statement of Zoila Nova

Date: 15 October 2013

A. No.

Q. Was there money in the cash register?

A. Yes, 66 dollars.

Q. Later was it discovered that the money was still there or was it missing?

A. It was missing. \$60.00 was missing. He just took three 20's.

Q. Does your son's store have video cameras?

A. Yes, but they weren't recording.

Q. When you exited the store and yell for help do you recall who was standing outside?

A. There were a few people out there. I asked for them to call the police but I don't know who they were. Some of them began to follow him.

Q. When you exited the store how long after did he exit the store?

A. I don't know, I'm not sure. I was covered in blood.

Q. Did you see what direction he left in?

A. He was walking towards Second Street towards the bank.

Q. When he was leaving the store did he still have the little black backpack?

A. I didn't see it, I'm not sure.

Q. Were you taken to the hospital?

A. Yes, an ambulance.

Q. Do you recall what hospital you were treated at?

A. Yes, Robert Wood Johnson in New Brunswick.

Q. Do you recall when you were released?

A. Last Thursday.

Q. What were your injuries?

A. The bullet wound to my left chest, it went through me. They operated on my left side for the bullet hitting my lung. Ten staples in my head and bursting to my left hand and back.

Q. Do you wish to add anything to your statement?

A. No, nothing else.

Q. Has everything that you have told me within this (6) page statement been the truth to the best of

Z N-10-15-13

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EMD

Voluntary Statement of Zoila Nova

Date: 15 October 2013

your knowledge?

A. Yes.

Q. After having this statement read back to you in Spanish and finding it to be true and accurate, will you sign it and swear to its truthfulness?

A. Yes.

Q. Have you made any corrections or additions?

A. Corrections: 0 ZN
Ans., # Initials

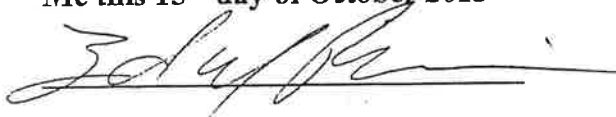
Additions: 0 ZN
Ans., # Initials

Sworn to and Subscribed to before

Me this 15th day of October 2013

Zoila Nova - 10-15-13
Zoila Nova Date

Time Ended: 1204 hours



ED M. RIVERA
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JAN. 29, 2015
ID #2392848

PHOTO DISPLAY STATEMENT

CASE # 13-29950DATE: 15 OCT 13STATEMENT OF : ZOLA NOVAADDRESS : 300 A PARK AVE, PLAINFIELD, NJTELEPHONE NUMBER : 908-405-0052DATE OF BIRTH : 07-08-1961SOCIAL SECURITY NUMBER : NOT GIVENSTATEMENT TAKEN BY : Det. Ed RiversCASE NUMBER : 13-29950TIME COMMENCED : 12:29 pmTIME CONCLUDED : 12:40 pm

1. Q: I am Det. Ed Rivers of the PLAINFIELD Police Department and I am going to ask you some questions about the photo display that was just shown to you in the investigation into AN AGGRAVATED ASSAULT. Will you answer all of my questions truthfully?

A: Yes.

2. Q: Just a few minutes ago did I read some instructions to you explaining the photo display process?

A: Yes

STATEMENT OF EL LA NOVA

Page 2

Date: 15 OCT 13

3. Q: Did you view each of the photographs one at a time?

A: yes

4. Q: Did you recognize anyone in the photographs as being the person ~~you saw~~

WHO SHOT AND BEAT YOU on 5 OCTOBER 13 ?
(description of incident) (date of incident)

A: Yes.

5. Q: What was the number of the photograph that you recognized?

A: 6

6. Q: Why did you select Photograph Number 6 ?

A: Because he looked like him.

7. Q: How certain are you that this is the person that you saw on 5 OCTOBER 13 ?
(date of incident)

A: I'm not that certain.

8. Q: Did I or anyone else try to influence or suggest to you in any way that you should select this photograph?

A: No, no one.

9. Q: Did I or anyone else try to influence or suggest to you in any way that you should select any photograph?

A: No.

10. Q: Did I or anyone else tell you that other witnesses in this case selected or failed to select a particular photograph?

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STATEMENT OF E ILA NOVA

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Date: 15 OCT 13

A: No

11. Q: Have I or anyone else told you that the photograph that you selected is the person who committed the crime under investigation?

A: No

12. Q: Prior to the identification procedure or during the identification procedure that we just completed, did you speak with anyone about the subject and what they looked like other than what you said to me?

A: No

13. Q: If the answer is Yes to Question# 12, who did you speak with?

A: No

14. Q: What did you tell them?

A: No

15. Q: Did they give you information about the criminal event that you did not see or know about?

A: No

16. Q: What did they tell you?

A: No

17. Q: After reviewing this written statement and making any additions, deletions or corrections that you want to it, will you sign it and swear to the truthfulness of this statement?

A: Yes.

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STATEMENT OF: ZILA NOVA

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Date: 15 OCT 13

18. Q: Have you made any additions, deletion or corrections to this statement?

A: No

19. Q: Do you understand that you are not to talk to or discuss this identification procedure or what you did during this identification procedure with any other potential witnesses to this investigation?

A: Yes

Zoila Nova

WITNESS SIGNATURE

Ed M. Rivera

INDEPENDENT OFFICER SIGNATURE

Sworn to and subscribed

before me this 15th day

of October 2013.

Ed M. Rivera

ED M. RIVERA
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JAN. 29, 2015
ID #2982845

(Form Approved 1/28/13)

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