

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF MONROE

3	x-----x	Indictment No.
		: 2019-0482
4	THE PEOPLE OF THE STATE OF NEW YORK,	:
		:
5	vs.	: CPW 2ND (2)
		: ASSAULT 2ND (2)
6	TREIQUN HAWKINS,	:
		:
7	Defendant.	:
	x-----x	GUN/HEARING

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Hall of Justice  
Rochester, New York  
November 21, 2019

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12 P r e s i d i n g:

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HONORABLE THOMAS E. MORAN  
Supreme Court Justice

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15 A p p e a r a n c e s:

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SANDRA DOORLEY, ESQ.  
District Attorney, Monroe County  
By: ROBIN E. CATALANO, ESQ.  
Assistant District Attorney  
Appearing on behalf of the People

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PAUL A. GUERRIERI, ESQ. and  
MELISSA L. WELLS-SPICER, ESQ.  
Appearing on behalf of the Defendant

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Defendant present

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R e p o r t e d B y: JUDITH A. WARNER, C.S.R.  
Official Court Reporter

25

I N D E X   T O   W I T N E S S E S

Direct   Cross   Redirect   Recross

For the People:

Off. Michael Mortillaro            7            18

For the Defendant:

(None)

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1 MS. CATALANO: Sir, you are Treiquan Hawkins?

2 THE DEFENDANT: Yes, ma'am.

3 MS. CATALANO: You appear here today with  
4 your attorney, Mr. Guerrieri, assisted by Ms.  
5 Wells-Spicer?

6 THE DEFENDANT: Yes.

7 MS. CATALANO: Robin Catalano for the People.  
8 Good morning.

9 This matter appearing on your calendar for  
10 probable cause hearing this morning. The People are  
11 ready to proceed.

12 I have provided Rosario to defense counsel in  
13 the form of grand jury testimony of Mr. Mortillaro. I  
14 have also provided defense counsel with a copy of  
15 medical records for injuries sustained by both Officers  
16 Mortillaro and Lindauer as per the Court's request.

17 I would also place on the record Mr.  
18 Guerrieri raised this morning some question regarding  
19 whether he has received all the body-worn camera  
20 relative to this particular incident. I have turned  
21 over a disk to him containing what I believe to be all  
22 the body-worn camera relative for this CR. I have also  
23 asked Mr. Sunderland to return to the office and verify  
24 with our technicians it is all the body-worn camera  
25 under that CR and will share that information with

1 Court and counsel as soon as I hear from Mr. Sunderland  
2 in that regard.

3 THE COURT: Mr. Guerrieri?

4 MR. GUERRIERI: Acknowledge receipt of the  
5 grand jury minutes with respect to Officer Michael  
6 Mortillaro. Acknowledge receipt of medical records in  
7 relation to Officer Jeremy Lindauer. And, with respect  
8 to some of the other discovery, Subject Resistance  
9 Reports created by Officer Mortillaro and Mr. Lindauer  
10 with respect to the incident in question, I would  
11 request those as well because they would be considered  
12 Rosario.

13 MS. CATALANO: Mr. Guerrieri had requested of  
14 the Court at the bench when we spoke briefly before  
15 this matter was called that there be a continuation, if  
16 necessary, after he has had an opportunity to review  
17 the additional materials. I would place on the record  
18 that I provided the SRRs to Mr. Guerrieri so he may  
19 review those and utilize those in continuation of that  
20 matter. I do not have SRRs today.

21 THE COURT: For my own information, how come?  
22 When RPD prepares a grand jury package, aren't all the  
23 reports in there?

24 MS. CATALANO: No, your Honor. The SRRs are  
25 never included in the grand jury package. We have to

1 receive those by way of separate request. Technicians  
2 reports frequently are also not included. We typically  
3 have to make a separate request for that item as well.

4 THE COURT: What do you call them?

5 MR. GUERRIERI: SRR, Subject Resistance  
6 Report.

7 THE COURT: We used to call them something  
8 different in my day, but that's ancient.

9 Why aren't they included? Any idea?

10 MS. CATALANO: I don't know. I don't know if  
11 it's because it might have an impact on some sort of  
12 internal processes for the police department. I truly  
13 do not know why they're not included.

14 THE COURT: Obviously come the first of the  
15 year that's going to have to change.

16 MS. CATALANO: Correct.

17 MR. GUERRIERI: In speaking with the grand  
18 jury referral sheet, it does state there was a  
19 statement by the defendant. I know one was not noticed  
20 in the 710.30, but it also states there was a statement  
21 by the defendant, and it says, yes, and the box is  
22 checked. It will be number 14 along with, apparently,  
23 a misdemeanor card on the grand jury referral would be  
24 excluding the cover sheet letter, page two of  
25 discovery.

1 MS. CATALANO: Judge, Miranda card was  
2 provided to Mr. Guerrieri as referenced in my cover  
3 letter. There is no recorded statement by the  
4 defendant as indicated on the Miranda card on its face.  
5 He states he did not wish to talk. He just wanted to  
6 go downtown.

7 THE COURT: Mr. Guerrieri, on November 4th  
8 when you argued your motions you moved to preclude any  
9 statements, admissions or confessions of the defendant  
10 made to any law enforcement official, and I granted  
11 that request.

12 MR. GUERRIERI: My only concern if there was  
13 something out there, Judge, and if my client were to  
14 take the stand you would still --

15 THE COURT: It's precluded right now, period.

16 MR. GUERRIERI: Even for impeachment  
17 purposes?

18 THE COURT: Yes.

19 Are we ready?

20 MS. CATALANO: Yes, your Honor.

21 THE COURT: Call your witness.

22 MS. CATALANO: People call Officer Michael  
23 Mortillaro.

24 THE DEPUTY: Please raise your right hand and  
25 face the clerk to be sworn.

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1  
2 M I C H A E L M O R T I L L A R O, called herein as a  
3 witness, being duly sworn, was examined and testified  
4 as follows:

5 THE CLERK: Can you please state your name  
6 and spell it.

7 THE WITNESS: Michael Mortillaro,  
8 M-O-R-T-I-L-L-A-R-O.

9 DIRECT EXAMINATION

10 BY MS. CATALANO:

11 Q. Good morning, Officer.

12 A. Good morning.

13 Q. Can you please tell the Court how you are  
14 currently employed?

15 A. As a police officer with the Rochester Police  
16 Department.

17 Q. How long have you been with RPD?

18 A. Three years.

19 Q. What is your current assignment?

20 A. Clinton Section, third platoon.

21 Q. Can you tell us what third platoon hours are?

22 A. Three p.m. to 11:15 p.m.

23 Q. During the course of your career have you  
24 received any training in the investigation of weapons  
25 related offenses?

1 A. Yes, classes in the academy.

2 Q. During the course of your career prior to July  
3 24th of the year 2019 have you had occasion to make arrests  
4 for weapons related offenses?

5 A. Yes, multiple occasions.

6 Q. Approximately how many times have you made  
7 arrests for weapons related offenses during the course of  
8 your career?

9 A. Fifty to 60.

10 Q. During the course of your career, have you also  
11 received training in the investigation of narcotic related  
12 offenses?

13 A. Yes.

14 Q. Was that in the academy?

15 A. Yes.

16 Q. During the course of your career prior to July  
17 24th of the year 2019 have you also had occasion to make  
18 arrests for narcotics related offenses?

19 A. Yes.

20 Q. Has that included arrests of individuals for  
21 possession of marijuana?

22 A. Yes.

23 Q. Approximately how many arrests of that nature  
24 have you made prior to that date of July 24th of this past  
25 year?



1 A. Hundreds.

2 Q. Going to direct your attention specifically now  
3 to July 24th of the year 2019 at about 12:23 p.m. -- excuse  
4 me, 6:23 p.m. on that date. Were you working?

5 A. Yes, I was.

6 Q. Were you working with another officer on that  
7 date?

8 A. Yes, Officer Lindauer.

9 Q. Were the two of you riding together or separate?

10 A. In the same patrol car.

11 Q. Did there come a time you and Officer Lindauer  
12 arrived in the area of Weyl Street in the City of Rochester,  
13 County of Monroe and State of New York?

14 A. Yes.

15 Q. Do you recall why you and Officer Lindauer were  
16 patrolling in that particular area on that date and time?

17 A. That particular day, that was actually our car  
18 beat. It's an area that is known for violence and drug  
19 sales.

20 Q. During the course of your career, have you had  
21 occasion to respond to the area of 231 Weyl Street prior to  
22 that date?

23 A. Yes.

24 Q. What type of jobs have you responded to that  
25 location for on previous dates?

1 A. There had been shootings, also other gun arrests  
2 and narcotics arrests in that same exact area.

3 Q. During the course of your career, based on the  
4 training and experience you have described for us, have you  
5 become familiar with some common characteristics of what is  
6 called an open air drug market?

7 A. Yes.

8 Q. Can you describe for us what some of those  
9 common characteristics are?

10 A. Generally it will be people hanging out in a  
11 particular area for hours at a time selling drugs.

12 Q. Are they selling to people who are walking up on  
13 the streets?

14 A. Yes; walk ups, cars, however they get there,  
15 bikes.

16 Q. When you say selling drugs, is there a  
17 particular substance that is typically sold in an open air  
18 drug market or vary?

19 A. Vary depending on the area.

20 Q. Directing your attention to July 24th of 2019,  
21 have you -- when you and Officer Lindauer first arrived in  
22 the area of 231 Weyl Street, did you have your lights or  
23 sirens activated on your vehicle?

24 A. No, we did not.

25 Q. While you were coming into that area, did there

1 come a time you made some observations regarding individuals  
2 on the street?

3 A. Yes.

4 Q. Can you describe for us specifically what you  
5 observed?

6 A. In the area of 231 Weyl Street we observed a  
7 group of five to six males sitting in lawn chairs on the  
8 front yard and on the sidewalk area.

9 Q. Based upon your training and experience, what,  
10 if anything, was significant to you about that observation?

11 A. Due to the area and our familiarity with that  
12 area, we believed there to be some sort of drug sales going  
13 on at that time.

14 Q. You indicated yourself and Officer Lindauer were  
15 riding together?

16 A. Correct.

17 Q. Did there come a time you stopped your vehicle?

18 A. Yes.

19 Q. And do you recall about how far away from this  
20 group of males you were when you parked your vehicle?

21 A. Ten to 15 feet.

22 Q. Did there come a time you and Officer Lindauer  
23 exited your vehicle?

24 A. Yes.

25 Q. Did you ultimately approach this group of males?

1 A. Yes. We walked up to the individuals sitting in  
2 the chairs.

3 Q. As you were approaching the group, did you make  
4 any further observations?

5 A. Yes. As I approached the group of males  
6 approximately five feet away while speaking with one of the  
7 individuals I smelled the odor of what I have known to be as  
8 fresh marijuana.

9 Q. During the course of your career prior to this  
10 date you indicated you have had occasion to be involved in  
11 arrests for marijuana related offenses?

12 A. Correct.

13 Q. In the course of making those types of arrests,  
14 have you had occasion to smell the odor of fresh marijuana?

15 A. Yes, in training and with experience on the  
16 road.

17 Q. About how many times during the course of your  
18 career have you had occasion to make that particular  
19 observation of the distinctive odor of fresh marijuana?

20 A. Thousands.

21 Q. On this particular date and time was the odor  
22 that you were observing as you were interacting with this  
23 group consistent with what you know to be the odor of fresh  
24 marijuana?

25 A. Yes.

1 Q. Officer, you indicated I believe there was five  
2 to six males?

3 A. Yes, approximately.

4 Q. Were they all seated at that time?

5 A. Yes, correct. They were all seated in lawn  
6 chairs or camping chairs.

7 Q. Do you recall about how far away from the males  
8 you first were when you first began noticing that odor of  
9 fresh marijuana?

10 A. Five feet.

11 Q. Did there come a time you got closer than five  
12 feet to the males?

13 A. No. Based on the size of the group, to be able  
14 to see everybody, I stayed right around that area.

15 Q. Did you and Officer Lindauer engage the group?

16 A. Yes.

17 Q. Can you describe what you did to engage the  
18 group?

19 A. I spoke with one of the males sitting in the  
20 chair sitting directly in front of me. I asked them if they  
21 lived at the location they were sitting. They stated they  
22 did not. They pointed to a different address which ended up  
23 being 239 Weyl Street which we knew was a vacant structure.

24 Q. On this time -- on this date did you know that  
25 to be a vacant house?

1 A. Yes, familiarity with the area.

2 Q. That's based on responding to that area on --

3 A. Vice calls, drug related calls.

4 Q. Do you recall approximately when the last time  
5 you had responded to that area for a vice call was prior to  
6 this date?

7 A. I don't remember the exact date, but we had been  
8 in the area.

9 Q. After that individual indicated to you these  
10 people were associated with what you knew to be a vacant  
11 house, did you make any further observations regarding  
12 anyone in the group?

13 A. Yes. I observed Officer Lindauer dealing with a  
14 male who had stood up out of his chair.

15 Q. Do you see the individual who stood up out of  
16 his chair Lindauer was dealing with in the courtroom today?

17 A. Yes, sitting with a white black jacket.  
18 (Pointing.)

19 MS. CATALANO: I ask the record to reflect  
20 the witness has identified Mr. Hawkins.

21 THE COURT: So ordered.

22 Q. You indicated you observed Officer Lindauer  
23 speaking with or dealing with Mr. Hawkins?

24 A. Correct.

25 Q. And did you then make any further observations

1 with respect to Mr. Hawkins at that time?

2 A. Yes. Once Officer Lindauer addressed Mr.  
3 Hawkins, he began to flee from Officer Lindauer.

4 Q. How long in total was Officer Lindauer speaking  
5 with Mr. Hawkins before Mr. Hawkins began to flee?

6 A. Twenty to 30 seconds.

7 Q. When Mr. Hawkins began to flee, did you and  
8 Officer Lindauer ultimately attempt to detain Mr. Hawkins?

9 A. Yes.

10 Q. Were you ultimately able to do so?

11 A. Yes. He was eventually taken into custody.

12 Q. About how long in total was it from his initial  
13 flight until yourself and your fellow officer were able to  
14 detain Mr. Hawkins?

15 A. Three to four minutes.

16 Q. Once Mr. Hawkins was in custody or as he was  
17 coming into you custody, did yourself or your fellow  
18 officers ultimately recover a handgun?

19 A. Yes.

20 Q. You indicated, Officer, when you were dealing  
21 with this group, you smelled the odor of fresh marijuana as  
22 you were speaking with the individuals?

23 A. Correct.

24 Q. Did there come a time that marijuana was, in  
25 fact, recovered from the area on Weyl Street that you have

1 been describing for us?

2 A. Yes. There was a quantity of marijuana located  
3 stashed in the bushes directly behind where the males were  
4 sitting and also on Mr. Hawkins' person.

5 Q. Were other officers ultimately tasked with  
6 collecting those items of property?

7 A. Yes.

8 Q. On this particular date, July 24th of the year  
9 2019, were you wearing a body-worn camera?

10 A. Yes, I was.

11 Q. Was it recording during the course of the events  
12 that you described for us?

13 A. No, it was not.

14 Q. Can you tell us why it was not recording?

15 A. The software on our body camera, while taking it  
16 out of the dock which is we tag the videos, when removing  
17 that camera from the dock, it powers off the camera. Upon  
18 affixing the camera to my uniform, I press the record button  
19 not realizing the camera was powered off.

20 Q. Officer, did you affix the camera to your  
21 uniform when you were exiting your vehicle on Weyl Street?

22 A. Correct, with intentions of recording the  
23 incident.

24 Q. Prior to that, it had been in the dock in the  
25 vehicle?



1 A. Correct.

2 Q. You indicated you pushed the record button,  
3 correct?

4 A. Yes.

5 Q. But it was not powered on?

6 A. Yes.

7 Q. That's a function of it automatically powering  
8 down?

9 A. Yes. Once we remove it from the dock, we  
10 actually tag the videos with the CR number and the location.  
11 The software on the camera automatically powers down the  
12 camera.

13 THE COURT: Did Lindauer's camera work?

14 MS. CATALANO: Are you asking me?

15 THE COURT: I will ask either one of you.

16 MS. CATALANO: I can tell the Court that  
17 there is no body-worn camera from Officer Lindauer of  
18 the incident.

19 THE COURT: We seem to be developing a  
20 pattern. Go ahead.

21 Q. Officer, during the interaction with the males  
22 that you have described, can you tell us approximately how  
23 long in total it was from the time you engaged the males  
24 until Mr. Hawkins was ultimately taken into custody?

25 A. Probably a minute longer than his interaction,

1 four to five minutes total.

2 Q. At that time it was just yourself and Officer  
3 Lindauer at the location?

4 A. Correct, from start to finish of the taking into  
5 custody. Sorry.

6 Q. And then other officers responded?

7 A. Yes.

8 Q. You indicated that you had parked initially 15  
9 feet away from the group of males, 10 to 15 feet?

10 A. Yes. I parked my patrol vehicle actually on the  
11 south side of the street pretty much directly in front of  
12 them.

13 Q. You indicated you did not observe the odor of  
14 marijuana until coming within five feet of the group?

15 A. Correct, not until we were very close.

16 Q. At that time were there other individuals out on  
17 the street?

18 A. Not that we saw, no.

19 MS. CATALANO: I have no further questions at  
20 this time.

21 THE COURT: Counsel.

22 CROSS EXAMINATION

23 BY MR. GUERRIERI:

24 Q. Good morning, Officer Mortillaro.

25 A. Good morning.

1 Q. Direct your attention to July 24th, 2019  
2 approximately -- July 24th, 2019 at approximately 6:23. You  
3 stated you were riding along in a marked patrol vehicle with  
4 Officer Lindauer, correct?

5 A. That's correct.

6 Q. Weyl Street, two ends of it, right?

7 A. That's correct.

8 Q. At the end of this block from what, Brooks?

9 A. Baumann to the west and Joseph to the east.

10 Q. Which direction were you traveling from?

11 A. We were traveling westbound, so, from Joseph.

12 Q. So, you are coming from, effectively, Joseph and  
13 heading towards the location at 231 Weyl?

14 A. I'm sorry, Hudson. Hudson. I'm sorry.

15 Q. You are traveling? You didn't post up at the  
16 corner and watch anything, did you?

17 A. No, we did not.

18 Q. You are driving down Weyl Street, and you see  
19 five individuals sitting in lawn chairs, correct?

20 A. Correct.

21 Q. You never saw any hand-to-hand sales, correct?

22 A. No, we did not.

23 Q. You did not see any other individuals approach  
24 them?

25 A. Not at that time, no.

1 Q. You didn't receive a dispatch from people  
2 selling drugs, did you?

3 A. No, we did not.

4 Q. You didn't receive a dispatch of people being  
5 disorderly, did you?

6 A. No.

7 Q. In essence, five guys sitting in lawn chairs in  
8 the yard, right?

9 A. Correct.

10 Q. You decide -- well, who was driving the patrol  
11 vehicle?

12 A. I was.

13 Q. Upon driving the marked patrol vehicle, you  
14 decide you're going to stop?

15 A. Correct. We know that house. The owner of that  
16 house is Mr. Battle, and we knew he lived at that location.

17 Q. Mr. Battle didn't call you there, right?

18 A. He did call eventually, yes.

19 Q. When did he call?

20 A. During the altercation.

21 Q. That's when he called because there was an  
22 altercation outside the house?

23 A. Correct.

24 Q. He didn't call you because people were dealing  
25 drugs in his front yard, right?

1 A. No.

2 Q. You approached these five individuals and  
3 they're simply sitting there, correct?

4 A. Correct.

5 Q. You didn't see them sell any marijuana, right?

6 A. No, we did not.

7 Q. You didn't see any marijuana in plain view, did  
8 you?

9 A. No.

10 Q. You didn't see anybody smoking marijuana, did  
11 you?

12 A. No.

13 Q. No one swore at you or did anything of the sort?

14 A. They did not, no.

15 Q. You simply walked up and you stated Officer  
16 Lindauer then approached Mr. Hawkins, right?

17 A. He approached the rear of the group of males,  
18 yes, initially.

19 Q. You walked in front of the group of males,  
20 right?

21 A. Correct.

22 Q. And Officer Lindauer walked behind the group of  
23 males?

24 A. To address the males in the back, he was to the  
25 side of them.

1 Q. You stated a quantity of marijuana was actually  
2 found, correct?

3 A. Correct.

4 Q. And the quantity of marijuana was found,  
5 generally speaking, at the scene but you said by some  
6 bushes?

7 A. Correct. There was a row of bushes directly  
8 behind where they were sitting.

9 Q. In the report it states they were sitting more  
10 towards, I guess, the front of the yard, and, I guess, by  
11 the sidewalk, right?

12 A. Correct.

13 Q. And the marijuana was only found after the  
14 incident, correct?

15 A. Correct.

16 Q. And it was searched for and found hidden in  
17 bushes?

18 A. Some in the bushes and some in the satchel Mr.  
19 Hawkins was wearing as well.

20 Q. That was when you searched the satchel after he  
21 was placed under arrest?

22 A. Correct.

23 Q. In essence, Officer Lindauer was interacting  
24 with my client, and my client walked away from him?

25 A. That is incorrect.

1 Q. He was talking with him, right? What did my  
2 client do?

3 A. He began to run.

4 Q. So, he runs away. He hadn't committed a crime,  
5 right?

6 A. Not at that time.

7 Q. So, in essence, you guys chase after him without  
8 him having committed a crime, right?

9 MS. CATALANO: Objection.

10 MR. GUERRIERI: I think it goes to the heart  
11 of the matter.

12 THE COURT: I'm going to overrule. I want to  
13 hear the answer. Go ahead.

14 A. We were investigating the odor of marijuana  
15 being five, six males. We don't know which male had  
16 marijuana on them.

17 Q. You never posted up the street to see whether or  
18 not someone was dealing drugs there?

19 A. Correct. Because when you do that, a lot of  
20 times dealers will have lookouts and tip people off, and  
21 they will leave the area before we can get to them.

22 Q. You stated you don't know what individual, if  
23 anyone, had marijuana, correct?

24 A. Correct. That was part of our investigation.

25 Q. At that point, Mr. Hawkins hadn't committed a

1 crime, right?

2 A. No, he did not.

3 MS. CATALANO: Objection.

4 THE COURT: Overruled. Let him answer.

5 What was the answer?

6 THE WITNESS: No, he did not commit a crime  
7 at that time.

8 Q. You stated that when you pulled your body-worn  
9 camera off I guess the docking station, it turned itself  
10 off?

11 A. Correct.

12 Q. What time -- you said you work third platoon at  
13 the time?

14 A. Yes.

15 Q. What are the hours of the third platoon?

16 A. Three p.m. to 11:15 p.m.

17 Q. Three p.m. to 11:15 p.m.?

18 A. Yes.

19 Q. On July 24, 2019, this all occurred at 6:23,  
20 correct?

21 A. Yes.

22 Q. Your body-worn camera wasn't on your entire  
23 shift from three p.m. until up after 6:23 p.m. when this  
24 incident occurs?

25 A. That's incorrect.



1 Q. Where was your body-worn camera when you were on  
2 your shift?

3 A. The body-worn camera is affixed to my uniform  
4 while on my shift. And to tag the videos, we had software  
5 in our cars on the computers which we can do during our  
6 shift as opposed to waiting for all the videos to pile up at  
7 the end of the shift making it a little bit easier.

8 Q. In this particular instance your body camera was  
9 simply off?

10 A. It was off due to the software of the program  
11 turning it off, yes.

12 Q. You didn't bother double checking to make sure  
13 it was on when you put it back on your person?

14 A. I did not, no.

15 THE COURT: Anything else?

16 MR. GUERRIERI: I just ask we leave cross  
17 examination open.

18 THE COURT: We understand. Anything else?

19 MS. CATALANO: No, your Honor. Thank you.

20 THE COURT: Anybody else?

21 MS. CATALANO: No, your Honor.

22 THE COURT: You can get off the stand, but  
23 don't leave the room, please.

24 (WHEREUPON THE WITNESS WAS EXCUSED FROM THE WITNESS  
25 STAND BUT REMAINED IN THE COURTROOM.)

1 THE COURT: People rest?

2 MS. CATALANO: Yes, your Honor.

3 THE COURT: We are here for a probable cause  
4 hearing to determine if there was probable cause for  
5 Mr. Hawkins to be arrested. Now, this is a difficult  
6 situation because I have read the grand jury minutes,  
7 and I understand there was an altercation with police  
8 that involved Mr. Hawkins allegedly attempting to grab  
9 a gun.

10 Now, Mr. Hawkins, you don't know this, but  
11 I'm an ex-police officer. If those allegations are  
12 true, they are very, very, very serious. But, here is  
13 my problem. I do a lot of gun cases. I'm starting to  
14 see a pattern that I find deplorable. Every time I  
15 turn around now, oh, it didn't work, I don't know what  
16 happened, my camera didn't work, it didn't work, it  
17 didn't work.

18 In this case, there are two officers involved  
19 in this case that are integral to determining what the  
20 probable cause was, and, low and behold, both of them  
21 can't provide body-worn camera. I have had it. That's  
22 enough. This is an extremely serious case, but I don't  
23 have any body-worn camera from both people who were  
24 apprehending the defendant.

25 My ruling is this. There was no probable

1 cause. Your case is dismissed unless the People want  
2 to do something about it in the future.

3 MS. CATALANO: May I be heard?

4 THE COURT: You can do whatever you want, but  
5 I'm telling you, it's not going to change my mind.  
6 This is absolute wrong. This is like the fourth time  
7 in the last month I have heard this line. Come on.  
8 Who are you kidding? This is not my first cruise. You  
9 can say whatever you want. I'm not changing my mind.  
10 I got to be honest with you. I'm mad as hell about  
11 this.

12 MS. CATALANO: Judge, respectfully, I  
13 certainly understand the Court's frustration. I think  
14 we all share in that frustration because it makes it  
15 more difficult to prosecute and defend a case without  
16 having a complete picture.

17 With that being said, in this particular  
18 case, the officer has given testimony before the Court  
19 as to the events that occurred on that day. Based upon  
20 his testimony before the Court, I would respectfully  
21 submit there is no reason to doubt the credibility or  
22 voracity of his testimony. There is footage from after  
23 Mr. Hawkins was taken into custody. Of course that's  
24 not relevant for the purposes of this hearing which is  
25 why the People are not submitting it. The purpose of

1 the hearing, as everyone is aware, is the stop of the  
2 defendant which led to the recovery of the handgun  
3 which is the subject of suppression. I cannot put into  
4 evidence something which does not exist, of course. So  
5 I simply can only rely upon the testimony of the  
6 officer and officers who were present on that date.

7 If the Court is finding that the officer's  
8 testimony is not credible --

9 THE COURT: You're trying to be a little cute  
10 here, but that's okay. What I am finding is this, so I  
11 will do that. You want to push it on me, here is the  
12 findings of fact and conclusions of law.

13 My finding of fact is this. I can't today  
14 take his truthful and accurate Officer Mortillaro's  
15 testimony because I have seen a pattern of behavior  
16 that is coming from the Rochester Police Department  
17 that indicates that there is some kind of situation  
18 going on involving the body-worn cameras. In the last  
19 couple of cases we have had a consistent problem in  
20 cases involving apprehensions where all of a sudden the  
21 body-worn camera doesn't work, and it's happening all  
22 the time. As a result of that pattern of behavior, I'm  
23 finding that I can't find truthful and accurate Officer  
24 Mortillaro's statements and testimony here today.

25 Now, remember, this is not an easy task for

1 me. Of all people in this building it's insanely hard  
2 for me to say that. I'm an ex-police officer. I'm  
3 married to a retired cop. I don't want to do this, but  
4 I have had enough of it. I'm not changing my mind.

5 I cannot believe, based on these facts and  
6 circumstances, that there is justification for probable  
7 cause. Therefore, I'm ruling there was no probable  
8 cause.

9 If you want to move to dismiss, go ahead.

10 MS. CATALANO: Respectfully, I believe I have  
11 an opportunity --

12 THE COURT: You certainly do. You want to do  
13 that?

14 MS. CATALANO: I need to explore that option.  
15 With all due respect, I would again ask the Court to  
16 consider allowing me to call Officer Lindauer to  
17 corroborate --

18 THE COURT: Who is going to come in here and  
19 say his body-worn camera didn't work either, right?

20 MS. CATALANO: Unfortunately, yes. But of  
21 course as --

22 THE COURT: How many times has that happened  
23 with Officer Lindauer?

24 MS. CATALANO: I can't speak to that. I have  
25 done a number of cases with Officer Lindauer. On my

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personal cases I have not had that issue with him. I  
can't speak to other cases with other DAs.

THE COURT: What is it you want from me? The  
hearing is closed. I have made my ruling. What do you  
want? You want a 30-day adjournment?

MS. CATALANO: Yes, Judge.

THE COURT: Granted.

Give me a date.

MS. DURBIN: December 23rd, 9:30, for status.

MR. GUERRIERI: I will be out of town.

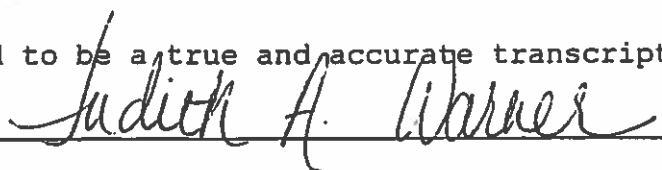
MS. DURBIN: December 20th at 9:00 a.m.

December 19th at 9:00 a.m.

THE COURT: December 19th. Stand adjourned.

\* \* \* \* \*

Certified to be a true and accurate transcript.



JUDITH A. WARNER, C.S.R.