

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF QUEENS : CIVIL TERM : PART 16

-----X

3 KAREEM DAVIS,

4 Plaintiff, Index No. 724812/21

5 -against-

JURY TRIAL

6 THE CITY OF NEW YORK, THE NEW YORK
7 CITY HOUSING AUTHORITY,

8 Defendants.

-----X

9 Supreme Courthouse
10 88-11 Sutphin Boulevard
11 Jamaica, New York 11435
12 January 16, 2025

13 B E F O R E:

14 THE HONORABLE CLAUDIA LANZETTA
15 Supreme Court Justice

16 A P P E A R A N C E S:

17 For the Plaintiff:
18 MILLS & EDWARDS, LLP
19 14 Penn Plaza, 21st Floor
20 New York, New York 10122
21 BY: DONTE MILLS, ESQ.

22 For the Defendants:
23 GOLDBERG & SEGALLA
24 711 3rd Avenue, Suite 1900
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BY: EMILIO F. GRILLO, ESQ.
RICHARD J. FEMIA, ESQ.

26 VICTORIA A. BIFULCO
27 MONICA JENKINS
28 Senior Court Reporters

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1 THE CLERK: Calling continued case on trial,
2 index number 724812 of 2021, Kareem Davis, plaintiff,
3 against the City of New York, the New York City Housing
4 Authority, defendants.

5 Counsel, your appearances.

6 MR. MILLS: For the plaintiff, Kareem Davis,
7 Mills and Edwards, LLP, by Donte Mills. Address is 14
8 Penn Plaza, 21st Floor, New York, New York 10122.

9 Good morning, your Honor.

10 MR. GRILLO: For the defendants, City of New
11 York and New York City Housing Authority, Goldberg and
12 Segalla by Emilio Grillo, 711 Third Avenue, Suite 1900,
13 New York, New York 10017.

14 Good morning, your Honor.

15 MR. FEMIA: Also appearing for the defendants,
16 City of New York and New York City Housing Authority,
17 Richard J. Femia of Goldberg and Segalla.

18 Good morning, your Honor.

19 THE COURT: Good morning, counsel.

20 So I know you guys have been working this
21 morning on some evidentiary issues, and there was
22 something that needs to be put on the record.

23 What have we got?

24 MR. GRILLO: Yes, your Honor.

25 We just had a discussion with Mr. Mills, and he

1 just sent Mr. Femia and I an email at 11:36 a.m. today
2 identifying a new fact witness by the name of Dwayne
3 Brown, providing an address of 17004 118th Road in
4 Jamaica, New York 11432, and it is his intention to call
5 him. We have no notice of this witness. The first we
6 are hearing of him is right now.

7 Now, so we would obviously object to the
8 production given the late hour, moreover, even the fact
9 that we are engaged in plaintiff's case. We had no
10 notice of this gentleman. We had no opportunity to
11 prepare for him.

12 So in that regard, not only would I seek his
13 preclusion, also, an offer of proof as well, but most
14 importantly, I would seek preclusion at this late
15 disclosure state.

16 THE COURT: Counsel, go ahead.

17 MR. MILLS: Just an offer of proof for the Court
18 which is completely reasonable. This gentleman was a
19 corrections officer at Riker's Island while Kareem Davis
20 was there, and he oversaw him while he was in the jail,
21 and he is going to come in to testify about taking him
22 out daily to do workout routines and the routines that he
23 was doing to show that he was not injured or had any
24 physical ailments after the incident that occurred at the
25 jail.

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1 It can be either now or in my rebuttal case, but
2 because yesterday we understood that now all of this
3 stuff is coming in, now we have somebody who is going to
4 testify as to his actions, to Kareem Davis' actions and
5 physical condition when he was at the prison after the
6 incident happened there.

7 THE COURT: How long after the incident was he
8 still incarcerated?

9 MR. MILLS: What was it, weeks? Seven or eight
10 months.

11 THE COURT: I thought it was two weeks. That's
12 why he refused surgery.

13 MR. MILLS: No. That was during the treatment
14 that --

15 THE COURT: So, counsel, the issues we were
16 having yesterday were a little bit of vagueness with
17 dates on pictures and various other time frames.

18 MR. MILLS: Understood.

19 THE COURT: If that's not cleared up, then, no,
20 your fact witness is not coming in because my
21 understanding was that he was incarcerated -- the reason
22 why he refused the surgery after the incident was that he
23 was incarcerated and getting out soon, within two weeks,
24 I believe one of the records said, if my memory serves.

25 MR. MILLS: But that was at that point in

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1 treatment, not at that point from the time of the
2 incident.

3 Do you understand what I am saying?

4 THE COURT: He was taken to the hospital after
5 the incident, correct?

6 MR. MILLS: No. He was treated at Bellevue
7 multiple times.

8 THE COURT: Well if this is not clear to me, I
9 doubt it was clear to the jury.

10 MR. MILLS: It is not my responsibility to make
11 that clear.

12 THE COURT: It is your responsibility because if
13 I am confused about this, then I believe the jury would
14 be confused by it.

15 MR. MILLS: None of it matters. There is
16 nothing for me to clear up.

17 THE COURT: So then your fact witness doesn't
18 matter?

19 MR. MILLS: If they are going to say he had
20 physical ailments after the accident in prison occurred,
21 I have absolutely the right to bring up a fact witness to
22 say, I was with him, I took him out daily to workout.

23 I absolutely have that right, like I said, on my
24 case in chief or rebuttal witness if they make any
25 mention of that.

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1 THE COURT: If there is a reasonable time frame.
2 I don't know the time frame. If this person was with him
3 for an additional two weeks after the incident, no, your
4 fact witness is precluded. If it was more time, then I
5 would consider allowing it in, but I don't know the
6 answer to that question now.

7 MR. MILLS: So in order -- if he is going to
8 testify he saw him after this incident occurred, what
9 difference does it make if he saw him the next day and
10 will testify that he had no physical ailments or two
11 months later in prison before he got out and he will say
12 he didn't have any physical ailments.

13 But the fact is he didn't have any physical
14 ailments at the time he was in jail after this incident.

15 I don't know what the issue would be.

16 THE COURT: The time frame makes a difference,
17 Mr. Mills.

18 MR. MILLS: I don't understand how, so I don't
19 know how to respond to that.

20 THE COURT: Because seeing someone two weeks
21 after an incident versus two weeks to seven or eight
22 months is a difference.

23 MR. MILLS: Well, he was the corrections officer
24 in Mr. Brown's area, his block.

25 THE COURT: I understand that.

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1 MR. MILLS: And he took him out consistently.

2 THE COURT: I understand that. You are going to
3 have to clear that up, because, again, my understanding
4 based on what came out yesterday was that almost
5 immediately after the incident or within two weeks after
6 the incident he was released from prison which is why he
7 didn't want to undergo the surgery.

8 Those two were tied together for some reason.

9 If you are telling me that he spent another
10 seven or eight months in prison after the incident,
11 that's a very different picture than what I have and what
12 the testimony and what the evidence presented shows.

13 And if a corrections officer saw him for two
14 weeks after the incident, that's a lot different for the
15 same corrections officer seeing him for seven or eight
16 months after the incident occurred.

17 I do not believe a perception two weeks after
18 the incident or up to two weeks after the incident serves
19 as a basis to determine the extent of his injuries as
20 opposed to seven or eight months.

21 MR. MILLS: Yes. He are remained in prison for
22 seven or eight months. The medical records from
23 Bellevue -- it's not just one visit where he said, I am
24 getting out and I don't want the surgery. That was after
25 he went for treatment. So he went for treatment for some

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1 time while he was incarcerated.

2 THE COURT: None of that is on the record.

3 MR. MILLS: I don't care. I am not going to
4 clear that up.

5 THE COURT: But I do. And I am not going to let
6 your fact witness come in unless it is made clear.

7 MR. MILLS: That the amount of time that he
8 remained -- okay. I'll ask him that, Judge.

9 MR. GRILLO: Judge, I have to be heard on this.
10 I'm sorry.

11 THE COURT: Go ahead.

12 MR. GRILLO: Whether it was two weeks or eight
13 months, I really don't care. Pursuant to 22 NYCRR
14 202.37, at the commencement of the trial or at such time
15 as the Court may direct, each party shall identify in
16 writing for the Court the witness it intends to call, the
17 order in which they shall testify, and the estimated
18 length of their testimony and should provide a copy of
19 such witness list to opposing counsel.

20 That's never been abided by, Judge, since hello
21 on this case.

22 THE COURT: I am going to talk to you for a
23 second because part of what I was doing while discussing
24 this was looking at my emails for Part 16, and I
25 specifically instructed you, Mr. Mills, by 6:00 yesterday

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1 evening to provide a list of your remaining witnesses and
2 when they will be appearing.

3 I do not have that on my email. We discussed it
4 in chambers and even in light of --

5 MR. MILLS: Judge, we just had a ruling
6 yesterday that all of this information was coming in up
7 until --

8 THE COURT: Counsel, first of all, that has
9 nothing to do with what we are discussing now.

10 MR. MILLS: Yes, it does.

11 THE COURT: No, it does not.

12 MR. MILLS: I was not going to call that witness
13 if the --

14 THE COURT: Counsel.

15 THE COURT OFFICER: Counsel.

16 THE COURT: Counsel, I specifically said you
17 were all in chambers, and I even instructed the
18 defendants as well. I want a list of witnesses and when
19 they are being called.

20 We started this trial on Monday. It is now
21 Thursday. I asked for this yesterday by 6:00. The
22 witnesses, when they were being called, and what the
23 schedule is to cover from now, inclusive of defendants'
24 case because they had to know when they were going to
25 make their witnesses available to start.

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1 And we did discuss it. You verbally told us
2 what your plan was. I still asked for an email by 6:00.
3 I do not have that.

4 MR. MILLS: I know -- I thought me going over
5 the schedule and telling you --

6 THE COURT: No. Please don't insult me or
7 everyone else in the room.

8 You are very intelligent. I asked for the email
9 three times.

10 MR. MILLS: But I told you --

11 THE COURT: And I still asked for the email, Mr.
12 Mills.

13 MR. MILLS: I apologize.

14 THE COURT: Okay. We are not doing that.

15 I asked for the email multiple times, not even
16 just yesterday. This has been an issue since day one,
17 since before day one. You have not provided anything to
18 say what witnesses you are calling and when. And I
19 understand there was an issue of scheduling and we had to
20 miss Tuesday, but since day one I have gotten nothing.

21 So your fact witness is precluded, and we are
22 going to continue with this trial.

23 MR. MILLS: Judge, this information just came
24 out yesterday that they were going to be allowed to
25 question him on the corrections officers in his time in

1 jail.

2 I am coming now, the next day, and saying I have
3 a witness to respond to what I learned yesterday was
4 going to be allowed into evidence.

5 I also had the ability to put on a rebuttal case
6 with the witness that I never exchanged if they put on
7 something during their case that I can rebut.

8 What's the difference here?

9 THE COURT: Then save it for rebuttal.

10 For now he is precluded. I'll re-address it on
11 rebuttal if necessary.

12 MR. GRILLO: You have my exception.

13 MR. MILLS: Judge, what is the basis for
14 preclusion? Where is there a requirement that says there
15 is a cut off?

16 THE COURT: Counsel, unfortunately, I don't
17 store all that information in my head. Please read the
18 NY CCR section again that requires --

19 MR. GRILLO: Sure, Judge.

20 22 NYCRR 202.37. At the commencement of the
21 trial or at such time as the Court may direct, each party
22 shall identify in writing for the Court the witnesses it
23 intends to call, the order in which they shall testify,
24 the estimated length of their testimony and shall provide
25 a copy of such witness list to opposing counsel.

1 MR. MILLS: Where is the preclusion of anything
2 saying --

3 MR. GRILLO: Can I finish?

4 We did this at the beginning of the case along
5 with our request to charge along with our verdict sheet
6 pursuant to your instructions.

7 The reason why we haven't given definitive dates
8 for next week is because I can't because I am waiting on
9 the plaintiff to finish his case. We have the witnesses
10 lined up. I can given you the particulars of it, but
11 that certainly is not it.

12 The bigger issue is counsel coming in with
13 feigned surprise. This is a lack of preparation by
14 counsel. He knew full well there was the potential this
15 is being deposed ad nauseam about his stay in Riker's.

16 There has been a multitude of Bellevue Hospital
17 records exchanged, brought into court by subpoena, and
18 now he is standing here in front of your Honor and has
19 the temerity to say, oh, I just learned of this
20 yesterday.

21 MR. MILLS: This issue --

22 MR. GRILLO: This issue has been the entire
23 defense of the case from hello.

24 I vociferously object to this, your Honor. I
25 can't state it any other way. This is trial by ambush.

1 It's been this way and this will tie into my next
2 application as well with respect to Dr. Proctor who is
3 purportedly coming in tomorrow. They are basically
4 interwoven to each other. It's a
5 fly-by-the-seat-of-your-pants respectfully. Just throw
6 it up against the wall and see what the judge will allow
7 and not allow.

8 Just moments ago Mr. Mills provided me with an
9 updated report from Dr. Proctor dated yesterday. Okay.

10 Now, the original report which I prepared for
11 trial, of course we can say, oh, I have no obligation to
12 do this; I have no obligation to do that. That's fine.
13 If he wants to practice that way, he can to the detriment
14 of his client.

15 However, your Honor, I practice a certain way.

16 And I don't mean to raise my voice, but I have
17 had it. I am sick of this.

18 All right, Judge. We have a plaintiff's
19 attorney and his client dictating the procedure in this
20 courtroom. That's what is going on here respectfully,
21 and I have to stand up for my client and at least be
22 heard on this. And I appreciate giving him the record.

23 But now, Judge, I have been operating with a
24 comprehensive 36 page life-care plan by Dr. Proctor in
25 2018. No supplement to that. No additional 3101(d). He

1 hasn't even given me the 3101(d) on the first one.

2 So now he surreptitiously he tells me about the
3 fact witness and at the same time emails me a report from
4 Dr. Primary care doctor from yesterday dated 1/14.

5 Yesterday wasn't 1/14.

6 I think he should be precluded. He should be
7 bound as all courts have ruled, he should be bound to the
8 four corners of his original report. It is nonsensical
9 and it's highly prejudicial to my defense in the case.

10 He will say again, I don't have to tell him
11 this; I don't have to tell him that. We are not in the
12 eighth grade, Judge. We are supposed to be experienced
13 practitioners with mutual respect. I know that respect
14 for me had gone out the window a long time ago. I don't
15 care.

16 I have been patient. I have been quiet, and I
17 am sitting here watching plaintiff's counsel and his
18 client run rough shod over the Court.

19 THE COURT: I don't think that is what's
20 happening.

21 MR. GRILLO: I don't mean to offend you, Judge.

22 THE COURT: I do take offense to that.

23 MR. GRILLO: I'm sorry.

24 MR. MILLS: He hasn't presented anything about
25 preclusion.

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1 THE COURT: If you violate a rule of the Court,
2 it is within my discretion to preclude what you are
3 asking to produce. 22NYCRR that was just quoted.

4 MR. MILLS: What was that?

5 THE COURT: 22 NYCRR that was just quoted.

6 As well as my part rules. As well as my
7 directives verbally to give me an email about who your
8 witnesses are and when they are being produced.

9 Your fact witness is precluded.

10 I'll hear nothing more about this.

11 Next issue.

12 MR. GRILLO: Dr. Proctor, we'll address it
13 tomorrow?

14 I mean, Judge --

15 THE COURT: We'll address it tomorrow.

16 Once again, gentlemen, I have told you as I tell
17 all the attorneys who appear in my court, the jury is
18 generally one of my priorities.

19 And I even gave them extra time today which
20 means you got extra time. Believe you me, if I am not in
21 this courtroom, I know when people get here. You were
22 told to be here early, so that we can start by 10:30, and
23 I know you were not all here early.

24 MR. GRILLO: We were here at 9:45.

25 THE COURT: I don't need it for the record,

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1 counsel.

2 MR. GRILLO: Okay, Judge.

3 THE COURT: Like I said, I know.

4 MR. GRILLO: Okay.

5 THE COURT: So that already puts us behind the
6 eight ball.

7 I gave the jury until 10:30. It is now 12:00
8 o'clock. Yesterday I told the jury 10:00, and we didn't
9 start until 12:00 o'clock because of all of these antics.

10 It's not happening again.

11 Let's line up the jury and continue with the
12 testimony.

13 Mr. Davis, please have a seat in the witness
14 box.

15 (Whereupon, at this time, the witness takes the
16 stand.)

17 MR. MILLS: Just so you know, for the record my
18 notice of that witness will stand, and I intend to call
19 him as a rebuttal witness once the defense does their
20 case.

21 THE COURT: So noted, counsel.

22 We'll address that, as I said, on rebuttal.

23 THE COURT OFFICER: All rise. The jury is
24 entering.

25 (Whereupon, at this time, the jury enters the

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1 courtroom.)

2 THE COURT: You may be seated. Thank you.

3 Good morning, everyone.

4 Good morning, ladies and gentlemen. Or good
5 afternoon, I should say.

6 So before we begin with our testimony, I just
7 want to take an opportunity to reiterate one of the
8 instructions that I read as an introductory instruction.

9 You will also, I believe, hear some level of it
10 in closing, but I think in terms of the proceedings in
11 the trial it's beneficial for me to read it.

12 This is one of the introductory charges I have
13 given for the benefit of the attorneys. It is PJI 1:4.

14 So at times during the trial an attorney may
15 object to a question or to the introduction of an exhibit
16 or make motions concerning legal questions that apply to
17 this case. Arguments in connection with objections or
18 motions sometimes are made outside the presence of the
19 jury. Sometimes, as you will hear, the attorneys say
20 there are side-bars when they come up.

21 Any ruling that I make will be based solely on
22 the law, and therefore you must not conclude from any
23 ruling or for that matter anything I say or do during
24 trial favors either party to this lawsuit.

25 Again, you are the sole finders of the fact. I

1 control the law of the case. I will not invade your
2 purview, and I don't expect you to invade mine.

3 We are going to operate under those instructions
4 and the continued instructions as well.

5 Having said that, Mr. Mills, you may continue
6 with your direct examination.

7 MR. MILLS: Thank you, Judge.

8 CONTINUED DIRECT EXAMINATION

9 BY MR. MILLS:

10 Q Mr. Davis, I am going to continue to ask questions
11 and remind you to keep your voice up so everyone can hear what
12 you are testifying to.

13 A Okay.

14 Q When we broke yesterday, we were talking about your
15 back.

16 Can you just walk us through the treatment you
17 received for your back starting with after the incident that
18 occurred on December 3, 2015?

19 A Over the years I have been going to multiple doctors,
20 therapy office. I think I have been to a total of -- yeah,
21 three from New York to Florida.

22 Q And who did you last treat with for your back?

23 A The visit I told you I had over a hundred visits was
24 with Comprehensive Health.

25 Q And just tell me --

1 A And that's in Florida.

2 Q What type of treatment have you received at
3 Comprehensive Health for your back?

4 A Massages, stretching, they call it, like, a
5 stimulation. These two things they put on my back, and they
6 turn on, and it kind of stimulates my back. And heat pads.
7 And that's mainly the main things.

8 Q To what area of your back has Comprehensive been
9 treating?

10 A The middle. Like right above my butt, my lower back
11 lower back.

12 Q Okay. You just described it. The area is right
13 above your butt?

14 A Yeah. Like where my spinal cord is at, but in the
15 middle, right there at the bottom.

16 Q Tell me as you sit here now, what is going on with
17 your lower back?

18 A It's very tight. Very tight. It's, you know, it's
19 tight. Right now it's very tight, and I didn't take my
20 medication this morning. I didn't take the ibuprofen.

21 Q Yesterday you said you were wearing a back brace?

22 A Yes.

23 Q Why?

24 A Because when I walk -- I have it on now, but when I
25 walk, I bring it very tight to keep it together when I walk

1 and stuff. It's uncomfortable when I am identity sitting down
2 like right now, but when I walk, it helps.

3 Q Who told you to wear that back brace?

4 A The doctors give it to me a long time ago, but the
5 one they initially gave me, I don't have it anymore.

6 Q Say it again.

7 A The one they initially gave me, I don't have anymore.
8 I bought my union back brace from Good Will. That was a long
9 time ago, the back brace they gave me.

10 Q Why did you stop wearing that one?

11 A It's been nine years. The other one was more bulky.
12 It came all the way to the top of my back. This one is more
13 comfortable.

14 Q Smaller than the other one?

15 A Yes, it's smaller.

16 Q Was the pain that you described in your back, does it
17 cause any issues with your day-to-day activities?

18 A Every day.

19 Q Would you tell us what?

20 A You name it. You use your back for everything. You
21 know, so everything. I don't know how to be specific about
22 it, but my back is tight, you know.

23 When I'm walking at times, sometimes I feel, like, a
24 punched nerve or whatever, like a little bit of pain.

25 Sometimes it's not there, and sometimes it's, like, I

1 don't know how to say it, but it's like if something just hit
2 you. So it's off and on, but I been dealing with it all the
3 time.

4 Q So from the time of the accident on, December 3,
5 2015?

6 A Yes.

7 Q Let me ask you this: From December 3, 2015, to now
8 as you sit here right now, was there ever a time where your
9 neck went back to how it was on December 2 of 2015?

10 A No. Say that again.

11 Q Sure. So from the time of this accident up until
12 now.

13 A From the time of the accident, December 3.

14 Q Up until now.

15 A Up until now, yes.

16 Q Did your neck ever go back to the same condition
17 or -- let me back up. I'll strike that question.

18 Before December 3, 2015, were you experiencing any
19 pain in your neck that prevented you from doing your
20 day-to-day activities?

21 A No, I didn't. I wasn't bothered before December 3 of
22 2015.

23 Q From December 3 of 2015 until now as you sit here
24 today, have you ever gotten back to the point where you were
25 not experiencing any pain in your neck that effected your

1 day-to-day activities?

2 A No. Nine years later it's still the same from when
3 it happened, and it's like I told you, some days it could be
4 better than others, but the pain never went away since this
5 accident.

6 Q Let me ask you about your left shoulder.

7 Before December 3, 2015, when this wheel hit you on
8 your left shoulder, neck and back area --

9 MR. GRILLO: Objection, your Honor.

10 THE COURT: Basis?

11 MR. GRILLO: As far as the form of the question,
12 to be honest with you.

13 THE COURT: Overruled.

14 MR. GRILLO: He is giving a narrative with
15 respect to -- I object to the wheel and everything else.

16 THE COURT: Thank you.

17 Counsel, rephrase.

18 Q Before December 3, 2015, were you experiencing any
19 pain in your left shoulder that prevented you from doing or
20 impacted your day-to-day activities?

21 A Say that one more time.

22 Q Sure.

23 Before you were hit by the wheel on your left
24 shoulder, back and neck area on December 3, 2015, before that,
25 were you experiencing any issues with your left shoulder that

1 prevented you from doing your day-to-day activities?

2 A No.

3 Q Since that time up until now, have you ever got back
4 to the position where your left shoulder is fine, and it has
5 not impacted in some way your day-to-day activities?

6 A No. I never got back to the way I used to be before
7 December 3, no, I have not.

8 Q All right. I want to ask about your lower back.
9 Before you were struck by that wheel on December 3,
10 2015 --

11 MR. GRILLO: Your Honor, same objection.

12 Do we have to keep saying, struck by that wheel.

13 MR. MILLS: I am giving him a time frame.

14 MR. GRILLO: We know what happened.

15 THE COURT: He testified what happened on what
16 date.

17 Rephrase your question.

18 MR. MILLS: So I am not allowed to say --

19 THE COURT: Rephrase your question, counsel.

20 Q Before the incident, were you experiencing any issues
21 with your lower back that prevented you from performing your
22 day-to-day activities?

23 A No.

24 Q From the time of the incident up until now, did you
25 ever get back to the point where you were not -- your back did

1 not impact your day-to-day activities?

2 A Dante, I am wearing a back brace right now. I have
3 been wearing this brace since the doctor gave it to me.

4 THE COURT: Mr. Davis, this is not a
5 conversation with your attorneys.

6 It is question and answer. You need to answer
7 the question.

8 A Okay. Yes. Yes. Yes. I haven't got back to myself
9 after the incident on December 3.

10 Q Understood. With respect to your lower back, you
11 talked about the physical therapy.

12 Did you receive any other type of treatment?

13 A I thought I wasn't allowed to talk about that.

14 Q Did you receive cortisone injections in your lower
15 back?

16 A Yes.

17 Q And from whom?

18 A I'm confused right now.

19 MR. GRILLO: What did he say?

20 THE WITNESS: I am confused.

21 MR. GRILLO: I have an objection with respect to
22 foundation.

23 Do we have the time, the facility?

24 MR. MILLS: That's what I just asked him.

25 MR. GRILLO: I don't want to argue with Mr.

1 Mills.

2 I am just making an objection. I'll abide by
3 your rules.

4 THE COURT: Objection noted.
5 Overruled.

6 Although your witness is confused, so please try
7 to clear that up.

8 THE WITNESS: I am confused.

9 THE COURT: You just said you were confused on
10 the record. I started this by saying if you don't
11 understand the question or don't know the answer, those
12 are perfectly good answers.

13 Your attorney will adjust accordingly, so now
14 your attorney will adjust accordingly.

15 Continue with your questions.

16 MR. MILLS: Yes.

17 Q I want to focus your attention -- I only want you to
18 answer my question directly.

19 I said you received cortisone injections in your
20 lower back, correct?

21 A Yes.

22 Q From whom?

23 A From the doctor in Florida that we discussed.

24 Q Is that Dr. Pasin?

25 A Yes.

1 Q I just want to go back to something we talked about
2 yesterday.

3 You said that the incident that happened with the
4 corrections officers where you were assaulted, just tell us
5 how long did you remain in custody after that incident?

6 A When did the incident take place?

7 Q Say that again?

8 A When did the incident take place from me being
9 assaulted, what date was it?

10 THE COURT: Mr. Davis, you can't ask your
11 attorney questions.

12 THE WITNESS: I needed to know the date. I can
13 tell you exactly.

14 THE COURT: Mr. Davis.

15 Mr. Mills, continue your questioning.

16 MR. MILLS: Sure.

17 Q Do you recall that the incident happened in March of
18 2014?

19 A Yes. Yes.

20 Q If you recall.

21 A Yes. I recall now. March, 2014.

22 Q How long did you remain in custody after that
23 incident occurred?

24 A I was released on March 2, 2015. A whole year.

25 Q Okay. When you were --

1 MR. MILLS: Give me one second, Judge.

2 Q When you were in custody after that incident
3 occurred, did you inform the doctors that that incident did
4 not impact your daily activities?

5 MR. GRILLO: Objection, your Honor.

6 A Yes, I did tell the doctors that.

7 THE COURT: Mr. Davis, as I said, if there is an
8 objection, you have to let me rule.

9 Basis?

10 MR. GRILLO: Leading and form.

11 THE COURT: Sustained.

12 MR. MILLS: Judge, I am going to -- there is an
13 exhibit that's in evidence. I believe it's marked as
14 Defendants' Exhibit B.

15 THE COURT OFFICER: New York City Health and
16 Hospitals?

17 MR. MILLS: No.

18 THE COURT OFFICER: You want Bellevue?

19 MR. MILLS: Yes.

20 THE COURT OFFICER: I believe it's Exhibit A.

21 MR. MILLS: May I show the witness a portion of
22 that?

23 THE COURT: I'm sorry. Were these premarked in
24 evidence?

25 MR. GRILLO: Yes.

1 MR. MILLS: May I display it for the jury?

2 THE COURT OFFICER: Defendants' A in evidence
3 shown to the witness.

4 MR. MILLS: I just have to plug this in here.

5 MR. GRILLO: Judge, can I move around?

6 THE COURT: Yes.

7 Q Mr. Davis, I want to hand you what I am showing to
8 the jury.

9 Do you recall being treated after the incident
10 occurred with the corrections officers?

11 A Yes.

12 Q And during that treatment, do you recall being
13 evaluated by the doctors?

14 A Yes.

15 Q And as a part of that evaluation, you had -- you were
16 examined for pain you had experienced and the range of motion
17 that you had, do you recall that?

18 A Yes.

19 Q Do you recall that your shoulders during that
20 examination had full range of motion?

21 A Yes.

22 Q Okay. And full range of motion without pain for your
23 back?

24 A Yes.

25 Q Okay. Is that consistent with how you were feeling

1 where your back, you had full range of motion. It was
2 nontender and you were not experiencing pain in your back?

3 A Yes.

4 Q And is that with regard to your shoulders, where you
5 had full range of motion in your shoulders?

6 A Yes.

7 Q And also full range of motion -- and I am pointing to
8 and I direct your attention to -- it says from, F-R-O-M, but I
9 want you to assume that we are talking about full range of
10 motion in your hips.

11 Do you recall that?

12 A Yes.

13 Q And did you have any pain in your back, shoulder or
14 hips after the incident that occurred with the corrections
15 officers?

16 A No.

17 Q Okay. And just so we are clear, I'm going to hand
18 you another record from Bellevue Hospital. I want you to take
19 a look at the top left-hand corner.

20 Do you see where it says Bellevue Hospital Center?

21 A Yes.

22 Q You treated there in response to being assaulted by
23 those corrections officers, correct?

24 A Yes.

25 Q And I want to direct your attention to the visit date

1 on the top, right portion of that record.

2 Do you see that?

3 A May 19?

4 Q No.

5 A 7/29?

6 Q Yes. 7/29/2014?

7 A Yes.

8 Q That was after the assault occurred?

9 A Yes.

10 Q But before the incident we are here for today,
11 correct?

12 A Yes.

13 Q Do you recall being treated at Bellevue Hospital in
14 regards to this condition?

15 A Yes.

16 Q And do you recall saying that during the incident you
17 were picked up and thrown down, and you had pain in your neck?

18 A Yes.

19 Q I want to direct your attention to -- it's the large
20 paragraph in the middle. It says, he denies any weakness or
21 numbness, tingling. Elsewhere he denied difficulty with
22 walking or urination, but completing his daily activities.

23 Do you see where I am referring to?

24 A Yes.

25 Q So at some point after the incident happened with the

1 officers but before the incident that we are here today, you
2 did not have any difficult completing your daily activities,
3 correct?

4 A Correct.

5 Q And is that what you recall and how you recall
6 feeling at some point after the incident with the officers but
7 before the incident where you were struck by the wheel?

8 A Yes.

9 Q I just want to talk about -- do you remember talking
10 about to the doctors about the medicines you were taking?

11 A Yes.

12 Q It says, patient vaguely remembers he is on
13 gabapentin.

14 Do you know what that means? You have memory issues
15 or --

16 MR. GRILLO: Objection, your Honor.

17 THE COURT: Sustained.

18 Q Do you know what that means?

19 MR. GRILLO: Objection, your Honor.

20 THE COURT: Sustained.

21 Q Do you recall having a conversation with your doctor
22 about whether or not you were on gabapentin?

23 A Yes.

24 Q What do you recall about that?

25 A They asked me was I still taking it and I stopped

1 taking it, but I couldn't remember.

2 MR. MILLS: Judge, if I may.

3 THE COURT: Are we done with the record?

4 MR. MILLS: Yes, I am.

5 Q You can finish your answer, Mr. Davis.

6 I just want the jury to be able to see you.

7 A So, again, the medication when it comes to names, I
8 don't know if it's me, but if you were to ask me gabapentin.

9 You said gabapentin?

10 Q Yes.

11 A I wouldn't know by the name. You say you use this
12 for pain. You use this for this. So in that situation I
13 didn't remember because they gave me, like, different meds,
14 and at that point I had stopped taking it.

15 Q You weren't trying to hide anything from the doctors,
16 were you?

17 MR. GRILLO: Objection, your Honor.

18 I didn't mean to say it loudly, but I object,
19 your Honor.

20 THE COURT: Sustained.

21 Q Were you trying to hide anything from the doctors?

22 A Absolutely not.

23 Q When you meet with doctors, you understand that
24 talking to them about a history is a part of the evaluation
25 process?

K. Davis - Plaintiff - Direct

1 MR. GRILLO: Objection, your Honor, as to form.

2 THE COURT: Be careful with --

3 MR. GRILLO: It's leading.

4 THE COURT: Be careful with your leading
5 questions.

6 MR. MILLS: Understood.

7 THE COURT: Overruled.

8 A Yes.

9 Q And what do you do when you are asked about history?

10 A Be honest. I told them that I wasn't taking it
11 anymore because I stopped and I had treatment.

12 Q But what if sometimes in that history, you are wrong?

13 MR. GRILLO: Objection, your Honor.

14 THE COURT: Overruled.

15 A It happens sometimes. It happens.

16 Q Have you -- okay.

17 I want to just clean some things up?

18 MR. MILLS: If I may have the photographs.

19 THE COURT OFFICER: Which ones?

20 MR. MILLS: Photographs.

21 Q There were photographs referencing the job site that
22 we marked yesterday, Mr. Davis, and I know that you testified
23 that these Plaintiff's Exhibit 21, 22, and 25, you testified
24 that you believe it happened during the summer of 2015?

25 A Yes.

1 Q I am going to hand you these documents and ask if you
2 know when those photographs were taken, and, if you do, just
3 let me know.

4 THE COURT OFFICER: Plaintiff's Exhibit 21, 22
5 and 25 being shown to the witness.

6 A This was the same as yesterday?

7 Q Yes.

8 A When was this taken?

9 Q Yeah.

10 A This one was taken in May.

11 Q What year?

12 A Of 2015.

13 Q Okay.

14 A These two, they both on the same date, and this was
15 in August of 2015.

16 Q You are now referencing Plaintiff's 21 and 22?

17 A Yes.

18 Q You are saying those are on the same days in August
19 of 2015?

20 A Yes.

21 Q How do you know that?

22 Because you said you weren't sure, so I'm just
23 asking.

24 A I looked it up.

25 Q What do you mean by that?

1 A My son. I could show you on my phone.

2 Q Just tell us.

3 A My son, because all these photos when I was at the
4 job is in my computer at home. I told him what happened and
5 he looked at it on the computer, and he was, like, he said
6 this one -- because, to me, May is the summer, and he said
7 this is not summer. This was in May. Summer starts in June.

8 So he told me this one was in May, and this one was
9 in August.

10 Q Okay. When you were in -- I know we talked about it
11 and we just looked at the record where you indicated there was
12 no impact on your daily activities.

13 Did you while you were in custody, what would you do?
14 What was your day-to-day after the assault by the corrections
15 officers?

16 A So after the assault by the corrections officers,
17 which I said yesterday was because of the wrong Kareem Davis.

18 MR. GRILLO: Objection.

19 Q Without --

20 MR. GRILLO: Judge.

21 THE COURT: Hold on, please.

22 MR. GRILLO: If he is going to volunteer on
23 that, I would like some latitude on cross examination as
24 to the reasons why he believes he was assaulted.

25 THE WITNESS: I could prove it to you.

1 MR. GRILLO: In light of his voluntary
2 statement, I believe I have the right to kind of probe
3 into that a little bit.

4 I am going to be asking for cross examination on
5 that.

6 THE COURT: Duly noted.

7 Mr. Mills.

8 A Okay. I was saying the unit I was removed from,
9 after that whole ordeal, and there was found out I was put
10 back in the same unit that I was at my whole time on Riker's
11 Island. While I was in that unit, the officers, M.A.'s, they
12 all was cool with me. The officers used to take my routine
13 because you had to get breakfast at, like, 4:00 in the morning
14 to get your cereal and milk and fruit.

15 And after that --

16 MR. GRILLO: Judge, I am going to move to strike
17 all the testimony. None of it is responsive to any
18 question.

19 MR. MILLS: It is.

20 MR. GRILLO: It's just a narration of his time
21 in Riker's Island, so objection.

22 A I am talking about Riker's Island.

23 MR. GRILLO: Judge, could you admonish the
24 witness not to answer me?

25 I am not the Judge.

1 THE COURT: Once again, Mr. Davis, this is not a
2 conversation between you and the attorney. When the
3 attorneys address the Court, they are addressing me, not
4 you.

5 As I said yesterday, you are not doing it wrong,
6 but there are certain rules that we must follow.

7 THE WITNESS: Sorry about that. We are not even
8 here for this.

9 THE COURT: We are going to strike the testimony
10 that is not responsive to the question.

11 Mr. Mills, you are going to rephrase the
12 question based on the discussions we had yesterday.

13 Q I want you to tell me when you were incarcerated
14 after your assault by the officers, what your daily activities
15 would be. I'll just focus you on activities.

16 A Okay. One of my main activities is I was in shape.
17 I was working out in there, and in order to go out to the
18 yard, you had to get up, like, after breakfast. They come and
19 they say, breakfast. So you have to get up and, like, put
20 your hand and you say you want to go to the breakfast.

21 MR. GRILLO: Judge, objection to the entire
22 narrative.

23 Respectfully request a break, Judge, at this
24 point.

25 THE COURT: No. We are not breaking.

1 MR. GRILLO: Okay. I have an objection to the
2 narrative, your Honor.

3 THE COURT: Mr. Mills, your question is inviting
4 the narrative. So if there is something specifically
5 that you want your client to testify regarding his daily
6 activities, adjust your question.

7 I think the point has been made about breakfast.
8 Breakfast is completely irrelevant.

9 MR. MILLS: It's not, Judge.

10 THE COURT: Mr. Mills, it is. It is.
11 Adjust your question.

12 Q Mr. Davis, if we can focus on the activities that you
13 would do.

14 A Right. There is only one thing you could do, leaving
15 outside of the unit, which I did every day. That was -- no,
16 two -- three things. Sorry. I went to church. I went to the
17 yard. And I went to the library.

18 Every day they held me, that was the three things I
19 did. In order to go the rec yard no matter what time it is,
20 and it's always, like, early in the morning. The officer
21 would come in the unit and he would scream out, rec. And
22 you -- if you want to go, you had to be up and ready when he
23 came in the unit and you had to --

24 Q What was rec? What does that mean?

25 A Rec is outside. It's inside a fence. Only the guys

1 that's in your unit are allowed to go there.

2 MR. GRILLO: Same objection, your Honor.

3 THE COURT: Noted.

4 A If you say you are going, you scream out yourself.
5 Officer comes, let's you out yourself, and he takes you to the
6 rec yard. I was one of the individuals that always wanted
7 some fresh air, so I went to rec every day.

8 Q And what did you do at rec every day?

9 And I want to make sure we are talking about after
10 the time that you were assaulted by the officers until your
11 time of release?

12 A I went to rec, and I worked out every day.

13 Q And was there -- now, with regards to the corrections
14 officers that was there, was that consistent or did they --

15 A There was one officer that me and him, we really got
16 cool with each other. His name was Officer Brown. He came --
17 he was the rec officer. He came every day, and it got to the
18 point where because it was cold out some days, and it's so
19 early in the morning, he would come and say, Davis, are you
20 going to rec today. He would personally come and get me.

21 MR. GRILLO: Objection to the hearsay
22 statements.

23 THE COURT: Hearsay statements are so stricken.

24 Q Just a reminder, you can't say what somebody else
25 told you. You could just describe if it was resolved.

1 A I went outside every day.

2 Q You said with Officer, Brown, right?

3 A Yes.

4 Q Is that Dwayne Brown?

5 A Yes.

6 MR. MILLS: Nothing further, Judge.

7 THE COURT: Thank you. Mr. Grillo, will you be
8 crossing?

9 MR. GRILLO: Yes, your Honor.

10 THE COURT: You may begin.

11 MR. GRILLO: Thank you, I appreciate it.

12 (Whereupon, at this time, Senior Court Reporter
13 Victoria Bifulco was relieved by Senior Court Reporter
14 Monica Jenkins.)
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1 THE COURT: Mr. Davis, same instructions as with
2 your own attorney. If you don't understand a question or
3 don't know the answer those are perfectly good answers and
4 the attorney will adjust.

5 MR. GRILLO: May I inquire, Your Honor.

6 THE COURT: Yes.

7 CROSS-EXAMINATION BY MR. GRILLO:

8 Q Good afternoon, Mr. Davis.

9 A Good afternoon.

10 MR. GRILLO: Mr. Davis, I know that this is an
11 emotional process for everyone involved. I want you to
12 know this is nothing personal.

13 THE WITNESS: It is.

14 MR. GRILLO: I appreciate your perspective. I'm
15 just letting you and the jury know I'm just doing my job
16 here.

17 MR. MILLS: Judge, objection.

18 THE COURT: Your objection is noted. You maybe
19 seated. Continue.

20 MR. GRILLO: I want to ask you some questions.
21 You brought a lawsuit against my client, The New York City
22 Housing Authority as well as the City of New York for an
23 incident that took place on December 3rd of 2015.

24 I'm going to ask you some questions. If there is
25 a question I ask you that you don't understand, please let

1 me know. It's not my intention to get you aggravated. My
2 intention is not to have you break down and cry. My
3 intention is just to ask you some questions.

4 It's going to be lengthy. If you need a break for
5 whatever reason please let me know but I want you to know
6 I'm, you know, I'm just asking questions. Fair enough?

7 THE WITNESS: Fair.

8 Q Okay. Now, can we agree, Sir, that you have a problem
9 with telling the truth, yes or no?

10 A I don't know what you mean by that.

11 Q You just said on direct examination you want to be
12 honest, correct?

13 A Yes.

14 Q Can we agree that in passed instances you haven't been
15 honest; is that a fair statement?

16 A According to my memory.

17 Q Okay. Well, let's start with your name. Your name is
18 Kareem Davis, correct?

19 A Correct.

20 Q All right. That's a name that's on your birth
21 certificate and a name on your driver's license?

22 A Correct.

23 Q You've also been known, have you not, Sir, by the name
24 of Tony Ellis?

25 A That's what I told your investigator, yes. I told him

1 that was my alias.

2 MR. GRILLO: No. When you say my investigator --

3 THE WITNESS: When you say that I told you guys
4 that and now you're using it against me.

5 THE COURT: Mr. Davis. Mr. Davis. I'm going to
6 say it again. I lost count. Not a conversation with the
7 attorney. You answer the questions that are asked, that is
8 it.

9 THE WITNESS: Correct. Your Honor.

10 THE COURT: Mr. Grillo, continue.

11 Q So you have used an alias by the name of Tony Ellis,
12 true?

13 A Tony Ellis, um, that was 26 years ago, yes.

14 Q Yes. Okay. You've also used an alias James Gent
15 G-E-N-T, correct?

16 A 30 years ago, yes.

17 MR. GRILLO: Your Honor, may I have an instruction
18 from the court to have Mr. Davis when a question is
19 posed --

20 THE WITNESS: You're asking me to answer the
21 question. I'm answering it.

22 THE COURT: Oh, Mr. Davis.

23 THE WITNESS: We are here for a damages trial.

24 THE COURT: Mr. Davis, I don't know how else I can
25 say this. Mr. Davis, it's very simple. Answer the

1 question that is asked. If you have an inability to do
2 that, then there will be consequences but we need to get
3 through this. If it is a yes-or-no question then it is a
4 yes-or-no answer.

5 A Yes, yes I'm sorry yes.

6 THE COURT: Mr. Grillo.

7 Q Yes as to James Gent, correct?

8 A Yes.

9 Q You've also used an alias Naqian Johnson N-A-Q-I-U-A-N
10 Johnson as well as N-A-Q-U-I-A-N Johnson, correct?

11 A It's Naqian which is my middle name and yes.

12 Q Is Johnson your last name?

13 A That's my mother's last name.

14 Q That an alias, correct?

15 A Correct.

16 Q You don't have a social security card that has Johnson
17 or Naqian as your first and last name on it do you?

18 A No.

19 Q Okay. Your social security card has Kareem Davis on
20 it, right?

21 A Correct.

22 Q So, the names we're talking about of all aliases, Tony
23 Ellis, Naqian Johnson? You've also gone by Kareem Naqian
24 Johnson, that's your middle name, correct?

25 A Correct.

1 Q Have you also used a nickname K-I?

2 A That was, yes, yes.

3 Q What does K-I stand for?

4 A It's short for king.

5 Q For king?

6 A Yes.

7 Q Okay. Now, you were asked all of these questions, were
8 you not?

9 A In a 7-hour interview, yes.

10 MR. GRILLO: I'm not asking you about that. Your
11 Honor, again.

12 THE WITNESS: If we want to be honest. Let's be
13 honest.

14 THE COURT: Mr. Davis. We're going to take a
15 break and Mr. Mills, you and I are going to have a
16 conversation with your client.

17 MR. MILLS: Understood judge.

18 THE COURT: 5 minutes.

19 COURT OFFICER: All rise. Jury exiting.

20 (Whereupon, the jury exited the courtroom.)

21 THE COURT: Everyone be seated. Off the record.

22 (Whereupon, a discussion was held off the record.)

23 (Whereupon, a luncheon recess was taken.)

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2 A F T E R N O O N S E S S I O N

3 * * * * *

4 MR. MILLS: Judge, I do have a -- my witness who I
5 thought I was calling this morning. I did let him know he
6 should be here this afternoon more likely. He did fly in
7 to testify today and he is scheduled to fly out tonight.

8 Whatever the court instructs me to do I will have
9 him do. I understand schedules change. I just wanted to
10 bring it to the Court's attention that I do have my witness
11 Proctor in the hallway.

12 MR. GRILLO: Judge, before we get to that I have
13 an open objection to the production of Mr. Proctor in light
14 of the fact that he just served me with a report.

15 THE COURT: To the production of him as a witness
16 or the report?

17 MR. GRILLO: The report.

18 THE COURT: Okay. Duly noted. Let's finish up
19 with our cross and probability redirect at some point and
20 see where we are. Come on up.

21 (Whereupon, the witness returned to the witness
22 stand.)

23 COURT OFFICER: All rise. Jury entering.

24 THE COURT: Thank you ladies and gentlemen. You
25 maybe seated. Mr. Grillo, you can continue with your

1 cross.

2 MR. GRILLO: Thank you, Your Honor.

3 CROSS-EXAMINATION BY MR. GRILLO:

4 THE WITNESS: I would like to say sorry.

5 THE COURT: Mr. Davis, it's okay. Thank you.

6 We're going to let Mr. Grillo continue.

7 Q Mr. Davis, good afternoon.

8 A Good afternoon.

9 Q Mr. Davis, I think we left off talking about the
10 aliases that you had used in the past, correct, you remember
11 that?

12 A Correct.

13 Q Who was James Gent?

14 A It was an alias that I used when I was younger.

15 Q Was that a person or no?

16 A No.

17 Q You made it up?

18 A Yes.

19 Q And similarly, Tony Ellis, was that a real person or
20 somebody you made up?

21 A A name I made up when I was younger.

22 Q Okay. As far as you were asked those questions, were
23 you not, about -- withdrawn. Why did you use aliases whether
24 you were younger, older, why did you use aliases?

25 A It was 26 years ago. I was young. I was young and

1 dumb.

2 Q For what purpose, aside from being young and dumb for
3 what purpose?

4 A I was young and dumb.

5 Q Can we agree, Sir, you used aliases to avoid having to
6 give over your true identity to people, correct?

7 A I was young and dumb.

8 Q That's not the question. The question is, I appreciate
9 what you are saying. I'm not going to call you young and dumb,
10 I'm trying to get to the very heart of it. Why would you use an
11 alias regardless of your age or your beauty, why did you use an
12 alias?

13 A To be honest that was 31 years ago. I really -- I
14 don't know what you want me to tell you but I wasn't thinking I
15 was wrong, I'm sorry.

16 Q I'm trying, you don't have to apologize to me, I'm
17 trying to understand what's the purpose of using an alias?

18 MR. GRILLO: Objection, Judge, asked and answered.

19 THE COURT: It hasn't been answered yet.

20 MR. MILLS: Understood, Judge.

21 A I was young. I was -- when I think about it I was
22 wrong. I was young. I did it and I don't know what you want me
23 to say.

24 Q I don't want you to say anything. What I would like to
25 know is why, what's the purpose of using an alias?

1 A The purpose of using it because that's what I used. I
2 use it. I used it and I shouldn't have because I was talking to
3 officers. I'm sorry, like, I'm sorry. I did time. I don't
4 know what you want me to say.

5 MR. GRILLO: I'm not trying to argue with you, Mr.
6 Davis.

7 THE WITNESS: I'm not trying to, I'm sorry.

8 MR. GRILLO: Don't apologize to me. I move to
9 strike the portions of the testimony that's non-responsive.

10 THE COURT: So stricken. Ask the question you
11 want to ask, Mr. Grillo.

12 Q Can we agree, Mr. Davis, that you used aliases to
13 basically to avoid law enforcement, fair enough?

14 A If that it, yes, if that's what you want to say, yes.

15 Q That's one of the reasons, correct?

16 A Correct.

17 Q So, you've had several instances, I know there's been a
18 lot of talk about your past brought out by your lawyer but I
19 want to get to the very heart of this idea. Can we agree when
20 you used an alias no matter if you used it in the past or
21 whether you use an alias today you're doing it to be deceitful,
22 correct?

23 A Correct.

24 Q You're doing it to lie?

25 A I was young, I'm sorry.

1 Q No. No. Again, please answer my question. When you
2 use an alias you just said you used these names in the past to
3 lie about your true identity?

4 A 30 years ago, yes, I did do that. I'm sorry.

5 Q You were actually prosecuted and convicted of felonies
6 under those names?

7 A Correct.

8 Q So, let's talk about it. I know we keep going back but
9 you will, would agree with me, Sir, that you were in 1995
10 convicted of robbery in the second degree using a knife and
11 sentenced to one and a half to 4 and a half years in prison,
12 correct?

13 A Correct. I was 16 years old, yes.

14 Q You were 16 in 1995?

15 A Yes.

16 Q You were born in 1978?

17 A I was born in '78. Sorry, I was 17, sorry.

18 Q I want to make sure the record is clear?

19 A I got arrested when I was 16 but 17 was '95, yes.

20 Q You were convicted. You went to jail and in that case
21 through the police department, through the court system and
22 through prison you did that under the name of Naqian Johnson?

23 A Yes.

24 Q Okay. Not true, not your name?

25 A Partially my name is Naqian my middle name, I told you

1 that.

2 Q But you didn't go through, I don't want to be hard
3 headed myself I'm trying to be respectful of this but I want to
4 get the facts out, okay. You went in, prosecuted, incarcerated
5 under the name not Kareem Davis?

6 A Correct.

7 Q Naqiuhan Johnson?

8 A Correct.

9 Q Then in 1998 you were convicted of weapons possession,
10 correct?

11 A Yes.

12 Q And you served 3 years in prison for that as well?

13 A Yes.

14 Q And in that crime you were convicted under the name of
15 James Gent, G-E-N-T?

16 A Yes.

17 Q Another falsehood, correct?

18 A Correct.

19 Q And then lastly in 2011 you were convicted in federal
20 court of conspiracy to commit robbery and brandishing a firearm
21 during the commission of a crime, correct?

22 A I never brandished a firearm.

23 Q But that's what you plead guilty to?

24 A Can I answer or you want me to just say yes?

25 Q Would you agree with me or no?

1 A I'm agreeing I was convicted in a big case and I never
2 brandished a firearm.

3 Q You pled guilty to brandishing a firearm, yes, or no?

4 A I pled guilty, yes, part of the case, that was part of
5 the case so, yes, yes, I pled guilty, correct.

6 Q The question I'm asking you is you were convicted of
7 two federal felonies, conspiracy to commit robbery and
8 brandishing a firearm; those are crimes, federal crimes you pled
9 to?

10 A Correct. You are right.

11 Q That was in 2011?

12 A No. It was 2004, 26 years ago.

13 Q That was 2004 when you were convicted. When was the
14 Certificate of Conviction, do you know?

15 A Well, if you have it there say 2011, okay, 2011.

16 MR. MILLS: Judge, so we're clear he is answering
17 when the incident happened was in 2004.

18 THE COURT: But that's not what Counsel is asking,
19 so, if he doesn't know the date he doesn't know the date.

20 MR. GRILLO: I'm asking when the conviction was.

21 THE COURT: Mr. Davis, if you don't remember you
22 can answer you don't remember.

23 MR. MILLS: If I can just ask for clarification
24 the conviction or disposition?

25 MR. GRILLO: The conviction was in 2011, the

1 judgment.

2 MR. MILLS: That's the disposition. That's the
3 end of it. I don't want to -- I want it to be clear for
4 the jury as to when it happened as to when everything is
5 over.

6 MR. GRILLO: Judge, it's improper and I don't want
7 it to be difficult.

8 THE COURT: Okay. The question is I believe do
9 you recall when the conviction occurred. If you don't know
10 you don't know.

11 THE WITNESS: I don't know.

12 MR. GRILLO: Your Honor, at this time can I have
13 this document marked as Defendant's Exhibit D as in David.

14 THE COURT: For identification, correct?

15 MR. GRILLO: Yes.

16 THE COURT: Make sure Mr. Mills has an opportunity
17 to see it.

18 COURT OFFICER: It's going to be Exhibit E.

19 THE COURT: Thank you very much. Don't comment on
20 it, Mr. Mills. Just take a look at it. I will take a look
21 at it as well. When you get a chance I will take a look at
22 it, please, thank you. So, this is the judgment.

23 MR. GRILLO: Judgment and conviction, Your Honor,
24 yes.

25 THE COURT: Can you guys approach please.

1 (Whereupon a discussion was held off the record.)

2 THE COURT: So, just for clarity marked for
3 identification as Defendant's E is, we'll call it the
4 judgment and you can refer to it Counsel as you need to.

5 (Whereupon, the document was marked for
6 identification as Defendant's Exhibit E.)

7 MR. GRILLO: May I hand it to the witness?

8 COURT OFFICER: Defendant's Exhibit E marked for
9 ID.

10 THE COURT: As far as part of the title is
11 concerned, there is a stamp over part of the title. We'll
12 call it a judgement.

13 COURT OFFICER: Defendant's Exhibit E shown to the
14 witness.

15 MR. GRILLO: Mr. Davis, you have been handed
16 what's been marked as Defendant's Exhibit E as in Edward.
17 I'm asking you to take a look at it, Sir, and take your
18 time reading it and let me know with the Court's
19 permission.

20 THE COURT: Yes.

21 THE WITNESS: Yes, I looked at it.

22 Q Sorry?

23 A I looked at it.

24 Q Are you familiar with that document?

25 A No but I see my name on here.

1 Q Do you know what that is?

2 A Yes. It says United States District Court.

3 Q That's a Certificate of Judgement, if you know?

4 A I see it say judgment on the right-hand-side.

5 Q Okay.

6 A I never seen this before.

7 Q Does that refresh your recollection as to whether or
8 not you pled guilty to the crime of conspiracy to commit robbery
9 and brandishing a firearm during the commission of a crime of
10 violence?

11 MR. MILLS: Objection judge. He acknowledged that
12 he plead guilty. He doesn't need his memory refreshed. It
13 was the date. We are talking about an incident that
14 occurred in 2004. He acknowledged that he plead guilty.
15 It's improper to refresh his memory.

16 MR. GRILLO: If there's a concession he plead
17 guilty it was unclear to me if he's conceded it with
18 respect to the Certificate of Judgement.

19 THE COURT: Yes, Counsel, he did indicate that.

20 MR. GRILLO: I ask you in light of Mr. Davis'
21 inability to recognize the document, will the Court take
22 judicial notice of this document for introduction into
23 evidence.

24 THE COURT: Where did this document come from?

25 MR. GRILLO: It was secured from the federal

1 pacer. Bears the markings across the top which is actually
2 filed in the federal pacer filing system. This one under
3 case number 2 colon 05 CR-00016 hyphen JS.

4 I don't have the document number in front of me.
5 Its on the actual document. Officer, may I see it quickly
6 for the record. This is under that Federal Criminal Index
7 Number Document 761 filed on March 29, 2011 in the matter
8 of the United States of America versus Kareem Davis.

9 THE COURT: That's part of the federal record,
10 correct.

11 MR. GRILLO: Yes and available online.

12 MR. MILLS: Objection, Judge. First reason is
13 authentication because he says he printed it out from
14 online, I don't know what that means. The Court can't know
15 what that means.

16 There is no, there's no certification or anything
17 attached where it came through a uniform system. He just
18 says he printed something out online and in addition, um,
19 relevance to this case, there is no reason to enter the
20 judgment.

21 There was testimony that Mr. Davis plead guilty to
22 crimes he committed in 2004 and there is nothing, no
23 probative value to this evidence or to this document that
24 we don't know. There's no certification or anything being
25 introduced into evidence in this case.

1 THE COURT: Well, that's why he is asking the
2 Court to take judicial notice of it because it's a court
3 record. It doesn't require a certification as a court
4 record.

5 That's why the court could take judicial notice of
6 it. The Court will take judicial notice of that document.

7 MR. GRILLO: In light of that, Your Honor, I would
8 like to introduce this into evidence as Defense Exhibit E
9 as in Edward.

10 THE COURT: So admitted.

11 MR. MILLS: Judge, based on our previous
12 discussion --

13 THE COURT: Mr. Mills.

14 MR. MILLS: I would ask it be submitted or
15 admitted subject to redaction. Um, if the jury is going to
16 see this document, um, it should be appropriately redacted
17 based on the earlier arguments that were made regarding
18 these matters.

19 THE COURT: We will address that before it's
20 published to the jury. I don't necessarily see a reason
21 for redaction but if you see one we'll address that at a
22 future time.

23 COURT OFFICER: Defendant's Exhibit E marked in
24 evidence.

25

1 (Whereupon, the document was marked in evidence as
2 Defendant's Exhibit E.)

3 MR. GRILLO: Officer, may I have that.

4 Q Mr. Davis, you plead guilty to these robbery and
5 weapons charges and you were sentenced, were you not, Sir, to 36
6 months and a day in federal prison, correct?

7 A Correct.

8 Q All right. And with respect to those charges, in
9 addition to being sentenced to that jail time, you were also
10 required to pay restitution in the amount of \$131,819; you know
11 that, right?

12 A That was everybody that was involved not just me.

13 Q Okay. Did you ever pay back any of the \$131,000 that
14 was stolen from the victims of this robbery; yes or no?

15 THE COURT: Hold on, Mr. Davis. Come on up guys.

16 (Whereupon, a discussion was held off the record.)

17 MR. GRILLO: Objection, Judge. I ask that the
18 record be stricken. Judge, I object to the question and
19 ask that the record be stricken.

20 THE COURT: Your objection is sustained and the
21 record is stricken. Mr. Grillo, the confines of what we
22 discussed regarding the specifications of this line of
23 questioning I think have been clearly addressed.

24 MR. GRILLO: Excuse me. Okay. Your Honor, but
25 that was part of the sentence. I didn't go into the

1 underlying fact.

2 THE COURT: Move on. I will say it again. This
3 is not --

4 MR. GRILLO: Respectfully I will move on. That's
5 fine.

6 Q At the time of the accident of December 3rd of 2015,
7 Mr. Davis, you were living at 6514 Parsons Boulevard, right?

8 A Correct.

9 Q And that's a building and forgive me on the
10 pronunciation, it's the Pomonok Houses?

11 A Yes.

12 Q That facility is known as part of the New York City
13 Housing Authority system and that was the Pomonok Houses,
14 P-O-M-O-N-O-K Houses, how long did you live there before
15 December 3rd of 2019, mind you there was periods of
16 incarceration, how long had you been there though exclusive of
17 being incarcerated?

18 A I think I was there for about 6 years.

19 Q 6 years. So some time around 20 -- 2009 to 2015, fair
20 enough?

21 A Yeah, I believe so.

22 Q These are approximate okay?

23 A Yes.

24 Q Prior to that, you lived in another New York City
25 housing facility located at West 19th Street in Manhattan,

1 correct?

2 A Correct.

3 Q What was the name of that facility, if you know?

4 A It wasn't a facility. It's a NYCHA development for low
5 income people.

6 MR. GRILLO: Got it. Okay. Thank you for saying
7 that because I couldn't find it, so I appreciate it.

8 Q How long did you live there for?

9 A I can't remember but I lived there before I moved to
10 Pomonok, I can't remember.

11 Q More than 5 years, less than 5 years?

12 A I think, I'm not sure. I don't want to guess.

13 (Whereupon, Senior Court Reporter Victoria Bifulco
14 began recording the following proceedings:)

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1 Q And then prior to that you lived in Louis Pink houses
2 in East New York, correct?

3 A Yes, I was born and raised. I lived there, and this
4 was where all the bad stuff came out of that. Dangerous and
5 messed up environment, yes.

6 Q And that was in a New York City Housing facility,
7 correct?

8 A Correct.

9 Q And it's still there?

10 A It's still there to this day.

11 Q All right.

12 A I no longer go there anymore.

13 Q Okay. Now, the job that you got with APS
14 Construction, you got that through the Rees, R-E-E-S, program,
15 correct?

16 A Correct.

17 Q Do you know what Rees stands for?

18 A I don't know what it stands for, but it's a program
19 that helps people that live inside the NYCHA.

20 Q Correct. So it's a program -- I'll help you with it.
21 Tell me if it refreshes your recollection.

22 Resident Employment Empowerment; does that ring a
23 bell?

24 A No.

25 Q But you would agree it's a program run by NYCHA, New

1 York City Housing Authority to help residents find jobs,
2 correct?

3 A Yes.

4 Q And that's ultimately what happened here.

5 The job that you had on December 3, 2015, was
6 actually -- my client helped you find that job, correct?

7 A Correct.

8 Q And now you're suing them?

9 MR. MILLS: Objection.

10 THE COURT: Sustained.

11 MR. MILLS: It should be noted that his client
12 did something wrong and liability was --

13 MR. GRILLO: Judge, speaking objection.

14 THE COURT: I sustained the objection. I
15 sustained the objection.

16 MR. MILLS: Okay.

17 Q Now, you are currently suing New York City. You are
18 currently suing the New York City Housing Authority.

19 Can we agree this isn't the first time you sued the
20 City of New York?

21 A Correct.

22 Q How many time before this lawsuit have you sued the
23 City of New York?

24 A I sued when I was forcibly accused.

25 Q Not about why, but how many times have you brought

1 litigation? Not the case now in the Pomonok Houses, but how
2 many times did you sue the City of New York as an individual
3 saying that you were wronged by the City of New York?

4 A I was.

5 THE COURT: Do you know a number, Mr. Davis?

6 THE WITNESS: No. No. I am trying to think
7 right now.

8 A It was when I was forcibly accused --

9 THE COURT: Mr. Davis, stop speaking out loud.

10 Think in your head and give us the number that
11 was the answer to the question.

12 A Two times. Sorry. Two times.

13 Q Were you represented by a lawyer by the name of
14 Matthew Flamm, F-L-A-M-M?

15 A Yes.

16 Q He brought a lawsuit for you, did he not?

17 A That's for what I am talking about when I was falsely
18 accused.

19 Q That's the one though. That lawsuit was brought in
20 Federal Court, correct?

21 A Because --

22 Q Not because.

23 A I'm sorry.

24 Q You don't have to apologize. I want to try to move
25 it along.

1 That was brought in Federal Court, correct?

2 A It was brought in Federal -- I want to answer you,
3 but I just want to note --

4 THE COURT: The answer is yes or no.

5 Was it brought in Federal Court?

6 THE WITNESS: Yes, because it's Rikers Island.

7 THE COURT: Go ahead, Mr. Grillo.

8 Q Well, you were in -- and what's the other case that
9 you sued the City of New York in?

10 A That was when the police illegally searched me and
11 pulled me out of my car.

12 Q Okay. And in that case did -- and where did that
13 happen?

14 A It happened in Brooklyn, New York.

15 Q Is that -- and were you represented by a lawyer named
16 Wally Masaku?

17 A Correct.

18 Q So in that case, that happened over on Fountain
19 Avenue as well, correct?

20 A Correct.

21 Q At the time do you remember when it was that
22 happened?

23 A I remember that I was pulled over for traffic
24 violation --

25 THE COURT: Do you remember when that happened?

1 When?

2 A No, I don't remember what day. Sorry, no.

3 Q If I told you November 11, 2010, would that sound
4 about right?

5 A If that's when, yes.

6 Q If I told you on or about November 11, 2010, at 7:00
7 at night on Fountain Avenue at or within close to the
8 intersection of Northern Boulevard --

9 MR. MILLS: Objection.

10 THE COURT: What is the objection?

11 MR. MILLS: The substance of the matter.

12 He answered his question in regards to any
13 lawsuits that he brought against the City. The
14 underlying facts, I do believe, is irrelevant is my
15 objection.

16 THE COURT: Sustained.

17 Q You brought a lawsuit in that case, and one of the
18 allegations that you made was that you were pulled out of the
19 car --

20 MR. MILLS: Objection.

21 THE COURT: Let him finish.

22 MR. MILLS: If he gets the question out, what's
23 the point?

24 THE COURT: Counsel, again, sustained.

25 Q Did you make an allegation in the lawsuit that you

1 were man handled?

2 MR. MILLS: Objection, your Honor.

3 THE COURT: Counsel.

4 MR. MILLS: Objection, Judge.

5 THE COURT: Come on up, guys.

6 (Whereupon, at this time, a discussion was held
7 off the record.)

8 THE COURT: You may continue, Mr. Grillo.

9 I'm sorry.

10 As far as the objection is concerned, it is
11 sustained.

12 Move on.

13 MR. GRILLO: Okay. Thank you.

14 Q Well, Mr. Davis, were you ever represented by the law
15 firm of Mayers and Galiardo?

16 M-A-Y-E-R-S, G-A-L-I-A-R-D-O.

17 A Yes.

18 Q You were.

19 And in that case did you also sue the City of New
20 York with them as your attorneys?

21 A Yes.

22 Q Okay. So with respect to Mr. Flamm, Mayers and
23 Galiardo and Mr. Masaku, can we agree, sir, that all three of
24 those law firms or lawyers brought litigation against the City
25 of New York on your behalf, correct?

1 A Because I was violated, yes.

2 Q What?

3 A I was violated in search and seizure.

4 Q So you were --

5 A Driving while black too.

6 THE COURT: No. No.

7 MR. GRILLO: I didn't hear that, Judge.

8 THE COURT: No. It's stricken. It doesn't
9 bear -- it's not worth repeating.

10 MR. GRILLO: I apologize. Okay.

11 Q Can we -- now, how about the lawyer by the name of
12 Leo Glickman. Have you ever been represented by him?

13 A I don't know who that is.

14 Q You don't know. Okay.

15 How about a lawyer Wily or L-U-I-L-I-E?

16 MR. MILLS: Objection, Judge.

17 Relevance.

18 MR. GRILLO: I'm sorry.

19 THE COURT: He can ask the question if he was
20 represented. He has been asking that question.

21 MR. MILLS: What is the relevance if he has been
22 represented by other lawyers?

23 MR. GRILLO: Well, Judge, we got three suits
24 against the City by three different lawyers. He said
25 two, now we are at three. I want to ask him about the

1 others.

2 THE COURT: Overruled.

3 Continue.

4 A He just asked me about him. I said yes already.

5 THE COURT: Hold on.

6 What is the question?

7 Q Have you ever represented by a lawyer named Leo
8 Glickman, G-L-I-C-K-M-A-N, against the City for a violation of
9 your civil rights?

10 A I guess so. I can't remember actually, sir.

11 Q Okay.

12 A I know you have --

13 Q That would have been in and around 2014; you can't
14 remember that?

15 A If it's there, yes. I am not lying. If it's there,
16 yes.

17 Q I am just asking if you remember.

18 A I don't really remember, but if it's there, yes.

19 Q So we are clear, now we have four lawsuits against
20 the City of New York?

21 A Correct.

22 Q For civil rights violations.

23 Could there have been more or no?

24 A Excuse me?

25 Q Could there have been more than four?

1 A If you want to include this, yeah.

2 Q Well, if it's true, yeah.

3 A I am talking about what you said earlier about Rikers
4 Island.

5 THE COURT: Could there have been more than four
6 lawsuits, yes or no?

7 A Including the assault with the officers, that would
8 be five.

9 Q Five lawsuits where you sued the City of New York.
10 So let's talk about the one where the -- with the
11 officers at Rikers Island, okay?

12 A Correct.

13 Q Now, I know you were talking about and you went
14 through on direct examination about how the corrections
15 officers ordered you out. You said, I believe you said you
16 were lifted off the ground, correct, that you scuffled with
17 them, remember?

18 A I was beat up. I was assaulted.

19 Q Beat up and assaulted, but that's what you said.

20 Can we agree, sir -- and you gave a reason as to why
21 they assaulted you. Did they just assault you without
22 insulting you?

23 MR. MILLS: Objection, Judge.

24 THE COURT: Sustained.

25 Q Well, do you remember your interaction with those

1 officers?

2 A I remember being assaulted because I was in the wrong
3 place.

4 MR. MILLS: Objection, Judge.

5 THE COURT: Sustained.

6 Q When you say you were assaulted --

7 MR. MILLS: Objection, Judge. Objection, Judge.

8 THE COURT: Guys.

9 Sustained.

10 MR. GRILLO: Judge, I need to approach on this.

11 I'm sorry.

12 THE COURT: No.

13 Circumstances of the assault are not to be
14 discussed. This is not a trial about that.

15 MR. GRILLO: No, it's not, but, your Honor, I
16 think it goes to credibility and I also think --

17 THE COURT: We discussed this already, counsel.

18 Move on.

19 Q With respect to the lawsuit that you filed against
20 the City of New York for the assault at Rikers Island, you
21 collected a settlement amount in the case, didn't you?

22 A No.

23 Q Okay. You collected -- the case that you went --
24 well --

25 MR. GRILLO: Now, Judge, I want a little

1 latitude, but I'll get to it.

2 Q We can agree, sir, that you ultimately got arrested
3 at some point and you were in Rikers Island. That's the case
4 you went to trial on and you were acquitted.

5 A Yes.

6 Q You brought a separate lawsuit on that one; is that
7 correct?

8 A Yes.

9 Q You sued the City of New York in Federal Court on
10 that?

11 A Forcibly arrested, yes.

12 Q After you were acquitted, you brought the lawsuit.
13 Who was your lawyer in that case?

14 A Matthew Flamm.

15 Q Matthew Flamm?

16 A Yes.

17 Q So with respect to that, you received a settlement,
18 didn't you?

19 A Correct.

20 Q How much was the settlement?

21 MR. MILLS: Objection, Judge.

22 THE COURT: Sustained.

23 Q Wasn't the settlement for \$250,000.

24 MR. MILLS: Oh my God.

25 THE COURT: Counsel. If I sustained him

1 answering.

2 A For three years in jail.

3 THE COURT: And no histrionics.

4 If I sustain the objection to him answering,
5 that pretty much indicates you can't put the number on
6 the record I wouldn't let him answer.

7 MR. MILLS: Judge, respectfully, he knows that.

8 MR. GRILLO: No, Judge. I don't think --

9 THE COURT: Guys.

10 So stricken.

11 Move on.

12 Q The lawsuit with Rikers, the assault from Rikers
13 where these officers allegedly beat you brutally, did you
14 receive any settlement for that?

15 A No.

16 Q Do you know why you didn't receive a settlement for
17 that?

18 A Because I went home.

19 Q But you brought a lawsuit against them?

20 A The lawyer came to see me in jail and filed a lawsuit
21 against the officers for brutally beating me up for no reason,
22 yes.

23 Q But you received no recovery on this one?

24 A I received not a dime, no, I did not.

25 MR. GRILLO: Your Honor, abiding by your ruling,

1 I'll move on from there.

2 Q Now, for this case against the New York City Housing
3 Authority, who was your first lawyer? Was it Miller and
4 Miller?

5 A Yes.

6 Q And then you changed lawyers after Miller and Miller,
7 correct?

8 A Yes.

9 MR. MILLS: Objection, Judge.
10 Relevance.

11 MR. GRILLO: I'll get to it subject to
12 connection, Judge.

13 THE COURT: Quickly.

14 MR. GRILLO: I just want to go through the
15 lawyers.

16 THE COURT: Quickly.

17 MR. MILLS: What is the relevance?

18 MR. GRILLO: I may not be able to do it until
19 all the medicals are in, Judge. That's the issue.

20 There is nothing improper about me asking him
21 about -- I'm the asking the conversation, I am not asking
22 why.

23 I would just like to ask who the lawyers were on
24 this case and who they are.

25 THE COURT: And I said get to it quickly.

1 MR. GRILLO: Correct.

2 Q Miller and Miller was your first lawyer and then
3 changed over Novender and Brown, correct?

4 A Yes.

5 Q Then they changed over to Mills and Edwards?

6 A I didn't change over. Novender and Brown gave it to
7 Mr. Mills because he was a trial lawyer, and he said the case
8 was ready for trial.

9 Q I see. Okay. So the lawyers -- you had no other
10 lawyers beyond those three lawyer firms, correct, that you are
11 aware of that were involved in your case, correct?

12 A Yes.

13 Q Nobody else?

14 A Yes.

15 Q You don't know the law firm of William Schweitzer, do
16 you?

17 A Yes.

18 Q How do you know them?

19 A Because they deal with construction accidents.

20 Q So have they represented you?

21 A They did at one point.

22 Q Where?

23 A What do you mean where?

24 Q Where, in New York or Florida?

25 A In New York.

1 Q Okay. And with respect to and which case did they
2 represent you?

3 A This case we are here on right now.

4 Q So that's my question to you.

5 Were they involved in this case?

6 That's what I am trying to get at.

7 A Yes.

8 Q They were a law firm involved in this as well?

9 A Yes.

10 Q Got it. Thank you.

11 Now, can we agree, Mr. Davis, that you never told
12 your own treating surgeon, Dr. Katz, of your prior medical
13 history, correct?

14 A In regards to what?

15 Q Well, we spent a lot of time talking about the Rikers
16 Island injuries that you sustained, correct?

17 A Correct. Yeah.

18 Q You never told him how you were brutally attacked by
19 the officers in Rikers Island, correct?

20 A Because he asked me was I in an accident.

21 THE COURT: Mr. Davis. Mr. Davis.

22 Yes or no.

23 A No, no.

24 Q And you never told -- I mean, you testified about
25 this, right, as far as the circumstances of the accident,

1 seven officers attacked you, correct?

2 A Yeah. Seven.

3 Q They put in a choke hold?

4 MR. MILLS: Objection, Judge.

5 THE COURT: What's the objection?

6 MR. MILLS: We talked about the circumstances of
7 the incident.

8 THE COURT: He testified about it. Or he
9 started to testify about it.

10 I'll give him a little bit of leeway. Little
11 bit.

12 Q Mr. Davis, can we agree that these officers put you
13 in a choke hold; I think you testified they put you in a yolk
14 hold, correct?

15 A Correct.

16 Q He by yolk hold, you mean they put you in a hold and
17 yanked you off the floor, correct?

18 A They had me like this (indicating).

19 Q But they compressed your neck, correct?

20 A Yes.

21 Q And in addition to that, they also grabbed your legs
22 and lifted your legs up, correct?

23 A Yes.

24 Q And they punched you, they kicked you, they brutally
25 beat you?

1 A Yes.

2 Q And you never told -- you sustained injuries to your
3 neck, right, in the assault?

4 A Yes.

5 Q You sustained injuries to your lower back in that
6 assault, correct?

7 A Yes.

8 Q And you sustained injuries to your entire body,
9 correct?

10 A I was beaten. I was beaten really bad.

11 Q Beaten twice on that day?

12 A Yes.

13 Q First three guys and then seven or, I'm sorry, first
14 three and then another four, so seven officers beat you
15 brutally that day?

16 A Because my name was Kareem Davis.

17 THE COURT: That's not the question.

18 Q I appreciate you trying to say it, but let's try to
19 move it along.

20 But yet you never told your surgeon, the guy who
21 basically did the surgery on your neck, the guy who did the
22 surgery on your shoulder, you never told him about your
23 medical history or that fight at Rikers Island, how badly you
24 were beaten, correct?

25 A Yes.

1 Q And you had brought a lawsuit regarding the assault
2 at Rikers Island, correct?

3 A Yes. When the lawyer came to see me, yes.

4 Q Who was the lawyer that came and saw you?

5 A I can't think of his name.

6 Q If I gave you the name of Curan and Ahlers, does that
7 refresh your recollection?

8 A If that's them, yes.

9 Q And in that case, you brought the lawsuit against
10 those very corrections officers. It was Kareem Davis against
11 the City of New York, City of New York Department of
12 Corrections and then Correction Officer Kinloch,
13 K-I-N-L-O-C-H, Correction Officer Harris, Correction Officer
14 Mulligan, Correction Officer Boyd, James and then Correction
15 Officers Jane and John Doe.

16 The attorney who filled out the complaint, his name
17 was William Costello.

18 Does that ring a bell, the lawyer who came to see
19 you?

20 A I don't know what lawyer came to see me, but I know
21 they filed a lawsuit on behalf of me being assaulted.

22 Q Okay. And in that lawsuit, you made certain
23 allegations, did you not, sir, about the nature and extent of
24 the injuries you had sustained in that altercation?

25 MR. MILLS: Objection, your Honor.

1 THE COURT: Overruled.

2 Q Yes or no.

3 THE COURT: Objection noted.

4 Overruled.

5 He is asking about the injury.

6 A I told the lawyers what happened to me, and they made
7 what you are reading.

8 Q And so they put together -- they filed a complaint
9 against the City of New York for this claim. Okay.

10 A Okay.

11 Q And they said that --

12 MR. MILLS: Objection, Judge.

13 Q Do you recall whether or not --

14 THE COURT: Hold on.

15 What's the objection?

16 MR. MILLS: He wants to ask him. He is reading
17 from an a document that he is unaware of. To impeach him
18 of something he didn't create and was unaware of, he is
19 asking him the question.

20 If he wants to ask him what his information is,
21 that's different.

22 THE COURT: Counsel, what is that that you are
23 reading from?

24 MR. GRILLO: I am reading from the Verified Bill
25 of Particulars in that case under -- it's the Bronx

1 County case under index number 20735 of 2015, E as in
2 Edward, electronic filing.

3 THE COURT: Attorney verified or client
4 verified?

5 MR. GRILLO: Verified by attorney verification,
6 not by Mr. Davis, but filed in the NYSCEF system.

7 MR. MILLS: There is nothing to suggest Mr.
8 Davis saw this, prepared this, had any knowledge of this
9 case.

10 If he wants to ask him questions, but to
11 question him about a document prepared by the attorney
12 that he is not aware of.

13 THE COURT: Let's mark it for identification.

14 MR. GRILLO: I believe it's already marked for
15 ID as Rupert and Gross file.

16 THE COURT: It's a BP.

17 MR. GRILLO: The BP, I could pull it out of
18 there.

19 THE COURT: That's Mr. Davis' BP in a prior
20 action.

21 MR. GRILLO: I would like to have it back, your
22 Honor, so I could refer to it.

23 THE COURT: Sure.

24 Have him take a look at it.

25 MR. GRILLO: This does not have the -- I'll give

1 it to the judge.

2 I'm sorry.

3 THE COURT: It is the one that we have in the
4 packet signed?

5 MR. GRILLO: I'm not sure, your Honor. I'll
6 look.

7 Judge, I have it subpoenaed to Court, but this
8 doesn't have a separate stamp from the Rupert and Gross
9 firm. It doesn't pursuant subpoena, but it doesn't have
10 the verification that the BP is not verified.

11 THE COURT: Made up in their file?

12 MR. GRILLO: In their file. But I surmised
13 online it's signed, Judge. I have -- we have discovery
14 and inspection. I have the verification.

15 Judge, I believe this is what is included with
16 it. We have a copy in our --

17 MR. MILLS: Judge, I don't know if we should be
18 discussing this in front of the jury.

19 MR. FEMIA: A signature. The judge asked the
20 question.

21 THE COURT: It's the signature.

22 MR. FEMIA: I have a copy. There you go.
23 Should we use this for reference?

24 THE COURT: Yes. This one has an attorney's
25 signature on it.

1 MR. FEMIA: It's the same document signed.

2 This is online, your Honor.

3 MR. GRILLO: We got it online.

4 MR. FEMIA: It's a public document.

5 MR. MILLS: He wants a verification by Mr. Davis
6 and it is not. Mr. Davis did not sign it.

7 THE COURT: It's your client's BP.

8 MR. MILLS: Off the record.

9 (Whereupon, at this time, a discussion was held
10 off the record.)

11 (Whereupon, at this time, Defendants' Exhibit F
12 was marked for identification.)

13 THE COURT OFFICER: Defendants' Exhibit F,
14 marked for identification.

15 THE COURT: Let's show it to the witness.

16 THE COURT OFFICER: Defendants' Exhibit F being
17 shown to the witness.

18 Q Mr. Davis, I ask you to take a look at Defendants'
19 Exhibit F which was marked for ID purposes only.

20 I would ask you to take your time and look at it.

21 A Yes. I seen it.

22 Q Okay. Does this document -- does the caption fairly
23 and accurately reflect the lawsuit -- the caption, the square
24 with your name it -- does it accurately reflect the lawsuit
25 that you filed on your own behalf that was filed on your

1 behalf -- excuse me -- by the law firm of Curan and Ahlers,
2 C-U-R-A-N, A-H-L-E-R-S, against the City of New York, New York
3 City Department of Correction, Correction Officer Kinloch,
4 K-I-N-L-O-C-H, Correction Officer Harris, Correction Officer
5 Mulligan, Correction Officer Boyd, Correction Officer James
6 and then Correction Officers Jane and John Doe relative to the
7 assault that was perpetrated upon you on March 19, 2014?

8 MR. MILLS: Objection.

9 THE COURT: What's the objection?

10 MR. MILLS: Compound question.

11 I don't understand what he is asking the client,
12 so I don't --

13 THE COURT: Can we have a readback on the
14 question, please?

15 (Whereupon, at this time, the last question was
16 read by the reporter.)

17 THE COURT: Counsel, rephrase the question.

18 It's a little convoluted.

19 Q Okay. Mr. Davis, the lawsuit that you brought
20 against the Department of Corrections and the City of New
21 York, in that case, you were represented by the law firm Curan
22 and Ahlers, C-U-R-A-N and A-H-L-E-R-S, correct?

23 A Correct.

24 Q And in that lawsuit, you brought a lawsuit naming the
25 City of New York, the New York City Department of Correction,

1 five individually named corrections officers and Jane and John
2 Doe, corrections officers, correct?

3 A If that's what is there, correct.

4 Q Does the caption in front of you, the square with all
5 the names in it, does that fairly and accurately reflect the
6 lawsuit that you brought for the assault that took place on
7 March 19, 2014?

8 A That the lawyers filed for me, yes.

9 MR. GRILLO: Your Honor, at this point I would
10 seek this document's introduction into evidence as
11 verified by Mr. Davis?

12 MR. MILLS: Objection, Judge.

13 It wasn't verified by Mr. Davis.

14 THE COURT: It was not -- the verification was
15 not by Mr. Davis. He did testify he is aware of the
16 document.

17 MR. GRILLO: Correct. Verified here in court.

18 MR. MILLS: No. He testified that he is aware
19 of the lawsuit.

20 THE COURT: He said the document as well. He
21 said he has seen the document.

22 THE WITNESS: I seen it just now.

23 MR. MILLS: When he handed it to him, but what I
24 am saying is Mr. Davis and we know verification means the
25 impact. Mr. Davis can't testify about a document he

1 never prepared.

2 THE COURT: Over your objection, it is admitted
3 as Defendants' Exhibit F.

4 MR. GRILLO: Thank you, your Honor.

5 (Whereupon, at this time, Defendants' Exhibit F
6 was marked into evidence.)

7 THE COURT OFFICER: Defendants' Exhibit F marked
8 into evidence.

9 MR. GRILLO: Thank you.

10 Could we have it shown back to the witness,
11 please?

12 THE COURT OFFICER: Defendants' Exhibit F shown
13 to the witness.

14 Q Mr. Davis, before you read that, are you --

15 A I got to read it now. I'm sorry.

16 Q No, no. Don't apologize. I was going to ask you
17 another question, but go ahead. Take your time. That's fine.

18 A I never seen this before. They got words I never --

19 THE COURT: Mr. Davis. There is no question.

20 A I seen it. I seen it. Yes, I seen it.

21 Q Have you had an opportunity to read it, familiarize
22 yourself with it?

23 A What I just seen?

24 THE COURT: Mr. Davis, were you given an
25 opportunity to review the document just now?

1 THE WITNESS: Yes.

2 THE COURT: Okay.

3 Q I want to look at the first number one, paragraph
4 number one; do you see it?

5 A Yes.

6 Q You sued the Department of Corrections and the City
7 of New York not just for the assault on March 19 of 2014.

8 You also sued them for an incident that took place in
9 Rikers Island on November 9 of 2013, correct?

10 A I don't know what you are talking about.

11 Q Well, paragraph one.

12 The two substantive events comprising the basis
13 of this action occurred on November 9, 2013, and March 19
14 2014, at 7:00 p.m. and 7:00 a.m. respectively.

15 Do you remember being involved in a prior assault in
16 Rikers Island in November on November 9 of 2013.

17 A Me being assaulted in November?

18 Q Yes.

19 A No, I do not remember that.

20 Q Okay. Well, let's talk about the injuries that your
21 lawyer alleged you sustained.

22 This is the lawyer who came to Rikers and spoke to
23 you, correct?

24 A You are confusing me now.

25 Q I don't mean to.

1 A I'm sorry.

2 Q We don't have to apologize to each other. You could
3 tell me.

4 THE COURT: Continue, please.

5 Q So to the extent that this is a document, you see in
6 the right-hand corner it's called a Verified Bill of
7 Particulars; do you see that?

8 A Yes.

9 Q That's a document where when somebody brings a claim,
10 they list their injuries.

11 A Okay.

12 Q That's what your lawyers did here.

13 MR. MILLS: Objection. Objection.

14 THE COURT: What is the objection?

15 MR. MILLS: He is not an expert. He can't give
16 testimony about what this document means or what his
17 lawyer did.

18 It's speculation. He doesn't know that.

19 THE COURT: He could testify as to what is in
20 the document.

21 MR. MILLS: Yes, but he is saying this document
22 includes X, Y and Z.

23 Mr. Davis doesn't know, and this lawyer doesn't
24 know. That's why you can't question somebody about a
25 document he didn't prepare.

1 MR. GRILLO: Judge, he verified the document in
2 court. It was been pulled from the NYSIS electronic
3 system.

4 THE COURT: I am not having any further
5 discussions regarding the admissibility of the document.
6 You can ask him further questions about the document.
7 You don't have to explain the document.

8 MR. GRILLO: Thank you.

9 Q Mr. Davis, I want you to look at paragraph three; do
10 you see t?

11 It's right in front of you.

12 A Yes.

13 Q Could you read along with me as I read it out loud?

14 Plaintiff -- that's you -- sustained the several
15 injuries listed below:

16 A. Meniscal tear of the right knee; semi colon;
17 full thickness fissuring in the cartilage along the
18 posterior margin of the lateral tibial plateaus.

19 A What does that mean?

20 Q I am just going to read it to you. Make sure I am
21 reading this accurately, okay?

22 A Okay.

23 Q We can ask the doctors if you don't know. That's
24 fine.

25 B. Cervicalgia requiring epidural injections

1 and gabapentin.

2 C. C3-4 broad based discs ridge complex
3 effacing the ventral subarachnoid space of the cervical
4 neck at disc C3-4.

5 D. Bilateral unconvertibral (sic) and facet
6 hypertrophy causing bilateral neuroforaminal narrowing of
7 the cervical neck at disc C3-4.

8 E. Broad base disc ridge complex with
9 superimposed central disc protrusion indenting the thecal
10 sac and the spinal cord in the cervical neck at disc
11 C4-5.

12 F. Bilateral unconvertibral and facet
13 hypotrophy of the cervical neck at disc C4-5.

14 G. Broad based disc ridge complex with a disc
15 protrusion indenting the ventral aspect of the thecal sac
16 and spinal cord of the cervical neck at disc C5-6.

17 H. Bilateral unconvertibral and facet
18 hypotrophy with right neuroforaminal narrowing of the
19 cervical neck at C5-6.

20 I. Broad based disc ridge complex with disc
21 extrusion indenting the v thecal sac and contacting the
22 spinal cord resulting in canal stenosis of the cervical
23 neck at C6-7.

24 J. Bilateral unconvertibral and facet
25 hypertrophy, greater on the left, causing bilateral

1 neural foraminal narrowing of the cervical neck at disc
2 C6-7.

3 K. Right thumb and lateral forearm
4 paraesthesias.

5 L. Neuropathy including right arm weakness,
6 numbness, stinging, tingling and pins and needles
7 sensation requiring use of a wrist splint for alleviation
8 of symptoms.

9 M. Cervical radiculopathy.

10 N. Myofascial cervical pain.

11 O. Muscle spasms.

12 P. Chondromalacia of patella.

13 Q. Facial injuries.

14 R. Lacerations to the left hand and fingers
15 with scarring.

16 S. Lacerations to the right wrist with
17 scarring.

18 T. Lacerations to the right leg with scarring.

19 U. Lacerations to the left knee with scarring.

20 V. Contusions to arms, elbows and upper
21 extremities.

22 W. Contusions on head and face.

23 X. Lightheadedness.

24 Y. Sharp headaches in the right temporal and
25 occipital areas.

1 Z. Severe injury to plaintiff's health, mental
2 and physical well-being, safety and rights inflicted in
3 an intentional, wanton, reckless and malicious manner
4 constituting punitive behavior and requiring punitive
5 damages.

6 By reason of the foregoing, the plaintiff was
7 rendered sick, sore, and disabled and was caused to
8 suffer and still suffers great pain, physical incapacity,
9 mental anguish, and loss of enjoyment of life.

10 Upon information and belief plaintiff will
11 continue to suffer great pain in the future all to his
12 loss and detriment.

13 Next paragraph. Plaintiff has required and will
14 require for an indefinite period of future duration
15 various modalities of therapy, repeated hospitalizations,
16 either in patient or as an outpatient, continuous medical
17 care and psychological and social care and monitoring.
18 Plaintiff's injuries and resultant sequelae are
19 associated with pain, discomfort, disability and
20 impediment of normal activities, impairment and negative
21 effect upon plaintiff's preinjury enjoyment of life,
22 limitations, diminution and/or effect of functions,
23 including his ability to sleep, activities, vocation and
24 all other activities in which the plaintiff engaged prior
25 to the accident, inability to resume preinjury modus

1 vivendi, social relations, including his formally
2 extensive social participation.

3 Paragraph four, all of the plaintiff's injuries
4 are permanent except those of a temporary nature.

5 Did I read that correctly, Mr. Davis?

6 A They pronounced big words.

7 Q I screwed that up too, so don't worry about that, but
8 with that said, I want you to look at the last page of the
9 document.

10 A Yes.

11 Q At the end -- I'm sorry.

12 Yours are numbered page 16.

13 A This i page 4. I lost you. Sorry.

14 Q Page 16. Next to last page.

15 A Page 16. I have it.

16 Q Do you see that?

17 A Yes.

18 Q So that was dated November 27 of 2018, correct?

19 A It says August 5, 2015.

20 Q Okay.

21 A You said page 16, right?

22 Q Maybe we have a different -- I might be reading from
23 a different copy. You might have the right copy. I have the
24 wrong copy. I apologize. I stand corrected. I have the
25 wrong photocopy of my book.

1 Can we agree then if you look at that document as of
2 August 5 of 2015, these were all the injuries that you had
3 alleged were ongoing and permanent as of August 5 of 2015,
4 correct?

5 MR. MILLS: Objection, Judge.

6 THE COURT: Basis?

7 MR. MILLS: He has no knowledge of that. This
8 is a legal document that we established was an allegation
9 made by his attorney, not Mr. Davis. Mr. Davis didn't
10 have anything to do with this document.

11 (Whereupon, at this time, Senior Court Reporter
12 Victoria Bifulco was relieved by Senior Court Reporter
13 Monica Jenkins.)

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1 THE COURT: Come on back guys.

2 (Whereupon, a discussion was held off the record
3 outside the presence of the jury.)

4 THE COURT: Let's continue.

5 MR. GRILLO: Your Honor, may I have the last
6 question and answer so I know where we left off?

7 THE COURT: It's a daily, they switched off.
8 Sorry.

9 MR. GRILLO: Okay, no problem. I will figure out
10 where we left off.

11 Q Mr. Davis, I believe I had you tell me, I'm sorry to
12 repeat it, can you go to the last page and give me the date of
13 that document, Sir?

14 A Page 16?

15 Q The one that has the August 5th, is that the date?

16 A Yes.

17 Q That the lawyer's signature is next to it?

18 A Yes.

19 MR. GRILLO: Your Honor, at this time I'll would
20 ask to have the document published to the jury.

21 THE COURT: Yes. Anthony, you can do so.

22 COURT OFFICER: Defendant F marked as evidence
23 being shown to the jury.

24 (Whereupon, the item was given to the jury.)

25 COURT OFFICER: The jury has viewed Defense

1 Exhibit F.

2 THE COURT: Thank you.

3 Q Mr. Davis, let me ask you this just so my recollection
4 is clear. You started working for -- you started working on
5 this roofing project in and around the Spring of 2015, correct?

6 A Correct.

7 Q And we can agree, Sir, based on the document?

8 THE COURT: One morin interruption and I'll clear
9 the courtroom because I think that's the 3rd on 4th time.

10 Q Mr. Davis, can we agree, Sir, that while you
11 purportedly had been doing all this heavy manual labor, you had
12 a lawsuit going on in Bronx County Supreme Court as of August
13 5th, 2015, 4 months before your accident where you were
14 basically saying you were permanently disabled, you were saying
15 that you had ongoing pain, you were saying that you were
16 incapacitated, correct?

17 A When I left jail I left jail. So, I --

18 THE COURT: That's not responsive.

19 Q The question becomes --

20 A Because I didn't know that was still going on. That's
21 what I'm telling you. When I went home I was happy to be home.
22 I didn't know that was still going on.

23 Q You didn't know you had a pending lawsuit, is that your
24 testimony right now?

25 A I'm saying when I --

1 THE COURT: Yes or no.

2 THE WITNESS: Yes. Yes.

3 Q Can we agree, based on what I just showed you and based
4 on what this jury just looked at, there was a legal document
5 filed?

6 A Yes.

7 Q In a lawsuit you brought in Bronx County whether you
8 knew about it or not, that alleged permanent, I want to make
9 sure I'm reading it correctly, August 5 of 2015 by reason of the
10 foregoing plaintiff was rendered sick, sore and disabled and was
11 caused to suffer and still suffers great pain, physical
12 incapacity, mental anguish and loss of enjoyment of life upon
13 information and belief plaintiff will between to suffer great
14 pain in the future all to his losses and detriment; this was a
15 document, Sir, you agree?

16 A The lawyers that said that, yes, that is true.

17 Q No. No. Not just what the lawyer said, it was filed on
18 your behalf?

19 A Yes.

20 Q Can we agree?

21 A Yes.

22 Q That this document is a complete contradiction of your
23 testimony about what your physical capabilities were, right,
24 because you put these pictures in, didn't you, the video of you
25 with the jackhammer, remember that?

1 A Yes.

2 Q That was all from the Summer and how you loved the job?

3 A Yes.

4 Q While all that was going on, you had claims contending
5 you were totally disabled in a lawsuit that you collected on by
6 the way?

7 A I did not collect anything off that lawsuit.

8 MR. MILLS: Not true.

9 THE WITNESS: I did not collect anything off that
10 lawsuit. I did not collect, Your Honor. I did not get one
11 dollar from that.

12 THE COURT: Mr. Davis.

13 Q So, are you telling me this lawsuit that was brought on
14 your behalf was fraudulent?

15 A I didn't get one dollar from the lawsuit.

16 THE COURT: Guys.

17 THE WITNESS: He said I collected. I didn't
18 collect nothing.

19 THE COURT: Guys.

20 Q So, is it your testimony, Sir, that a lawyer hired by
21 you filed a fraudulent lawsuit on your behalf, yes or no?

22 A I wouldn't call the lawyer fraudulent, no, I wouldn't
23 do that.

24 Q Well, you just saw a document that talked about how you
25 were permanently disabled, you couldn't work, you had ongoing

1 pain, disability and it's in direct contradiction to what you
2 showed up on the screen the other day; so, is this lawsuit
3 fraudulent, yes or no?

4 A I don't know.

5 Q So it could have been fraudulent?

6 A What I'm saying is that the lawyer came to see me in
7 jail. He made a lawsuit while I was in jail and when I went
8 home I went home. So, if that lawsuit was still pending and
9 that's what he said, then that's what we have but as far as me
10 knowing what was going on when I was home.

11 MR. GRILLO: Move to strike as non-responsive.

12 THE WITNESS: So stricken. So stricken.

13 Q Yes or no, is this a fraudulent lawsuit?

14 A I'm not going to answer that.

15 THE COURT: Mr. Davis, you have to answer. You
16 have to answer the question asked.

17 MR. MILLS: No, he doesn't, Judge, objection.

18 THE COURT: What's the objection.

19 MR. MILLS: His 5th amendment right to not answer
20 that question.

21 MR. GRILLO: Oh my God, Judge. It's not a
22 criminal proceeding.

23 MR. MILLS: You are asking the question about
24 that. He's trying to make it so he can say yes it's
25 fraudulent. He's not going to say that.

1 THE COURT: Point made. Move on.

2 Q Can we agree, Mr. Davis, that the allegations in your
3 lawsuit were a falsehood, yes or no?

4 THE COURT: Counsel, point made. Move on.

5 Q Mr. Davis can we agree that the allegations of your
6 permanency, disability, loss of enjoyment, etcetera, that is a
7 complete contradiction of your testimony here at trial in front
8 of this jury, yes or no?

9 MR. MILLS: Objection, Judge.

10 THE COURT: Basis?

11 MR. MILLS: Say it again?

12 THE COURT: Basis?

13 MR. MILLS: Argumentative.

14 THE COURT: Overruled. Mr. Davis, you have to
15 answer that question.

16 THE WITNESS: What's the question?

17 MR. GRILLO: Can I have it read back, please.

18 (Whereupon, the requested portion of the record
19 was read back.)

20 A I'm going to say the lawyer did that and if that's what
21 he put in there, yes.

22 Q So, it is a contradiction. Okay. Now, that lawyer
23 came to Rikers Island and sat down with you, yes?

24 A I don't know.

25 Q Do you recall, you said you spoke to a lawyer, where

1 did you speak to him?

2 A I know you haven't been in Rikers, so --

3 MR. GRILLO: Believe me I have, not as an inmate
4 but I have been there, so don't tell me what I have done.

5 THE COURT: We're going to take a 5-minute break
6 and then we will continue.

7 COURT OFFICER: All rise. Jury is exiting.

8 (Whereupon, the jury exited the courtroom.)

9 THE COURT: Take your break guys. Do what you
10 have to do, 5 minutes.

11 (Whereupon, a recess was taken.)

12 COURT OFFICER: All rise. Jury entering.

13 THE COURT: We can all be seated. Cross can
14 continue.

15 MR. GRILLO: Thank you, Your Honor.

16 CROSS-EXAMINATION BY MR. GRILLO:

17 Q Mr. Davis, did you discuss your testimony with anybody
18 over the recess?

19 A Excuse me?

20 Q Did you discuss your testimony with anybody over the
21 recess?

22 A No.

23 Q Okay. Now, Mr. Davis, would you agree -- we can agree,
24 Sir, that this assault took place on March 19th of 2014 in
25 Rikers Island, correct?

1 A Yes.

2 Q And following the assault you had extensive medical
3 treatment, did you not?

4 A 14 weeks of therapy.

5 Q 14 weeks of therapy?

6 A On Riker's.

7 Q On Rikers?

8 A Yes.

9 Q So, and on Rikers that's part -- they have the facility
10 there that's part of the New York City Health and Hospitals
11 Organization; are you aware of that, Sir?

12 A Yes.

13 MR. GRILLO: Okay. So, that what's been entered
14 into evidence as Defense Exhibit B. These are your records
15 from Rikers. In addition to your records from Rikers I
16 believe we have, if I may, Defendant's Exhibit C -- A, I
17 apologize.

18 Q And, Mr. Davis, in addition to your treatment at Rikers
19 you were also treated at Bellevue Hospital, correct?

20 A It was all at the same time.

21 Q Right but you had some treatment on Rikers and you had
22 treatment at Bellevue as well, correct?

23 A I went to Bellevue the see the doctors only.

24 Q Where did the physical therapy take place?

25 A On Rikers Island.

1 Q That's what I want to get at. The physical therapy,
2 there are, you were any time whether it was for this assault or
3 when you were on Rikers if you had a cold you could get
4 treatment on Rikers Island in the infirmary?

5 A For a cold, not physical therapy.

6 Q Where would you go for your physical therapy?

7 A They had a facility on Rikers. They would pick me up
8 and take me there.

9 Q So that's where you had your physical therapy, okay.
10 And then in addition to the physical therapy, you also went to
11 Bellevue Hospital to see a doctor, correct?

12 A Correct.

13 Q And so we're clear, I think you testified on
14 direct-examination you were, you stayed on Rikers for about
15 another 7 or 8 months or excuse me up to a year after the
16 assault happened on March 19th of 2014, correct?

17 A Correct.

18 Q So we can assume or you would agree, Sir, would you
19 not, that you got out of Rikers in and around March of 2015,
20 correct?

21 A Yes.

22 Q So, from the time of the assault in March of '14 to the
23 time of your release in March of '15, this is when you had all
24 that physical therapy, correct?

25 A No.

1 Q When did you have the physical therapy?

2 A I had the physical therapy right after I was assaulted
3 but before I left I didn't have no physical therapy.

4 Q Okay. Right after you were assaulted. I don't want
5 to, my memory escapes me, how many weeks of physical therapy did
6 you have?

7 A I believe, I don't even want to guess. I don't know.

8 MR. GRILLO: We can go through the records, okay,
9 to make sure we're clear on that. Bear with me, Your
10 Honor. I'm sorry. Let me get a point of reference.

11 Q Do you remember being treated by a physician's
12 assistant by the name of Edzar Roach (ph) for back pain on or
13 about March 23rd of 2014 about 9 days after your assault?

14 A No.

15 Q Okay.

16 A I can't recall.

17 MR. GRILLO: Okay. These are in evidence. I'm
18 just reading from this. Okay. Tell me if you recall.

19 Q Do you recall being treated again at Rikers Island by a
20 Gerard Auguste A-U-G-U-S-T-E for facial injuries to the left and
21 right, scratches to your left middle finger, right wrist, right
22 leg and left knee; you recall being treated on March 24th for
23 that?

24 A I can't recall that.

25 MR. MILLS: What year, Judge, so it's clear?

1 MR. GRILLO: 2014.

2 Q Or on March 25 -- withdrawn. Trying to find the
3 treatment related to the assault. You remember being treated on
4 March 26, 2015 by a physician's assistant Robert Bermister
5 B-E-R-M-I-S-T-E-R for back pain, back ache; do you recall that?

6 A I can't recall.

7 Q Do you remember -- do you recall during this course of
8 treatment from the time of your assault to the time of your
9 release being prescribed Naprosyn; do you remember that?

10 A I don't recall.

11 Q Do you know what Naprosyn is?

12 A It's a pain medication.

13 Q Okay. And also on March 27th of 20 -- March 27th of
14 '14 you recall being treated by a P-A that's physician's
15 assistant Jamie Calva (ph) on March 27th of ' 14 at Rikers Island
16 with complaints of muscle aches?

17 A I can't recall.

18 Q And back ache. Okay. On April 1st of 2014 you recall
19 being treated and examined by a P.A. Jorge J-O-R-G-E Villalobos
20 V-i-L-L-A-L-O-B-O-S, P.A. for neck pain? Patient complains
21 having neck pain since status post involved use of force
22 3/19/14.

23 Patient states pain not resolving with Naprosyn and
24 Robaxin R-O-B-A-X-I-N. See injury note of 3/19 of 14; you don't
25 remember being treated for that, correct?

1 A Correct.

2 MR. GRILLO: Judge, I apologize. I thought they
3 were chronological and they're not.

4 Q These records are in evidence and to save time, Mr.
5 Davis, I just want you to assume that there are records in here
6 that run through, they run from prior to your incident but also
7 after your incident of March 19th of 2014 all the way through
8 treatment of March 30th of 2015; can we agree, Sir, that you
9 were treated for approximately one year in the Rikers Island
10 facility whether it's by PA's or physical therapists, you
11 treated for a year for the injuries that you sustained in this
12 assault, fair?

13 A I can't recall.

14 MR. GRILLO: Well, the records will speak for
15 themselves. They're in evidence and I will provide them
16 too. I ask they be submitted to the jury at a later time.
17 Just to move along these are all on Defendant's Exhibit B?

18 THE COURT: Noted.

19 Q In addition to being treated on Rikers, seeing various
20 physician's assistants and healthcare providers, you were also
21 treated at Bellevue Hospital, correct?

22 A Correct.

23 Q For the injuries you sustained in the assault of March
24 13th of 2014, correct?

25 A Correct.

1 Q What did they do for you at Bellevue in and around 2014
2 through 2015 after your assault?

3 A I remember going there and just seeing doctors.

4 Q Do you remember the names of any of the doctors?

5 A No.

6 Q Okay. Do you remember being treated by a Doctor
7 J-U-G-A-L Shah S-H-A-H on or about December 16th of 2014 at
8 Bellevue Hospital?

9 A I can't recall.

10 Q Now, when you say you can't recall does that mean you
11 don't remember or it didn't happen or something else?

12 A That means that I know I went to Bellevue but I don't
13 remember who I seen. I don't remember who I talked to. I don't
14 remember what day it was. I was incarcerated for something I
15 shouldn't have been there for and I went to Bellevue. That's
16 what I'm saying.

17 THE COURT: Portions of the answer that are
18 unresponsive are hereby stricken.

19 Q You were diagnosed, were you not, by a doctor in
20 Bellevue on or about December 16th of 2014 with the that you
21 were in need for an anterior cervical discectomy infusion
22 surgery; you were basically diagnosed with the need to have that
23 done, correct?

24 A I can't recall.

25 Q Okay. Now, for -- to the extent that this litigation,

1 I know we're talking about Rikers but fast forward to this
2 litigation which stems from an accident that happened on
3 December 3rd of 2015, correct?

4 A What we are here for, that's what you mean, right.

5 Q I want to get clarity for the record. All right.
6 You've testified, this is obviously the trial but prior to
7 coming here today or yesterday at testifying, you testified at
8 three other proceedings in this case, correct?

9 A You talking about the guy that work for you Kevin
10 Bryant.

11 Q He didn't work for me but yes?

12 A I seen Kevin Bryant, yes.

13 Q Kevin Bryant but early on, early on, if I may, Your
14 Honor, before you even filed the lawsuit you filed what's called
15 a Notice of Claim. Okay?

16 A I didn't file it.

17 Q Okay. But to the extent that there was a claim filed
18 by lawyers Miller & Miller, your lawyers, okay on April -- I'm
19 sorry. They filed a claim and you ultimately gave testimony on
20 April 4th of 2016, you gave the testimony at 100 Wall Street
21 which I believe was the office of the prior defense attorneys
22 and you were accompanied by Natalie Miller of the Miller &
23 Miller firm on April 4th of 2016; do you remember that?

24 A I remember going there. Yes, I remember.

25 MR. GRILLO: Can I get a stipulation from Counsel

1 that there was a 50h Hearing conducted?

2 MR. MILLS: Definitely.

3 MR. GRILLO: Okay. I want to move it along.

4 Okay.

5 Q In addition to, not to belabor it, when you talked
6 about, so you gave testimony at the 50h Hearing?

7 A That's what it's called?

8 Q Yes, that's what it's called. We agreed. Then the
9 next time you testified you gave a deposition and that was done
10 here in the courthouse. That was on October 10th of 2018; you
11 remember testifying? I think --

12 A I remember that one was 7 hours. I remember that one.

13 Q And that was Zerembra (ph) Brown and your lawyer was
14 Thomas Payne and the law firm that had it at that time was
15 Tremello (ph) McDonald & Kevin Bryant handled that, correct?

16 A Excuse me?

17 Q Kevin Bryant was the lawyer that questioned you with
18 this in 2018?

19 A But that lawsuit was with the same Zerembra Brown (ph)
20 and Mr. Mills is the same people.

21 Q Yeah, I'm just trying to demonstrate to get you to
22 understand that you testified three times in depositions in this
23 case?

24 A Yes.

25 Q So, the first time was really wasn't called a

1 deposition was called a 50h Hearing in 2016. The second time
2 you testified was in October 10th of 2018 and that was here in
3 the courthouse.

4 And the then the third time you testified was on
5 September 18th of 2023 and that deposition was taken in the city
6 at Mr. Mills' office at 14 Penn Plaza, you remember that?

7 A Yes.

8 Q Okay. So we can agree, Sir, that in all three
9 instances you testified, right?

10 A Yes.

11 Q And you testified obviously took an oath like you did
12 here in front of the jury although there was not a judge, there
13 wasn't a jury, there was somebody recording everything you said,
14 right?

15 A Yes.

16 Q And when you took the oath you told the -- you told --
17 you swore to tell the whole truth and nothing but the truth,
18 correct?

19 A To what I remember, yes.

20 Q And you testified -- withdraw that. You testified
21 truthfully, did you not, Sir, in those depositions?

22 A To what I remember, yes.

23 MR. GRILLO: Your Honor, I have to ask a favor.

24 If I may, it's kind of embarrassing but I lost my train of
25 thought in going through all the depositions. Can I get

1 the testimony read before I went into the deposition
2 transcripts if you don't mind, my last question before the
3 Q & A on the transcripts?

4 THE COURT: Are you using the deposition
5 transcripts right now?

6 MR. FEMIA: Do you have a copy right now?

7 THE COURT: Before that I will read the
8 instruction regarding them so the jury is set up for that.
9 So, currently the lawyers for the defendant are going to
10 read portions of a document referred to as an examination
11 before trial of the plaintiff.

12 You have you may hear both attorneys refer to this
13 document as an EBT or deposition. At some point before the
14 trial began the plaintiff and then any witness who this is
15 used for, under oath answered certain questions put to him
16 or her by the lawyers from the parties.

17 A stenographer recorded the questions and answers
18 and transcribed them into a document which in this instance
19 the plaintiff later on witnesses later signed before a
20 notary public.

21 Portions of the transcript are of the examination
22 before trial that you will hear are to be considered as if
23 the plaintiff now or any witness on the stand is testifying
24 from the stand.

25 You may continue.

1 MR. GRILLO: Mr. Davis, I'm going to read you a
2 portion of your deposition transcript and ask you if it
3 refreshes your recollection. Okay.

4 Q I just asked you if you recall a doctor discussing a
5 need for you to have this anterior cervical discectomy infusion
6 surgery and you said you didn't recall right now, correct?

7 A Yes, I said I don't recall.

8 MR. GRILLO: So, I'd like to direct your attention
9 to your deposition testimony taken on October 10, 2018.
10 Page 121 Line 11 and this question is by Mr. Bryant:

11 Question: And do you recall that while you were
12 being treated during that period of your incarceration that
13 one of the doctors by the name of Jugal J-U-G-A-L Shah
14 S-H-A-H, that he advised you on December 16th of 2014 that
15 you may need the exact surgery as of that point in time do
16 you recall them discussing that you might have, that you
17 may have to have that surgery at C-6,7 back in December of
18 2014.

19 Answer: On line 21. I remember the doctor asking
20 me.

21 Question: Asking you what.

22 Answer: Asking me do I want to do, will I do that
23 surgery.

24 Answer: Or do I need the surgery I remember that
25 conversation yes.

1 Question: And what did you say then.

2 Answer: I told him no.

3 Question: And why didn't you want the surgery
4 because I was, I thought I was getting ready to go home. I
5 just didn't want to do it.

6 Question: But you were still having problems with
7 your neck as of that point in time.

8 Answer: Yeah but it wasn't to the fact that I
9 wanted to have doctors in jail cut my neck open. No, I
10 didn't want to do that.

11 Question: As of that point in time at least as of
12 November 19, 2014 you were still taking pain medication
13 from pain management doctor for the neck problems, correct.

14 Answer: I guess so.

15 Q Does that refresh your recollection, Sir, as to the
16 questions and answers that were opposed to you and the answers
17 you gave?

18 MR. MILLS: Judge, just for completeness if he can
19 finish that response.

20 THE COURT: You don't have to.

21 MR. GRILLO: I don't have to but --

22 THE COURT: If you would like to.

23 MR. GRILLO: There is an objection. I'm going to
24 move on.

25 Q Does this refresh your recollection?

1 A I can't recall.

2 Q You can't recall. Okay.

3 MR. GRILLO: Can I get a stipulation from Counsel
4 and the Court that I have read the deposition transcript
5 accurately?

6 MR. MILLS: Yes. Other than my completeness
7 objection to what he didn't read.

8 THE COURT: That which was read was accurate as to
9 the transcript that I have been reading from as well.

10 MR. GRILLO: Okay. And continuing now.

11 Q As far as the medication you were taking at the time,
12 were you taking Gabapentin?

13 A I can't recall.

14 Q Were you taking Baclofen B-A-C-L-O-F-E-N?

15 A I can't recall.

16 MR. GRILLO: Reading from your deposition
17 transcript on Page 123 Line 7:

18 Question: If I told you at least referring to
19 this chart here that as of that point in time you were take
20 Gabapentin G-A-B-A-P-E-N-T-I-N 900 milligrams for pain and
21 Baclofen B-A-C-L-O-F-E-N excuse me, withdrawn.

22 I will read it again. I'm sorry because I
23 skipped.

24 Question: Line 7. If I told you at least
25 referring to this cart here as of that point in time you

1 were taking Gabapentin that's G-A-B-A-P-E-N-T-I-N 900
2 milligrams and Baclofen B-A-C-L-O-F-E-N.

3 THE WITNESS: Judge, can I stand up for a second?

4 THE COURT: Sure. You can continue.

5 MR. GRILLO: Ready?

6 THE WITNESS: Yes.

7 MR. GRILLO: 10 milligrams for pain. Does that
8 refresh your recollection of the medication that you were
9 taking.

10 Answer: Yeah I remember something called gab yeah
11 I remember that.

12 Question: So as of November mid November of 2014
13 you're still taking pain medication for the neck injury
14 that you sustained earlier in March of that year correct.

15 THE WITNESS: I can't recall.

16 MR. GRILLO: No. No. No. I looked at you,
17 sorry.

18 Answer: Well for the whole well for the injuries
19 that I sustained I was taking medication yes.

20 Question: But it was for pain.

21 Answer: It was for pain. It was for pain yes.

22 Q So, can we agree, Mr. Davis, that as of November of
23 2014 --

24 MR. MILLS: Judge, the same objection with regards
25 to completeness as to pain where. He's asking him if he

1 going to use this to follow up what he was taking pain for.

2 THE COURT: Your objection is noted. He doesn't
3 have to read what he doesn't want to read and what you
4 stated is not even in the transcript.

5 MR. MILLS: It is. It's the next question.

6 THE COURT: The next -- we're on 124. I'm not
7 going to read it. Line 2, it doesn't mention pain.

8 MR. MILLS: Yes, it does. It talks about where.

9 THE COURT: Doesn't mention pain, does not say --
10 Counsel, he doesn't have to read it.

11 MR. MILLS: Understood.

12 THE COURT: He doesn't have to read it. If you
13 want to complete the record you're free to do that on
14 redirect.

15 MR. MILLS: Understood.

16 Q Mr. Davis, can we agree, Sir, based on what I just read
17 you were taking medication for neck and back pain as late as
18 November of 2014?

19 MR. MILLS: Objection, Judge. This is my
20 objection. This is the whole purpose of it. He's trying
21 to use --

22 MR. GRILLO: I'm not trying to use anything. I
23 can rephrase, Judge, it's fine.

24 THE COURT: Thank you. Rephrase.

25 MR. GRILLO: I will rephrase.

1 Q Can we agree that as of November of 2014, seven months
2 after your assault in March of 2014, you were actively taking
3 pain medication, were you not, Sir?

4 A I can't recall.

5 Q I just read you transcripts saying that you did.

6 A I can't recall.

7 Q You can't recall now?

8 A I can't recall now.

9 Q We'll let the records speak for themselves. Can we
10 also agree, Sir, that as of December of 2014 you were
11 recommended by a doctor at Bellevue a surgeon to have the very
12 same surgery that you are alleging was the result of this
13 accident of December 5th, December 3rd of 2015 almost a year
14 before a doctor in Bellevue told you you needed the same surgery
15 a year before, yes or no?

16 A I can't recall.

17 Q What I just read you, did you hear what I just read you
18 about Dr. Jugal in recommending surgery, said you remember it
19 back at your deposition in 2018, correct?

20 A I said I can't recall.

21 Q Can we agree, Sir, that your memory regarding incidents
22 and circumstances of 2014 would have been better in 2018 than
23 they are now in 2025, correct?

24 A I can't recall.

25 Q Can you agree with me, Sir, that 2018 is closer in time

1 to 2014 than 2025?

2 A I can agree my memory I don't recall things.

3 Q No. No. Just as a concept. The year 2018 is closer
4 in time to the year 2014 than the year 2025?

5 A You are absolutely right. Correct.

6 Q Can we agree, Sir, that your memory of something that
7 happened in 2014 would have been fresher or better in 2018 than
8 it is now in 2025, fair enough?

9 A It depends on the person. With me, I can't remember
10 some things from back then. I barely remember some things from
11 last week, so, I can't recall.

12 Q But you --

13 A I'm ready to go home.

14 Q You testified, Sir, under oath at a deposition about a
15 doctor in 2018, not now, but in 2018, that's why I read you the
16 transcript, you testified about remembering a doctor telling you
17 about a surgery?

18 A I can't recall.

19 Q You just sit here today, do you remember telling a
20 doctor in 2014 that you didn't want the surgery in 2014 because
21 you didn't want to get cut by a doctor in jail; did you testify
22 to that?

23 A That I did absolutely say.

24 Q Okay.

25 A I do remember that.

1 Q So, you said that, did you not, in response to the
2 doctor's recommendation that you needed the surgery?

3 A The doctor told me that he wanted to give me surgery
4 and I said no, what you, how you read my statement, that's
5 absolutely true. Correct.

6 MR. GRILLO: So, are you finished? I didn't mean
7 to cut you off are you finished?

8 THE WITNESS: With my statement I'm finished.

9 Q We can agree then, can we not, Sir, that you now recall
10 a doctor in 2014 telling you you need the cervical surgery that
11 you had in this case in 2017, correct?

12 A I remember a doctor telling me that if I wanted to have
13 a surgery I can. I told the doctor no. I didn't know what he
14 was explaining but the word surgery, when he said that to me I
15 said no, I'm not doing that and I didn't know I was going home
16 but I told him I'm going home because I didn't have nothing. I
17 didn't want no surgery from inside jail.

18 Q You didn't want a jail --

19 A Surgery, yes.

20 Q Jail surgery but he told you, you needed the surgery?

21 A He said the word surgery. I don't know the specifics
22 when he said the word surgery.

23 THE COURT: Nope.

24 Q Can we agree, Sir, Mr. Davis, as you sit here today on
25 January 16th of 2025 you never told any of your treating

1 surgeons, Dr. Katz in particular about the whole dialog with a
2 surgeon at Bellevue, correct?

3 A I can't recall.

4 Q Okay. Would you agree, Sir, that you never mentioned
5 anything about your medical history to Dr. Katz before he did
6 the surgery that was recommended for you in 2014?

7 A I'm going to tell you that I filled out a form that
8 said were you in a previous accident before and I marked yes.
9 They never said were you assaulted before. So, when it comes to
10 the assault, I'm under interpretation that it's not an accident.

11 So, you, if you -- I'm going to tell you right now.
12 You are right. I never said, I never acknowledged that I was
13 assaulted because I was assaulted. You asked me about an
14 accident so you're right I'm answering his question, Your Honor.
15 He's right.

16 MR. GRILLO: Move to strike.

17 THE COURT: Right. So stricken. How much longer
18 do we have? So, we have to stop for the day. It is now
19 4:30. I'm actually 2 minutes over. Before I let the jury
20 go because I would rather not repeat what has been
21 happening.

22 What is the expectation for tomorrow as far as
23 setup? I know we have to finish cross and then what is the
24 expectation, another witness?

25 MR. MILLS: Yes. I have my witness here today

1 ready to go. I do have a different witness that was
2 supposed to be here in the morning that I know will be here
3 in the morning.

4 I'll figure out scheduling. We're ready with our
5 witnesses to go.

6 THE COURT: With the exception of the one that I
7 am aware of, any other applications or issues that are
8 going to be presented to the Court?

9 MR. GRILLO: What I spoke to you about outside of
10 the presence of the jury relative to what we want to make
11 sure we identify two witnesses and then there was an
12 application I made previously regarding disclosure of one
13 of them. It's an expert witness.

14 THE COURT: So those I am aware of.

15 MR. GRILLO: I didn't want to give in front of the
16 jury.

17 THE COURT: That's fine I wanted to verify. I
18 believe we're on the same page. I know what we have to
19 discuss. So, in keeping in mind what we have to discuss,
20 um, I'm going to give the jury until 11 o'clock to get
21 here.

22 And I will make you a promise. We will start no
23 later than 11:15. Do you all hear that?

24 MR. GRILLO: Yes, Your Honor.

25 MR. FEMIA: Yes, Your Honor.

1 MR. MILLS: Yes.

2 THE COURT: So, all of the business that we have
3 to do, you will be here by 10 and we will have an hour.
4 That's more than sufficient time.

5 MR. GRILLO: Will we learn the identities of the
6 witnesses?

7 THE COURT: I believe Mr. Mills sent an email.

8 MR. GRILLO: As long as it stays the same.

9 THE COURT: My assumption is it will stay the
10 same. I'm going to release the jury.

11 MR. MILLS: The issue is I have my witness met
12 halfway here.

13 THE COURT: I will release the jury. We will have
14 an opportunity to discuss this but as I said 10 o'clock.
15 We will start by 11.

16 MR. GRILLO: Your Honor, one other item. Well, in
17 light of these witnesses who Mr. Mills is calling, will we
18 hold the cross-examination?

19 THE COURT: No. I am not doing that. You will
20 continue with cross. Absolutely no.

21 MR. GRILLO: I want to have my stuff in order to
22 continue.

23 THE COURT: I'm not breaking that up at all.
24 Ladies and gentlemen, thank you. Same instructions as
25 always, no talking to each other about the case, no

1 Googling, no other internet searches or things like that.

2 Enjoy the rest of your night. I will see you
3 tomorrow at 11. Thank you.

4 COURT OFFICER: All rise jury exiting.

5 (Whereupon, the jury exited the courtroom.)

6 THE COURT: Okay. Gentlemen, here by 10:00.

7 (Whereupon, the trial was adjourned to Friday,
8 January 17, 2025 at 11:00 a.m.)

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