

CRIMINAL JUSTICE CLINIC

Prof. Elizabeth Nevins

Accusatory Instruments: Conversion and Facial Sufficiency Assignment

“It is well settled that, in order to be sufficient, an information must both provide reasonable cause to believe that the person named in it committed the offense charged, and contain sworn, non-hearsay allegations supporting every element of that offense, and that person’s commission thereof...”

“But with respect to count one, the People in effect posit, Alice-in-Wonderland fashion, that, because Penal Law Section 205.00(3) provides that any “thing” can be contraband, contraband is any “thing” they say it is, and that, therefore, they need not demonstrate in pleadings – and implicitly, that they need not prove at trial – that the “thing” involved in the accusation they make under count one is marijuana. They are in error...”

“The People’s request for denial of the motion so they can have a reasonable time to cure these defects is denied [in that] ...such a course presupposes that the People have, before the motion is decided, actually analyzed their case and the applicable law and demonstrated to the court that they have the ability to cure the extant defects.”

- Judge Susan Kluewer, dismissing the prison contraband case against clinic client Grisela Cruz in 2011.

In other words this was a winner for some of your clinic predecessors. To practice in Nassau County is to practice in a lawless and routinized plea machine. The first step of a nascent practitioner is to understand the legal mechanisms by which the Government can reach out grab your client by the throat and demand her money, her time, and her liberty. We begin, therefore, with a study of the legal requirements of the charging documents – the accusatory instruments. It can be dry. It can be confusing. You will find that your adversaries and even the judges have no idea of what the law requires. Because no one actually seems to read the law or even read the complaints lodged against our clients. It is indeed Alice-in-Wonderland.

I am asking that you read “Litigating Accusatory Instruments in Criminal Court” as a beginning primer, then examine some cases (quite a few, but they’re short – and if you only read the primer, you’ll miss some really key stuff), and finally answer a few questions. Please note that that in Nassau our misdemeanor court is “District Court” rather than “Criminal Court.”

I have learned that having required “homework” can give a needed framework for this study. Please treat the assignment here seriously. I will go over it and return it at the beginning of our first class. But perhaps more importantly, I will also be asking you to simulate court room argument on a number of cases during that first class, and if you haven’t put in the time, that stuff will be nigh impossible.

Other Assignments:

1. Do the reading on Accusatory Instruments outlined in the Orientation Assignments Memo.
2. Answer the Questions on Accusatory Instruments below. Written responses should be emailed to me (elizabeth.nevins@hofstra.edu) as a stand-alone document, as directed in Orientation Assignments Memo.
3. Review the attached accusatory instruments and write down your initial thoughts as to what arguments you would have to move to dismiss them. As noted in the Orientation Assignments Memo, you should be prepared to argue to the court whether the accusatory instruments are complaints or informations (and whether that matters), as well as whether they are facially sufficient (although you need not submit these responses in writing). Note that some of these are much harder than others, but they are all cases that the clinic has done. You do not need to do additional research (although, if you're down for it, feel free!). Otherwise, just do your best, given the charges as outlined in the complaints, and note where you *would* want to do more research. This is more about issue spotting and reasoning, based on the core cases/principles in this area. ***Each accusatory instrument starts with a complaint against a named defendant (Perkins, Hines, Rafalowicz, Castillo, Sharkey, Essabba), and it may or may not have attachments (or two or three). Just because it indicates it has an attachment, however, does not mean that there is one. But make sure your analysis looks not just at the complaint/information but also any attached supporting depositions and/or other materials.*

Questions on Accusatory Instruments

*****PLEASE CITE TO AUTHORITY UPON WHICH YOU'RE RELYING FOR EACH QUESTION!**

1. What kinds of non-felony accusatory instruments might we encounter in our practice at CJC? Where in the CPL are they described?
2. What are three differences between misdemeanor complaints and misdemeanor informations?
3. Why is the distinction between complaints and informations important to C.P.L. § 30.30 (speedy trial) calculations?
4. What are four grounds to argue that an accusatory instrument is facially insufficient? Please give a supporting case name for each ground.
5. Why is it important that facial insufficiency is a jurisdictional defect?
6. Is a written motion required for a motion to dismiss for facial insufficiency? What authority supports your position?
7. How does CPL § 170.70 relate to the issue of whether a complaint is converted to an information?
8. In the cases you read, was the issue that the accusatory instrument was facially insufficient or not converted to an information (or both)? If facially insufficient, why/what was missing? If not converted to an information, what was the argument that it was not converted?
 - a. *Dumas*
 - b. *Alejandro*
 - c. *In re Rey*
 - d. *Casey*
 - e. *Cullinan*
 - f. *Gonzalez*
 - g. *Machado*
 - h. *Dreyden*

DISTRICT COURT -- INFORMATION

Citation#

CR# 213CR0050484

Arrest# 213AR0013643

Return Date 11/05/2013

Date / Time of Arrest 11/04/2013 at 21:30

Court Docket

025178

DOB
06/23/1985

FIRST DISTRICT

Age
28

THE PEOPLE OF THE STATE OF NEW YORK AGAINST

THOMAS S PERKINS
590 FULTON AVE APT E18
HEMPSTEAD NY 11550

Offense

221.10 (1)

IN THE STATE OF NEW YORK COUNTY OF NASSAU: PO LEONARD MATHEWSON, SHIELD# 13757, BEING A MEMBER OF THE NASSAU COUNTY POLICE DEPT DEPOSES AND SAYS THAT ON OR ABOUT THE 4TH DAY OF NOVEMBER, 2013, AT ABOUT 9:30 PM, AT IN FRONT OF 232 LAWRENCE ST UNIONDALE, THE DEFENDANT DID VIOLATE NEW YORK STATE PENAL LAW SECTION(S) §221.10 (1) .

CRIM
POSS
MARIHUANA
5TH SUB 1

§ SEC. 221.10 CRIMINAL POSSESSION OF MARIHUANA IN THE FIFTH DEGREE. A PERSON IS GUILTY OF CRIMINAL POSSESSION OF MARIHUANA IN THE FIFTH DEGREE WHEN HE KNOWINGLY AND UNLAWFULLY POSSESSES:

B
MISDEM

1. MARIHUANA IN A PUBLIC PLACE, AS DEFINED IN SECTION 240.00 OF THIS CHAPTER, AND SUCH MARIHUANA IS BURNING OR OPEN TO PUBLIC VIEW; OR 2. ONE OR MORE PREPARATIONS, COMPOUNDS, MIXTURES OR SUBSTANCES CONTAINING MARIHUANA AND THE PREPARATIONS, COMPOUNDS, MIXTURES OR SUBSTANCES ARE OF AN AGGREGATE WEIGHT OF MORE THAN TWENTY-FIVE GRAMS. CRIMINAL POSSESSION OF MARIHUANA IN THE FIFTH DEGREE IS A CLASS B MISDEMEANOR.

Sector
323

Prepared By
9204MATHE

TO WIT: At the aforementioned date and time, your deponent while conducting a narcotics investigation of a 2004 Honda, bearing NY registration GCN 6556 in which defendant, Thomas S. Perkins, was the front passenger and was found to be in possession of a quantity of brown and green leafy substance believed to be Marijuana. As your deponent conducted the aforementioned investigation he observed the defendant holding a plastic bag containing a quantity of a green and brown leafy substance believed to be Marijuana in his right hand and place the said bag into his right jeans pocket. The said substance was recovered by your deponent from aforesaid location. The defendant further stated to your deponent, "that's just my weed, there's not a lot."

The belief that this substance is in fact Marijuana is based on your deponent's 10 years of Police experience, involvement in numerous Marijuana related arrests and investigations, and the training in the recognition and the identification of Marijuana he received at the New York City and Nassau County Police Academies.

* ANY FALSE STATEMENT MADE HEREIN IS PUNISHABLE AS A CLASS A MISDEMEANOR, PURSUANT TO SECTION 210.45 OF THE PENAL LAW.

SUBSCRIBED BEFORE ME THIS
5TH DAY OF NOVEMBER 2013.

PO LEONARD MATHEWSON

LT VINCENT G BODEN

DISTRICT COURT -- ~~FELONY~~ COMP INT

CTJ

CR# 213CR0004597

Return Date 01/30/2013

Court Docket 002419

Citation#

Arrest# 213AR0001210

Date / Time of Arrest 01/29/2013 at 17:20

* NOTE: PRESUME CLIENT HAS BEEN CHARGED IN A MISD. COMPLAINT UNDER §170.20 - same elements as outlined below, but an A MISD. instead of a felony. ORIGINAL

DOB 07/22/1971

FIRST DISTRICT

Age 41

THE PEOPLE OF THE STATE OF NEW YORK AGAINST

170.20

JOHN A HINES
177 GRENADA AVE
ROOSEVELT NY 11550

Offense

170.30

IN THE STATE OF NEW YORK COUNTY OF NASSAU: PO JOSEPH IPPOLITI, SHIELD# 1146, BEING A MEMBER OF THE NASSAU COUNTY POLICE DEPT DEPOSES AND SAYS THAT ON OR ABOUT THE 29TH DAY OF JANUARY, 2013, AT ABOUT 2:45 PM, AT 100 MILL RD FREEPORT, THE DEFENDANT DID VIOLATE NEW YORK STATE PENAL LAW SECTION(s) §170.30 .

CRIM
POSSESS
FORGED
INSTRUMENT

§ A PERSON IS GUILTY OF CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE FIRST DEGREE WHEN, WITH KNOWLEDGE THAT IT IS FORGED AND WITH INTENT TO DEFRAUD, DECEIVE OR INJURE ANOTHER, HE UTTERS OR POSSESSES ANY FORGED INSTRUMENT, OF A ~~KIND SPECIFIED IN SECTION 170.15.~~

C
FELONY

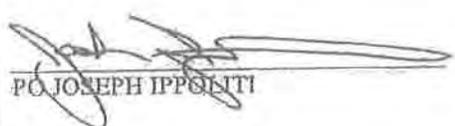
Sector FR

TO WIT: At the aforementioned date, time and place of occurrence, based upon information and belief, that being the investigating CAP squad detective's investigation, training and experience as a Certified Fraud Examiner, signed statement of the complainant and evidence recovered, the defendant, John Hines, did violate Section 170.30 of the Penal Law of the State of New York (CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE FIRST DEGREE, a class C felony) in that with knowledge that it is forged and with intent to defraud, deceive or injure another, did possess five (5) counterfeit, \$100.00 Federal Reserve Notes, bearing serial numbers FL33324136B, FL33324138B, FL33324144B, FL33324148B and FL33324149B.

Prepared By 7920RISPO

* ANY FALSE STATEMENT MADE HEREIN IS PUNISHABLE AS A CLASS A MISDEMEANOR, PURSUANT TO SECTION 210.45 OF THE PENAL LAW.

SUBSCRIBED BEFORE ME THIS 29TH DAY OF JANUARY 2013.


PO JOSEPH IPPOLITI

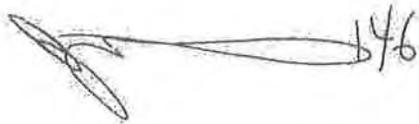

LT JOHN M KLINDWORTH

01 30 2013 15
DISTRICT CLERK

ITC
IT - 30 DAYS

BJ's in Levittown. to deny the return from them. At approx 5:15 pm the male subject, who I now know as John A Hines walked into the Freeport BJ's to return the 40" Samsung TV that he bought earlier. The police were then called. The male subject, John A Hines, used a BJ's membership card # 12741558115. The female subject used membership card # 13643543114. These subjects did not have permission to use counterfeit money for these purchases. I want an arrest to be made, PO Ippoliti prepared this statement for me and its the truth.



PO  146

FREEPORT POLICE DEPARTMENT
SUPPORTING DEPOSITION

INSTRUCTIONS: Deponent must place signature immediately after his/her narrative statement which shall include a statement of non-permission when applicable. Police Officer will complete boxed area of form and will witness the deponent's statement by placing signature immediately below the deponent's signature.

Case Report # D-424-13	DD No	Defendants Name if Known		Relationship of Deponent to Property
Date & Time of Deposition 01-29-13 1910	WITNESS	Rank PO	Name Printed Ippoliti	Serial No. 41330
				Command Freeport

NOTICE

ANY FALSE STATEMENT MADE IN THIS DEPOSITION IS PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW.

I am Dorovan Walcott I have read and understand the above notice.

On the 29 day of January 2013 at about 2:30 AM PM I was at work 100 Mill Rd, Freeport where I am employed as a BJ's store register clerk. At approx 2:43 pm I was at register 10 when a male black came to the counter and proceeded to buy \$942.73 worth of store items. This subject gave me 10 \$100 Bills. I gave him the change and he left. At 2:58 pm a female black, heavy set, dark skin, 30-40 yrs old came to my register and she bought \$2,527.68 worth of items. She gave me 26 \$100 Bills. I gave her the change back and she left. On both of these transactions I checked the bills with the marker and the bills appeared to be good. This is the first time that I observed these subjects. I do not have any relationship with these subjects prior to these transactions. PO Ippoliti prepared this statement for me and its the truth

Dorovan Walcott
PO [Signature] 146

J.D. No.

MISDEMEANOR INFORMATION DOMESTIC..

Case Report No RC-00782-13

Police Serial No: _____

Blotter/CC No. RC-008739-13

Appearance Ticket: _____

Return Date...:07/10/2013

Arrest Number... RC-00142-13

Court Docket No.: **015730**

Court Liaison No.: _____

Defendant in Custody from:12:17 July 10, 2013

to July 10, 2013

99 MAIN STREET

HEMPSTEAD, NY 11550

THE PEOPLE OF THE STATE OF NEW YORK
against

DAVID C SHARKEY (44)

106 N FOREST AVE APT A4

ROCKVILLE CENTRE, NY 11570-

D.O.B.:

(1) 12/06/1968

STATE OF NEW YORK^{SS}

COUNTY OF NASSAU

PO MATTHEW A VARIO, Shield 462, being duly sworn, deposes and says that he is a member of the Rockville Centre Police Department, County of NASSAU, New York and that on the 10 day of July, 2013, at about 12:17PM at 1 Jefferson Ave ROCKVILLE CENTRE in the County of NASSAU, New York.

DAVID C SHARKEY

OFFENSE

CRIM CONTEMPT 2

CLASS A

MISDEMEANOR

THE DEFENDANT(S) DID VIOLATE SECTION 215.50 SUBDIVISION 3 OF THE PENAL LAW OF THE STATE OF NEW YORK, IN THAT AT THE TIME AND PLACE AFORESAID, THE SAID DEFENDANT(S) DID INTENTIONALLY BECOME DISOBEDIENT OR RESISTANT TO THE LAWFUL PROCESS OR OTHER MANDATE OF A COURT, TO WIT; David Sharkey was present at home of Robert Sharkey (DOB: 07/02/1933) violating a duly served order of protection issued by the state of new York prohibiting David from the home. Stay away order was Issued by Judge Conrad D. Singerassell court order # 2013-003057, court docket # O-05575 -13

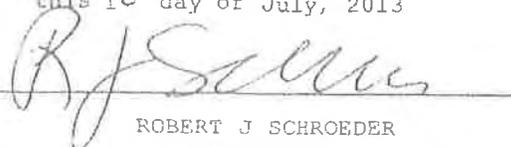
Supporting Deposition of ROBERT SHARKEY annexed hereto and made a part hereof.

This complaint is based on personal knowledge and information and belief, the source being, SUPPORTING DEPOSITION OF ROBERT SHARKEY

Any false statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the Penal Law.

Prepared By
PO M VARIO

Subscribed and sworn to before me
this 10 day of July, 2013


ROBERT J SCHROEDER
SERGEANT


MATTHEW A VARIO
POLICE OFFICER

**Page 2 of the NYS Domestic Incident Report:
STATEMENT OF ALLEGATIONS / SUPPORTING DEPOSITION**

Suspect Name (Last, First, M.I.)
Shurley, David

I, Robert Shurley 7/1/13 (victim/deponent name), state that on 7/10/13, (date) at 1100
Yo, _____ (nombre de victima/deponente), declaro que en tal fecha 7/10/13 en _____

(location of incident), in the County/City/Town/Village of Rockville Ctr, of the state of New York, the following did occur:
(donde el incidente ocurrio), el condado/ciudad/aldea/pueblo de _____, del estado de Nueva York, lo siguiente ocurrio:

Robert
my son David came over my apt located at 1 Jefferson Ave Apt A4 to check on me and help take care of me. While he was here so was my son David who is not supposed to be here. They both began arguing and the two got into a fight.

(Use additional pages as needed)

False Statements made herein are punishable as a Class A Misdemeanor, pursuant to section 210.45 of the Penal Law.
Declaraciones falsas hechas aqui son castigables como una clase de delito menor, de acuerdo con la seccion 210.45 de la ley penal.

Robert Shurley
Victim/Deponent Signature
Firma de victima/deponente

7/10/13
Date
Fecha

Note:
Whether or not this form is signed, this DIR form will be filed with law enforcement.
Nota:
Si esta forma esta firmada, o no, esta DIR forma sera registrada con la policia.

Interpreter
P.O. [Signature]

Date
7/10/13
Date

Witness or Officer

Page
2
of
2

DISTRICT COURT OF NASSAU COUNTY
SECOND DISTRICT: HEMPSTEAD PART

DISTRICT COURT
OF NASSAU COUNTY
2013 AUG 22 AM 10:53
SECOND DISTRICT

-----x
THE PEOPLE OF THE STATE OF NEW YORK

-Against

Nesslene Rafalowitz
2314 Milburn Avenue
Baldwin, NY 11510

11565/13
ORIGINAL

-----x
STATE OF NEW YORK)
COUNTY OF NASSAU) SS.:

JON LIPINSKY, CODE ENFORCEMENT OFFICER of the Town of Hempstead, Department of Buildings, being duly sworn, deposes and says that on July 25, 2013, at premises located at: **2314 Milburn Avenue; Baldwin, NY , 11510** in the Town of Hempstead, County of Nassau and State of New York, the defendant did violate the provisions of the Property Maintenance Code of New York State of New York, as follows:

COUNT I

33556

Violated the **Property Maintenance Code of New York State of New York, Article 1 Section 107.4**, by unlawfully residing in placard dwelling unfit for human occupancy.

To wit: At the aforementioned time and place, your deponent observed unfit posters removed from dwelling, dwelling is unfit for human occupancy.

That the **Property Maintenance Code of New York State of New York**, as amended was duly and legally adopted, enacted, published and posted by the Town Board of the Town of Hempstead, and filed in the Office of the Town Clerk prior to **July 25, 2013**, and said ordinances are still applicable

That at all times hereinabove the abovementioned defendant, **Nesslene Rafabowitz**, is the Owner of the abovementioned premises.

The above statements are true based on my personal observations and upon information and belief based upon public documents, which are attached hereto; and as to those statements, I believe them to be true.

FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW.


Jon Lipinsky
Code Enforcement Officer

NASSAU COUNTY POLICE DEPT
DUI/DWI SUPPORTING DEPOSITION AND BILL OF PARTICULARS -PCDN 93ASJ

Printed 08/21/2012-08:32

By 9098SCHWA

Page 1

Arrest# 212AR0013212 Arrest Date 08/20/2012 23:00

THE PEOPLE OF THE STATE OF NEW YORK AGAINST:
KARIM M CASTILLO,, DOB 05/28/1965

The above defendant is charged by Simplified Traffic Information with operating a motor vehicle under the influence of alcohol or drugs, contrary to Section 1192 of the Vehicle and Traffic Law. A SUPPORTING DEPOSITION and BILL OF PARTICULARS pursuant to Section 100.25 and 200.95, respectively, of the Criminal Procedure Law are hereby provided, as follows:

On 08/20/2012, at or about 22:54, at the vicinity of LONG BEACH RD/ISLAND PKWY, ISLAND PARK, County of Nassau, State of New York, the Defendant, KARIM M CASTILLO,, did operate a motor vehicle under the influence of alcohol or drugs, contrary to section 1192 of the Vehicle and Traffic Law.

While on routine patrol the arresting officer observed a 2011 Honda Pilot NY reg FTJ1475 that crashed into a pole on the corner of Long Beach Road and Island Pkwy. Directly behind the Honda was a 2011 Dodge Charger NY reg GAB8031 There was another vehicle at the scene that witnessed the auto accident that was uninvolved with other parties. After approaching the vehicles I noticed the defendant in the drivers seat of the Honda pilot. After removing her from the vehicle and placing her in the ambulance Po Schenfeld had noticed blood shot glassy eyes slurred speech and a strong smell of a alcoholic beverage. Po Schenfeld then administered the PBT with a positive reading of .15 %bac. The defendant was then placed under arrest at 2300hrs and transported to SNCH in ambulance 2364 for medical evaluatuion. Wilfredo Acuna was the operator of the Dodge Charger still in the driver seat . He is recently divorced from the defendant . Wilfredo was also arrested by Po schenfeld for DWI and criminal contempt. A blood kit #1686 was brought to the hospital for the defendant by Po Mitchell. At 2359 hrs the defendant was asked to give a chemical test of her blood and consent was given. The defendant was discharged from the hospital at 0150 hrs and transported to CTS in RMP 421 for arrest processing . The vehicle was impounded to K&G garage located at 656 rockaway tpke. impound # 207.

Defendant has the following prior conviction(s) for section 1192:

NONE

* ANY FALSE STATEMENT MADE HEREIN IS PUNISHABLE AS A CLASS A MISDEMEANOR,
PURSUANT TO SECTION 210.45 OF THE PENAL LAW.

Subscribed before me this
21ST day of AUGUST 2012.



PO CHRISTOPHER LEEK



SGT MARGARET M KING

DISTRICT COURT -- INFORMATION

Citation#

CR#

Arrest# 213AR0004361

Return Date 04/09/2013

Date / Time of Arrest 04/08/2013 at 14:25

Court Docket

DOB
03/17/1980

Age
33

Offense

220.03

CRIM
POSS CNTRL
SUBS 7TH

A
MISDEM

Sector
325

Prepared By
7830MIGLI

FIRST DISTRICT

THE PEOPLE OF THE STATE OF NEW YORK AGAINST

ANDRE ESSABBA
455 NASSAU BLVD
WEST HEMPSTEAD NY 11552

IN THE STATE OF NEW YORK COUNTY OF NASSAU: DET ANNE MARIE MIGLIORE, SHIELD# \1220, BEING A MEMBER OF THE NASSAU COUNTY POLICE DEPT DEPOSES AND SAYS THAT ON OR ABOUT THE 8TH DAY OF APRIL, 2013, AT ABOUT 2:25 PM, AT 100 CARMAN AVE BLDG D EAST MEADOW, THE DEFENDANT DID VIOLATE NEW YORK STATE PENAL LAWSECTION(s) §220.03 .

§ 220.03 CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SEVENTH DEGREE. A PERSON IS GUILTY OF CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SEVENTH DEGREE WHEN HE KNOWINGLY AND UNLAWFULLY POSSESSES A CONTROLLED SUBSTANCE.

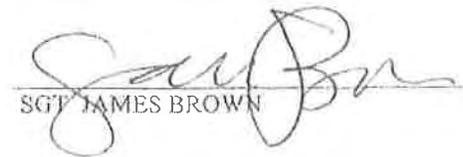
TO WIT: On the aforementioned date and time, the defendant Andre Essabba, while on the grounds of the Nassau County Correctional Center in East Meadow, NY, did knowingly and unlawfully introduce dangerous contraband into a detention facility. The defendant, passing numerous signs stating that all forms of contraband were forbidden, and after a positive hit by Canine "Togo" and his handler, NCCO Marino, was found to be in possession of one and a half, yellow, rectangle pills, known to be alprazolam, in his right front pocket of the blue jean pants, which he had been wearing at that time. The substance recovered believed to be alprazolam is based on your deponent's nine years of law enforcement experience from the Nassau County Police Academy and numerous drug arrests.

The above is based on information and belief, the source of said information and the basis for such belief, being the supporting deposition, the recovered evidence and the Police investigation, which have been annexed hereto and made part hereof.

* ANY FALSE STATEMENT MADE HEREIN IS PUNISHABLE AS A CLASS A MISDEMEANOR, PURSUANT TO SECTION 210.45 OF THE PENAL LAW.

SUBSCRIBED BEFORE ME THIS
9TH DAY OF APRIL 2013.


DET ANNE MARIE MIGLIORE


SGT JAMES BROWN