

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. F01-7975

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STATE OF FLORIDA,
Plaintiff,
vs.
SEAN D. CASEY,
Defendant.

ORIGINAL

FILED FOR RECORD
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OFFICE OF THE CLERK OF COURTS
MIAMI COUNTY, FLORIDA
CIRCUIT CRIMINAL #5

J. BICKETT

Transcript of proceedings and testimony taken
before the Honorable DARYL E. TRAWICK, Judge of the Criminal
Court in Courtroom 7-2 of the Richard E. Gerstein Justice
Building, 1351 N.W. 12th Street, Miami, Florida, on Wednesday,
October 10, 2001.

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I N D E X

KATHERINE FERNANDEZ-RUNDLE
STATE ATTORNEY
BY: ANTHONY ACCETTA
ASSISTANT STATE ATTORNEY
On behalf of the Plaintiff,
The State of Florida.

MILTON HIRSH, P.A.,
BY: MILTON HIRSH, ESQ.,
On behalf of the Defendant.

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Steven Nagel	9	14		
Robert Hundevadt	21	48	75	
Robert Silvagni	83	97	117	118

E X H I B I T S

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1 (Thereupon, the following proceedings were had:)

2 THE COURT: We are here on a motion to suppress in
3 the case of State of Florida versus Sean Casey, Case
4 Number F01-7975.

5 Appearances, please.

6 MR. ACCETTA: Anthony Accetta on behalf of the
7 State.

8 MR. HIRSH: Milton Hirsh of Milton Hirsh, P.A., on
9 behalf of the defendant, who is present.

10 THE COURT: Good afternoon, Mr. Hirsh.

11 All right, Mr. Hirsh.

12 MR. HIRSH: First of all, may I respectfully request
13 that the rule of witness sequestration be invoked?

14 THE COURT: The rule has been invoked. Both sides
15 are responsible for enforcing as to their own witnesses.

16 MR. HIRSH: Next, Your Honor, so that we can make
17 the best possible use of time, I respectfully request
18 pursuant to 90.202(6), that the Court take judicial
19 notice of the following items:

20 Number one, the three pending motions that bring us
21 here today. That would be the Defendant's Motion to
22 Suppress evidence unlawfully seized on May 16th.

23 The Defendant's Motion to Suppress confession or
24 admission illegally obtained, dated July 11th, and the
25 Defendant's Supplementary Motion to Suppress, dated

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August 29th. I also ask that the Court, pursuant to the same sub-section, take judicial notice that at or about the time of the search and seizure in question there was no search warrant.

Similarly, at the time or in connection with the interrogation, their questioning, there was no Miranda Rights Waiver in the file.

THE COURT: State, is there an issue regarding the fact whether there was search warrants or whether Mirandas have been given to the defendant?

MR. ACCETTA: No, Judge. There is no search warrant on the day of March 11th. If defense counsel is alluding to that, of 2000.

THE COURT: Okay.

MR. ACCETTA: And with regarding to taking judicial notice, I don't see that there is a problem with that. These are motions that I was given regarding --

THE COURT: Will the State stipulate to those search warrants?

MR. ACCETTA: For that particular day?

THE COURT: For that particular day.

MR. ACCETTA: Correct, there was no search warrant.

THE COURT: Will the State stipulate that on the date the defendant was questioned that no Miranda Warnings were given?

1 MR. ACCETTA: Well, there was Miranda Warning given,
 2 but there was no statements made by the defendant after
 3 they were given. They were given when he was arrested
 4 later that afternoon at approximately three p.m. There
 5 was Miranda Warning given verbally by Officer Silvagni.

6 THE COURT: This is on March 11th?

7 MR. ACCETTA: Yes.

8 MR. HIRSH: If the matter is uncontroverted, Your
 9 Honor, the only notice the Court could take today is
 10 there would be nothing written in the file reflecting
 11 that.

12 Mr. Accetta indicates or he agrees that, in other
 13 words, that the warnings, if any, were given orally. I
 14 had a transcript prepared by office, which is by no means
 15 official, of the taped statement taken from Mr. Casey.

16 It says -- it has Officer Hundevadt speaking who
 17 says, "Today's date is March 11th, 2001, the starting
 18 time of this statement is about 1:47 p.m."

19 I think the State can stipulate that in connection
 20 with this taped statement, which is the most of what I
 21 seek to suppress in connection with the motion regarding
 22 testimonial evidence, that there have been no Miranda
 23 Warnings at that time.

24 MR. ACCETTA: At that time, Judge. Miranda was
 25 given when he was placed under arrest. He had made no

1 statements post Miranda, so that is really not an issue.
2 He invoked --

3 THE COURT: From what I hear of that stipulation
4 from the State that there were no Miranda Warnings prior
5 to the defendant being placed under arrest.

6 MR. ACCETTA: Correct.

7 THE COURT: Okay. All right, Mr. Hirsh, you may
8 proceed.

9 Actually, if there is any argument that you might
10 want to make.

11 MR. HIRSH: No, I have none.

12 THE COURT: All right. No argument.

13 State, do you have any argument that you wish to
14 make prior to calling witnesses?

15 MR. ACCETTA: No, Judge.

16 THE COURT: All right. Let's have your witnesses
17 then.

18 MR. ACCETTA: The State calls Officer Nagel. Would
19 you like me to get him?

20 THE COURT: Yes.

21 THEREUPON:

22 OFFICER STEVEN NAGEL
23 was called to testify on behalf of the Plaintiff, and after
24 being first duly sworn was examined and testified as follows:

25 THE COURT: Good afternoon.

1 THE WITNESS: Good afternoon, Judge. How are you?

2 THE COURT: Fine.

3 MR. ACCETTA: May I proceed, Your Honor?

4 THE COURT: Yes.

5 DIRECT EXAMINATION

6 BY MR. ACCETTA:

7 Q. State your name for the record.

8 A. Steven Nagel.

9 Q. How are you employed?

10 A. I'm a police officer with the City of Miami Beach.

11 Q. How long have you been employed in that capacity?

12 A. It will be 24 years in November.

13 Q. And were you so employed back on March 11th of 2001?

14 A. Yes.

15 Q. In what capacity were you employed? What were your
16 duties on that day?

17 A. I was the on-call traffic homicide investigator.

18 Q. And did you respond to a traffic homicide earlier
19 that morning?

20 A. Yes.

21 Q. Where did you respond to?

22 A. 78th and Harding.

23 Q. Please explain to the Judge what you observed upon
24 arrival.

25 A. When I arrived I observed the scene secured with

1 crime scene tape and officers with the deceased victim lying
2 on the right-hand side of the roadway.

3 Q. Were you given any description of a vehicle that may
4 have been involved in that incident?

5 A. I was advised when I arrived that the original BOLO
6 had been issued for a red BMW, that was shortly afterwards
7 changed to a black BMW driven by a black male.

8 Q. Once you were given this information regarding a
9 black BMW did you leave the scene?

10 A. No, I did not.

11 Q. Approximately how long did you remain at the 78th
12 Street and Harding Avenue crime scene?

13 A. I was there approximately an hour.

14 Q. At some point in time in your investigation was --
15 did you discover that some passed away?

16 A. Yes.

17 Q. Do you know that person's name?

18 A. Mary Montgomery.

19 Q. Was that -- based on your knowledge of the scene or
20 based on your observations, was that caused by this alleged
21 black BMW that was involved in the incident?

22 A. At the time we weren't sure of that. We were
23 certain that it was caused by a motor vehicle crash.

24 Q. Were there any items at the scene that indicated a
25 motor vehicle was involved?

1 A. There were some small body pieces of a car in the
2 roadway.

3 Q. Was there a rearview mirror?

4 A. It was part of a side view mirror and part of a
5 windshield wiper.

6 Q. Were there any witnesses indicating that it was a
7 vehicle which struck this pedestrian, Ms. Montgomery?

8 MR. HIRSH: Objection, calls for hearsay.

9 MR. ACCETTA: Judge, hearsay is admissible at
10 hearings.

11 THE COURT: It is admissible to a limited extent. I
12 will overrule the objection. Go ahead

13 THE WITNESS: We had witnesses from the original
14 call-in that advised that the vehicle, a vehicle had hit
15 the pedestrian.

16 BY MR. ACCETTA:

17 Q. At some point did you learn that a black BMW was
18 located matching the description that was originally given at
19 the scene?

20 A. Yes.

21 Q. And when you -- approximately how long did it take
22 before you received that information?

23 A. I was probably on the scene for probably 10 or 15
24 minutes before I heard about it.

25 Q. How long did it take you to respond to where the

1 vehicle was located?

2 A. I responded to that scene approximately about an
3 hour after arriving on the original scene.

4 Q. Once you arrived on the scene, please explain to the
5 Judge what you observed.

6 A. Which scene?

7 Q. Where the BMW was located.

8 A. Where the BMW was? The car was parked -- it was a
9 parking area that is public property on Gary Avenue on
10 Parkview Island. The car was parked facing in in proximity to
11 regular parking, legal parking spots. It had damage to the
12 right front, including the windshield, which was broken
13 through and it had groceries scattered inside. There were
14 beer cans that were consistent with beer cans found at the
15 scene that were part of the groceries that were believed the
16 victim was carry back from Publix.

17 MR. HIRSH: Objection to the hearsay basis of the
18 knowledge and the witness is not competent to make that
19 statement.

20 THE COURT: The officer may testify as to what facts
21 he observed.

22 THE WITNESS: We did. We observed food products,
23 specifically, grapes, I believe some bananas that were
24 inside the car, beer cans, Heineken beer cans that were
25 inside the car, along with hair and tissue that was

1 inside the windshield and inside the vehicle.

2 BY MR. ACCETTA:

3 Q. These items, these grocery items, were they all at
4 the crime scene in the roadway?

5 A. Yes. They were consistent with groceries that were
6 found at the scene.

7 Q. Once you -- were you making these observations
8 outside of the vehicle? Were they in plain view?

9 A. Yes.

10 Q. At this point, approximately what time would it be
11 when you are making these observations where the BMW was
12 found?

13 A. It was approximately a quarter after twelve noon.

14 Q. Twelve noon. Did you find at that point any
15 information regarding the ownership of the vehicle?

16 A. We had the owner's name based on running the tag
17 through NCIC-VIC.

18 Q. Approximately how long did you remain at the scene
19 where the BMW was located?

20 A. I was originally there for approximately 10, 15
21 minutes.

22 Q. Did you in those 10, 15 minutes, did you learn of
23 any information regarding the vehicle had been reported
24 stolen?

25 A. Yes. We had been advised by a third party that the

1 owner had been contacted and that he had been reporting the
2 vehicle stolen.

3 Q. Did you proceed to make sure that the vehicle would
4 have been impounded as to standard procedure in the City of
5 Miami Beach Police Department?

6 A. Yes.

7 Q. And for as much as, you know, to the best of your
8 knowledge, do you know if that vehicle was impounded?

9 A. Yes.

10 Q. Is that standard procedure when you have a stolen
11 vehicle that was recovered?

12 A. Yes.

13 Q. Was Crime Scene ever dispatched to the location of
14 both the crime scene of 78th Street and Harding where you
15 originally responded and to the location of the black BMW?

16 A. Yes.

17 Q. What was your involvement at this point after the
18 vehicle was being processed to be taken?

19 A. At the scene of the vehicle I was only there briefly
20 for 10 or 15 minutes. The doctor from the Medical Examiner's
21 Office was there taking photographs, as well as our Crime
22 Scene techs were there taking photographs.

23 I left prior to the car actually being towed to our
24 station.

25 Q. Was the vehicle eventually towed to your station?

1 A. Yes.

2 Q. And once you arrived at the station, did you make
3 any contact with the person, the owner of the vehicle?

4 A. I did not.

5 Q. Did that person who later became known to you as
6 Sean Casey as the registered owner of that black BMW?

7 A. Yes.

8 Q. Now, on March 11th, earlier that morning, actually,
9 early afternoon, at some point in time did you make contact
10 with the owner of that vehicle?

11 A. It was later in the afternoon at his apartment and
12 then Officer Silvagni, Sergeant Hundevadt, they were there
13 with the defendant.

14 Q. Was that the first time you met with Officer
15 Silvagni and Sergeant Hundevadt?

16 A. Yes.

17 Q. At that point in time, what was your role in the
18 investigation?

19 A. I was basically doing investigation as far as the
20 accident for the crash.

21 Q. Did you aid in any way with regard to Officer
22 Silvagni and Sergeant Hundevadt at the defendant's home?

23 A. No, not much more than just being there.

24 Q. When you arrived at the home of the defendant, do
25 you recall him being in custody or being in handcuffs when you

1 first arrived?

2 A. No, he wasn't.

3 Q. To the best of your knowledge, was the address in
4 which you responded to 1000 West Avenue, Apartment No. 1209,
5 Miami Beach, Florida?

6 A. Yes.

7 MR. ACCETTA: I have no further questions of this
8 witness, Judge.

9 THE COURT: What is the apartment number again? I'm
10 sorry.

11 MR. ACCETTA: 1209.

12 THE COURT: All right.

13 Sir?

14 MR. HIRSH: Yes. Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. HIRSH:

17 Q. Did I hear you to say, Officer Nagel, that the
18 procedure of the City of Miami Beach Police Department is to
19 impound an automobile in circumstances like these
20 circumstances?

21 A. Yes.

22 Q. And in connection with such an impound is it also
23 the practice of the City of Miami Beach Police Department to
24 inventory the contents of the automobile?

25 A. Yes.

1 Q. Did you participate in that inventory?

2 A. Yes.

3 Q. Do you have it with you? Do you have a written
4 inventory with you?

5 A. Are you referring to the actual inventory of the car
6 when it was towed from the original scene? No, it wasn't. I
7 wasn't there when the car was originally towed from the scene.

8 Q. All right. My understanding, and please correct me
9 if I am wrong, is that when a car is impounded it is taken to
10 a secure facility and at that facility its contents are
11 inventoried; am I not correct about that?

12 A. Most of the time it is done on the scene when the
13 car is towed. In this case, Officer Bowers is the officer
14 that towed the vehicle. We did do our inspection of the
15 vehicle at the scene -- at the station.

16 Q. At the station?

17 A. Yes.

18 Q. A formal inventory?

19 A. Yes.

20 Q. Is there a written inventory list?

21 A. There is a property receipt that are of items that
22 the ID tech took from the vehicle.

23 Q. Have you ever seen that?

24 A. I have seen it, yes.

25 Q. Are you familiar with its contents?

1 A. Roughly, yes.

2 Q. Do you have it with you?

3 A. I don't have it with me.

4 Q. Do you know of your own knowledge if an effort was
5 made to determine if any items of personal identification such
6 as driver's license, wallet, credit cards or the like were
7 found in the interior compartment or the passenger compartment
8 of the automobile?

9 MR. ACCETTA: Objection to the relevance on a Motion
10 to Suppress, Judge, what items were found.

11 THE COURT: Objection overruled.

12 THE WITNESS: I don't recall.

13 BY MR. HIRSH:

14 Q. Do you know of your own personal knowledge whether
15 any physical evidence -- did you personally -- let me ask it
16 this way. Did you personally impound or take custody of any
17 items from the interior of the car from the passenger
18 compartment of the car?

19 A. I don't believe so.

20 Q. You would not be on the chain of custody as to
21 anything found in the car?

22 A. Within the car at that time?

23 Q. Yes.

24 A. No.

25 Q. But within the car at any time?

1 A. Later on after search warrants, yes.

2 Q. After the search warrants, which were months later,
3 correct?

4 A. I don't recall how long later it was, but --

5 Q. Does that sound right to you?

6 A. Probably a couple months later.

7 Q. Did you make any effort on or about March 11th,
8 March 11th or 12th, let's say, for round numbers, did you
9 personally make any effort to determine if there were any car
10 keys in the car?

11 A. Yes, we did find a -- the valet key was inside the
12 car.

13 Q. When you say "valet key," that is the key that turns
14 the car on, you can drive with that car, correct?

15 A. I don't know if it can or if it can't.

16 Q. That is the ostensible purpose of the valet key, is
17 it not, Officer Nagel?

18 A. One would think so, but I am not an expert on BMWs,
19 so I do not know.

20 Q. By describing it as valet key, you meant to say it
21 is the kind of key that someone customarily gives to the valet
22 at a valet parking lot, right?

23 MR. ACCETTA: Objection as to what he meant to say.

24 MR. HIRSH: I'm asking what he meant to say.

25 THE COURT: Overruled.

1 THE WITNESS: I believe so.

2 BY MR. HIRSH:

3 Q. Did you try to drive that car with that key?

4 A. I didn't try to drive the car, no.

5 Q. Did you try to turn the ignition on with that key?

6 A. I did try to turn the ignition on with that key to
7 get the mileage, but that is part of one of the things we do
8 in our inspection for traffic homicides and we couldn't get
9 the car to display the mileage.

10 Q. Which could turn the engine on?

11 A. I guess it could. We didn't try to.

12 Q. Okay. Did you personally observe anyone make any
13 effort to recover fingerprints inside the passenger
14 compartment of the car?

15 A. I believe that -- well, I don't recall. You would
16 have to ask the Crime Scene tech. That is their department.

17 Q. That's fine. Did you participate in an area canvass
18 where the car was found?

19 A. An area canvass, no.

20 Q. Are you aware which officers, if any, participated
21 in an area canvass? Do you know what I mean by an area
22 canvass?

23 A. I assume you mean checking an area for possible
24 subjects?

25 Q. Yes.

1 A. I don't know. I was busy at the scene.

2 Q. For possible witnesses?

3 A. I am not aware of it.

4 Q. You don't know of your own knowledge whether any of
5 your fellow officers went to any of the nearby apartment
6 dwellers and asked if they had seen who got out of that car?

7 A. No, I did not.

8 Q. Do you know if such an area canvass was done?

9 A. I do not know, no.

10 Q. If I were to ask you what if any physical or
11 evidentiary matter was taken out of the interior or that car,
12 you can't tell me, correct?

13 A. Evidentiary material?

14 Q. Anything.

15 A. I believe there was some Heineken beer cans that
16 were taken out of the car, glass collected out of the car,
17 tissue, hair was taken from both inside the vehicle and the
18 outside.

19 Q. And you were not on the chain of custody to see any
20 of those things?

21 A. No. The Crime Scene techs collected all of that
22 there.

23 Q. Did you at any time enter the car?

24 A. Yes.

25 Q. Tell me about it.

1 A. When we were doing the vehicle inspection and when
2 we were trying to figure out what the mileage was.

3 Q. That was at the scene where the car was recovered?

4 A. No. That was at the station.

5 Q. That was at the police department?

6 A. Yes.

7 Q. But that was still on March 11th?

8 A. Yes.

9 Q. So you and one or more of your brother officers
10 entered the car?

11 A. Yes.

12 Q. And we are entirely in agreement that you had no
13 warrants at that time, correct?

14 A. Correct.

15 MR. HIRSH: Very good. Thank you, Officer.

16 THE COURT: Redirect.

17 MR. ACCETTA: No, Judge.

18 THE COURT: Thank you, Officer.

19 Next witness.

20 MR. ACCETTA: Sergeant Hundevadt.

21 THEREUPON:

22 SERGEANT ROBERT HUNDEVADT

23 was called as a witness by the Plaintiff and after being first
24 duly sworn was examined and testified as follows:

25 THE COURT: You may proceed, State.

1 MR. ACCETTA: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. ACCETTA:

4 Q. Please state your name for the record.

5 A. Robert Hundevadt.

6 Q. And how are you employed?

7 A. I'm a sergeant with the City of Miami Beach Police
8 Department.

9 Q. How long have you been employed with the City of
10 Miami Beach Police Department?

11 A. I am on my 21st year.

12 Q. Were you so employed back on March 11th of 2001?

13 A. Yes, I was.

14 Q. In what capacity were you employed?

15 A. I was a sergeant of police assigned to the Uniform
16 Patrol Division.

17 Q. Were you on duty the morning of March 11th?

18 A. Yes, I was.

19 Q. Did you respond -- did you get any information
20 regarding a traffic fatality that occurred on Harding Avenue
21 and 78th or 79th Street?

22 A. Yes, sir, I did.

23 Q. Could you please explain to the Judge when you first
24 learned about this incident?

25 A. We normally dispatch over two channels, but when

1 they issue a BOLO they will simulcast it over both channels,
2 which is divided into two zones. I was supervising the south
3 zone with Sergeant Devaney, so I heard the BOLO for the Be On
4 The Lookout simulcast over the south channel.

5 Q. Could you please explain to the Judge what you heard
6 come over the BOLO? Not the entire BOLO, but the substance of
7 it.

8 A. A black BMW, possibly driven by the black male.
9 What I am referring to is my supplemental report.

10 Q. And in your supplementary report, would that be
11 police case number 0149143?

12 A. Yes, sir.

13 MR. HIRSH: Forgive me for the interruption, but if
14 the witness is going to be referring to his report, I
15 would think I ought to be provided with a copy of it.

16 MR. ACCETTA: Judge.

17 THE COURT: So far he has not referred to it, but
18 are you going to be using that at all?

19 THE WITNESS: Only if I can't answer the question.

20 THE COURT: All right. If that happens, then I will
21 allow you to review it.

22 MR. HIRSH: Thank you.

23 MR. ACCETTA: Judge, just for your information,
24 there has been no discovery being invoked in this trial
25 and I would object to defense counsel being provided any

1 defense report.

2 THE COURT: If the witness does use it he is
3 entitled to use it.

4 MR. ACCETTA: That specific portion, not the entire
5 report.

6 THE COURT: Let's deal with it when it comes up.

7 THE WITNESS: I have closed the file.

8 THE COURT: All right. Thank you.

9 BY MR. ACCETTA:

10 Q. Once you receive this BOLO, basically Be On The
11 Lookout, is that what BOLO stands for?

12 A. Yes, sir.

13 Q. Now, where were you? What area were you in and who
14 were you with?

15 A. I was with Sergeant Pat Devaney, I was in South
16 Miami Beach. We usually assign two supervisors to supervise
17 the south district from Miami Beach regarding calls.

18 Q. Your capacity of your duties on that day were just
19 to supervise routine police patrols?

20 A. Uniform patrol, yes.

21 Q. Now, did you ever respond to that actual scene on
22 79th Street and Harding Avenue?

23 A. No.

24 Q. Where did you first respond once you received this
25 information?

1 A. I was riding with Sergeant Devaney and Sergeant
2 Devaney was requested to respond to, I think it was, 1100 West
3 Avenue.

4 Q. Okay.

5 A. In order to 15 or meet with uniform officers who
6 were there.

7 Q. And where did you respond?

8 A. To 1100 West Avenue.

9 Q. Was this information put out on a Be On The Lookout
10 for, the address?

11 A. No.

12 Q. How did you obtain this information?

13 A. Sergeant Miller, who was the supervisor in the North
14 District of Miami Beach, requested Sergeant Devaney and I
15 respond to meet with the officers who were at that location.

16 Q. Do you know why you responded to that location at
17 that point?

18 A. Yes.

19 Q. What was the reason?

20 A. The owner, a possible owner of the vehicle used or
21 involved in the hit and run accident.

22 MR. HIRSH: Your Honor, I assume the Court is
23 accepting that as Postel, I assume, his basic conduct,
24 not for its truth?

25 THE COURT: Correct. It is being admitted for the

1 purposes of determining why the officer did what he did.

2 BY MR. ACCETTA:

3 Q. Once you responded to that location, did you know
4 whether or not a vehicle was recovered at that point?

5 A. No, I did not.

6 Q. What happened when you responded to that location?
7 Explain to the Judge.

8 A. We arrived at the -- this was the old Forte Towers
9 complex. You enter through the main entrance and went up to
10 one of the upper floors, I don't recall the number right
11 offhand, and as we exited the elevator we met two uniform
12 officers, Officer Jomarron, I believe, and Officer Randy Smith
13 and they were in the hallway with the defendant. I believe
14 Mr. Casey was at a table.

15 MR. ACCETTA: Let the record reflect the witness
16 identified the defendant.

17 BY MR. ACCETTA:

18 Q. What did you do at this point?

19 A. At this point we advised why were there. Officer
20 Jomarron, if I'm pronouncing his name correctly, advised me
21 that they were -- that this was Mr. Casey, the owner of the
22 vehicle, that he was attempting to contact, that they were en
23 route to the parking garage to ascertain if the vehicle was
24 there.

25 Q. Did you have an opportunity to speak with this