

**MINUTES
SPECIAL MEETING
MUNICIPAL COUNCIL – BOROUGH OF RED BANK
JUNE 14, 2007
7:00 P.M.**

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT: Mayor Menna and Council Members Curley, Murphy, Lee, DuPont and Cangemi.

ALSO PRESENT: Borough Clerk Vivona, Acting Borough Attorney Michael Holzapel, Assistant Attorney Hall, representing the Borough of Red Bank, Samuel Reale and John Vassallo, representing Best Liquors of Red Bank, Inc.

ABSENT: Councilman Bifani, Chief Financial Officer Mason, Attorney Pringle, Administrator Sickels and Engineer Kosenski.

SUNSHINE STATEMENT

Mayor Menna requested the minutes reflect that, in compliance with Public Law 1975, Chapter 231 (Open Public Meetings Act), notice of this meeting has been provided by notifying the Asbury Park Press, the Courier, the Two River Times and the Star Ledger and by placing a notice on the bulletin board and filing same with the Borough Clerk on June 1, 2007.

EXECUTIVE SESSION

07-151A The Attorney read a resolution to adjourn to executive session to discuss deliberations.

Mr. DuPont offered a motion, seconded by Mr. Murphy to adjourn to executive session to discuss deliberations. Minutes to be made public in 180 days.

ROLL CALL:

AYES: Curley, Murphy, Lee, DuPont, Cangemi

NAYS: None

There being five ayes and no nays, the motion was declared approved.

Mr. Murphy offered a motion, seconded by Mr. DuPont to adjourn from executive session.

ROLL CALL:

AYES: Curley, Murphy, Lee, DuPont, Cangemi

NAYS: None

There being five ayes and no nays, the motion was declared approved.

Continuation of Hearing Regarding Charges and Specifications against Plenary Retail Distribution License No. 1340-44-020-005 Currently Issued to Best Liquors of Red Bank, Inc.

MAYOR MENNA: As I said earlier, this is a continuation of the Best Liquors of Red Bank. Mr. Reale is here on behalf of the Licensee; Thomas Hall is here on behalf of the Borough of Red Bank. However, it is my recollection that the State's case has not been completed yet. Is that right, Mr. Hall?

MR. HALL: Right.

MAYOR MENNA: You have one more witness?

MR. HALL: The Borough calls --

MAYOR MENNA: I know there're some members of the public who are here this evening that were not here for the first part of the hearing. The way the proceedings are being conducted this evening there is a court reporter, which is obviously a young lady that's taking down all the information because in all

likelihood there will be other proceedings, either administrative or court proceedings, and, so, therefore, it's very, very important that the proceedings be clear, accurate and concise. The court reporter obviously has to take down all of the information that is being offered this evening by any party. So, therefore, the hearing has to be conducted in an orderly fashion. The State will present its witnesses. After the State finishes its presentation of its witnesses, Mr. Reale, on behalf of the Licensee, has the right to cross-examine those witnesses. At the conclusion of the State's case, Mr. Reale, if he wishes to do so, will present any testimony on behalf of the Licensee. Individuals who are not represented by counsel this evening do have the right to cross-examine any of the witnesses that are being offered by any party as part of the administrative proceedings. Therefore, the hearing will at some point conclude by statements and if anyone wishes to make a statement, and we'll get to that part later on, ask a question, you must be identified on the record, so you will have to come up and give your name and address for purposes of the record. Because the record has to be clear, I would insist that only one person, including counsel and people and professionals, speak at any given time so that the record is clear for any review body or agency. Having gone through those very simple instructions, Mr. Hall, I believe that you still have the case.

MR. HALL: The Borough calls Police Officer Broadley.

MAYOR MENNA: Officer, could you raise your right hand.

B E A U B R O A D L E Y called as a witness, having been first duly sworn, testified as follows:

MAYOR MENNA: Please state your full name as well as spell your last name for the court reporter and your professional relationship.

THE WITNESS: My name is Beau Broadley,

B-R-O-A-D-L-E-Y.

MAYOR MENNA: Please speak into the microphone, that does move, so people in the audience will be able to hear you also. I know you have a loud voice, so exercise it.

DIRECT EXAMINATION BY MR. HALL:

Q Good evening, Officer Broadley.

A Evening.

Q I direct your attention to November 22, 2006, a time around 6:45 in the evening. Where were you?

A 6:45 in the evening I was in an unmarked patrol vehicle on Catherine Street.

Q I ask you to move your chair in closer and speak into the mike.

A Okay.

Q I'll tell you if you're speaking too loud, don't worry. Okay. You were in an unmarked patrol car?

A That is correct.

Q And was that car parked or moving?

A Parked.

Q And where were you parked?

A On Catherine Street near Tilton Avenue.

Q Were you in plain clothes or uniform?

A Plain clothes.

Q What was your purpose in being there?

A To observe the area of the intersection, Catherine Street and Leighton Avenue.

Q Was there anything in particular you were looking at?

A We were positioned so that we could see the front of Best Liquors, 75 Leighton Avenue.

Q Have you ever been to Best Liquors before that date?

A Yes.

Q About how many times?

A Numerous times.

Q I direct your attention to 8:45 in the evening. What, if anything, happened at that time?

A At around that time I observed a green Ford Explorer approach southbound on Leighton Avenue, park on Leighton near Catherine Street, directly across from the liquor store.

Q What happened next?

A I could observe a male driver and a female in the front seat passenger, and the passenger side door of the vehicle opened and the female exited as well as a black male subject from the back seat and both subjects then entered the liquor store.

MR. HOLZAPFEL: Try if you can to speak as closely to the mike as possible.

Q Speak so I can hear you. Okay? Did you know the names of the two people who got -- who you just talked about, who got out of the car and went into the liquor store at that time?

A Not at that time, no.

Q Did you later learn their identities?

A Yes.

Q What did you learn it to be?

A Kristin Philpot of Red Bank and Stanley Bibens also Red Bank.

MAYOR MENNA: Mr. Hall, I'll have to tell you the same thing. I know you like to stand by the wall, stand over there because people can't hear you in the back. You got to be close to the microphone, there's --

THE WITNESS: I'm trying to get the officer to enunciate.

MAYOR MENNA: If he speaks into the microphone, we will hear him. If you get closer to him and he'll be closer to you.

Q All right. When you saw -- what happened next after you saw those two individuals, Ms. Philpot and Mr. Bibens, go into the store?

A I could see them inside of the store purchasing several items.

Q And did you see the items they were purchasing from where you were?

A I couldn't make out exactly what they were, no.

Q Okay. What was the next thing that happened?

A It appeared a transaction took place at the counter and both subjects exited the store, each carrying black plastic bags, which appeared to contain some sort of large item.

Q What was the next thing that happened after that?

A They both entered the vehicle. The driver of the vehicle, the male subject, I observed him through the passenger-side window holding one of the bags, going through the contents of the bag.

Q Then what happened next?

A The subjects exited the vehicle a second time, went back into the liquor store a second time, appeared to make a second purchase, and came out again with black plastic bags which appeared to --

Q Let me stop you. Subject went into the liquor store, who did you see go into the liquor store the second time?

A Both subjects, the male and female.

Q Thank you. Mr. Bibens and Ms. Philpot?

A Yes.

Q Please continue.

A They exited the vehicle -- correction. They exited the liquor store a second time and they were both observed carrying black plastic bags the second time that appeared to contain numerous large items.

Q What happened next?

A The female subject got back into the passenger side of the vehicle. The black male subject approached the driver's side of the vehicle. He then ran across the intersection towards the southeast corner of the intersection. At that time is when we decided we were going to effect a motor vehicle stop.

Q What did you do then?

A My partner for the evening, Patrolman DeMarco, activated the emergency lights on the vehicle and we effected a stop of the vehicle at its current location on Leighton.

Q Across from Best Liquors?

A Yes.

Q That was the Ford Explorer you testified about earlier?

A Right.

Q What happened next?

A All three of the subjects were separated, identified, and through the window of the vehicle you could see numerous 40 ounce bottles of alcoholic beverages.

Q Then what happened?

A The subjects were searched, placed under arrest for -- under possession of alcohol, the vehicle was searched for any further contraband. Each of the subjects was separated and taken to headquarters where they were processed.

Q What, if any, alcoholic beverages did you find inside of the vehicle?

A If I may refer to my report for the exact description.

Q Go ahead.

A Inside of the vehicle was located 4 40-ounce bottles of King Cobra malt liquor; 2 40-ounce bottles of Steel Reserve malt liquor; 4 bottles of Schmirnoff Ice; and one small bottle of Hypnotic liqueur.

Q Are those -- were those bottles in any other type of container when you found them in the car?

A Yes.

Q What were they in?

A They were contained in black plastic shopping bags.

Q Were those the same type of plastic bags that you saw Ms. Philpot and Mr. Bibens come out of the store with?

A That is correct.

MR. REALE: Objection. I don't know, since we haven't segregated or identified which plastic bags are

which, I don't know how he can testify as to whether they were the same as what he saw being carried out. He didn't approach anybody as they were carrying out the bags and he didn't effect a stop until afterwards.

MAYOR MENNA: Why don't you develop that line of questioning, Mr. Hall.

Q You saw both Ms. Philpot and Mr. Bibens come out of the store on two occasions, and they were carrying black plastic bags. Correct?

A That's correct.

Q Did you see what was inside of those black plastic bags from your vantage point as they came out of the store and went to the car?

A I could see they contained several items. I could not tell what they were.

Q And were the black plastic bags carried by both Ms. Philpot and Mr. Bibens similar in appearance?

A Yes.

Q Okay. Now, the black plastic bag that you found in the back of the car after you arrested Mr. Bibens and Ms. Philpot were they similar in appearance to the bags you saw those same two individuals coming out of the Best Liquors with on two occasions?

A Yes, they were.

Q Okay. By the way, from the time you saw Ms. Philpot and Mr. Bibens come out of the store a second time until you stopped their vehicle, did you ever lose sight of their vehicle?

A No, I did not.

Q Now, did you take pedigree information from Mr. Bibens and Ms. Philpot?

A Yes, I did.

Q Okay. How old was Mr. Bibens?

A Mr. Bibens at the time of the incident was 18 years of age.

Q Okay. And where did Mr. Bibens live?

A Evergreen Terrace, Red Bank.

Q Where is that in relation to Best Liquors?

A A few blocks away.

Q Now, did you take pedigree information from Ms. Philpot?

A Yes, I did.

Q How old was Ms. Philpot at the time that you arrested her?

A 15 years of age.

Q Okay. And where did Ms. Philpot live?

A Madison Avenue, Red Bank.

Q Where is Madison Avenue in Red Bank in relation to Best Liquors?

A It's on the eastern end of town, on the other side of Broad Street.

Q Is it -- withdrawn. About how many blocks or miles would you estimate Ms. Philpot's residence is from the best liquor?

MR. REALE: Objection. There's no, absolutely no relevance as to where she lives or how far it is. Either there was a sale from the location or wasn't a sale.

MAYOR MENNA: What's the relevance?

MR. HALL: The relevance is that people were going out of their way, I should argue, that they were coming from across town to go to this place.

MAYOR MENNA: They are not coming from across 10 miles. It's an 11-square mile town.

MR. HOLZAPFEL: The objection is sustained.

MAYOR MENNA: Okay.

Q Now, you testified earlier that you searched the car that they were in?

A Yes, I did.

Q And you testified earlier you found no contraband. Correct?

A That is correct.

Q And when you say you found no contraband, would that include any kind of false identification?

A Yes.

MR. REALE: Objection. First off, it's a leading question, and, secondly, I'd like Mr. Hall to somehow testify and if he wants he can be sworn and I'll be more than happy to cross-examine him.

MR. HALL: Excuse me?

MR. REALE: I'll be more than happy to cross-examine Mr. Hall if he wants to continue to testify. I mean it's an absolutely leading question.

MAYOR MENNA: In your --

MR. HOLZAPFEL: Ask him if he knows the term "contraband" and develop it from there.

Q What's your definition of contraband?

A Any illegal item.

Q Okay. Is it illegal to possess a fake ID?

A Yes.

Q Would you consider a fake ID to be contraband?

A I would.

MR. REALE: Objection again.

MAYOR MENNA: Noted for the record.

Q Okay. Did you -- was Mr. O'Brien, Mr. Bibens and Ms. Philpot searched here at the station?

A Yes, they were.

Q At police headquarters?

A That is correct.

Q Was any contraband found on their persons?

A No.

MR. HALL: At this time, Mr. Mayor, I ask that RB 7 and RB 8 be marked into evidence.

MR. REALE: I'm going to object to RB 7.

MAYOR MENNA: Let me see it first, Mr. Reale. It's a transcript of record. Is that correct?

MR. REALE: No. RB 7 is not the transcript.

MAYOR MENNA: It's a transcript of record from the court.

MR. REALE: That's RB 8.

MR. HALL: No. RB 7.

MAYOR MENNA: No. RB 7 is what I call the transcript of record. That's signed by Mr. Pasteriza (phonetic). RB 8 is the actual transcript.

MR. REALE: I refer to it as trying to pass for a judgment of conviction.

MAYOR MENNA: Well, that's -- AOC parlance is a transcript. What's your objection? It's an official document.

MR. REALE: Well, the reality is it does not set forth the charge that he pled guilty to. The summons that's being presented does not, in fact, charge the offense for which that defendant, Mr. Balvinder Singh, entered his plea of guilty. That's the first thing. The second thing is that the judgment -- the complaint summons does not need the first sheet of RB 7. RB 7 is simply a recitation by the clerk. It is not, in fact, the sentence that was imposed or the signature of the court, which, in fact, is the record. So the summary that's provided is, in fact, surplus and is not something that's the appropriate judgment or court record from Mr. Balvinder Singh's matter.

MAYOR MENNA: You have no objection to RB 8? Do you?

MR. REALE: RB 8 is the transcript of the court.

MAYOR MENNA: Okay.

MR. HOLZAPFEL: RB 5 is also, I'd like the point noted, in evidence similar to what was admitted RB 15 --

MR. DUPONT: There was no objection --

MR. HOLZAPFEL: There was no objection under those terms.

MR. REALE: That was then, this is now.

MR. HALL: I move 7 and 8 into evidence.

MR. DUPONT: Let's have a little consistency here. If you didn't do it the first time, doesn't make it right the second time.

MR. HOLZAPFEL: The document should be admitted.

(RB 7 and 8 received in evidence.)

Q Let me ask you to go to what has been marked as RB 24. I just ask you to put your initials BB, please, indicate the approximate location of where you were parked while you were observing 75 Leighton. Okay. Where was the vehicle that Mr. Bibens and Ms. Philpot arrived in? Where was that parked?

A Do you want me to draw it on the map?

Q Yes. Draw a box or rectangle indicating the approximate location of the vehicle. Make it big enough that we can see it. Put KP and SB in there somehow, the initials for Kristin Philpot and Stanley Bibens. Is that the approximate location where you stopped the vehicle?

A Yes, sir.

Q Okay. And that's the mark KB and SB?

A Correct.

Q From your vantage point there on Catherine Street, could you see the person who was working

behind the counter that night at Best Liquors?

A Yes.

Q Could you identify that person?

A I couldn't identify him from my vantage point.

Q Okay. Could you -- did you later learn the identity of the person who was working behind the counter?

A Yes, I did.

Q What did you learn?

A Balvinder.

MR. REALE: Objection. Calls for a hearsay answer.

(Whereupon, the requested portion is read back by the reporter.)

MR. HOLZAPFEL: He can answer the question.

A I learned that the subject name was Balvinder Singh.

Q Had you ever met Mr. Singh prior to November 22, 2006?

A I had seen him working in the store. I had never met him professionally, no.

MR. HALL: Okay. Nothing further.

MAYOR MENNA: Mr. Reale.

MR. REALE: Thank you.

CROSS EXAMINATION BY MR. REALE:

Q Officer, you weren't alone that night. Correct?

A No, I was not.

Q What time of the day was this that you were on this stake-out?

A Between the hours of -- if I can actually refer to my report.

Q Do you have to refer to your report?

A I can give you a roundabout without looking at the exact some time.

MR. HALL: Objection.

Q Do you have to refer to the report to refresh your recollection?

A No, not for the incident, no.

Q Do you have to refer to your report to refresh your recollection as to the time?

A The time of my shift or the time of the incident?

Q The time of the incident.

A The time of the incident, no, sir.

Q What was the time of the incident?

A Approximately, 8:45.

Q All right. And that would have been in November 22, 2006?

A That is correct.

Q So it was dark out. Correct?

A Correct.

Q And were there any street lights in the area that were illuminating the outside of the property?

A There were some. I don't recall if they were directly in my view.

Q Well, were the street lights – strike that. Was the lighting on inside of Best Liquors?

A Yes, it was.

Q Okay. Do you recall that in the windows of Best Liquors there are Neon signs that are lit in the evening?

A I don't recall.

Q You don't recall. Would a photograph from the outside of Best Liquors refresh your recollection?

A It may.

MR. REALE: Could I have that marked, please?

(L 4 marked for identification.)

MR. REALE: Mark this as 5 and 6.

(L 5 and 6 marked for identification.)

MR. REALE: I want you to do one more as 7.

(L 7 marked for identification.)

Q Officer, I show you what's been marked for our purposes as L 7. Do you recognize the scene depicted there?

A Yes, I do.

Q What's the scene depicted in that photograph?

A The storefront of 75 Leighton Avenue.

Q And does that photograph accurately depict as how the scene would have looked to you on November 22, 2006?

A I can't say that it does.

Q Well, does it, in fact, show Neon lights in the windows?

A Photograph does show that, yes.

Q All right. Do you recall the Neon lights being in the windows of Best Liquors in November 22nd of 2006?

A I don't recall that.

Q You don't recall. Let me ask you this question, Officer: If there were Neon lights in the windows as depicted in L 7, would you agree with me that that lighting would interfere with somebody's ability to look in the windows?

MR. HALL: Objection. Speculation.

MR. REALE: It's not speculating. You can either -- he can either agree or disagree. I'm addressing the court.

MAYOR MENNA: You're using a test of anyone. You can ask him whether or not it may have interfered in his view of the window.

MR. REALE: I'll rephrase the question.

Q Officer, L 7, the Neon lights that are depicted in that photograph do they block or interfere with a clear view through the windows into the store of Best Liquors?

A They hinder somewhat, but I could still see inside.

Q How much could you see inside the store of Best Liquors on November 22nd, 2006?

A Well enough to see the patrons inside of the store.

Q Now, how many patrons did you see in the store?

A At the time I was observing two.

Q How many other people were in the store at that time?

A I believe there was one other.

Q You're not certain, though?

A It was in another officer's report. It wasn't in mine.

Q Well, did you prepare a report?

A Yes, I did.

Q Well, in your report how many people did you recollect of being inside of Best Liquors?

A I observed two people enter and two people exit.

Q So you couldn't see how many other people were inside of the store?

A No, I could not.

Q And you couldn't see, what, if anything, went on between the two people who entered the store and any salesclerk that was in the store that evening. Correct?

A That's incorrect.

Q That is incorrect?

A I could see a transaction, yes.

Q Well, let me ask you a question: Let me show you what's been marked for our purposes as L 5. Do you recognize the scene depicted there?

A Yes.

Q All right. What's the scene that's depicted there?

A This is Leighton Avenue by an intersecting street which I didn't label.

Q As you look down Catherine Street, you can see a car parked on the left-hand side in that photograph. Correct?

A I can't say for certain if that's Catherine Street or not.

Q Well, you would agree with me that it's at least taken from Leighton Street. Correct?

A It appears that way.

Q Okay. And whatever that cross-street happens to be is there a car depicted on the left-hand side of that photograph parked down the block of whatever street that is?

A Yes, there is.

Q Okay. Now, for a moment setting aside the question about whether it's Catherine Street or not, is that car parked in about a similar position to where your car was parked on the evening of the 22nd?

MR. HALL: Objection. No foundation.

MR. REALE: All right.

Q Officer, now let me show you --

MR. HOLZAPFEL: Rephrase the question.

MR. REALE: I'll rephrase the question.

Q Let me show you what's been marked as L 6. Do you recognize that photograph?

A Yes, I do.

Q Do you recognize that scene a little better than the other scene?

A Yes, I do.

Q Can you now tell what location it is?

A It appears to be Catherine Street west of Leighton Avenue.

Q Okay. Could I have it back for a second. You see in the photograph, in the photograph that's been marked as L 6, do you see a car on the left-hand edge of that photograph?

A Yes, I do.

Q All right. Sir, is that in the approximate position of where your car was parked that evening on November 22nd of 2006?

A There's no way for me to tell how far back that vehicle is from me.

Q Well, how far back were you from the intersection?

A Several feet.

Q Can you be more specific?

A 50, 75 feet. I didn't exactly measure.

Q Well, how far were you from the front door of Best Liquors?

A That I don't know. I can only estimate.

Q Well, what's your estimation of how far you were from the door?

A 150 feet, maybe. It's hard to say.

Q Were you using binoculars?

A Yes, I was.

Q Did you have the binoculars or your partner?

A I did.

Q Did your partner have binoculars?

A No, he didn't.

Q At what point did you go into Best Liquors?

A I did not enter the establishment that day.

Q Did you ever go in and attempt to identify who was working or who else was in the store at that time on November 22nd?

A I was assisted by another officer who identified the employee that evening.

Q I'm sorry?

A I was assisted by another officer who identified the employee that evening.

Q And that officer is not here, I take it?

A No.

Q All right. Now, you told us that from your vantage point at night that you saw two people enter the store and then come out of the store. Correct?

A That is correct.

Q And first time they came out they were carrying two plastic bags?

A That is correct.

Q And the second time they came out they were carrying two plastic bags. Correct?

A They were -- there was at least one other plastic bag. I can't say for certain how many there were.

Q So there were at least three plastic bags?

A I believe so, yes.

Q Okay. How many plastic bags did you find in the car?

A I don't recall.

Q Where is the property report that you guys prepared that night?

A I don't have it with me.

Q Is there one?

A There absolutely is.

MR. REALE: I ask if we could have the report provided. Chief, if you have it.

MAYOR MENNA: Wasn't provided in discovery prior to tonight?

MR. REALE: No. It was not.

MR. HALL: We'll get it for you.

MAYOR MENNA: Let's skip over that line of questioning and go back to it and then we'll take it from there.

Q Now, how many bottles of beer -- as I understand your testimony, and you correct me if I misunderstood it, how many bottles of beer were in the car not inside of these plastic bags?

A None. They were all contained in the plastic bags.

Q I'm sorry. I thought you testified earlier on direct that the bottles were laying in the car?

A No, I didn't.

Q Did I misunderstand your testimony?

A Perhaps.

Q How many bottles were there?

A Would you like me to read the description from my report?

Q No. What do you recall, not from your report. What do you independently recall without looking at your report as to the number of bottles that were involved?

MR. HALL: Objection. Badgering.

MR. REALE: I'm not badgering. I'm asking him to answer a question based without refreshing his recollection.

MR. HOLZAPFEL: It's a fair question. Mr. Reale, it's a fair question. Let's keep it civil. You can answer.

A Numerous, more than 10.

Q More than 10.

A Without looking at the property report or my report I couldn't tell you the exact number.

Q Did you prepare the property report?

A Yes.

Q Did you prepare the arrest reports?

MAYOR MENNA: Which one?

MR. REALE: Well, there's --

MAYOR MENNA: I presume there are more. Is there more than one report?

THE WITNESS: There were several arrest reports.

MAYOR MENNA: So which one are you referring to?

MR. REALE: Let's just ask him again and save some time.

Q Did you prepare all of them?

A No, I definitely did not prepare all of them.

Q Do you recall which arrest reports you did prepare?

A Not offhand, no.

Q But I assume if we got the copies of those arrest reports, we could see whether you, in fact, prepared them. Correct?

A That's correct.

Q On the direct examination you were asked a series of questions about that contraband.

A That's correct.

Q How long have you been a member of Red Bank Police Department, Patrolman?

A Almost 5 years.

Q And I assume you went through one of the academies?

A Yes.

Q Which academy did you attend?

A Monmouth County.

Q Sir, could you tell me how many times prior to this evening you've referred to IDs, drivers licenses,

things of that nature, as contraband?

A I couldn't say.

Q Well, do you have any recollection of ever, prior to this evening, ever referring to something like a driver's license as contraband?

A If that license depicts something other than the actual information of the individual, then it's an illegal item.

Q Sir, could you answer the question that I asked?

A You're asking me if I referred to a normal conversation as contraband.

Q No, sir. I'm asking you in your professional capacity prior to this evening if you ever referred to a driver's license that may be false or falsified as being contraband?

A Yes.

Q You have. Do you recall when that was or in what circumstances?

A No, I couldn't.

Q Have you ever testified to that in either municipal or superior court?

A No.

MR. HOLZAPFEL: What is the relevance of that?

MAYOR MENNA: I think you made your point, Mr. Reale. I don't really see the tangential evidence in terms of whether it's referred to as a legal document or false document or as the reference he's made to it. You made your point. Let's go on to something else.

Q Let me ask you a question, Patrolman, November 22nd of 2006 you had Mr. Bibens in your custody. Correct?

A That is correct.

Q And who interviewed Mr. Bibens?

A Investigator Frazee.

Q Was a statement taken from Mr. Bibens?

A That I don't know, I wasn't part of the investigation.

Q Did you review the file prior to this evening?

A Investigator Frazee's report, yes.

Q Did you review the entire file prior to this evening?

A No, I did not.

Q So as you sit here you don't know whether Mr. Bibens provided any statement, by that I mean a handwritten or formal statement, that might have been taken by some other member of your department?

A I know there was an interview with Mr. Bibens. That's about all I can say.

Q To your knowledge, how was that interview memorialized?

A In a police report.

Q And whose report?

A Investigator Frazee's.

Q Now, did you physically search Mr. Bibens?

A No, I did not.

Q Who searched Mr. Bibens?

A One of the other officers on the scene.

Q You were not present when that occurred?

A When he was searched?

Q Yes.

A No.

Q So you really can't tell us what, if anything, happened or what type of search was performed?

A A search of his person was conducted because he was placed under arrest.

Q Okay. But you weren't there to see what was done?

A I was in the area. I was not within sight.

Q Patrolman, it's not a difficult question. Were you present when Mr. Bibens was searched?

A I wasn't -- I was on scene, again, but I wasn't right there, no.

Q Okay. Do you have any independent recollection -- independent knowledge as you sit here testifying under oath as to how the search was conducted that would be done in accordance with the policies and procedures of your department?

A I know that a thorough search was performed and it was negative for any other contraband.

Q Do you know as you sit here this evening whether whoever searched Mr. Bibens emptied out any sort of a wallet, to examine all the contents of that wallet?

A I couldn't say for sure.

Q So the answer is you can't tell us, can you?

A I didn't perform the search, no.

Q So as you sit here this evening, you really can't testify that Mr. Bibens did not have an ID on his person that would have shown him to be over 21 years of age?

A I had -- I did read the investigator's report.

Q I didn't ask you about what somebody else wrote, Officer. I'm talking about your personal observation.

A That wouldn't be part of my observation. I did not search the individual.

Q So the answer is you can't tell us that Mr. Bibens did not have in his possession some ID that depicted his photograph that said he was over 21 years of age?

A Not my own personal knowledge, no.

Q Okay. Officer, are you aware that Mr. Singh told your compatriots that on prior occasions Mr. Bibens had exhibited for him a license that showed he was over 21 years of age?

A Yes, I did. I'm aware of that.

Q You're aware of that?

A I'm aware of that, yes.

Q Who is Patrolman Bradley?

A That's me. It's pronounced Broadley.

Q I'm sorry. It looked like Bradley. I apologize. I do see it. My apologies.

MR. REALE: So let me ask to have marked then as L 8.

(L 8 marked for identification.)

Q Officer, I'm going to show you what's been marked for our purposes as L 8 for identification. Do you recognize that?

A Yes, I do.

Q Okay. What is that?

A It's a property report for alcoholic beverages.

Q It's a property report you prepared?

A That is correct.

Q Was that the sole property report you prepared in connection with this case?

A Yes.

Q Could you tell me what happened to the plastic bags?

A They were not logged into evidence.

Q What happened when you sent the bottles out for analysis, what was the report that came back from the lab?

A That's beyond my scope, sir.

Q Well, let me ask you a question: You secured the evidence and logged it in.

A Yes, sir.

Q Did you at any time prepare a request to have that evidence examined to determine what the contents were?

A No, I did not.

Q Where is the evidence today that's referred to in that report?

A That I don't know. That would be answered by our records division.

Q Well, you see a little red stamp there?

A It says destroyed.

Q What's the date of that destruction?

A November 28, 2006.

Q So if I understand correctly, 6 days after the case the evidence was destroyed?

A It appears to be, yes.

Q Thank you.

MR. REALE: Nothing further. I move in Ls 4, 5, 6, 7, 8.

MAYOR MENNA: Can I see L 8 first. I just may have some questions. This was just produced this evening?

MR. HALL: Yes.

MAYOR MENNA: So this is what you got?

MR. REALE: Yes.

MAYOR MENNA: Officer, do you know -- could I ask a question, gentlemen, just to clarify this? We have an L 8 and it looks like the report is dated November 22, 2006.

THE WITNESS: Yes.

MAYOR MENNA: You signed the report as the arresting officer, the officer that processed the evidence. It was reviewed by someone else. It says sergeant something or other. We can't make it out. Who was it reviewed by?

THE WITNESS: I believe it was Sergeant Berbrick.

MAYOR MENNA: And then you turned this over to Sergeant Berbrick. Is that your normal procedure?

THE WITNESS: That would be the normal procedure.

MAYOR MENNA: And is there a second chain of custody report that may have been attached to this in terms of any analysis?

THE WITNESS: I wouldn't have the answer to that.

MAYOR MENNA: Were photographs taken of this particular evidence?

THE WITNESS: Yes, there were photographs.

MAYOR MENNA: Are the photographs part of the police department report property report file?

THE WITNESS: They are in the incident report. They wouldn't be with the property report.

MAYOR MENNA: You have photographs of the evidence before you destroyed it?

THE WITNESS: Yes, I do.

MAYOR MENNA: Now, you didn't personally destroy the evidence.

THE WITNESS: Not personally.

MAYOR MENNA: Who was responsible for the destruction of the evidence on November 28th?

THE WITNESS: I don't know who actually did the destruction, but they were logged into evidence.

MAYOR MENNA: Would that have been prior to or after the municipal court case?

THE WITNESS: I can't say for sure when it was done. The destruction stamp on the form is the first I'm hearing of it.

MAYOR MENNA: And you have the photographs of the actual evidence?

THE WITNESS: Yes, I do.

MAYOR MENNA: I don't have any further questions. Any follow-up questions based upon my questions?

MR. REALE: Actually, I would like the property report back, if I might. May I approach the witness again?

MAYOR MENNA: Yes.

MR. REALE: Mark this as L 9.

(L 9 marked for identification.)

MR. HOLZAPFEL: Before we pass them around, are there any objections to the photographs into evidence?

MR. HALL: There really hasn't been a foundation for 4, 5, 6 and 7. There's no testimony as to 4 and 6; number 5 the witness testified he can't be sure if it's Catherine. And number 7 he said it was not a fair and accurate depiction.

MR. HOLZAPFEL: Well, to build on the councilman's comment earlier for consistency purposes I would note that we do have L 1 and L 2 are also into evidence I think for the same purpose.

MR. REALE: May I approach the witness?

MAYOR MENNA: Let's follow up on that. Will you be calling any witnesses on your client's behalf?

MR. REALE: I haven't made that decision.

MAYOR MENNA: In terms of identifying who took the photographs and all.

MR. REALE: I haven't made that decision.

MAYOR MENNA: For whatever it's worth, what's your call --

MR. REALE: If I could, I'll withdraw -- I'll withdraw 5. I move 6 in because the witness 22 identified it as the intersection of Catherine and Leighton.

MAYOR MENNA: That's correct.

MR. REALE: He said he can't recollect as it relates to 7 whether, in fact, that is the scene as it appeared that night, so I'll hold those two. I would move in 6 at this point.

MAYOR MENNA: That's fine. We go that.

(L 6 received in evidence.)

MR. REALE: If I could approach the witness again.

CONTINUED CROSS EXAMINATION BY MR. REALE:

Q Officer, I show you what's marked for our purposes as L 9. Do you recognize that?

A Yes, I do.

Q Is that a photograph you took?

A No, it's not.

Q Who took the photograph, do you know?

A That I don't know.

Q Okay. Does that depict the evidence that was seized in connection with this case?

A Yes, it does.

Q How many bottles are there?

A It's hard to tell. They are a little blurred.

Q Let's go through them. Let's see if we can count, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10. Do you agree there's 10?

A No. There's one smaller in front of you.

Q One smaller bottle? That's an 11th bottle?

A The smaller one.

Q What's that?

A That would be the Hypnotic liqueur.

Q Where was that?

A Where was it when?

Q Where was it when you found it?

A Inside of one of the plastic bags.

Q Did you find it inside of the plastic bag?

A Yes, I did.

Q Officer, you told us that there were three bags. Correct?

A I wasn't certain how many.

Q You said there were at least three?

A There were a few.

Q Okay. Let's focus for a moment. Your testimony earlier on cross you said there were at least three bags, two the first time and one the second time.

A Yes.

Q Do me a favor, you have your report with you?

A Yes, I do.

Q How many bags do you refer to in your report?

A Two bags are referred to in the report.

Q Are you referring to the second page of your report?

A That's correct.

Q Okay. So you found two bags in the rear of the vehicle?

A That is correct.

Q Where was the third bag?

A I do not recall.

Q Do we have any idea, as we sit here today, what was in the third bag?

A I would assume over 10 bottles of alcoholic beverages.

Q Now, that's an assumption on your part. Correct?

A It would be tough to fill those bags -- those bottles in two bags.

Q Best Liquors doesn't just sell liquor, does it?

A It does not.

Q It also sells soda?

A I believe so.

Q Sell some grocery items?

A It does.

Q Okay.

MR. REALE: Nothing further.

MAYOR MENNA: Any re-direct?

MR. HALL: Yes.

RE-DIRECT EXAMINATION BY MR. HALL:

Q Find any soda in the car?

A No.

Q Did you find any grocery?

A No.

Q Did you find any ice cream in the car?

A No, sir.

Q Anyone tell you that they found a fake ID on any of the individuals who you arrested?

A No.

MR. REALE: Objection. Hearsay.

Q You remember testifying on cross-exam about a statement that was given by Mr. Singh to Investigator Frazee?

A Yes, I do.

Q Do you have that report with you?

A Yes, I do.

Q Pull that out. Okay. Do you see the third paragraph on the first page?

A Yes.

Q On the second page, beginning with "This officer then met with Stanley Bibens..."

A Yes, I do see it.

Q Please read that paragraph, please.

MR. REALE: I'm going to object. First off, the report hasn't been marked, hasn't been identified. To my knowledge, this is not the officer that prepared the report and it's got all sorts of included hearsay. If they want to do it tell them to bring Frazee in.

MR. HOLZAPFEL: Let's mark it and lay a foundation, and then we'll rule on the objection.

MAYOR MENNA: Specifically, whose report are you referring to, Mr. Hall?

MR. HALL: The report by Investigator Frazee.

MAYOR MENNA: Is that a narrative report or also an investigative report where statements were taken under oath?

MR. REALE: Narrative.

MR. HALL: It's a narrative of statements that have been taken.

MR. REALE: It's a narrative.

MAYOR MENNA: There are no actual statements taken under oath. Okay.

MR. REALE: At least none that have been provided to me.

MR. HALL: Mark this as RB 28.

(RB 28 marked for identification.)

Q Now, you have RB 28. Do you recognize RB 28?

A Yes.

Q What is it?

A This would be Investigator Michael Frazee's report of the incident.

Q Was that report prepared in the regular course of business of Red Bank Police Department?

A Yes.

MR. REALE: I object. I think there ought to be better --

MAYOR MENNA: You're raising Sixth Amendment grounds?

MR. REALE: Yes.

MAYOR MENNA: That's where I thought you were going. How do you get around that?

MR. HALL: Hearsay is admissible. He opened the door.

MR. HOLZAPFEL: I understand that but at least even in this context under the residuum rule there does have to be at least an independent competent point to this particular piece of evidence. We don't have Investigator Frazee here. It's not a statement under oath. Investigator Frazee is not cross examinable here today. I'm --

MR. HALL: We will have Investigator Frazee here momentarily.

MAYOR MENNA: He is here. Why don't you ask him instead of wasting time on this?

MR. HALL: At that time we will. We will get Frazee.

MAYOR MENNA: As I see it, it's a classic Sixth Amendment ground. That's why he's objecting. Let's move on.

MR. HALL: I am.

Q Now, you didn't enter the plastic bags into evidence?

A No, I did not.

Q Why not?

A It wasn't needed.

MR. HALL: I have nothing further of this witness.

MR. REALE: If I may.

RE-CROSS EXAMINATION BY MR. REALE:

Q You didn't find three bags, did you?

A I can't say for certain how many bags there were.

Q Now, we can't know that because you didn't bother logging them in because they weren't important to you.

A The plastic bags aren't illegal. They weren't placed into property.

Q All right. Officer, hold on a second. You've been a patrolman for 5 years. Is that correct?

A That is correct.

Q During your time either in the department or at the academy did you, in fact, have courses or practical hands-on experience as to handling evidence that comes into your possession custody and control?

A Yes.

Q You would agree with me that you've testified tonight in front of this council to the fact that what you see is people carrying plastic bags out of Best Liquors. You agree with me, would you not?

A Yes, sir.

Q Yet you're sitting there telling us that the bags weren't kept. Is that your testimony?

A I stated when I looked through the window I could see alcoholic beverages inside of the vehicle.

Q You told us that the alcoholic beverages was inside of the bags.

A That is correct.

Q Because you recall on cross-examination I asked you whether the bags -- whether you saw bottles laying out in the car. You remember that?

A The bags were not tied shut. I could see in the open part of the bag, the inner contents of it.

Q Let me come back then to the question you didn't answer. The bags were what you saw being brought out of Best Liquors. Agreed?

A The bags and what appeared to be large items inside of the bag.

Q The bags is what you could plainly see from your vantage point at night with binoculars 150 feet away?

A Yes. However, it was not an empty bag.

Q You've told us that there were -- your report says one number of bags you've testified to a second number of bags but you didn't log the bags in because they weren't important to you.

MR. HALL: Asked and answered.

MR. REALE: No, he didn't answer it. That's the problem.

A I can't say for certain why exactly they weren't logged in. There were several officers worked on this case and the bags were not logged into evidence.

MR. REALE: Nothing further.

MR. HALL: Brief recess to wait for Investigator Frazee to come in.

MAYOR MENNA: I think he's available. Do you have any other witnesses?

MR. HALL: No.

MAYOR MENNA: Why don't we take a 5- or 6-minute recess and we will reconvene so the court reporter can stretch her fingers.

(Recess is taken.)

MR. REALE: Would you mark these, please.

(L 10 and 11 marked for identification.)

MAYOR MENNA: Sorry for the delay. There have been some reviews of a number of legal matters. We're now back on the record. It's 10 minutes to 9. The council is still convened. All present are still here. Mr. Hall, still yours.

MR. HALL: Mr. Mayor, with the Council's permission I call Investigator Michael Frazee.

MAYOR MENNA: I have to correct you. Sergeant Frazee.

MR. HALL: Thank you. Congratulations!

M I C H A E L F R A Z E E, called as a witness, having been first duly sworn, testified as follows:

MAYOR MENNA: Michael, please state your full name for the record and your professional relationship with the Borough.

THE WITNESS: Michael Frazee, sergeant for the property division.

MAYOR MENNA: Speak directly into the microphone.

DIRECT EXAMINATION BY MR. HALL:

Q Sergeant, I show you what has been marked as RB 28. Do you recognize what has been marked as RB 28?

A Yes, I do.

Q What do you recognize it to be?

A It's my supplemental police report of this investigation.

Q Pertaining to what?

A This investigation of Best Liquors.

Q Did you prepare that report in your official capacity as a then investigator with the Red Bank Police Department?

A Yes, I did.

Q Was that report kept in the regular course of business in the Red Bank Police Department?

A Right.

MR. HALL: I move RB 28 into evidence.

MR. REALE: I don't think he needs to move it in evidence. He has a witness here to testify as to what it is. He can testify to it or is that it?

MR. HALL: No.

MR. REALE: Then I suggest we don't need the report. The officer can -- the sergeant can testify.

MR. HALL: I move it in.

MR. HOLZAPFEL: Why don't you question him with regard to the report, if he needs to refer to it to refresh his recollection, but as long as the sergeant is here, the best evidence would be his testimony.

MR. HALL: Okay.

Q On November 22nd, 2006, did you have occasion to interview Stanley Bibens?

A Yes, I did.

Q Why did you interview him?

A I was called to the scene at Best Liquors by Patrolman DeMarco to assist an investigation.

Q Before you spoke to Mr. Bibens, did you say anything to him?

A Yes. I read him his Miranda rights.

Q And did he waive each of the rights?

A Yes. He said -- he stated he understood all of them.

- Q Can you tell us what you said to Mr. Bibens and what Mr. Bibens said to you -- let me stop you for a second before you get to that. Where did you interview Mr. Bibens?
- A Right outside the liquor store.
- Q Okay. Please continue. What did you say to Mr. Bibens and what did he say to you?
- A I asked him if he purchased alcohol and he said yes. He went on two separate times purchased I believe some beer as well as alcohol.
- Q On that date or --
- A On that date.
- Q Please continue.
- A He said he went into the store on two separate occasions because he was unable to carry the merchandise on one trip. I asked him if he displayed any form of identification and he stayed no. He didn't have any at all and that he hasn't had identification for a number of years.
- Q Did you ask him anything else?
- A I asked him if he could identify the employee in the store who sold him the beer.
- Q What did he say exactly?
- A He walked over and went to Mr. Singh.
- Q And when you say Mr. Singh, who is Mr. Singh?
- A Balvinder Singh. He was the employee at the time.
- Q When Mr. Bibens identified Mr. Singh to you, where was Mr. Singh?
- A He was in the store.
- Q Okay.
- A Behind the counter.
- Q Behind the counter?
- A Yes.
- Q Had you ever seen Mr. Singh before that date?
- A Yes, I have.
- Q And how did you know him?
- A I didn't know his name at the time.
- Q Okay.
- A I know him from working at the store.
- Q At Best Liquors?
- A Yes.
- Q Did you ask him anything about prior purchases of Best Liquors?
- A Yes, I did.
- Q What did he say?
- A He told me that he had been to the store to purchase alcohol.

MR. REALE: Objection as to relevance for prior events.

MR. HOLZAPFEL: What's the point of the question, Mr. Hall?

MR. HALL: It was his statement. I believe the witness' statement was the credibility of the declarant. It also goes to his ability to identify the individual behind the counter.

MR. HOLZAPFEL: I'll allow him to answer the question.

A Mr. Bibens stated he had purchased alcohol from Best Liquors approximately 10 times through the course of 2 months, however, during those times he always --

MAYOR MENNA: Sergeant, I ask you if you could get closer to the microphone. Some people can't hear you. Thank you.

THE WITNESS: Sorry.

A He had purchased alcohol approximately 10 times over the course of 2 months, however, during those times it was always from Mr. Singh, not Sunny.

Q Did you talk about anything else regarding those prior occasions?

A All those times he said he had never shown identification at all.

Q Did he discuss whether anyone asked him for identification?

A No, he didn't.

Q Did he say that nobody asked him for identification?

MR. REALE: Objection.

MAYOR MENNA: Why don't you ask the question in a different way.

Q Mr. Bibens said that he never showed identification to anybody in Best Liquors.

A Correct.

Q Is that correct?

A Correct.

Q Okay. Did he say anything about whether anyone in Best Liquors asked for identification?

A He said at no time did anyone --

MR. REALE: Objection to form.

A No one ever showed it to him.

MR. REALE: Objection to the question, as to the leading nature of it. It's clear the answer was unresponsive to the question. I object to the leading nature of the question. It calls for a yes or no answer.

Q Do you recall specifically whether or not at this point sitting here what Mr. Bibens said to you about anyone asking to see the ID from prior patrons? Do you recall that now?

A Yes, I do.

Q What did they say?

A He said to me that day that he did not show identification to anyone in that store at that time, nor did he show identification to anyone in that store during any of those other times.

Q Did he say anything about whether anyone asked to see the identification on prior occasions?

A He said they never asked him at all.

Q The people at Best Liquors never asked him at all?

A Never asked him at all.

Q Thank you. Now, did you yourself search Mr. Bibens?

A Yes. I gave him a pat-down search. He had no identification on him at all.

Q Okay. Did you look in all of his pockets?

A Yes.

Q By patting him down?

A Correct.

Q Okay. Did you look in his wallet?

A He had no wallet.

Q Did you speak to any other witnesses at the scene besides Mr. Singh?

A Yes. I also spoke with a neighbor, Mrs. Pamela Rodriguez.

Q And who is Pamela Rodriguez?

MR. REALE: I'm going to object to the line of questioning. Mrs. Rodriguez -- it's clearly hearsay.

MR. HOLZAPFEL: You can answer if you know who she is, but I think I know where this line of questioning is going. You can answer the question as to whether you know who Pamela Rodriguez is.

THE WITNESS: Yes, I do.

Q Who is she?

A At the time she was a witness in the Best Liquors.

Q Tell us what she said to you and what you said to her at the time?

A She approached me. I was outside the liquor store at the time. She told me that she was directly behind Bibens when he made the purchase of alcohol and that at no time did he display any form of identification.

Q Did you ask her whether or not she heard the employees say anything behind the counter, say anything to Mr. Bibens?

A I'm not sure. Could I refer to my report?

Q Please refresh your recollection.

MAYOR MENNA: While you're reading the report, what's the report date? How many pages is it so we're --

THE WITNESS: It's a page and a half.

MAYOR MENNA: What's the date on that report, Sergeant?

THE WITNESS: November 22nd, 2006.

MAYOR MENNA: Do you have that?

MR. REALE: Yes, I do. I believe I have it, yes.

A Mrs. Rodriguez told me at that time that the employee never asked Mr. Bibens for identification.

Q Did Mrs. Rodriguez indicate whether she knew Mr. Bibens?

A Yes, she knew him from the area.

Q Did she know how old he was?

A She knew he was under 21 years of age.

Q Did she identify the person who sold the liquor to Mr. Bibens?

A She pointed to Mr. Singh. Also, she said it wasn't Sunny.

Q Okay.

MR. HALL: I have no further questions for the witness.

CROSS EXAMINATION BY MR. REALE:

Q Sergeant, what did Mrs. Rodriguez tell you when you asked her what she told the clerk since she knew that Mr. Bibens was under 21?

A I'm sorry?

Q You just told us that Ms. Rodriguez was in Best Liquor --

A Yes.

Q -- according to what she told you. Correct?

A Correct.

Q And you say that she told you -- she's not here this evening, is she?

A I don't believe so, no.

Q All right. And she told you that she was in line right behind Mr. Bibens and saw this transaction?

A Correct.

Q And more important she told you that she knew that Mr. Bibens was under 21?

A Correct.

Q Now, obviously, at that point you asked her what she said to the clerk to alert the clerk that Mr. Bibens was under 21. Right?

A No.

Q You never asked her what she told the clerk?

A Never asked her.

Q So you had an individual that was in the store who knew somebody was under 21, you're investigating the possible sale to underage, and you don't ask her if she engaged in a conversation with the clerk about Mr. Bibens.

A Correct.

Q Let me ask you a couple of questions. I want to show you what's been marked as L 5. Do you recognize the intersection?

A Yes.

Q Is that the intersection of Catherine and Leighton Avenue?

A Yes. Facing west.

Q All right. And now you've sat out on Catherine Street watching Best Liquors over the course of the last year, haven't you?

A I patrol the area all the time.

Q And you've parked out there and watched that, the store. Correct?

A I watched the entire area.

Q The question is have you pulled up and stopped your car on Catherine Street looking towards Best Liquors?

A Absolutely.

Q You have?

A Yes.

Q Okay. And let me draw your attention. You see that -- just happens to be I think a Crown Vic, a gray Crown Vic?

MR. HALL: Objection. It's outside the scope of the re-direct.

MR. REALE: I'll recall him as my witness, then.

MAYOR MENNA: Let's just get to the point. Go ahead, ask your question.

Q I'm sorry, is it a Chrysler?

A I think so, yes.

Q Is that about the spot where you parked your car?

A Depends what you're looking for.

Q Well, when you watched Best Liquors and you pulled up and parked on the side of the street.

A I parked on Leighton Avenue before, I parked on Catherine Street before. I can't say exactly where I parked.

Q Officer --

A If you give me a specific date and time when I've been out there, I can probably narrow it down for you.

Q You can't answer the question about whether you ever parked on Catherine Street?

A Have I parked there, yes.

MAYOR MENNA: His answer was he had numerous times for numerous reasons.

Q And you've been out there at night and parked and driven by. Correct?

A Yes.

Q I'm showing you what's been marked as L 7 for identification. Does that depict what I would see if I were standing outside of Best Liquors at night?

A Yes.

MR. HALL: Objection.

MAYOR MENNA: It's a hypothetical question. We all know that. We know that he wasn't sitting there with him. So your objection is overruled. Take the answer for whatever it's worth.

MR. HALL: Okay.

Q Does this photograph depict the scene as you would see it when you were sitting across the street on Catherine looking towards Best Liquors at night?

A From the naked eye, yes.

Q Now, how old was Mr. Bibens?

A I'm sorry?

Q How old was Mr. Bibens?

A 18 at the time, I believe.

Q Who was driving the car?

A I have no idea.

Q Did you ask the officers who was driving the car?

A No. I asked to speak with Mr. Bibens.

Q Did you ever speak to anybody else?

A Mr. Singh and Mrs. Rodriguez.

Q Okay. Did anybody ask you to talk to Mr. Singh?

A Not as part of my investigation.

Q Okay. So why were you called, then?

A To assist them.

Q Okay. Were you the senior officer on the scene? I recognize at that point you had an investigator title but were you the senior officer?

A Senior officer, no.

Q Who was the senior officer?

A I would say Sergeant Berbrick.

Q Did Sergeant Berbrick show up?

A Yes.

Q Who was the property -- who was designated to log the property in?

A Usually the arresting officers.

Q Do you know who the arresting officer was in this case?

A I know the investigation was conducted by Patrolman Kamarkin and Patrolman Broadley.

Q You don't know who took possession of the property?

A No.

Q How much money did Mr. Bibens have on him?

A I have no idea.

Q Well, you said you searched him.

A I searched him for identification only.

Q Well --

MAYOR MENNA: He didn't count his money is what he's saying.

MR. REALE: If I may.

MAYOR MENNA: Sure.

Q You searched him. You patted him down I think is the phrase you used. Correct?

A Correct.

Q And in patting him down, the only reason you were patting him down was to see if he had ID on him?

A Correct.

Q You weren't patting him down to see if he had any drugs on him?

A No.

Q And you didn't bother to check to see how much money he had on him?

A No, sir.

Q As you sit here today, do you have anything that would indicate whether he did have money on him or not?

A I can't say he had money on him.

Q Have you ever reviewed the entire investigative file in connection with this particular incident?

A I looked at the other -- the officer reports earlier during the first phase of this hearing.

Q Well, do you have any recollection of anybody ever saying whether they conducted any search of him or the vehicle?

A I can't say that I did.

Q Did you search the vehicle?

A No, sir.

Q Was the vehicle impounded?

A Not to my knowledge.

Q Now, you, in fact, interviewed Mr. Singh?

A Correct.

Q Where did you interview Mr. Singh?

A Inside of the store.

Q Now, you told us that you gave Mr. Bibens what we would commonly call his constitutional rights. Correct?

A Correct.

Q Did you have him sign a rights card?

A No. I read it word for word off the card that I carried with me at the time.

Q Did you have him sign a rights card at some later point acknowledging that, in fact, at the time you spoke to him on the street you had given him his constitutional rights?

A No, sir.

Q Okay. You knew in this particular case that there was an investigation underway that you were picking up on, involving the alleged sale of alcoholic beverage to an underaged individual. Correct?

A Correct.

Q Okay. And you had a suspect, didn't you?

A Yes.

Q And based on what you knew on November 22nd, 2006, when you're talking to the other officers and you're having the chance to talk to Mr. Bibens and you talked to Ms. Rodriguez you know that you have probable cause to arrest Mr. Singh. Correct?

A Correct.

Q Okay.

MAYOR MENNA: Can I interject for a second? Are we going into, like, Rule 8 admissibility issues in terms of statements? We're not here for that. That would have been an appropriate motion or purview in municipal court. I don't know where you're going with that, because the officer has already indicated that he talked to him about certain questions and answers and that there was no written Miranda card that was executed at the time, Miranda warnings were given.

MR. REALE: The problem, Mayor, is that, first off, it's all being taken down if there are, as you said earlier this evening when we started, whether there are other proceedings that may take place with respect to this in another venue, the transcript would be available.

MAYOR MENNA: True.

MR. REALE: Now, this particular testimony one of the charges that have been brought by you against this Licensee is that there was a sale to an underage and there's no identification being asked for because that's what the testimony has been as to Ms. Rodriguez and Mr. Bibens.

MR. DUPONT: And others.

MR. REALE: I'm sorry?

MR. DUPONT: And others.

MR. REALE: And others. Well, that's the question because if you're looking at this as to -- we already heard testimony that the bags aren't important and we don't know where the bags are. We've heard the testimony from an officer as to what might be described as a shoddy investigation, and we're about to see whether that shoddy investigation continued when they were dealing with Mr. Singh as against to when they were dealing with Mr. Bibens, because my next question to the sergeant, if I may, is:

Q Sergeant, at what point did you give Mr. Singh his constitutional rights?

A I didn't. He wasn't taken into custody.

Q Okay.

MAYOR MENNA: There was not a custodial interrogation?

THE WITNESS: No, sir.

MAYOR MENNA: He was not under arrest?

THE WITNESS: At the time he was not.

Q Did you tell Mr. Singh he was going to be arrested?

A No, I did not.

Q Was it your responsibility to make that arrest that night or was it the officer's?

MR. HALL: Objection.

Q The other officer's.

MR. HOLZAPFEL: Sustain the objection. Where are we going with this, Counsel?

MR. REALE: I'll move on.

Q Mr. Singh told you that night that, in fact, Mr. Bibens had been in the store. Correct?

A Yes, he did.

Q He also told you and you knew because Mr. Bibens had told you he had been in the store before, Mr. Singh had told you that Mr. Bibens had been in before. Correct?

A Correct.

Q Mr. Singh also told you that on prior occasion he had shown, by that I mean Bibens, had displayed and exhibited an identification to him that Mr. Singh understood to show that Mr. Bibens was over 21 years of age.

MR. HALL: Objection.

MR. HOLZAPFEL: I think the door was opened for that on direct. I'll allow him to answer.

MR. HALL: It's leading.

MR. HOLZAPFEL: It's cross-examination.

MR. HALL: Call him as your own witness.

MR. REALE: No, I'll get to that.

MAYOR MENNA: Continue. You can answer that question.

MR. HOLZAPFEL: Do you need the question read back?

THE WITNESS: Yes, please.

(Whereupon, the requested portion is read back by the reporter.)

A Yes, he did.

Q Now, you said that Mr. -- one final thing, Sergeant, you said that Mr. Bibens told you that he hadn't had any form of identification for several years. Is that correct?

A That's what he told me. Correct.

Q Did you ever run him through DMV to see if he had had a license?

A No, I did not.

Q Did you ever run him for -- he was 18, so that he's an adult?

A Right.

Q Did you do any warrant checks on him?

A At the time we did a warrant check. He didn't have one.

Q You didn't run DMV to see if he had a driver's license?

A I didn't personally. I'm not sure if anybody else did it.

Q Well, is there anything in the reports that you've seen that says they did that?

A My report, no.

Q How about anybody else's report that you reviewed?

A Not to my knowledge, sir.

MR. REALE: Nothing further.

MR. HALL: Done.

MAYOR MENNA: Thank you, Sergeant.

THE WITNESS: Thank you.

MR. HALL: The Borough rests.

MAYOR MENNA: No further witnesses, Mr. Hall?

MR. HALL: That's correct.

MAYOR MENNA: All the evidence is being moved at this point?

MR. REALE: No objection other than the objections I've placed.

MAYOR MENNA: I think some of the objections were previously noted.

MR. REALE: I just simply ask to preserve the objections as it relates to the nature of the material.

MR. HOLZAPFEL: Just for purposes of clarification on the, that is, RB 9, RB 28, L 4 and L 6, if I'm not mistaken.

MR. REALE: That was -- I'm going to move L 4 and L 6 based on the testimony of the investigator or sergeant.

MR. HALL: No objection.

MAYOR MENNA: Okay. I think, Mr. Hall, one of the issues may be looking at, at least some of the state's exhibits, we've been given at least documents that show that there was a disposition by the Licensee to Ordinance 6-4.4? Do you happen to have a copy of -- does anybody have a copy of Ordinance 6.4-4?

MR. HALL: I do.

MAYOR MENNA: So we can at least have that for the record?

MR. HALL: 6-4.4?

MAYOR MENNA: You have no objection to that, do you?

MR. REALE: No, I don't. You're able to be cognizant of it.

MAYOR MENNA: Obviously, we can make reference to 33:1-77, but I'm not sure if the council has 6.4.

MR. HALL: Mayor, also, 6.7-1 is the unlicensed or the -- unregistered employee but since we've conceded that --

MAYOR MENNA: That was stipulated.

MR. REALE: That was stipulated.

MR. HALL: But I do have 6.4-4 and that's marked as RB 12. I think one copy of --

MAYOR MENNA: I think we need that. We need evidence of that.

MR. HALL: I also have 54, NJSA 54:52-18, that's knowingly possessing goods in which tax is not paid.

MAYOR MENNA: We have that. That's part of the State statutes.

MR. HALL: All right. I'm going to move RB 12 into evidence.

MR. DUPONT: Could I have a copy of that Ordinance?

MR. HALL: Sure.

MR. HOLZAPFEL: RB 12 is moved into evidence.

(RB 12 received in evidence.)

MAYOR MENNA: What else, Mr. Hall?

MR. HALL: RB 18, what was your ruling -- did we have a ruling on RB 18? That's a letter from McDonough to Sharma.

MR. HOLZAPFEL: That was excluded last time around.

MR. HALL: It was excluded.

MAYOR MENNA: That's not in evidence.

MR. HOLZAPFEL: 18 and 19.

MR. HALL: Everything is in.

MAYOR MENNA: So you rest with the moving of all of those exhibits?

MR. HALL: Yes, I do.

MAYOR MENNA: Counsel.

MR. REALE: Well, I just assume that with respect to the municipal ordinance --

MAYOR MENNA: You have to speak closer to the microphone.

MR. REALE: I assume with respect to the ordinance that we're referring of 6-4.4 the Borough has in its possession the correspondence with the director of ABC so that the ordinance is, in fact, effective. If not, I ask counsel to provide that.

MAYOR MENNA: Let's take a look at that and your legal issue that would be preserved. Mr. Holzapfel will look into that, and we will sort it all out and we will make the decision on it.

MR. REALE: Mayor, quite frankly, Best Liquors of Red Bank is not going to call any witnesses. The only thing we would move in and asked to be moved in and presented to the Council, we've asked that and had it marked for identification, and I've shown it to Mr. Hall, we're talking about L 10 and 11, which are two petitions in support of Best Liquors.

MR. HALL: I object. They are not relevant. Petitions signed by -- a cursory review shows that it was signed by people in Staten Island, Long Branch. They are not relevant to anything.

MR. REALE: Well, quite frankly, it's not -- it is relevant.

MAYOR MENNA: Gentlemen, isn't the basis at least at this point for us to consider purely and only and exclusively the evidence that's before us in terms of the actual charges proffered?

MR. REALE: I hold this to sentencing if we get to that point. I'll withdraw.

MAYOR MENNA: You don't need it right now.

MR. REALE: I'll withdraw it. You don't need it.

MAYOR MENNA: Right. Okay.

MR. REALE: I'll withdraw.

MR. DUPONT: So they rest?

MR. REALE: Yes.

MAYOR MENNA: It is my understanding that obviously Counsel on behalf of the Licensee is resting, meaning that there will be no witnesses called in terms of the proceeding. It's my further understanding, and as is appropriate in most of these cases that I've been through anyhow, that both the State as well as the Licensee and their representatives will, of course, retain the right to make closing or further comments at some point in time after the governing body has an opportunity to review the exhibits, the evidence, the law, and get clarification in terms of -- and also and guidance from its Borough attorney, Mr. Holzapfel, regarding some of the issues before us and our review of those issues.

MR. DUPONT: Are they going to make closing arguments tonight?

MAYOR MENNA: No.

MR. DUPONT: Why not?

MAYOR MENNA: Mr. Holzapfel is going to address that.

MR. HOLZAPFEL: Is counsel prepared to make their closings this evening?

MR. HALL: Yes.

MR. HOLZAPFEL: Mr. Reale?

MR. REALE: I'd like an opportunity to go through the transcript and cull the transcript. I'll do what I need to do. I do note the hour.

MR. DUPONT: This is the second meeting. I think that we can conclude this hearing and council has been working on this for a number of months. I'm one voice here, but I think that the public's been here a couple of times. I think that they should make their closing arguments so that we can evaluate the closing arguments and all the other evidence. This is just my statement.

MR. HOLZAPFEL: You know what, I feel it appropriate that in light of the fact that this is the second meeting I think it would be appropriate if counsel would make their closing arguments this evening so that this council can adjourn, deliberate, confer with me and ultimately make their decision.

MR. HALL: Okay. I'll be guided by you. I'm ready to sum up now.

MR. HOLZAPFEL: Why doesn't counsel proceed with closing statements.

MR. REALE: Members of the council, Mayor, members of the council.

MAYOR MENNA: By the way, I want to thank both of the attorneys and the members of the public for their attention to this hearing. It's an important matter and both attorneys, despite the fact that it's been a ping pong match on occasion, have done their respective jobs in a professional manner. I certainly want to compliment both of them as they should be complimented.

MR. REALE: I just want to -- I'm not going to be long because I don't need to be. The situation here is that you're sitting as a quasi-judicial body when you come right down to it. You have a fact-finding role much like a municipal court judge, if you will, or a superior court judge sitting.

MAYOR MENNA: I know you like to move. You can move the microphone with you.

MR. REALE: Then I'll feel like a game show host.

MAYOR MENNA: You might be making more money that way.

MR. REALE: The problem as I see it for you is the nature and the quality of the evidence that you've heard. You're being asked to decide the existence of a business based upon not simply hearsay, which Mr. Holzapfel will advise you that hearsay is admissible in one of these proceedings, unlike a trial, unlike municipal court, unlike Superior Court, hearsay is admissible; but there are limits even in these type of proceedings as to how much hearsay and the quantum of the hearsay that is admissible. It is what Mr. Holzapfel alluded to earlier this evening as what we call the residuum rule. The problem is that you've had testimony that amounts to second- and third-hand hearsay. That's the first thing. The second thing is that other than Ms. Rosato, none of the individuals who allegedly purchased the alcoholic beverages have been called in front of you. Now, there's a problem with that. It comes back to this concept of utilization of hearsay, because by using the methodology that you have used, because, quite frankly, you're also Mr. Hall, you have precluded the Licensee from cross-examining the people who have said, Oh, well, gee I went but I didn't have any ID. I haven't had ID for several years. Keep in mind that when you did have the opportunity to hear from the officers and you're cross-examining the officers, you're hearing the direct examination of the officers, quite frankly, you're hearing different bits and pieces that, quite honestly, don't match up with what Mr. Hall, you, suggest. Take a look at it. One of the biggest problems in this particular matter is that you, Mr. Hall, have wanted to proceed as it relates to the Valdez matter. Mr. Valdez didn't appear in municipal court. He didn't appear here. Mr. Valdez, according to the testimony Mr. Hall put in, was in possession of a Pennsylvania driver's license that you have in evidence. Now, the reason that Mr. Valdez isn't available is that we've heard he's in the United States Navy and apparently he's serving on a submarine; but in that particular case, which I understand it is charge B, if I'm looking at it correctly, that particular case shouldn't even be here. You move on to and we've already conceded the fact of what some of us would call the paper violation, the employee who wasn't properly registered under the Borough's Ordinance. Then let's take a look at Ms. Rosato's case. Now, curiously I hope you will recall this testimony and it's in the transcript when you get back and have a chance to deliberate in this

case, which is what you're going to do, take a look at Patrolman Hall's testimony. Evaluate Patrolman Hall's testimony for what it is. The fact that Patrolman Hall is testifying in front of you that he could see things -- when you take a look at the very photographs that he identified and that were utilized, it's virtually impossible for somebody to see that. Now, that becomes important, why, because the one question that comes down to the whole case as it relates to Ms. Rosato is this, on cross-examination, the question was: Officer, would you agree that others looking and seeing Ms. Rosato could come to a different opinion as to how old she was, and his answer, without hesitation, was yes. If the witness for the State, the officer, is telling you that others could have looked at her and not thought she was underage, then I don't understand why we're even here on that particular case, because the State, you, have created, if you want, the reasonable doubt. Well, that's not the standard that we're working under here. There has been much testimony as to the fact that these investigative events take place at night. We've had RB 24 marked and everyone -- all the officers, I think we've got at least three officers whose initials or some notations appear, as to where they parked. You have the photographs that show where the -- where cars are parking along Catherine. You have the photographs at night. You have the windows with the Neon lights and people from 150 feet away are testifying to what they're seeing through binoculars. Curiously, the last witness, Sergeant Frazee, said that he had an opportunity to speak to Ms. Rodriguez. I didn't hear Patrolman Broadley testify about anybody that he saw in there with him other than the clerk. What could he have seen? Where are the bags? If you've got an officer who is testifying, well, we took two bags out -- we saw three bags coming out but there's two bags in the car, nobody has the bags. The evidence has been destroyed 6 days later. Nobody ever checks the evidence. That is, politely, a sloppy investigation. Especially when the Patrolman sits here and tells you for almost a half hour that it's the bags that he sees hauled out of here that are critical to him. It is a credibility issue. Now, that is the nature of the testimony and the quality of the evidence that you're being asked to, essentially, because Mr. Hall is going to stand up here and basically he's going to ask for the death penalty is what he's going to ask you, he's going to ask you to revoke the license, kill the business. Is the evidence that you have heard the last two weeks presented by the department, presented by Mr. Hall, the type of evidence that you would want somebody to evaluate whether your business should continue or not, because you have heard repeatedly from officers that they could see things through windows at night that you know in your common sense, simply looking at the scene and the photographs, that you just can't do. Why is it necessary for them to do that? I'm not going to speculate but when you have Patrolman Adams saying, Hey, somebody else could have taken a look at Ms. Rosato and thought she was a different age, if that's the nature of the testimony from the officer himself, then how can you pass judgment on somebody as to whether he thought Ms. Rosato was underage. You've got this situation, the last situation where we're talking about the October 22nd -- November 22nd sale to Philpot and Bibens. You might think it a small thing but playing the game of, well, you know we weren't really going to lock him up, so we didn't give him his rights, I don't think it would have made a difference but it goes to the nature of the investigation that was being run out there that night. The further problem is that you have from that witness, from Sergeant Frazee, Sergeant Frazee is testifying to you to two different stories. He's telling you what Bibens told him. Now, Bibens, they're locking up. He doesn't have an interest. I've never had an ID. He's 18. I've never had any ID. Mr. Singh, who says he's been in before and he showed me an ID, I thought he was 21. Is that the quality and the nature of evidence that you want to rely upon or you would want to have judging again your survival as a business? There has been testimony here, or at least exhibits, not really much testimony, at least nothing what I would call competent testimony, because again we're back into that hearsay or hearsay-type situation, where we're talking about the tax case, the untaxed cigarettes case. Curiously, that untaxed cigarettes case occurred at a time when you, knowing that it occurred because you have to be on notice of it, you renewed the license, and now a year later you turn around and say, wait a minute, we're going to use that as a ground. There is a question about fundamental fairness even in one of these proceedings. But the fact of the matter is that the sum total of the testimony in that is the uncounseled plea that you have the record in front of you, no lawyer. A lawyer will tell you in the context of prior convictions that a prior conviction of a crime isn't something you can use against somebody to attack credibility if they were unrepresented by counsel. Now, if that's the situation, generally, under the rules, and I'll yield to the Borough's counsel whether he wants to agree or whatever questions you might pose to him about that, but the reality is, again, you're being asked to make a decision based on something that you already knew and you already had passed on. You want to come back and revisit and again what you want to do is, well, the guy was in municipal court but he didn't have a lawyer. That's not to stand here and basically say that there are things that could be done. That's not to stand here and say that there are things that could be improved; but the reality is that of the charges that are presented to you tonight or for previously have not been sufficiently established under any standard of proof, any standard of proof that we as reasonable people would want to have applicable to make a decision as to this Licensee, especially in the context that Mr. Hall is going to stand up with his very nice chart -- have you marked it, Mr. Hall? Can I use it?

MR. HALL: Go ahead.

MR. DUPONT: It wasn't used in the testimony.

MR. REALE: It's acceptable as a demonstrative aid during closing.

MR. HALL: No objection.

MR. HOLZAPFEL: It's been stipulated before the hearing that it's acceptable as a demonstrable aid.

MR. REALE: Let's take Mr. Hall's chart, I don't mean to steal his thunder, it's a very nice chart. The revenue stamp, basis of that -- Valdez is the individual who is not here who had the Pennsy driver's license. Ms. Rosato, well, she could have been another age. Reasonable people could differ as to her age. We've talked -- actually, you have taken off the license -- the employee one. Correct?

MR. HALL: No.

MR. REALE: Employ without -- we've already done that so you find that on a 10-day suspension the situation that you have, again, taking these they are not all cases that Mr. Hall can make out. Some day they are going to wireless mike everybody like they do in some of the Federal courts. The situation is that the testimony that you've heard, the evidence has been presented to you very clearly, does not make out all of these charges. Revocation of this license, a finding by you and a decision to revoke this license has not been established or sustained as a result of evidence. It's been presented by Mr. Hall, the police department, essentially by you, in this context. With that I thank you very much for your courtesy and the courtesies extended to counsel as well as to our client.

MAYOR MENNA: Thank you.

MR. HOLZAPFEL: Mr. Hall.

MR. HALL: Mayor and Council, the only issue in this case is whether the Borough of Red Bank has proven by a preponderance of the evidence the charges and specifications before you and that is summarized here on the chart that Mr. Reale just discussed. The evidence shows beyond any doubt that the Licensee has been in violation of each and every one of the charges, specifications submitted to you. The issue is not bias or predisposition on this case. Mr. Reale keeps alluding to the fact that these are your charges, that I'm part of the Borough. The law is clear. The legislature has given you in the first instance the right and the duty to hear these charges. If you believe Mr. Reale's arguments, the Licensee's arguments, no municipal council in the State could ever hear liquor license charges. Mr. Reale doesn't like the law. Well, this is not the forum for changing the law. What you're going to have is you're going to have -- we have a record, as has been pointed out before, and in that record is going to be the evidence; and there will be, I'm sure, subsequent review by some other judicial authority and that judicial authority will decide whether or not the penalty you impose in your wisdom is warranted by the evidence that you have heard here today, so don't be cowed into doing or not doing what is right in this case because of Mr. Reale's accusation and intimidations of bias and predisposition. The issue is not a question of fairness because the tax case was -- the Licensee was arrested for the tax case before the renewal. What Mr. Reale doesn't point out to you is that the tax case wasn't disposed of until November 9th, 2006, 4 or 5 months after the license was up for renewal in July of 2006. So without that guilty plea or without that disposition you would have had no reason to renew the license if that was even an issue. The issue is not hearsay. Mr. Reale is not the law, Mr. Reale is not the judge, Mr. Reale cannot tell you about what's admissible and what's not admissible. You have your counsel. Hearsay is admissible in these proceedings. It's up to you to determine what weight you will give that evidence. The issue is not plastic bags. This case is not about criminal possession of a plastic bag. What was critical? Mr. Reale claims that the plastic bags were critical. That's not critical. What was critical is that these two individuals, Ms. Philpot and Mr. Bibens, a 15-year-old and an 18-year-old, were coming out of a liquor store with big heavy bags, and we know they weren't carrying groceries, they weren't carrying ice cream, they weren't carrying candy. They were carrying liquor. There's some things you're not going to have to waist a whole lot of time on in this case. Mr. Sharma has already pled guilty to the untaxed cigarettes. You have that in evidence before you, RB 1 and RB 2. Mr. Sharma has also pled guilty to the sale to Mr. Limon and Mr. Valdez on July 7, 2006. You have that evidence before you in exhibits RB 3 and RB 4.

MR. REALE: I don't like to interject during a closing but clearly even in a trial when an attorney mischaracterizes the evidence, it's necessary and appropriate. There's been no conviction as to Valdez and the Valdez case has been dismissed.

MR. HALL: I said Limon.

MR. HOLZAPFEL: We have the transcript. Everything is written down. The documents have been admitted or not admitted.

MR. HALL: There was no guilty plea with the case involving Mr. Valdez. If I misspoke, I apologize. We'll discuss that in a few minutes. You're not going to have to spend a lot of time worrying about the sales to Ms. Philpot and Ms. Bibens because the Licensee's employee has pled guilty to that, and you have that evidence before you in RB 7 and RB 8. And you're not going to have to waste a lot of time about the unlicensed or unregistered employee. Let's talk about the case that you should spend some time on. Let's

look at the sale of 7-6-06, the sale to Mark Valdez. You heard the testimony from Detective Ramos. Detective Ramos told you that Mr. Valdez went in the store, handed something to the clerk, it was an exchange. Mr. Valdez went out the store, got back in his car. Detective Ramos was very candid, he thought at that first exchange when Mr. Valdez handed something to the clerk and got something back and walked out Detective Ramos concluded that he had gotten carded and he got thrown out of the place. So Detective Ramos follows Valdez. He follows him up Catherine Street to Shrewsbury, all the way down to Shrewsbury until he gets to the Stop & Shop, the plaza over here on Bridge Avenue. The same -- in that same plaza is Crate Liquors. Now does some Valdez go into Crate Liquors, no. He goes into the Stop & Shop -- Quick Chek. I forget what it is.

MR. HOLZAPFEL: It's actually a WaWa.

MR. HALL: Thank you. A WaWa. I'll get 24 to it eventually. He comes out and Ramos doesn't know what he's doing. Does he walk a few steps over to the liquor store there, no. He drives all the way back to Best Liquors. He goes out of his way. Why is he going to Best Liquors, because that's the best game in town. The whole world knows if you're underage, you can buy at Best Liquors. He goes back in and then there's another exchange and Mr. Valdez comes out with the beer. Mr. Valdez isn't here. Mr. Valdez is on a submarine somewhere but that doesn't matter because if you believe Detective Ramos, if you found him credible, that's all you need. If you believe Ramos, you may find that charge sustained. Now, let's look at Ramos' testimony. Mr. Reale implies that Ramos is not credible, that Ramos is trying to frame Valdez. Let me tell you this: If Ramos was going to frame Valdez, don't you think he would have done a better job? If Investigator Ramos is going to frame Valdez, the Pennsylvania license that was marked in evidence, the phony Pennsylvania license disappears, never exists, it would have been ridiculously easy for Detective Ramos to bury that evidence if he wanted to but he didn't. He came in here. He told you what he saw, what he observed, warts and all, and now you should make the determination. Again, if you find -- if you believe Ramos you must believe that he made the sale to Valdez. Then you have the sale on July 7th, the next day, Detective Ramos, again, makes the arrest for the sale to Limon, age 16. Age 16. Didn't hear the Licensee talking about, oh, gee, the 16-year old looked like he was 21. As a matter of fact, you didn't hear anybody from the Licensee's side come in and say, take an oath and say, that person looked like he was 21. Nobody from the Licensee came in here and gave you testimony that somebody showed me an ID or this person had shown me ID in the past, came in here and said that. Then you have testimony of Nicole Rosato, who I submit came in here, showed a lot of courage and told you exactly what happened. She identified Mr. Sharma as the person who sold her the liquor. Did you believe Ms. Rosato? What more did you need to hear? You saw Ms. Rosato. And Ms. Rosato you can determine and make your own determination as to whether or not she appeared to be of age, and you heard Ms. Rosato tell you she had been in there plenty of times in the past because it was the best game in town. It was the place to go and buy liquor when you're underage. She told you she had never been asked and never showed an ID in that place. During the cross-examination of Ms. Rosato the Licensee tried to imply that Ms. Rosato somehow tailored her testimony to the Red Bank Police Department. I don't know what to say to that argument. Do you think Ms. Rosato is a friend of the Red Bank Police Department? Do you think after being dragged in here, arrested, sent home to her Mom, dragged down to court, called upon to pay -- forced to pay a \$500 fine, coming back two times and admitting her guilt in an open court and in front of the council, do you think she's a friend of the Red Bank Police Department? She's tailoring her testimony to help the Red Bank Police Department? That's preposterous. On the chart what you have is, in the regulations, the ABC commissioner, NJAC 13:2-19.2011. You have presumptive penalties for various offenses. These are the presumptive penalties relied upon by the ABC commissioner. Ask yourself has the Licensee done anything here to help, to pierce the presumption, mitigate that presumption? The presumptive penalty for the possession of cigarettes without the revenue stamp or first event is 15 days. What is he giving you to overcome that presumption? The presumptive penalty for the first sale to a minor is 15 days, and we've established that with the sale of Mark Valdez. That's the 7-6-06 sale, the testimony of Detective Ramos. The second offense for sale to a minor is a 30-day suspension. We've established that sale to Sergio Limon, and that's also the testimony from Detective Ramos. The third offense --

MR. REALE: If I might, Mayor, I don't mean again to interrupt Mr. Hall. Quite frankly, now he's talking in terms about the penalty phase, and I find it improper to be pointing out at this juncture presumptives when you haven't made any findings of fact. I mean that's not saying he can't come back and make that argument later when we get to that point. Why don't we have the horse in front of the cart for a change.

MR. HOLZAPFEL: Let's stick to the charges and the evidence. I will do my own due diligence and confirm exactly what the ordinance provides for, but why don't we wait until we get to that stage.

MAYOR MENNA: I think that is the role of our Borough attorney, to advise us of the penalties. So just continue with the closing argument.

MR. HALL: The Licensee has basically come in here and said there's mitigating circumstances. I'm sorry. Show me mercy. There's not enough for the death penalty, as Mr. Reale put it. What has he shown you, though, to mitigate what's gone on here? Remember, this is a guy who got a warning. He got

his warning and he pled guilty to the sale of Peter Roscowinski, that's RB 15, back in 2005. I forget what the guilty plea was. The date of the sale was July 22, 2005. There happens to be a condition on RB 15. This is a guy who got a warning. Was that good enough? No. Four more sales to minors, not to mention the other violations, the tax violation, the employee without registration. Four more sales after that. Now he's sorry. Now he's sorry after the mountain of evidence that the Borough has produced against him. I think Mr. Reale said it in his opening statement right at the beginning, a liquor license is a privilege, not a right. This Licensee has grossly trampled upon and abused that privilege. There is no reason for you to show any mercy. The charges have been established, I would submit to you, beyond a reasonable doubt. What's important here is not what went on in the store. It's when he saw -- it's when the various witnesses saw the individuals coming out of that store with bottles of liquor or cans of beer in their hands. That's the key. What went on in the store is really meaningless. What's important is when they walk out that door holding that beer, holding that liquor, and you remember each and every witness told you that from the time they saw these people walk out the door holding that beer, holding that liquor, they never lost sight of the individual until they arrested them. There's no need for mercy in this case. There's no mitigating circumstances. There's no need for this license in this Borough. I, therefore, ask you to find that each and every one of the charges and specifications submitted to you have been proven by a preponderance of the evidence. Thank you.

MAYOR MENNA: Thank you. Summations have concluded. Any comments? The council will go to the next phase.

MR. HOLZAPFEL: My comments, Mr. Mayor, I think there was a brief, I guess, allusion to public questioning or public comment early on. I discussed this with attorneys and discussed this with council. This is, as has been alluded to in the past, perhaps a more relaxed setting than superior court. However, there are still certain considerations that must be afforded to the Licensee and public comment or questioning I think at this juncture is inappropriate. It's a form of questioning that I don't believe is cross-examinable for either attorney, and I don't find it relevant to the charges as framed, so it's for the public's benefit the reasons why we're not having public comment this evening is for -- to respect the rights of the process and otherwise for both parties. I just wanted to clarify that.

MAYOR MENNA: Having said that, it would be my recommendation, however, that all of you would be provided with the transcript from the previous hearing that Ms. Dolan has provided us and also tonight's hearing. I think that all of us are bound to review that transcript and review the evidence. Mr. Holzapfel will be providing us with guidance in terms of our review and also the range of options that the municipality may engage in in our review and he will be available to us to render that advice. I think it's probably going to take us a little bit of time to review the transcript, so, I guess, Michael, would you recommend that we have a special hearing or just carry this to one of our regular council meetings for a decision?

MR. DUPONT: My --

MAYOR MENNA: Let him answer that first and then we'll go further.

MR. HOLZAPFEL: I think again given the form in which these hearings have been conducted, I think a special hearing would be appropriate.

MAYOR MENNA: Councilman DuPont.

MR. DUPONT: My question to you I know that every one of us has been taking notes as well as the exhibits, is there any particular reason why we can't look at the exhibits this evening and talk amongst ourselves?

MR. HOLZAPFEL: The exhibits that are in evidence can be distributed to council.

MR. DUPONT: I guess my question is your call for a special meeting, and we've got another 30 days, another 2 weeks, I think that, you know, the material is fresh in our mind and exhibits are fresh here. I'm not quite sure we can't discuss some of these things this evening potentially make a decision here.

MAYOR MENNA: I don't have a vote on this but frankly on a magnitude of this nature I've never seen a governing body, even this governing body in the past make a decision the same night they hear the case. That's up to counsel.

MR. DUPONT: It's just my own comment. These parties have been patient in waiting for us to hold hearings. I presume that the business owner is anxious for a decision to be rendered. I know the public is anxious for a decision to be rendered. Maybe the other council members aren't prepared without going over the testimony, again, but I do think that we owe it to the public as well as the business owners to make a decision relatively quickly. We shouldn't be delaying, you know, this decision. Just my comments.

MR. HALL: May I move for a practical suggestion?

MR. DUPONT: No. Let's finish the discussion.

MS. CANGEMI: Councilman, I would be willing to at least begin the process. I wouldn't disagree with you that we should begin the process rather than delay this a lot longer. Even if we don't come to a conclusion this evening I would think the beginning of the process would be fair to residents and to the business owner, because I think doing it in a more timely fashion would be a good idea.

MR. CURLEY: You know, too, I just want to mention the necessity for clarification to the public that they will be allowed to comment regarding these hearings at a public council meeting, at a regular council meeting, that their comments could not be used as evidence and obviously they could not be cross-examined in this particular forum. It's a very similar situation to Mr. Reale when he presented his petitions. The petitions politicized the -- an attempt to politicize the hearing and again we could not cross-examine anyone that signed that document.

MR. DUPONT: One of the reasons why I was pushing us to consider the evidence this evening so that there won't be any allusion to the fact that if we have a council meeting we have public members coming forward and demanding X and demanding Y or whatever the case may be. I don't think we should be influenced by that. We should only be influenced by the evidence that has been presented. We have been diligent in reviewing the documents. We've been diligent in listening to the testimony and the numerous objections, and so part of me wants to make sure that we evidence a decision that's impartial and not politicized and can't be defined as politicized.

MR. MURPHY: Mayor, I'd be inclined to move the process along. I believe every council member here was present for both meetings. I believe we all heard the testimony. I'd be willing to, you know, to hear it out tonight and to move swiftly on it. Whether it carries into another meeting or not is another story. If it concludes tonight, it concludes tonight. I would be inclined to move it along.

MAYOR MENNA: I respect everybody's opinion. Again, I don't vote. You can do whatever you want. My strong recommendation is you're dealing with very very serious legal issues here. You're dealing with very serious legal issues. I'm going to give you 100 percent probability this is going to end up on appeal no matter what you say.

MR. DUPONT: That may be.

MAYOR MENNA: Let me finish, Councilman. As a result of that, you need the time and the guidance from your attorney instead of shooting from the hip no matter what our analysis is. I'm not calling for 30 days of deliberations. I think you've heard everything. You can make your decisions. If I were making my decision, I would want to sit down with my attorney and not in 5 or 10 minutes or 45 minutes but to really get some really finite decisions in terms of range of options. I would call for a meeting for the next Thursday night at 6 o'clock to make decisions. I'm not talking about 6-months decision. I think you need time to speak with your attorney, to discuss it with your attorney. If you don't want that, that's fine. Make the decision tonight.

MR. HOLZAPFEL: There's no problem beginning the process tonight but, it's going to take time to get the second half of the transcript filed. The council should at least have the benefit of the other half of the transcript.

MR. DUPONT: The transcript -- the testimony that we heard this evening?

MR. HOLZAPFEL: Yes.

MR. DUPONT: That testimony would be required over and above our notes that we took and the exhibits presented?

MR. HOLZAPFEL: The transcript is verbatim.

MAYOR MENNA: But Ms. Dolan can do that in the next couple of days. She's shaking her head yes. But, again, you can take a vote on it. I think it's up to you.

MS. CANGEMI: I would doubt we would come to a conclusion tonight but I would echo Councilman Dupont in suggesting that perhaps at least starting the process and getting out some of the questions for our attorney might not be a bad idea. Getting this thing out on the road. Again, it would be doubtful that we would come to a conclusion this evening.

MR. DUPONT: I don't think we could come to a conclusion, but I do think that we can agree on some

findings.

MR. CURLEY: I think while things are fresh in our minds we should continue with the process. Again, I don't think we're going to reach a full deliberation at this point.

MR. DUPONT: I think maybe our objective should be to at least to reach findings of facts and then we can always verify them with the transcript at the next hearing.

MS. LEE: Excuse me. How much notice do we need to give to the public if we should have a meeting?

MR. REALE: You don't.

MR. HOLZAPFEL: The Licensee is 5 days.

MAYOR MENNA: We're continuing the hearing.

MR. REALE: We've discussed this if you want our input.

MR. HALL: If you're going to deliberate under the OPMA, the Sunshine Law, you're going to have to call a meeting and deliberate. You can go into executive session, you know, for your judicial function but you have to call a meeting. You can't deliberate on your own. You have to schedule a meeting for deliberations. One thought I had was we could be here Monday, if it's not too close. You want to start tonight it's up to you, but maybe start Monday's meeting at 5:30 deliberations. Everyone will be here. I don't know Mr. Reale's schedule. That was my thought.

MR. DUPONT: What time is our council meeting on Monday?

MS. VIVONA: We don't have a meeting Monday.

MAYOR MENNA: We don't have a meeting.

MR. CURLEY: That puts us under constraint. That's a 2-hour period, 5:30 to 7:30, perhaps we're going to need more time than that for the deliberation. I don't want to put a time limit on it.

MR. LEE: We're not going to deliberate. It's a regular meeting.

MR. CURLEY: No, no. We're going to deliberate at a meeting prior to the regular meeting.

MR. DUPONT: Is the statement accurate that we have to have a meeting before we can go into executive -- before we can deliberate? We can deliberate -- the hearing has been closed. We can deliberate this evening or are you saying that we have to have a meeting and then go into executive session and then go to regular meeting? That doesn't make sense.

MAYOR MENNA: I didn't say that.

MR. DUPONT: Mr. Hall said it.

MS. CANGEMI: I'm confused about the order.

MS. VIVONA: Yeah. I'm with you. I'm confused about the order.

MR. DUPONT: That doesn't make sense. What makes sense is we can deliberate this evening.

MR. HALL: Right. Right.

MS. CANGEMI: In executive session.

MR. HALL: You can go into executive now. You can go into executive now. You can deliberate. You can suspend your deliberation and then you can come out and adjourn. You can come out and you adjourn and you go into -- if you don't reach a decision, you just have to call a meeting to go and to deliberate further. You can't, like, caucus among yourselves over the weekend to deliberate.

MR. DUPONT: Here is what I suggest we do. I suggest that we go into executive session for deliberations.

MR. MURPHY: I second the motion.

MR. DUPONT: Then we need a vote.

MAYOR MENNA: Vote on what?

MR. DUPONT: The vote to go into executive session to deliberate.

MAYOR MENNA: Just voting to go to executive session for purposes of commencing deliberations.

MR. DUPONT: Correct.

MAYOR MENNA: Will any formal action be anticipated to be taken this evening as a result of that executive session?

MS. LEE: No.

MS. CANGEMI: No.

MAYOR MENNA: So we will not be reconvening. Is that correct?

MR. DUPONT: Correct.

MAYOR MENNA: So there's a motion to go into executive session for purposes of discussing or starting to discuss the deliberations, however, no formal action will be taken this evening as a result of whatever discussions the council takes. Is that an accurate reflection?

MR. DUPONT: Right. It was seconded.

MAYOR MENNA: All in favor all in favor?

(All Council members respond in the affirmative.)

MAYOR MENNA: Any opposed?

(No Council members respond in the negative.)

MAYOR MENNA: No. Okay. Now having gone beyond that, is there any need for us to schedule a formal meeting where further deliberations will be taking place? That's what I was getting at. I don't want to carry it over 6 months.

MR. DUPONT: What's the notice requirement that we have to have, 5 days?

A VOICE: There's no notice.

MAYOR MENNA: Not to the Licensee at this point. The hearing is over with.

MR. REALE: The Licensee waives it.

MAYOR MENNA: It's a 5-day requirement. The standard open meetings notification of 48 hours. It's only a 48-hour notification. The five day is for the Licensee. He's waiving that.

MR. DUPONT: Can we do this Monday?

MS. LEE: I won't be here Monday.

MS. CANGEMI: There is no counsel meeting.

MR. DUPONT: Before a counsel meeting.

MAYOR MENNA: I suggested next Thursday evening.

MS. VIVONA: Thursday is the zoning board.

MAYOR MENNA: Before the zoning board.

MS. VIVONA: The zoning board starts at 6.

MR. DUPONT: And Sharon won't be here on Monday?

MS. LEE: Monday and Tuesday. How about Thursday?

MR. CURLEY: How about Saturday morning? I love to ruin people's weekends.

MR. DUPONT: Some people have lives.

MR. REALE: If it helps, Mayor, I'm not available on Monday.

MAYOR MENNA: It's not going to be Monday. Councilwoman Lee will not be here Monday so it's not going to be on Monday. I will be out of state Tuesday, so I can't do it. And possibly Wednesday as well.

MR. DUPONT: Thursday is out.

MAYOR MENNA: We can do it earlier than Thursday. Is there any reason why we can't meet like around 4 o'clock Thursday?

MR. HALL: If I can get out of tax board early. It's a Monmouth County tax board Thursday. I can prevail upon Mr. Clark.

MAYOR MENNA: I think you can get out by 3:30 in Monmouth County tax court.

MR. DUPONT: So it's 3:30 on Thursday?

MS. LEE: 4 o'clock.

MR. DUPONT: 4 o'clock.

MAYOR MENNA: That gives us enough time. That way we can keep the momentum. I just don't think we're going to be able to resolve all the issues tonight.

MS. CANGEMI: No.

MAYOR MENNA: 4 o'clock Thursday.

MR. MURPHY: 4 o'clock Thursday.

MR. DUPONT: The 21st.

MAYOR MENNA: Thank you, gentlemen. Members of the public, thank you.

(The hearing is adjourned.)

AUDIENCE

EXECUTIVE SESSION

07-151B The Attorney read a resolution to adjourn to executive session to discuss deliberations.

Mr. DuPont offered a motion, seconded by Mr. Murphy to adjourn to executive session to discuss deliberations. Minutes to be made public in 180 days.

ROLL CALL:

AYES: Curley, Murphy, Lee, DuPont, Cangemi

NAYS: None

There being five ayes and no nays, the motion was declared approved.

Mr. Murphy offered a motion, seconded by Mr. DuPont to adjourn from executive session.

ROLL CALL:

AYES: Curley, Murphy, Lee, DuPont, Cangemi

NAYS: None

There being five ayes and no nays, the motion was declared approved.

ADJOURNMENT

Ms. Cangemi offered a motion, seconded by Mr. DuPont to adjourn the meeting to Thursday, June 21, 2007 at 4:00 p.m.

ROLL CALL:

AYES: Curley, Murphy, Lee, DuPont, Cangemi

NAYS: None

There being five ayes and no nays, the motion was declared approved.

Respectfully submitted,

Carol A. Vivona