

MINUTES
SPECIAL MEETING
MUNICIPAL COUNCIL – BOROUGH OF RED BANK
MAY 22, 2007
5:00 P.M.

MAYOR MENNA: Good evening. Welcome to the Red Bank Special Council Meeting. It is now 5:12 p.m. This is a special hearing this evening concerning a plenary retail distribution license hearing. It has been advertised as such. Could you please rise for the Pledge of Allegiance.

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.

EXCUSED: Councilman Bifani

ABSENT: Chief Financial Officer Mason, Attorney Pringle, Administrator Sickels and Engineer Kosenksi.

Councilman DuPont left the meeting at 8:55.

MAYOR MENNA: I indicated at the roll call, Councilman Bifani had excused himself from this. I also note for the record that Michael Holzapfel from the firm of Becker Meisel is going to be our borough attorney and acting in that capacity this evening and this is a special meeting.

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 April 24, 2007.

MAYOR MENNA: As I said, this is a special meeting, and I had some just brief technical discussion with both attorneys for the parties this evening, and out of respect for members of the public, the professionals, as well as members of the council, I would encourage these proceedings to start tonight; but I would also encourage that we have a sunset clause where no further testimony will be taken since most of us, including the members of the public, have worked all day and so I would not encourage a marathon hearing.

If we have to have a special meeting if we don't conclude this evening's proceeding, preferably not going to 2 o'clock in the morning, I would establish that at least tentatively 9 o'clock would be the cut-off time for this particular hearing. I think that's fair. That gives us 4 hours of testimony, if we have to go that long.

The way it's going to proceed, for the purposes of the hearing, would be just like in any plenary hearing, the parties will make some brief introductory remarks, if they choose to do so. The State will proceed with its testimony and the witnesses thereafter. Those witnesses can be cross-examined by the interested party, by the defense, and by members of the public who are not represented can certainly have the opportunity to ask questions.

After the State concludes its case, then, obviously, if the defense wishes to place some witnesses, that would be the appropriate time to do so and we will follow the same procedure in terms of cross-examination as well as questions from the public.

At the conclusion of both parties, there will be summations by all parties; and prior to summations, if any members of the public who are not represented by counsel wish to make any comments or general commentary about the procedure and what is transpiring, that would be the time to do so.

Because these hearings are being transcribed by a court reporter out of respect for her, she can only take the testimony and the colloquy of one person at a time, so it's important that only one person speak at any given time. The only way we can do so, so we can have an accurate record, is that if anyone wishes to

make a comment, let me acknowledge you first so the reporter will have a true and accurate record of what is exchanged in terms of colloquy instead of having everyone speak or shout at the same time.

With those brief introductory remarks, gentlemen, would you present your appearances for the record since we are on tape.

MR. HALL: Thomas Hall, Pringle, Quinn Anzano, on behalf of the Borough.

MR. REALE: Thank you. Sam Reale, Kearns, Vassallo and Kearns, on behalf of the licensee, which is Best Liquors, Inc.

MAYOR MENNA: Thank you.

MR. REALE: I would ask, if there's witnesses, I would ask for sequestration.

MAYOR MENNA: I have no objection. I think that's proper. How many witnesses do you have, Mr. Hall?

MR. HALL: I have five. There's two in the audience. You want to exclude the next one?

MAYOR MENNA: Please.

MR. HALL: Patrolman, please step outside.

MAYOR MENNA: Is the Chief going to be a witness or not?

MR. HALL: No. The Chief is not going to be.

MAYOR MENNA: You have one witness in the courtroom?

MR. HALL: There's only one in the courtroom. Everyone else is out.

MAYOR MENNA: I presume that's a joint request. Mr. Reale, your only witness, I believe, is your client.

MR. REALE: Is the representative of the entity. As you well know, the entity is only appearing with counsel.

MR. HALL: Are you going to call the alibi witness again?

MR. REALE: Are we retrying this tonight?

MR. HALL: Well, if you're going to recall the alibi witness, she should be excluded.

MAYOR MENNA: We can't hear you. We couldn't hear what you were saying.

MR. REALE: There was a question about whether we were going to be recalling a witness that we called in another proceeding. Out of the abundance of caution, I asked her to step out.

MAYOR MENNA: Thank you. Mr. Hall, you go first.

MR. HALL: I go first.

A VOICE: Before you start, there's not an ability to hear back here, Mayor. We can't – I can't hear you very well, and I certainly can't hear the people there. If the mike could be turned on, that would be great.

MAYOR MENNA: They are on.

A VOICE: They are not on loud enough. I can hear the clerk.

MS. VIVONA: You have to speak into the mike. People aren't doing that.

A VOICE: Thank you.

MR. HALL: I'll try to shout. Mr. Mayor, members of council, the Borough will prove by a preponderance of the evidence the following charges against the licensee, which is Best Liquors Incorporated, with respect to liquor license number 1340-44-020-005, that on May 19th, 2006, the Licensee, Pankaj Sharma, was in possession of a quantity of cigarettes without the proper revenue stamp, in violation of NJSA 54:52-18 and NJSA 33:131 (f) for failure to have at all times the proper stamps or other proper evidence of paper of any tax required to be paid by any law in this state, that a licensee was in possession and attempting to sell untaxed cigarettes.

The evidence will also show that the licensee later pled guilty to this charge before the municipal court of the Borough of Red Bank. The Borough will also show that on July 6, 2006, an employee of the licensee Rakesh Sandel sold a quantity of alcohol to Mark Valdez, who was 18 years old, in violation of NJSA 33:1-77, Borough Ordinance No. 6-7.1, and NJSA 33:1-31 (a) and (h).

We will also prove by a preponderance of the evidence that on July 7, 2006, the Licensee Pankaj Sharma sold a quantity of alcohol to Sergio Limon, age 16, in violation of NJSA 33:1-77, Borough Ordinance 6-7.1, and NJSA 33:1-31 (a) and (h). The evidence will also show that the licensee, Mr. Sharma, pled guilty to that offense on January 4th, 2007.

We will prove that on July 14th, 2006, the licensee, again, Mr. Sharma, sold a quantity of alcohol to Nicole Rosato, age 19, at the time, in violation of those same statutes and ordinances I cited to you earlier.

Fifth, the Borough will prove that on October 6th, 2006, the licensee permitted his employee Balvinder Singh to work at the premises without being registered with the Borough of Red Bank in violation of Borough Ordinance 6-7.1 and NJSA 33:1-31 (h). We will prove also that Mr. Singh pled guilty to this offense on November 9th, 2006.

Finally, the Borough will prove that on November 22, 2006, Balvinder Singh sold, that same employee of the licensee, sold a quantity of alcohol to Christian Philpot, P-H-I-L-P-O-T, age 15, and Stanley Bibbins, age 18, in violation of NJSA 33:1-77, Borough Ordinance 6-7.1, and NJSA 33:1-31 (a) and (h). We will prove that Mr. Singh pled guilty to that offense on January 4, 2007.

The Borough will prove its case through several different types of evidence. We will call to the stand police officers who made the observations, who developed the evidence, and made the arrests in this case.

We will also call to the stand one of the actual underage purchasers of alcohol, Ms. Nicole Rosato. We will also enter into evidence certified records of the municipal court of the Borough of Red Bank showing the guilty pleas that I already described to you.

At the end of this hearing, Mayor and Council, I submit to you I'll ask you to render a decision on this license, and I'm going to ask you on the basis of the particulars set forth in the New Jersey Administrative Code to revoke the licensee's license for the multiple violations of the law that we will prove to you over the course of this proceeding. Thank you.

MAYOR MENNA: Mr. Reale.

MR. REALE: Thank you, Mayor. Mayor and Council, I'm not sure I need a microphone. I've never been accused of being soft spoken. Good evening.

On behalf of the licensee, we first off have to point out that what Mr. Hall has just represented to you as the licensee having been charged, the licensee having pled guilty, the licensee here is Best Liquors of Red Bank, Inc. Best Liquors of Red Bank has never been a defendant in the municipal court. There have never been any charges filed against Best Liquors of Red Bank in the Red Bank Municipal Court. That's the first mistake.

The second question I have is one as to process. This process this evening Mr. Hall has already stood up and said that this body has already by a preponderance of the evidence decided to file the charges.

MR. HALL: Objection.

MR. REALE: The question -- go ahead.

MR. HALL: Misrepresenting the opening statement.

MAYOR MENNA: Let Mr. Reale finish his statement first.

MR. REALE: Mr. Hall told this body in his opening sentence that you have already preferred charges based on your review of the material. Now, you, this evening, have to set that aside to evaluate the evidence you hear to make a decision. You are now a trier of fact.

The problem is that in this particular setting you are not able to, I suggest, really divorce yourself from the other information that's been out there that has been provided to you as members of the governing body. By that I mean all the media accounts and the residents who have come forward and made other allegations, none of which we are here tonight trying.

I suggest to you that, in fact, the process should be a referral to the Division of Alcoholic Beverage Control, to the director, to allow a hearing to be conducted at that location through the administrative law process, because I suggest to you that it is virtually impossible to divorce yourself from what you've already decided, and the only reason we're here is because you've already decided.

Now, first, if you recall, I said when I started my remarks that Best Liquors has never been a defendant. The process here is a hybrid. There have got to be rules of evidence, there have to be questions as it relates to procedure. The licensee objects to the utilization of hearsay information in this particular hearing.

For point of fact, Mr. Hall didn't tell you this but the charge as it relates to Mr. Valdez was dismissed in municipal court for lack of prosecution because the State was unable to produce Mr. Valdez and Mr. Hall was not going to be able to produce Mr. Valdez this evening or any time in the foreseeable future, yet he has that as a particular charge that he wants you to consider.

Now, ask yourself this question: How can you evaluate a case without having the persons who are allegedly involved in the purchase or sale of the alcoholic beverage as to whether the licensee, the licensee, not the individual, the licensee, has run afoul of the statutes governing the sale of alcohol to persons under legal age? I suspect that we are all agreeable that we are working under a burden of proof that is mere preponderance.

Now, I'm not going to try to describe that for you at this juncture. That's not my purpose, but while Mr. Hall is presenting his case he is necessarily going to have to rely on hearsay evidence. You need to evaluate that, whether you are going to permit that.

The utilization of judgments of conviction to municipal ordinances, which Mr. Hall didn't differentiate between convictions for the Title 33 violation which is having pled guilty to an order, it's not one made known to you, those convictions in and of themselves are not admissible against the licensee.

The doctors of res judicata and collateral estoppel do not apply here. Again, Best Liquors is not a party. The licensee objects to any evidence that Mr. Hall on behalf of you would offer to you this evening as it relates to judgments of conviction or any record of proceedings to which Best Liquors was not a party.

Granted, we're not going to argue with the question about whether there was an employee who was working there who hadn't gotten his license. Mr. Hall can save his time on that one. That's not really the issue here. The issue here is related to these underaged sales that are alleged, that, quite frankly, happened in a very compressed time for our purposes in 2006. This is not an entity that's going to be presented to you this evening as being Camp Run a Muck or where anybody can walk in off the street and purchase liquor.

You need to keep in mind, as I'm sure Mr. Hall's witnesses are going to testify to, the police officers, that there's no foolproof way to screen everybody, that you're going to get leakers no matter how closely you card or screen the people buying your liquor.

With that, I ask you to keep an open mind. I'm concerned as to whether you're able to do that, and that's not a slight or a nod. It's just a recognition of human nature and the fact that you sit there as elected members of the community. You are the representatives. Keep an open mind because at the end of the day things may not be as they appear.

Thank you, Mr. Mayor, and thank you, Council.

MAYOR MENNA: Thank you. With respect to the legal issue that you raised, that you raised it, I think it would be preserved if there's any subsequent proceedings, so that's noted for the record.

Do you have anything else to add, Mr. Holzapfel?

MR. HOLZAPFEL: No. I believe we should proceed.

MR. REALE: I'll place a continuing objection on the record and say --

MR. HOLZAPFEL: Continuing objection as to hearsay?

MR. REALE: As to the hearsay and as to res judicata and collateral estoppel.

MAYOR MENNA: The other matter that you raised was one of inappropriate forum, essentially.

MR. REALE: Definitely.

MAYOR MENNA: It's on the record and we would obviously have to review all of the facts when they come in. I think your objection to hearsay I certainly understand as an attorney and we all do, but it would be a continuing objection. That's my understanding.

Do I also understand you to state at least in your opening remark that at least one of the charges with respect to the actual unrepresented, the person did not present the license is not really in dispute?

MR. REALE: I don't think that's of any -- that's not in any great dispute. I mean that individual was charged with not being a licensed employee. The licensee has an obligation to make sure that its employees are licensed. That doesn't seem to make any sense to me to chew up time to deal with that one. That's really not what's driving this evening anyway.

MAYOR MENNA: Okay. Thank you. I appreciate it.

MR. HALL: The Borough calls Ms. Rosato to the stand.

N I C O L E R O S A T O, called as a witness, having been first duly sworn, testified as follows:

MAYOR MENNA: State your name for the record.

THE WITNESS: Nicole Rosato.

DIRECT EXAMINATION BY MR. HALL:

Q Thank you for coming down tonight, Ms. Rosato. Are you employed right now?

A No.

Q Do you go to school?

A Yes.

Q Where do you go to school?

A Bethany College in Rutland, Massachusetts.

Q How long have you been in Bethany College?

A Just finished up my second year.

Q You are on summer break now?

A Yes.

Q Where do you live?

A In Middletown.

Q What address?

A 30 Garryford Drive.

Q What's your date of birth?

A January 20th, 1987.

Q And you're now 20 years old?

A Yes.

Q I direct your attention back to July 14th, 2006. Were you 19 years old at that time?

A Yes.

Q Now, on July 14th, 2006, were you at the liquor store located at Leighton Avenue and Catherine Street in the Borough of Red Bank?

A Yes.

Q Do you know the name of that store?

A No. Well, I know from hearing it here but I didn't prior.

Q What do you know it to be now?

MR. REALE: Objection to relevancy. It doesn't matter what she knows now. It's what she knew then.

MR. HOLZAPFEL: Overrule the objection. Move on, Counsel.

MR. HALL: Sustained or overruled?

MR. HOLZAPFEL: You can continue.

Q Do you know the name of the store now?

A Yes. Best Liquors.

Q Now, bringing you back to July 14th of 2006, why did you go to Best Liquors?

A To purchase beer.

Q Okay. And did you, in fact, purchase beer on that day?

A Yes, I did.

Q Do you remember what you bought?

A A 30 pack of Natural Lite Beer.

Q Why did you go to Best Liquors as opposed to any other liquor store?

A Well, I heard from, like, friends who have been there.

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

MR. HOLZAPFEL: Why don't you move on to a different question, Counselor. As we all know, under the rules by which we operate, hearsay rules are somewhat relaxed, however, let's not go too far astray.

MR. HALL: Well, it goes to -- it's not being offered for the truth. It goes to motivation why she went there. Why that liquor store as opposed to any other liquor store.

MAYOR MENNA: Ask her that question.

Q Why did you go to that liquor store as opposed to any other liquor store?

MR. REALE: Same objection.

MR. HOLZAPFEL: You can answer it.

A Just because underage friends have been there and purchased before.

Q So you knew that the underaged people had successfully purchased liquor at that store?

MR. REALE: Objection to the leading nature of the question. It's not what the witness testified to.

MR. HOLZAPFEL: I'm going to sustain the objection.

Q Okay. When you went to the liquor store and bought the Natural Lite Beer, did you know the person behind the counter?

A What do you mean "know"?

Q Have you ever seen that person before?

A Yes.

Q Okay. Did you know that person's name?

A Well, I knew of his nickname.

Q What was that?

A Sunny.

Q Okay. And did you ever see that person before, Sunny, before July 14th, 2006?

A Yes.

Q And where did you see him in the past before that date?

A In the liquor store.

Q Okay. And what was your purpose in being in the liquor store on those prior occasions?

A Try to purchase alcohol.

Q Okay. Were you successful in those prior occasions?

A Yes.

MR. REALE: Objection.

MAYOR MENNA: What's the basis for the objection?

MR. REALE: He hasn't been charged with any offense other than this. The licensee hasn't been charged with any sale to Ms. Rosato on any date other than July 14th of 2006. This is --

MR. HOLZAPFEL: I'm inclined, Counsel --

MR. REALE: It's improper.

MR. HALL: It goes to knowledge. It goes to her ability to identify the person behind the counter. It goes to her credibility. It explains her actions.

MR. HOLZAPFEL: I'm inclined to recommend to counsel that we keep in conformity with the charges that are at issue for purposes of this hearing. If you want to ask her questions with regard to the incident that forms the basis for this particular hearing, one of the specified charges, I think that's not a problem. I think we should keep it to the issues in question.

Q Do you see the man that you bought liquor from -- or beer from, excuse me, that you bought beer from on July 14th, 2006, sitting here in the council chambers tonight?

A Yes.

Q Can you please point him out?

A There.

MR. HALL: Sitting next to Mr. Reale.

MR. HOLZAPFEL: Mr. Reale, agree?

MR. REALE: I stipulate for this purpose.

MR. HOLZAPFEL: Okay.

Q When you bought the beer on July 14th, 2006, did you show the licensee, sitting here today, did you show him any form of identification?

A No, sir.

Q Were you asked for any form of identification?

A No, sir.

Q Did you ever show any form of identification to anyone at Best Liquors on the prior occasions that you were in there to purchase alcohol?

MR. REALE: Objection.

MR. HOLZAPFEL: Basis for your objection, Counsel.

MR. REALE: It's prior acts. I mean it's that simple.

MR. HALL: Prior acts --

MR. HOLZAPFEL: I think we're talking about a single act on the night of --

MR. REALE: No. The question was, unless I misunderstood it, we can have it read back, the question was had she ever showed it on prior occasions.

MR. HALL: There's a defense to a charge of underage sales. If she's shown IDs in the past, that's a defense. I'm entitled to establish that she never has shown an ID in that premises.

MR. HOLZAPFEL: Could you read the question back.

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

MR. HOLZAPFEL: I'm inclined to recommend to counsel that we confine it to the evening in question that forms the basis for the charge. I'm inclined, Mr. Hall, to recommend that we confine it to the evening with which you speak, that being July 14th, 2006.

MR. HALL: I reserve my right to reopen the door if he opens the door, then.

MR. HOLZAPFEL: Absolutely.

Q After you purchased the beer, you were arrested. Correct?

A Well, after I purchased the beer, I put it in the back seat of my car and drove around the corner, and Officer Adams pulled me over and following that I was arrested.

Q And Officer Adams -- what, if anything, did Officer Adams do with the beer you purchased?

A He took it and put it in his car.

Q Officer Adams brought you here to Red Bank Borough Hall, to police headquarters. Correct?

A Yes.

Q You were processed for arrest here in Borough Hall?

A Yes.

Q And your parents were notified. Correct?

A No. My parents were not notified.

Q You were let go that night with a summons. Correct?

A Yes. I'm pretty sure.

MAYOR MENNA: I think she said she was 19 at the time, so her parents would not have been entitled to notification. Is that correct?

THE WITNESS: Right.

Q Okay. You later pled guilty to the hearing in Red Bank Municipal Court. Correct?

A Yes.

Q And you paid a fine. Correct?

A Yes.

Q How much was that fine?

A Over \$500.

MR. HALL: I offer and ask to have marked for identification RB 16.

MAYOR MENNA: Any objection?

MR. REALE: Well, I don't see the purpose of it. The witness has testified that she pled guilty and paid a fine. I don't know what -- I don't know what it adds to the equation.

MAYOR MENNA: It's a disposition of record. It's part of the court record. I don't see any harm in accepting it.

MR. HALL: It's admissible under the hearsay rules as an official government document. I move RB 16 into evidence.

(RB 16 received in evidence.)

MR. HOLZAPFEL: I recommended to the council that this can be admitted into evidence under Rule 803, under Rule 609. Considering the relaxed standard, I don't think there's a problem with its submission.

MR. HALL: Thank you for coming tonight.

MAYOR MENNA: Mr. Reale, will ask you questions now.

CROSS EXAMINATION BY MR. REALE:

Q Ms. Rosato, you remember me, don't you?

A Yes.

Q Okay. Now, when you pled guilty in front of the Red Bank Municipal Court, you weren't represented by counsel, were you?

A No.

Q You came here, your mother was with you, if I recall. Correct?

A Not when I was in front of the council for my charge, but in the first time I testified, yes, my mother was with me.

Q So you weren't accompanied by your Mom -- you weren't accompanied by anybody when you entered your plea in connection with your arrest?

A No.

Q And prior to entering the plea you had had an opportunity to speak to the Prosecutor. Correct?

A Yes.

Q And you spoke to Patrolman Adams. He was back in that room as well?

A Yes.

Q Patrolman Adams was the officer that arrested you, wasn't he?

A Yes.

Q Now, you pled guilty to a municipal ordinance, didn't you?

A Yes.

Q And part of that was the Prosecutor explained to you that by pleading guilty to an ordinance you wouldn't have a criminal record, didn't he?

A Correct.

Q He also told you that he was going to want you to testify in the trial as it related to Mr. Sharma?

A He said if I was needed as a witness, that he would call me. That was his exact words.

Q You were how old at that point?

A 19.

Q And now, on July 14th of 2006, I recognize you were plowing some of the same ground we plowed before. You were coming from where?

A Work.

Q Okay. And where was work?

A Osteria Dante in Red Bank.

Q That's a restaurant?

A Yes.

Q You were employed as what there?

A A hostess.

Q And how were you dressed that night?

A I was dressed probably in a nice sweater, a nice pair of pants.

Q You weren't wearing jeans or cut-offs. Correct?

A No.

Q You weren't wearing a T-shirt?

A No.

Q Were you wearing your glasses or contacts that night?

A Contacts.

Q Okay. And do you often wear your contacts? Which do you prefer, contacts or your glasses?

A Well, I switch off, I mean.

Q Okay. But you had your contacts in that evening?

A Yes.

Q All right. Now, what sort of make-up were you wearing?

A I was not wearing any, and I remember because I was, like, curious why he -- the officer would pull me over, and he said because you don't look very -- you don't look old enough. I said okay. How old do I look, out of curiosity. He said 15 or 16, because I'm not wearing make up.

Q So the officer thought you were 15 or 16?

A Well, I don't -- obviously underage. He didn't even think that -- I remember -- sorry. I recall it was definitely under 18 that he...

Q Did you understand the officer was having trouble figuring out how old you were?

A Yes. But he, I guess, knew I was underage.

Q Okay. But the officer, when he first came up to you on the side of your car, when he stopped you and his conversation with you, he was having trouble figuring out how old you were?

A I don't recall. I'm sorry. I --

Q Now, on that particular evening you say you went to Best Liquors?

A Yes.

Q Your purpose for going in there, you say, was to buy alcoholic beverages?

A Yes.

Q When you walked into Best Liquors that night, how old -- what was your understanding of how old you had to be to buy liquor or alcoholic beverages in the State of New Jersey?

A 21.

Q And you wanted to pass off as 21, didn't you?

A Yeah.

Q All right. So you would agree with me that you carried yourself and you presented yourself as if you were over 21?

A I guess so.

Q All right. Because that was your entire purpose for being in there. Correct?

A Yes.

Q Okay. Now, you say you knew Mr. Sharma?

A Well, not as, like, not personally, but I just have seen him before in the store and friends have said, oh, this is Sunny's store.

Q So your working that evening – where were you going, I'm sorry, I forgot to ask you this. Where were you going after you bought the beer, where were you headed to?

A Just my friend's house.

Q Well, where was that in connection with Best Liquors of Red Bank?

A Shrewsbury.

Q Well, I'm not really familiar with the area. Could you help me out. About how far is that from Best Liquors or Red Bank?

A Probably about 10 minutes.

Q Okay. What other liquor stores have you bought liquor from wherein you weren't 21 years of age?

A Nowhere, sir.

Q Never did this before?

A Well, at Best Liquors, yes, but nowhere else.

Q Okay. Isn't it true, Ms. Rosato, that when the officer and you were having the discussion, you told the officer you didn't recall the name of the individual who sold you the liquor?

MAYOR MENNA: This -- Mr. Reale, just a clarification for my education. You asked her when she was having the discussion with the officer?

MR. REALE: Yes.

MAYOR MENNA: Are you referring to the discussion she had with the officer in municipal court or are you referring to whatever discussion she may have had with the officer at the scene?

MR. REALE: The officer in connection with the arrest, Mayor.

MAYOR MENNA: At the time of the arrest?

MR. REALE: Yes.

MAYOR MENNA: That's what we're talking about.

MR. REALE: That's what we're talking about.

MR. DUPONT: Is this part of the direct testimony?

MAYOR MENNA: She said that she had a conversation with him.

MR. REALE: That's why I was asking where that discussion took place.

MAYOR MENNA: Why don't you go through the question again?

MR. REALE: I'll be more than happy to rephrase.

Q Now, when you and Patrolman Adams were talking after you had been arrested, isn't it true that you told Patrolman Adams that you really didn't recall the name of the individual who was selling you the liquor, the beer?

MR. HALL: Objection. Basis of the question.

MR. REALE: She can answer it yes or no.

MR. HOLZAPFEL: Can you articulate your objection?

MR. HALL: What's the good faith basis for this question?

MR. HOLZAPFEL: As to relevancy?

MR. HALL: No, as to what she told PO Adams.

MR. HOLZAPFEL: Understanding his relevancy objection, I'll recommend that she be permitted to answer the question. However, I think we have in evidence that the end result of this underlying transaction, you know, has been established. I don't know why we're litigating -- why are we revisiting the underlying court proceeding or the testimony that was offered?

MR. REALE: If that's the case, I do renew my objection to this proceeding. I recognize that's going to be denied.

MR. DUPONT: If we can move this proceeding along here. I know we're understanding various objections but if we can try to get to the facts here, Mr. Reale, Mr. Hall, it would be helpful so that we can make a decision and at least get some testimony out.

MR. REALE: Well, if I may, Mayor, I don't want to address any individual members. I apologize.

MAYOR MENNA: That's the proper way to do it.

MR. REALE: The reality is is that every witness who testifies here has a credibility issue. Credibility is always an issue.

MR. HALL: Can we save summations until the end of the case?

MR. REALE: That's not the issue. Am I allowed to cross-examine?

MAYOR MENNA: He asked a question and she was getting ready to answer the question, in any event. Do we want to get over this if we went ahead with the question and answer. I don't see any prejudice in the question being asked. Do you remember the question?

MR. HOLZAPFEL: Let's have it read back.

MR. REALE: I'll rephrase it.

MR. HOLZAPFEL: Thank you.

BY MR. REALE:

Q Ms. Rosato, when you were talking to Patrolman Adams, isn't it true that Patrolman Adams told you that Mr. Sharma's name was Sunny Sharma?

A Are you talking about when he pulled me over or in the courtroom last time?

Q When he pulled you over.

A No. I don't think we had -- I don't recall any talk about who told me anything.

Q Okay. When you got to court and you talked to Patrolman Adams and the Prosecutor, they told you the man's name was Sunny Sharma?

A Well, yes and no. I already knew that but he did confirm that. I didn't know his last name at the time. I'm sorry. I did know that he was Sunny prior to being told that that day.

Q Did you have a conversation with Mr. Sharma that evening, that being July 14th, 2006?

A No. I don't recall that.

Q Okay. How did you pay for your purchase?

A With cash.

Q How much cash?

A I don't remember.

Q Did you get change?

A I think so.

Q You didn't pay with a credit card?

A No, sir.

MR. REALE: I have nothing further.

MR. HOLZAPFEL: Thank you.

MR. HALL: Very brief.

RE-DIRECT EXAMINATION BY MR. HALL:

Q Did anyone ever make you any promise for coming and testifying in municipal court?

A No.

Q Did anyone make you any promise for coming and testifying here today?

A No.

Q When you were back in the municipal court were you subpoenaed to appear in municipal court?

A Yes.

MR. HALL: I'm going to ask that this be marked as RB 17. I'm showing it to the witness.

MR. REALE: Could I see it?

MR. HALL: Sure.

(RB 17 marked for identification.)

MAYOR MENNA: Any objection, Mr. Reale?

MR. REALE: I have no objection to the item being marked for identification.

MAYOR MENNA: Thank you.

MR. HALL: May I show it to the witness?

MAYOR MENNA: Yes.

Q Ms. Rosato, take a look at what's been marked as RB 17. Does that fairly and accurately depict your appearance on the night of July 14th, 2006?

A Yes.

Q Okay.

MR. HALL: I move RB 17 into evidence.

MAYOR MENNA: Any objection?

MR. HOLZAPFEL: Any objection?

MR. REALE: Well, I object to the fact that it's beyond the scope of the cross, but recognizing this proceeding for what it is.

MR. HOLZAPFEL: Mr. --

MAYOR MENNA: With all due respect, you asked her about make-up. You asked her if she was wearing eyeglasses. I think it's appropriate. So --

(RB 17 received in evidence.)

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

MR. REALE: If I may?

MAYOR MENNA: Sure.

RE-CROSS EXAMINATION BY MR. REALE:

Q Ms. Rosato, what time is this photograph taken?

A I don't remember.

Q Okay. How long had you been in police custody before the photograph was taken?

A By about 5 minutes, not too long.

Q Not too long after you got back to the station?

A No.

Q To your knowledge, do you have any other photographs that were taken of you that evening?

A No.

Q Can you tell from that photograph whether your -- what you're wearing for a top? You testified before you thought you were wearing a sweater. Can you tell from that photograph what it is you're wearing?

A Well, to be honest, I had a sweater over a tank top. I'm not allowed to wear tank tops like that, but I was nervous and hot and I took it off in the police station.

Q So the clothing that's depicted in this photograph, this being RB 17, isn't the complete outfit you had on at the time you went into Best Liquors?

A Correct.

Q Okay.

MR. REALE: Nothing further.

MR. HOLZAPFEL: Thank you.

MR. HALL: Thank you.

MAYOR MENNA: Thank you, Ms. Rosato. You may be excused.

(The witness is excused.)

MR. HALL: I call Lieutenant McDonough.

MAYOR MENNA: If you would just step in the box, please. Raise your right hand.

T H O M A S M C D O N O U G H, called as a witness, having been first duly sworn, testified as follows:

MAYOR MENNA: Please state your name for the record as well as your current status.

THE WITNESS: Lieutenant Tom McDonough, Red Bank Police Department.

DIRECT EXAMINATION BY MR. HALL:

Q Lieutenant McDonough, how long have you been with the Red Bank Police Department?

A 21 years in May.

Q And how long have you been a lieutenant?

A Approximately, five.

Q Do you have any special duties with the Red Bank Police Department?

A I run the service division, and part of that is the ABC.

Q When you say ABC?

A Alcoholic Beverage Control Enforcement.

Q Can you describe your duties as running the ABC department?

A I'm responsible for all the background investigations concerning liquor license applications to buy a license. We do all the background investigations for employees that have to be licensed to serve alcoholic beverages.

Q In your capacity as the ABC officer is it your duty to become knowledgeable concerning violations by a licensee in the Borough of Red Bank?

A Yes, it is.

Q Now, are you familiar with Best Liquors?

A Yes.

Q Where is that located?

A 75 Leighton Avenue. Corner of Leighton and Catherine.

Q Can you describe the neighborhood around Best Liquors?

A It's a residential neighborhood.

Q Describe Leighton Avenue, please.

A Residential street, runs north and south.

Q Okay. Describe Catherine Street.

A It's a similar street, residential street, runs east and west, intersects obviously Leighton.

Q Is Leighton Avenue a local or county road?

A Local road.

Q What road -- is there a county road within the vicinity of Leighton Avenue that runs parallel?

A Shrewsbury Avenue.

Q Shrewsbury Avenue is a county road?

A County road.

Q Can you compare Shrewsbury Avenue and Leighton Avenue?

A Shrewsbury Avenue is a heavily traveled road as Leighton is not. It's a secondary road, if you will, residential street.

MR. HALL: Mayor, I'm going to ask that this be marked as RB 24. I ask it be marked and shown to the witness.

MR. REALE: We can move that right in.

MAYOR MENNA: Just move it right in.

MR. HALL: Thank you.

(RB 24 received in evidence.)

Q Lieutenant, I direct your attention to July 22nd, 2005. Did you become aware of any official enforcement action concerning Best Liquors that day?

A Yes, I did.

Q Describe what you learned.

A There was a violation of sale to underage.

Q And how did you learn about this?

MR. REALE: I'm going to interpose an objection at this point. There's no charge related to the sale of -- there's no charge for a sale of underage -- to my knowledge, we're not here with respect to any charge that's been filed as it relates to July of 2005 against the licensee. I object to the introduction of any such evidence.

MAYOR MENNA: What's the relevance, Mr. Hall?

MR. HALL: It was in -- this is a prior warning to the licensee of an underaged sale. This was -- this evidence was noticed in the charges and specifications, that the Borough would seek to introduce this evidence. This goes to penalty. If counsel is going to argue, which I'm sure he is, that he's entitled to some reduction from the presumptive penalties that I'll be asking you to enforce at the end of this proceeding, certainly the fact that he was given a prior warning goes to whether or not there should be some relief from the presumption. It's being offered for the fact that he got prior warning.

MR. REALE: I need to respond to this and I'll make sure I'm heard. That's a backdoor attempt to try to put before you evidence that's improper. The reality is that this licensee is here to address the charges and specifications that you've directed be filed. The licensee is entitled to confront those charges. The reality is is that you're about to be asked to listen to testimony for an area that has never resulted in any charges, there's never been any testimony with respect to, and this lieutenant wasn't there and can't speak directly as to what happened and how it happened.

To go forward with that particular type of evidence, whether it was provided by Mr. Hall to the licensee or not, doesn't make it, A, relevant or, B, admissible. And that's my objection. This is an improper area of inquiry on the part of the State.

MR. HOLZAPFEL: Counsel, if there's no objection, on the part of the Borough council --

MAYOR MENNA: Let him respond.

MR. HALL: Let's be clear on one thing. The administrative code permits the admission of hearsay in this proceeding. That is clear. Secondly, counsel was put on notice of this charge. Thirdly, the licensee pled guilty to this charge. Now, we are not asking for a penalty based on this charge because he got a warning. I will not be asking to impose a penalty based on this charge, but what I'll be asking you to do is consider this warning when considering whether or not you should deviate from the presumption. It's being offered for that limited purpose.

Therefore, prior bad acts are liberally admitted in the State of New Jersey. This goes to knowledge, this goes to absence of care, this goes to -- it's clearly admissible for that limited purpose.

MAYOR MENNA: Mr. Reale.

MR. REALE: I don't want to use the word "ludicrous", but that's not the case. Yes, hearsay is admissible in the context of an administrative proceeding, but there must be the residuum rule is how they refer to it in the administrative code. This particular incident is not one of the charges or specifications for which the licensee is being called upon to respond. It is a backdoor attempt to create this other offense. I don't care how Mr. Hall dresses it up, it's still an improper attempt to bring in prior acts, what we as lawyers would call prior acts under the rules of evidence.

Now, the --

MR. DUPONT: Are prior acts disciplinary --

MR. REALE: Not without very specific findings of fact.

MR. DUPONT: But we haven't had the opportunity to find any facts because you keep objecting.

MR. REALE: That's not the issue. The issue is the process and how it works. This officer --

MR. DUPONT: Right now we're trying to listen to the facts. We haven't made any determination at this point in time. It's my understanding in what Mr. Hall is trying to elicit, I apologize to counsel and Mayor, that there had been a prior warning given. That's all we know at this point in time. I don't know any facts around it. I don't know why it was given. I don't know anything because you don't want us to listen to it.

MR. REALE: It's not the issue about whether counsel and I want you to listen to it.

MR. DUPONT: Sure, it is. You are objecting to it.

MR. REALE: The question is whether it's appropriate testimony before this body. That's the issue, and that's the basis of the objection. And this is not coming from any witness who has firsthand direct knowledge of anything.

MR. DUPONT: We don't know that. You keep objecting. Right now we got three sentences out of this lieutenant. I might refer the question or your objection to our counsel. I think that -- I'd like to know whether the question can proceed.

MR. HOLZAPFEL: If counsel does not object and if the Borough counsel does not object I would like to reserve 2 minutes just to confer with my notes and the statute.

MR. REALE: No problem.

MAYOR MENNA: We will adjourn for about 3 minutes or so and we will reconvene.

(Recess is taken.)

MAYOR MENNA: We're back. It's 6:12. Everybody is all accounted for.

MR. HOLZAPFEL: Mr. Hall, before I go any further, could I hear your proffer one more time for the purpose for which this testimony is being admitted.

MR. HALL: It's being admitted firstly to show or to negate any diversion from the presumptive penalties. You've got a warning in the past it would negate any departure from the presumptive penalties. You wouldn't be entitled to mercy or mitigation if you had already been warned. It goes to a lack of care.

MR. HOLZAPFEL: Is there a presumptive penalty based on warning?

MR. HALL: There are some penalties in the New Jersey Administrative Code in Section 13:2-1911, which I'll be relying on at the end of the proceeding. I think I sent those along to you, you and counsel, some months ago.

It goes to lack of care. It goes to knowledge. He's not in any way reformed his conduct. He's already been warned, and what happened? He went out and got hit for two or three other underage sales. I think it's entirely relevant. It's only being offered for that limited purpose, to negate any departure from presumptive penalties.

MR. HOLZAPFEL: Presumptive penalty based on the rule derived from which provision, Counsel?

MR. HALL: They are under 13:2-1911. I think I have a spare copy, if you want to look at it.

I'm going to show you the alcoholic beverage control handbook. It's portions 51 through 57. It outlines the presumptive penalties. And those penalties escalate based on the number of offenses.

MR. DUPONT: Excuse me, Mr. Hall. Counsel for the defense, are we supposed to have witnesses back into the room here?

MR. HALL: I consented to her sitting in. It would be more comfortable.

MR. REALE: She will be leaving again.

MR. DUPONT: Just asking.

MR. HOLZAPFEL: Now, in the recommended presumptive penalty based on warnings is found --

MR. HALL: No. There is no recommend -- I'm not going to -- if you count this -- I'm going to present evidence of four underaged sales. The presumptive penalty for four underaged sales is revocation. Now, the testimony that's going to be elicited would be a fifth underage sale. I'm not going to get up on summation and say five sales, revoke him for five sales, but I anticipate that Mr. Reale will get up here and say there's mitigating circumstances, the presumptive penalties shouldn't apply. I'm entitled to rebut that argument by putting in the fact that the guy got a warning. It's only being offered for that purpose, the licensee got a warning. It's not being offered for any additional penalties.

Now, in the -- in the charges and specifications I specifically pointed out that we were going to introduce this evidence. He's on notice that this evidence was coming in.

MR. HOLZAPFEL: I understand he's on notice. He still has an objection.

MR. REALE: Based on what Mr. Hall has just told you, this evidence should not come in now. If it has any relevance at all, it comes in at a penalty phase. The fact that it was on notice and specifications that he was going to rely on something, again, doesn't make it admissible here.

I mean the old adage is you can put anything in a pleading because it's just notice pleading. The reality is if Mr. Hall's position is what it is, which is this goes to penalty, then that's where it's relevant. It's not

relevant now. Because necessarily we don't have any of the firsthand participants. We haven't had a ruling yet as to the hearsay aspects of this along with the residuum rule, as it relates to administrative law proceedings, so that essentially what's being done is you're being provided additional information through a back door that he couldn't get in the front door.

MAYOR MENNA: Mr. Hall, why is the standard any different in this proceeding than the standard would be in a criminal or quasi-criminal proceeding in terms of admissibility of prior acts prior to conviction of a particular defendant? In other words, are you trying to get this information in based on a possible penalty in the event of a conviction?

MR. HALL: Yeah. I mean --

MAYOR MENNA: Why --

MR. HALL: Right.

MAYOR MENNA: Why would that be done before the actual conviction is my question?

MR. HALL: I don't think we're going to have a bifurcated proceeding here, where we put in information on sentencing. If we're going to have a bifurcated proceeding whereby we try the specifications and then have a separate penalty phase, then I'll withdraw it and I'll wait until the penalty phase. That wasn't my understanding of the proceeding.

MAYOR MENNA: Again, please, gentlemen, correct me if I'm wrong, and counsel on the table or other council people on the table, but we're supposed to be listening to the evidence, so we're not preordained for any particular penalty at this point.

MR. HALL: Right.

MAYOR MENNA: We haven't heard the evidence. All I'm saying is I'm asking you normal standard is that you put in your evidence. If there is a conviction, then the council will have to deliberate and will have to render an appropriate penalty at that stage. Information concerning prior events or prior convictions just like in any criminal proceeding or quasi-criminal proceeding is very relevant and it's very appropriate, but normally it is done at that stage.

Now, correct me if I'm wrong, but if this is strictly a civil proceeding, then obviously it's a different civil standard versus a criminal standard or quasi-criminal.

MR. HALL: Right. The fact that it's a civil proceeding the rules of evidence are the same. We're not talking about someone going to jail here, so the standard is a little looser but the evidentiary rules don't change. Okay.

Now, the evidentiary rules for prior bad acts are whether there's -- counsel keeps talking about the residuum rule, the officer is relying, he's the alcoholic beverage control officer, he's relying on a business record. The business record shows there was an arrest for sale to an underaged minor, a sale of alcohol to a minor by this licensee. This licensee later pled guilty to that. Clearly there's substantial and clear convincing evidence that the facts occurred.

Now it's being offered to show a lack of care. It's being offered to show this defendant has in the past been aware of the possibility of underage sales and he did nothing about it. It goes to his knowledge and his intent.

MR. HOLZAPFEL: Very briefly.

MR. REALE: Well, first of all, Best Liquors is the licensee that's before you tonight. Best Liquors was not a party to any action in municipal court on that case or any others, so Mr. Hall's mixing of apples and oranges, first off, is very confusing.

MR. DUPONT: Is your client a member of the Best Liquors or shareholder or officer of Best Liquors?

MR. REALE: My client is Best Liquors.

MR. DUPONT: I'm asking you is the gentleman sitting to the right --

MR. REALE: Is the 100 percent shareholder of that organization.

MR. DUPONT: Okay. That's fine.

MR. REALE: That's not the party. Mr. -- the licensee is the entity that's before you.

MR. DUPONT: Again, I'm not here to argue with you. I'm trying to -- we've been spending 20 minutes on notice here of prior acts. My recommendation is we move on from this issue.

MR. HOLZAPFEL: I recommend to the Mayor that we also move on from this issue. As I understand the statute, it's the violation of any ordinance, resolution, regulation, etcetera, that triggers the penalties. I don't read in the statute that a warning triggers the penalties.

Perhaps if Mr. Reale opens the door for this down the road we can revisit it at that time; but the relaxed standards of the rules of evidence notwithstanding and based on the Rule 404 (a) and (b) and the skepticism generally with which prior bad acts are generally viewed, I'm inclined to recommend that we move on from this issue.

MAYOR MENNA: Okay. Objections are noted, preserved for the record.

Lieutenant, answer the question if you can remember it.

MR. HALL: I don't even remember it.

MAYOR MENNA: I figured you were going to say that. Your question again?

MR. HALL: You're asking me. I would have to ask to have it read back. I don't remember the last question posed to the witness.

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

BY MR. HALL:

A Okay. I learned about that violation as part of my job to review all the arrests and police reports on a daily basis.

Q What, if anything, did you do upon learning of that information?

A I recognized that it was an ABC, Alcoholic Beverage Control, violation, and I had a discussion with the Chief, and as our policy we sent him a letter advising him of the violation and advising that there was a warning and further violations would result in official action by the police department.

Q Sent who a letter?

A The licensee. That would be Mr. Sharma.

Q By the way, do you know Mr. Sharma?

A Yes, I do.

Q And how do you know him?

A I did his background investigation for his license.

Q Would it be fair to say you met him on numerous occasions?

A More than numerous.

Q Do you see him sitting here in the courtroom?

MR. REALE: I'll stipulate.

MAYOR MENNA: Stipulated.

MR. HALL: Thank you. I ask that RB 18 be marked and shown to the witness.

(RB 18 marked for identification.)

Q Do you recognize RB 18?

A Yes. That's the letter -- copy of the letter that I sent to Mr. Sharma.

Q Okay. And the additional documents after -- your letter is the first page. Correct?

A That is correct.

Q And the additional documents following the first page, can you identify those documents?

MR. HOLZAPFEL: May I see a copy?

MR. HALL: I'm sorry. Forgive me.

MAYOR MENNA: Proceed.

Q Do you recognize or can you identify the following pages following the first -- your letter?

A Yes, I can. The second, third, and fourth pages is a 3-page police investigative report concerning a liquor violation at 75 Leighton Avenue.

Q Are those three pages kept in the ordinary course of business of the Red Bank Police Department?

A Yes, they are.

MR. HALL: I move RB 18 into evidence.

MR. REALE: My objection is a hearsay objection. The information even with relaxed standards of hearsay, which I acknowledge and there's no dispute about, the reality is that the residuum rule is important for a purpose which is you're asking this witness to basically identify and provide to you records that essentially have third-hand hearsay.

Again, we come back to the question of this information, if it has any relevancy at all, is relevant, as the Borough's counsel has pointed out for this purpose, is related to penalty and as Mr. Hall has acknowledged. Again, this information is an improper introduction of an event that is not charged and it includes third-hand hearsay.

MR. HOLZAPFEL: Third hand, it appears the lieutenant drafted the letter.

MR. REALE: I'm not talking about the letter. I'm talking about the reports attached, and also I indicate that the letter necessarily includes hearsay that, again, is based on third-hand information.

MAYOR MENNA: Isn't the letter being offered for the purpose that there was some sort of dialogue or discussion concerning a particular incident?

MR. REALE: Mayor, I may --

MAYOR MENNA: Just the letter itself, not the attachments.

MR. REALE: I haven't heard any discussion between this officer and Mr. Sharma.

MR. HALL: I'll get to that.

MAYOR MENNA: All right.

MR. HALL: Is it admitted into evidence? Do you want me to connect it up?

MR. HOLZAPFEL: I want to hear where you go with the question before we make a ruling on the evidence. Go ahead with your question.

BY MR. HALL:

Q All right. Did you -- did there ever come a time -- withdrawn. Do you know whether or not that letter ever reached Mr. Sharma, the licensee?

A Yes.

Q How do you know that?

A I sent it certified mail, and I have a receipt return.

Q And subsequent to your composing and sending that letter, did you ever have any conversations with Mr. Sharma about the letter or the incident in question?

A I'm sure I spoke with Mr. Sharma about the letter. I've seen him, oh, since then, many times; the exact conversation, date, the time, I could not recall.

MR. HALL: Mr. Mayor, I ask that this be marked as RB 15.

(RB 15 marked for identification.)

MR. HALL: Marked for identification.

MAYOR MENNA: Mr. Hall, may we have a copy?

MR. HALL: I'm sorry. I keep forgetting to give you a copy. I'm going to offer RB 15. RB 15 --

MR. REALE: I hate to interrupt, Mr. --

MR. HALL: You're doing it.

MR. REALE: But he's about to testify as to the content of a record that's not, I suggest, is not admissible.

MR. HALL: I'm offering a certified record of the municipal court of the Borough of Red Bank that is clearly a certified government record and is clearly admissible under the rules of evidence even under a relaxed -- a nonrelaxed standard. Even in Superior Court a certified record of conviction comes in, no question. It's self-authenticating and an exception to the hearsay rule.

MR. HOLZAPFEL: Are you relating RB 15 to the proffer of RB 18?

MR. HALL: Yes, I am.

MR. REALE: May I respond? Mr. Hall, quite frankly, is incorrect. This document would never be admitted into a Superior Court record because, quite frankly, there's no evidence that the individual whose record this represents was represented by counsel, and we all know that the black letter law, the rules of evidence, is that judgments of conviction in the context of an individual who is not represented by counsel are not seeing the light of day and would not be admissible in any proceeding and they clearly shouldn't be admissible here.

MAYOR MENNA: Are you suggesting that if someone is unrepresented by counsel, those pleas or those sentences are sealed?

MR. REALE: No, not sealed, but under State versus Sand, they are not relevant and not admissible.

MAYOR MENNA: The question is one of admissibility sometimes, but they are certainly available for review by everybody. They are admissible under many instances, unless they are collaterally attacked.

MR. REALE: Not under State versus Sand and its progeny; and, quite frankly, as we all know, under Sand and its progeny one of the collateral attacks is the fact the individual whose record it is was not represented by counsel.

MAYOR MENNA: If that person --

MR. HALL: No one would get represented by counsel. You would never have a prior conviction. That's absurd. That's absolutely absurd.

MAYOR MENNA: That doesn't make any sense.

MR. REALE: I can't help what the Supreme Court has held.

MR. HALL: He has his appeal to the commissioner.

MAYOR MENNA: I think those cases say that if a conviction is under collateral attack, that obviously that conviction is still in dispute if someone is unrepresented by counsel, but this is a judgment of conviction, from what I understand, and a transcript of record of an official document of the court that to the best of my knowledge has not been reversed or reviewed or set aside.

MR. REALE: That's part of the equation. The rest of the equation is that if an individual were appearing in Superior Court on sentencing and that sentencing court was being asked to consider, as part of the sentence, a prior conviction, a prior conviction where an individual was not represented by counsel, would not be relied upon by a Superior Court judge.

MAYOR MENNA: But that happens every day, Counsel.

MR. DUPONT: Mayor, if I might, with all due respect to both counsel here, the legal maneuvers and objections really have not allowed anyone to listen to the testimony. Quite frankly, the objections, in my opinion, are somewhat lacking any substance. So it would be helpful, Mayor, if we could just move on and get direction rather than going through some of the legal arguments that are being presented because, quite frankly, some of the arguments make no sense whatsoever.

So, if we could get a little direction here and allow the witness to answer the question, not answer the question, but some of the objections are merely made, in my opinion, as an obstruction. Let's move this matter on.

MR. HOLZAPFEL: My recommendation, Mr. Mayor, is in light of the fact that RB 15 is likely admissible under the same standard that the first exhibit was admitted under, however, my inclination under RB 18, given my own research, there is authority for the proposition that a police report or a police memorandum there is authority for inadmissibility of those documents.

Again, while we do have a relaxed standard, I do think that in fairness RB 18 not be moved into evidence under RB 15. I don't think there's any prejudice.

MAYOR MENNA: RB 18 is not admitted.

MR. HALL: RB 18 is not.

MAYOR MENNA: According to our attorney and his research.

(RB 15 received in evidence.)

BY MR. HALL:

Q Let me direct your attention now to May 19, 2006. Lieutenant, are you aware of any enforcement activity concerning Best Liquors that occurred on that date?

A Yes.

Q All right. Can you briefly describe what you learned about the events of May 19th, 2006?

A It was actually -- there was action taken at Best Liquors, if I can refer to my file, for illegal cigarette sales, selling cigarettes without proper tax. I'll tell you exactly what it was. Retail -- didn't have a New Jersey cigarette retail dealer's license. Did not have a New Jersey revenue stamp on the cigarettes, and there's a third charge where he did not bear the required New Jersey revenue stamp for cigarettes in his possession. These were all charged by Special Agent Joseph De Angelo of the New Jersey Department of Treasury, Office of Criminal Investigation.

MR. HALL: Mayor, I ask that the following exhibits be marked for identification, RB 2 -- RB 1 and RB 2.

(RB 1 and 2 marked for identification.)

MR. REALE: You didn't provide this in the past.

MR. HALL: Yes, I did.

MR. DUPONT: Was this exhibit stipulated prior to the hearing, Mr. Hall?

MR. REALE: No.

MR. DUPONT: Is there an attempt to stipulate to any of them?

MAYOR MENNA: Let's just leave it at that, that they were not stipulate by the parties themselves.

MR. HALL: Mayor, RB 1 is a certified record of conviction Pankaj Sharma trading as Best Liquors. It's a guilty plea to 54:52-18 that the defendant was fined \$1,000 and \$33 court costs and other charges. I move RB 1 into evidence at this time as a certified record of conviction.

MAYOR MENNA: I'm sure there's a continuing objection.

MR. REALE: Continuing objection.

MAYOR MENNA: Continuing arguments. They are preserved for the record and it will be moved.

(RB 1 received in evidence.)

MR. REALE: Same objection to RB 2.

MAYOR MENNA: Okay.

MR. HALL: Mr. Mayor, RB 2 is a certified transcript of the guilty plea entered into by Pankaj Sharma on August 24th, 2006, for the summons that is the subject of RB 1. I'll move RB 2 into evidence as a certified transcript and also as an admission by the party.

MAYOR MENNA: The transcript speaks for itself. It will be moved in and reviewed.

MR. REALE: Same objections.

MAYOR MENNA: It's the same objections. Let's move. Same objection is continued for any appeal.

(RB 2 received in evidence.)

MR. HALL: I'm going to ask that we mark into evidence -- I want you to take judicial notice, I'm marking two statutes.

MR. REALE: If I may discuss with Mr. Hall for a moment.

MAYOR MENNA: Sure. Off the record.

(Discussion off the record.)

BY MR. HALL:

Q Lieutenant, did you take any official action with respect to the license on October 6th, 2006 -- withdrawn.

MR. HALL: Are you going to stipulate -- can I have a moment, Counsel?

MAYOR MENNA: This is off the record.

(Discussion off the record.)

MR. HALL: Mayor, I'm going to ask -- offer into evidence for completeness sake RB 5 and RB 6. RB 5 is a certified record of conviction for the unregistered employee that Mr. Reale has conceded.

MAYOR MENNA: It's stipulated.

MR. HALL: I know it's stipulated. Just for completeness sake, I would like the certificate and the transcript into evidence.

MAYOR MENNA: No objection.

(RB 5 and 6 received in evidence.)

Q All right. As the liquor control officer, are you familiar with Yogi's Liquor here in Red Bank?

A Yes.

Q Where is Yogi's Liquor in relation to Best Liquors?

MAYOR MENNA: What has that got to do with this?

MR. HALL: Let me connect it up.

MR. REALE: Could we have a proffer?

MR. HOLZAPFEL: I think he's going there. Let him ask the question first and we'll see where it goes.

Q Can you tell us where Best Liquors is compared to Yogi's Liquor?

A It's approximately a block south of Yogi's Liquor -- Yogi's is on the corner of West Bergen and Leighton Avenue.

Q So it's a block north or south on Leighton Avenue?

A South.

Q From Best?

A Right.

Q Now, in your years in ABC enforcement, are you aware of any complaints concerning Yogi's Liquor?

MR. REALE: Objection. How is that in any way relevant to this proceeding of what's happening in Yogi's Liquor?

MR. HOLZAPFEL: I think now would be a good time for a proffer.

MR. HALL: Well, if Yogi's Liquor is located a block -- do you want to do this in a side bar, not in front of council?

MAYOR MENNA: Just do it.

MR. HALL: If Yogi's Liquor is located a block south in the same neighborhood as this liquor store, what is the difference between the two liquor stores? I'm going to prove or show that there's been no complaints concerning Yogi's Liquor. You have two liquor stores in the same neighborhood a block away.

MR. HOLZAPFEL: Save your time, Mr. Reale.

MR. REALE: The damage is already done, quite frankly.

MR. HOLZAPFEL: I do not think that's relevant to these proceedings, and I don't think it should be considered in council's deliberations.

MR. HALL: Do you have an objection?

MR. REALE: Don't you have one that's signed?

MR. HALL: It's signed on the back.

MR. REALE: We'll stipulate that the license was issued for 2006, 2007 under 1340-44-020-005, the Best Liquors of Red Bank, Inc., and there's a short form -- there was a short form renewal last year.

MAYOR MENNA: So that can be introduced.

MR. HALL: Let's put the license in.

MR. REALE: We're obviously here because it's a licensed company. We're not disputing that there's a license.

MR. HALL: So we move RB 26 into evidence.

MR. REALE: Is there a date -- just out of curiosity, could Mr. Hall tell us the date that the council adopted the resolution renewing the license?

MR. HALL: It expires on 6-30-07. It was before the Clerk on June 7th of 2006, so some time in that time period. I can get you that information.

MAYOR MENNA: June 12th is the actual date.

MR. REALE: That's RB.

MR. HALL: 26.

MAYOR MENNA: RB 26, June 12, 2006 is the adopting date.

(RB 26 received in evidence.)

MR. HALL: I have nothing further. Your witness.

CROSS EXAMINATION BY MR. REALE:

Q Lieutenant, were you present at any of these events that you reviewed the police reports for?

A Yes.

Q You were present for the events?

A These events we're discussing today?

Q Yes.

A Yes.

Q You were at each and every one of these arrests?

A Was I present at any of them, all of them?

Q Yes. Were you present at all of the events?

A No.

Q Which events did you participate in the actual investigation of?

A The one that I wrote the summons for the ABC violation, not having a licensed employee.

Q Okay. The one that the licensee has admitted to this evening. Correct?

A That sounds correct.

Q Okay. You were not present during any of the other investigations?

A No.

Q You did not interview any of the other individuals, by that I mean non-police personnel?

A I believe that's correct.

Q And your first knowledge of these events, as you've told us about them this evening, was based on your review of the police reports that come across your desk as a matter of course?

A With the exception of the one I did myself.

Q With that exception?

A That is correct.

Q Okay. Now, let me ask you a question. That case that you did yourself -- strike that. The -- I apologize. The license, I believe, RB 26, do you get copies of the licenses or the license renewal forms that are submitted by the licensees?

A Yes. They come through my office.

Q Okay. I'd like to show you what's been marked for our purposes, then, tonight as RB 26. Do you recognize that?

A This?

Q Yes.

A It's his license.

Q Flip the second page. Do you recognize that document?

A I'm not familiar with it, no.

Q All right. Lieutenant, you've testified that you are, in fact, the ABC enforcement officer for Red Bank. Agreed?

A I'm not the only one if that's what you're trying to say.

Q Well, who is the -- let me rephrase the question.

MAYOR MENNA: Can I ask a question?

Q Who is in charge?

MAYOR MENNA: Is he the ranking officer in this division?

MR. REALE: I'll rephrase it. I understood from the direct that he was in charge of it. I'll try to sort it out.

Q Lieutenant, who is in charge of your ABC enforcement unit?

A I am.

Q Okay. How many detectives or patrol officers are assigned to that unit?

A Specifically to investigate?

Q Specifically assigned to ABC enforcement.

A It's on a need basis.

Q Is there a "need basis" during the renewal season when you're reviewing whether applicants should have their licenses renewed?

A We originally do not assign investigators to investigate the licenses when they do background, but they do it with renewals.

Q Explain for us, if you would, the process that you utilize in reviewing applicants for their annual renewal as would be reflected in the license issued RB 26?

A That would be based on the -- on their performance during the year. Had they had violations and problems, I would make recommendations that it not be renewed.

Q What recommendation did you make with respect to Best Liquors of Red Bank for the renewal for 2006-07?

A I did not make one because this hearing was pending.

Q I'm sorry. This hearing was pending for the 2006-2007 renewal?

A Oh, 2006. I didn't make any recommendations whatsoever for 2006 renewal.

Q But you were aware, as you sit here tonight, you told us that you were aware that there was a charge that somehow related to untaxed cigarettes?

A There was many charges, yes, on untaxed cigarettes.

Q You knew about that particular case?

A Yes, I testified to that.

Q You knew about that case at the time that Red Bank Liquors was up for renewal for 2006 and 2007?

A Best Liquors.

Q Yes.

A Red Bank Liquors is separate.

Q Yes. You knew as it relates to Best Liquors?

A I'm aware of all of these charges.

Q But you didn't see fit in your capacity as a supervisor for the ABC matters to report that to the council as some sort of strike or reason not to renew the license?

A It was my understanding council was aware of it.

Q How do you know whether council was aware of it?

A Through my communication through the chief, through the police commissioner.

Q Okay. Let me come at you with a series of questions. How did you -- when and how did you communicate with the chief as it relates to what you told us is this untaxed-cigarettes case?

A I can't recall exactly the communications, the date and time with the chief. I communicate with the chief on a daily basis, sometimes 7 days a week on these issues.

Q Lieutenant, you would agree with me that liquor licenses are a privilege, not a right. Correct?

A As is any license, yes.

Q And you would agree that charges or actions against a license threatens the very viability and continuation of a business. Correct?

A Yes.

Q And you take those cases seriously. You take your job seriously. Correct?

A Of course.

Q All right. And so when you communicate with the chief as it relates to liquor cases, do you communicate orally or in writing?

A Both.

Q All right. Did you communicate to the chief in writing as it relates to the untaxed-cigarettes case?

A No.

Q Did you communicate to the chief orally?

A Yes.

Q Do you keep a log -- let me strike that. Do you do it by snail mail, e-mail? Do you do it by e-mail? Is that oral for you or just --

A The cigarette case was just a discussion with the chief.

Q Okay.

A A verbal discussion.

Q Now, you indicated that the member of council who is the police commissioner is the police commissioner?

A That would be Mr. Murphy seated behind me.

Q Was Mr. Murphy, Councilman Murphy, let me apologize. Was Councilman Murphy the police commissioner at the time the licenses were being renewed for 2006 and 2007 in Red Bank?

A I believe so.

Q Did you communicate to Councilman Murphy?

A Not directly.

Q How do you then know that -- you testified that Councilman Murphy -- how do you know that Councilman Murphy was apprised of the tax case against Best Liquors?

A I don't.

Q That's an assumption, then, on your part?

A That's correct.

Q And you would agree with me that you haven't gone out and interviewed any of the participants in the events that you told us about?

A That's not true.

Q Other than what you wrote?

A I've spoken to some of the officers.

Q Have you spoken to all of the officers?

A Most likely. I can't recall exactly if I talked to all of them involved, but I talked to the officers involved in these investigations.

Q All right. Did you memorialize those conversations in any way?

A Did I take notes or write the reports, the answer is no.

Q Did you make any sort of memo or report in the ordinary course of business to the chief as it relates to the liquor license?

A No.

Q Did you ever prepare written documents to submit to counsel through the chain of command related to your position as --

A I did not submit any documents to the Mayor and Council.

Q Do you know whether the chief does?

A I do not.

Q But you're in charge of the liquor enforcement component of the Red Bank Police Department?

A I believe I testified to that twice.

Q Now, all of these matters that you told us that occurred in municipal court were you present for any of these other than the one you wrote?

A I believe the case involving Detective Fields and Clayton.

Q Well, let me ask you a question, Lieutenant, do you know whether Mr. Sharma was represented by counsel in connection with cigarette cases?

A I wouldn't know that.

Q Do you know whether counsel represented Mr. Sharma or anyone else associated with Best Liquors in municipal court prior to January of 2007?

A I have no knowledge of any attorneys representing Mr. Sharma besides yourself.

Q You never testified in municipal court. Correct?

A Can you ask the question again?

Q Sure. You never testified in municipal court as to any of these cases?

A I thought you said I never testified in municipal court. More times than you would like to ask. With the exception of this evening, I haven't testified for anything involving Best Liquors.

Q And when licenses are renewed by the Red Bank council, by the Borough council, do you attend that meeting?

A I do not.

Q Do you know whether anyone on behalf of the Red Bank Police Department attends the council, Borough council meeting, where licenses are renewed?

A Are they renewed in a separate meeting? I don't know.

Q So you don't know.

A I don't know.

Q Okay. But you would agree that on June 12th of 2006 that this Borough council renewed the license for Best Liquors of Red Bank. Correct?

A To the best of my knowledge, it has not been renewed.

Q I'm not talking about for the new year, '07. I'm talking about 2006-2007. You're telling me you're not sure if it wasn't renewed?

A I'm saying it was renewed. It was open for business.

Q Okay. Have you prepared any report or memorandum of any form to submit through the chain of command with respect to the upcoming renewal for 2007-2008?

A No.

Q Have you been asked to?

A No.

Q You say you did the background search for Best Liquors, Inc.?

A No. I did the background investigation on Mr. Sharma.

Q All right. Mr. Sharma. And the licensee, though, who is the licensee, Mr. Sharma or is it the corporation?

A We investigate individuals. We don't investigate paper.

Q All right. So that the record is clear, you investigate anyone who has more than 1 percent interest in a corporation or business entity. Correct?

A Yes.

Q It's not just that you investigated Mr. Sharma?

A My recollection is that he was the one applying for the license. If there was someone else on the license, I can't recall. Perhaps, you know if there was. If there was, I'm sure I investigated them.

Q Okay. But the license is not issued to Mr. Sharma. Correct?

A In my mind, that's who it's issued to because we have to hold --

MAYOR MENNA: You're asking for a legal determination. I think what you're saying is the actual legal entity is the corporation. Is that correct?

MR. REALE: I'll rephrase the question.

Q Who holds the license, Mr. Sharma or Best Liquors?

A Mr. Sharma.

MR. REALE: Nothing further.

MR. HALL: I have nothing further.

MR. HOLZAPFEL: Next witness.

MR. HALL: I call Detective Elliot Ramos.

MAYOR MENNA: Is Lieutenant McDonough going to be called again?

MR. HALL: No, not at this time.

MAYOR MENNA: Do you anticipate calling him?

MR. REALE: I don't anticipate calling him as a witness.

MAYOR MENNA: You have no objection with him remaining in the room?

MR. REALE: At this junction I don't but events may unfold that make it fuzzier, but at this point I can't speculate as to what may or may not happen.

MR. HALL: He's working nights.

MAYOR MENNA: The purpose of my question is I have no objection to him remaining in the room. However, if any one of you guys want to recall him, he would be sitting here when somebody else is testifying. So do you waive the objection to that?

MR. HALL: On the safe side, leave the room.

MAYOR MENNA: I want to protect the proceeding. Lieutenant. Please raise your right hand.

ELLIOT RAMOS, called as a witness, having been first duly sworn, testified as follows:

MAYOR MENNA: Please state your name as well as your professional relationship with the Borough of Red Bank.

THE WITNESS: My name is Elliot Ramos. I'm a detective with the Red Bank Police Department.

MAYOR MENNA: Mr. Hall.

MR. HALL: Thank you.

DIRECT EXAMINATION BY MR. HALL:

Q Detective, how long have you been a detective with the Red Bank Police Department?

A Approximately, 5 years.

Q Okay. And before that were you a patrol officer?

A Yes, I was.

Q And how long were you a patrol officer for the Borough of Red Bank?

A About 14 years.

Q Excuse me?

A 14 years, 19 years.

Q You've been 19 years on the force?

A Yes.

Q Now, let me direct your attention to July 6th of 2006 at about 9:30 in the evening. Where were you at that time?

A I was on duty in the area of Leighton Avenue and Catherine Street.

Q Okay. And what was your purpose in being there?

A I was working 3 to 11 shift, and at that particular time I was keeping a check on Best Liquors.

Q Okay. Now, were you in plain clothes or in uniform?

A Plain clothes.

Q Were you in a marked car or unmarked car?

A Unmarked car.

Q Where were you positioned in relation -- was your car parked or moving at about 9:30?

A Parked.

Q And where were you parked in relation to Best Liquors?

A On Catherine Street just off of Leighton, facing west.

Q Okay.

MR. REALE: I'm sorry. I didn't hear that. Could the witness repeat that?

THE WITNESS: I was on Catherine Street parked with my vehicle facing west on Catherine.

Q I draw your attention to about 9:40 p.m. Were you still parked in that same vicinity?

A Yes, I was.

Q Did you have any visual aids?

A Yes, I did.

Q What did you have?

A A pair of binoculars.

Q Okay. Were you looking at anything through those binoculars?

A Yes.

Q What were you looking at?

A I was looking at the front of the store as well as inside.

Q You said "the store", what are you referring to?

A Best Liquors.

Q And could you see inside of the store?

A Yes.

Q What could you see inside of the store? Describe what you could see.

A I could see the front counter. I could seem the lottery machine. I could see the cash register and halfway inside of the store.

Q And what were you looking through -- besides -- with respect to the store?

A Through the front door.

Q What were the lighting conditions like at that time?

A It was well lit. There's lights coming out from the store and the door was opened. There's lights outside.

Q Okay. Was it dark out or light out?

A It was dark.

Q Natural lighting?

A It was nighttime.

Q Now, about 9:40 in the evening, what, if anything, did you see in relation to this case?

A While sitting there, I observed a black vehicle coming on Catherine traveling west, and it parked on Catherine Street. I'd say approximately 50 feet away from the door on the north side of the Street. At that time I observed a white male exit the vehicle, walk to the front of the store. He approaches three Mexican males, has some type of conversation with them. They wave him off.

Q Let me stop you there. The male that you saw, did you know his name at that time?

A No, I did not.

Q Did you later learn that male's name?

A Yes.

Q What did you learn it to be?

A Mark Valdez.

Q And you saw --

MAYOR MENNA: What was his name?

THE WITNESS: Mark Valdez.

Q You saw Mr. Valdez approach a group of men. Is that correct?

A Yes.

Q And you saw Mr. Valdez talk to that group of men?

A Yes, he did.

Q And the group of men did what?

A They waved him off. They were – they appeared to be Mexican males.

Q Okay. After those men waved off Mr. Valdez, what was the next thing that happened?

A He then entered the Best Liquors, walks, to me, it looked like towards the back of the liquor store. A few seconds later he walks back up towards the counter. At that time it looked like he had a 12 pack of Miller Lite in his hand. He places it on the counter.

I then observe him hand an item to the clerk. I don't know what it was. He handed him something. At that time the clerk was not, you know, he wasn't in sight at that time. It looked like he backed up out of my sight.

Q You lost sight of the clerk?

A Yes.

Q Okay. Go ahead.

A A few seconds later it appears that the clerk, I know him as Rocky, hands him back whatever Mark handed him.

Q Let me stop you there a minute. You say you know the clerk as Rocky. How did you know the clerk?

A Just from going in there, talking to him.

Q Okay. And the clerk -- this is the clerk at Best Liquors?

A Yes.

Q Okay. You later -- did you ever learn the clerk's full name?

A Yes, Rakesh Sandel.

Q And prior to July 6th of 2006, had you ever seen that clerk before?

A Yes, I've seen him before.

Q Have you spoken to him before?

A Yes, I've been in there and spoken to him.

Q Okay. Go on. Now, what was the next thing that happened?

A At that time I see him hand Mark Valdez back whatever he was handed and Mark Valdez walks out of the store empty handed. He leaves the 12 pack there. He then returns back to his vehicle and does a U-turn on Catherine Street and travels to the WaWa, which is on 14 North Bridge Avenue.

Q Okay.

A I follow him. I thought he was going to go to Trades Liquors. I thought he was refused beer. That was my thinking at that time.

Q Let me stop you there. So Mark Valdez walked out of the Best Liquors without any type of alcoholic beverage?

A No.

Q He got back in the car and drove to the WaWa?

A Yes.

Q Where is that WaWa located?

A At 14 North Bridge Avenue.

Q Okay. And what other stores are – are there any other stores in that plaza with the WaWa?

A Yes. There's a Windmill, a Crates Liquors, another liquor store, there's a nail place.

Q Okay. Did you see Mr. Valdez go into any of those stores?

A He went into WaWa.

Q Did you see what he did inside of the WaWa?

A No, I didn't.

Q What was the next thing that happened?

A He then exited WaWa and then returned back to the same spot he had parked previously on Catherine Street, and, again, I took up a position where I could see him, and he walked back in the store and went back to the cooler. Again, came with a 12 pack of Miller Lite, a package, put it on the -- near a cash register and it appeared he paid for it. He left the store with that and a bottle of rum.

Q What happened next?

A At that time he entered his vehicle again. He did a U-turn, went down Catherine eastbound. He crossed Shrewsbury Avenue. When he got onto Catherine and Bridge, that's when I effected a motor vehicle stop.

Q From the time the vehicle left the vicinity of Best Liquors until you stopped at Catherine and Bridge, did you ever lose sight of the vehicle?

A No.

Q Okay. What was the next thing that happened?

A At that time I decided to stop him to further investigate my observations. I walked up to the vehicle, I spoke to the driver, which was Mark Valdez. At which time, I told him why he was being stopped. I asked for his license and credentials. At that time I illuminated the inside of the vehicle, I observed what appeared to be a Pennsylvania driver's license, which was fake, on the floor mat near his feet. I obtained that as well as his driver's license and he had a Navy card, a Navy ID card.

Q Let me stop you there. The fake Pennsylvania license you found on the floor, what age did that show him to be?

A 20.

Q Okay. And you said you recovered a New Jersey driver's license and a Navy identification card. Correct?

A Yes.

Q What was the age on those two cards?

A I'm not sure what the Navy if it has a date of birth, but I know the driver's license had him to be 18.

Q All right. Please continue. After you did that, what happened next?

A I then spoke to him. After I – I stopped him and I told him are you buying the liquor -- I saw you buy the alcoholic beverages. I saw you put it in the trunk. At which time, I then asked him where is the beer, and he opened up his trunk; and in there was the 12 pack of Miller, 750-milliliter bottle of Bicardi Razz, raspberry, and some other beers in the vehicle.

Q Let me stop you there for a minute. What was it that you saw Mr. Valdez take out of Best Liquors?

A A 12 pack of Miller Lite.

Q Did you see what he did with that 12 pack when he got back to his car?

A He placed it in the trunk.

Q Okay. All right. Did you take Mr. Valdez back to police headquarters in Borough Hall?

A Yes, I did.

Q Did you interview Mr. Valdez when you got back here?

A Yes.

Q Okay. And prior to interviewing him, did you read him his Miranda warnings?

A Yes, I did.

Q Could you tell us what Mr. Valdez told you after you read him the Miranda warnings?

MR. REALE: Objection. Continuing objection as to the utilization of hearsay, especially on a witness that admittedly by both state and defense is unavailable. So it's not something where the defendant can or the respondent in this context can go out and subpoena Mr. Valdez, because as Mr. Hall knows, well knows, there's a court case involving Mr. Valdez, and Mr. Sandel was dismissed for failure to prosecute and the inability to produce him.

MR. HALL: As I understand it, he's in the Navy somewhere.

MAYOR MENNA: So the criminal complaint against Valdez was dismissed?

MR. REALE: The criminal complaint against Mr. Sandel was dismissed. I have no idea of the status of any charges against Mr. Valdez.

MR. HALL: Mr. Valdez pled guilty to --

MAYOR MENNA: So your question was to the detective is it for Mr. Valdez or the other gentleman?

MR. HALL: What did Mr. Valdez tell you in the station house, what was the confession.

MAYOR MENNA: Okay.

MR. HALL: I'll put this into evidence now. I'll offer what's been marked as RB 9. I ask it be marked for identification.

(RB 9 marked for identification.)

MR. REALE: I would simply indicate I don't know what the relevance is to what happened to Mr. Valdez. We don't know what the implications or what discussions there were between Mr. Valdez and the Prosecutor.

MAYOR MENNA: All we have --

MR. REALE: Whether he pled guilty.

MAYOR MENNA: That's what I'm asking. All we have is RB 9. It looks like a municipal court transcript involving a Mark Valdez.

MR. REALE: Right. With an attachment.

MR. HALL: It's a certified record of conviction for Mark Valdez. He pled guilty to --

MAYOR MENNA: That's what it looked like.

MR. HALL: Fined \$350. I move it into evidence as a certified record of conviction. Your objection is noted. I thought you were asking about the other gentleman whose case was dismissed.

MR. REALE: That's what this is. This is related to the case that was dismissed against Mr. Sandel for failure to prosecute. This is as to Valdez. I say this is --

MAYOR MENNA: We only have Valdez. We don't have the other one.

MR. REALE: I don't know what the relevance is as to Best Liquors.

MAYOR MENNA: Okay.

MR. HALL: Is RB 9 admitted?

MR. HOLZAPFEL: It will be admitted.

(RB 9 received in evidence.)

BY MR. HALL:

Q The question stands. What did Mr. Valdez tell you at the station house after you read him his Miranda rights?

A Basically, he stated he went into Best Liquors to purchase the Bicardi Razz and the 12 pack of Miller Lite and went up to pay for it with a credit card. The credit card did not work. So he had to leave there and go to WaWa to get cash. Once he got the cash, he returned and he purchased the 12 pack of Miller Lite and Bicardi Razz and exited the store. I also asked him during the interview if he was ID'd, and he stated that he was not, not even asked for any identification by them.

Q So Mr. Valdez told you that he didn't use a Pennsylvania driver's license in that?

MAYOR MENNA: That's a leading question.

MR. REALE: Objection.

MAYOR MENNA: Rephrase the question.

Q What, if anything, did Mr. Valdez tell you about the Pennsylvania fake ID with respect to Best Liquors?

A He told me he did not get ID. He didn't use ID. He did purchase the ID in New York 2 weeks ago for \$80.

Q I'm going to ask you, if I can, can you go to the diagram that's been marked as RB 24. I'll give you a pen. Draw the approximate -- draw the approximate location where the Best Liquors is. Draw it with a box and write the number 75 in it.

Okay. Can you show where your car was parked on Catherine Street while you were making the observations? Why don't you put your initials ER in that box.

Can you show me the approximate location of where Mark Valdez pulled his car up prior to purchasing the Miller Lite? Thank you.

MR. HALL: Let the record reflect that the box MV has been marked where he parked his car.

MR. REALE: So the record is clear, that's the second visit or the first visit?

THE WITNESS: He parked in the same place both times.

MR. REALE: Thank you.

Q Can you indicate on the diagram where approximately -- I know it's not -- there's no lines, where Shrewsbury Avenue is? Just write "Shrewsbury".

A Right here.

Q Write Shrewsbury in there so we know, so someone who is not familiar with the area will know.

A Just so you know, this continues.

Q Catherine continues?

A All the way.

Q Eastbound across Shrewsbury?

A Yes. It intersects with Bridge Avenue.

Q Was there anything that obstructed your view between the place where your cars parked as indicated with the ER and Best Liquors?

A No.

Q Okay. You can resume your seat. Thank you. Now, did you -- in addition to Mark Valdez did you -- withdraw that. Was there anyone else in the car --

A Yes.

Q -- with Mark Valdez?

A Yes, there were. Brian Cassidy, a Daniel Doren, and a Robert Cataldo.

Q C-A-T-A-L-D-O?

A Yes.

Q What, if anything, did you do with respect to those three individuals?

A They -- like, once I did the stop there was more beer in the vehicle. I'm not sure which one, whoever, was arrested for marijuana and the other was charged with alcohol, underage alcohol possession.

Q All right. Let me -- did you identify or take pedigree information from all four of those individuals?

A Yes.

Q All right. And let's start with Mr. Valdez. What was Mr. Valdez' date of birth on July 6th, 2006?

A August 11th of 1987.

Q Okay. And that made him 18 years old?

A Yes.

Q Now, where did Mr. Valdez live?

A 97 Oak Hill Road in Middletown.

Q All right. Mr. Doren, what was his date of birth?

MR. REALE: Objection to relevancy as to where these individuals live. It's not a subject to any municipal court action, they weren't charged with anything, and the licensee hasn't been charged with anything.

MAYOR MENNA: So the only one charged was Valdez. Is that correct?

MR. HOLZAPFEL: The objection should be --

THE WITNESS: They were all charged.

MR. HALL: They were all charged with possession. Valdez is the only one charged with purchasing.

MR. HOLZAPFEL: This objection should be sustained. They are not part of the charges.

MAYOR MENNA: It's outside the specifications and charges.

MR. HALL: Okay.

BY MR. HALL:

Q While you were positioned in your car on Catherine Street, how long were you actually sitting there looking at Best Liquors prior to Mr. Valdez' arrival on the scene?

A About 5 or 10 minutes.

Q During that time could you see the person who was behind the counter?

A Yes.

Q And could you clearly see it was the person that you identified before as Rocky or Rakesh Sandel?

A Yes.

Q Now, let me direct your attention to June -- excuse me, July 7, 2006, the next day. Where were you at about 5:30 in the afternoon?

A The same location.

Q Okay. Was your car parked in the same approximate location as already indicated on RB 24?

A Yes.

Q All right. And what was your purpose in being there?

A Just keeping check on Best Liquors.

Q Okay. And were you again in plain clothes or uniform?

A Plain clothes.

Q Marked or unmarked car?

A Unmarked vehicle.

Q Okay. Did you have the binoculars again?

A Yes.

Q Okay. Were you -- did you have the same field of view into the store that you had on the day earlier on July 6th?

A Yes.

Q Okay. Do you recall who was behind the counter at that time -- on that day?

A Sunny.

Q When you say "Sunny", who do you mean?

A Subject sitting in front of me.

Q Indicating the defendant?

A Yes.

Q Okay.

MR. REALE: We'll stipulate.

Q Do you know --

MR. HALL: Not the defendant, the licensee. Forgive me for that.

MR. REALE: I ask that the record reflect that he is not the licensee, the corporation is.

MR. HOLZAPFEL: Noted.

MR. HALL: The sole owner of the corporate licensee.

MR. REALE: That's a little better.

MAYOR MENNA: Let's refer to him as his name like you just did. Okay. It's stipulated. Let's go on.

Q How long were you there observing Sunny or Mr. Sharma on July 7th, 2006?

A Five, 5 minutes, not long.

Q Had you ever met Mr. Sharma prior to that date?

A Yes.

Q How did you know him?

A Going into the store, other cases that I've dealt with going into the store and talking to him.

Q So you've known him for a while?

A Yes.

Q About how long, would you say?

A I'm not sure, maybe year, two. I don't know how long he's been in the store.

Q All right. At about 5:36 what, if anything, happened in relation to this case?

A I observed two subjects ride up on bicycles to the front of the store. One was a Sergio Limon, who I know, and then Jonathan Santamaria, who I know.

Q How do you know those two?

A They go to school with my son.

Q And did you know how old they were?

A 15.

Q Both of them 15?

A Yes, I believe so.

Q All right. How did they get up to the store?

A They rode up on bicycles.

Q They rode?

A Rode up on bicycles.

Q What was the next thing that happened?

A Jonathan Santamaria stays outside on his bike while Sergio Limon enters the store. I then observe him go to the right where there are coolers and then comes back -- he goes out of my sight for a few seconds. He comes back into sight, walks up to the counter, places two 40-ounce bottles of beer on the counter. Makes a purchase, walks out with them, and he then walks over to where Jonathan Santamaria is and unzips a backpack that he had on, places the bottles of beer in the backpack, and they then ride off on their bicycles eastbound on Catherine.

Q What did you do next?

A At that time, knowing that he was underage, I then stopped him halfway down the street on Catherine, half a block away.

Q When you say you stopped him, who did you stop?

A Both him -- both Sergio Limon and Jonathan Santamaria.

Q What happened next?

A Then I advised them that I was observing them. That I saw them purchase the liquor, the bottles of beer. At which time I asked Jonathan to hand me the bag. I grabbed him. I could feel the 2 bottles, the 40-ounce bottles of beer, in it. I opened them and discovered that the bottles were in there, and I placed them under arrest.

MR. HALL: I'm going to ask that this be marked as RB 19 and 20.

(RB 19 and 20 marked for identification.)

MAYOR MENNA: Who is who?

MR. HALL: May I show them to the witness, Mr. Mayor?

MAYOR MENNA: Sure. Go ahead.

MR. HALL: Thank you.

Q Take a look at what's been marked as RB 19 and 20. Could you identify those exhibits?

A Yes.

Q What are they?

A These are the two defendants.

MR. REALE: Could we identify which is which?

MAYOR MENNA: Please.

THE WITNESS: Sergio Limon.

MAYOR MENNA: Which number?

THE WITNESS: I think that's 20, RB 20. And 19 is Jonathan Santamaria.

Q Do those exhibits fairly and accurately depict Mr. Santamaria and Mr. Limon's appearance on July 7, 2006?

A Yes.

Q Okay.

MR. HALL: I move RB 19 and 20 into evidence.

MR. REALE: I object to 20. I don't see -- I'm sorry. I object to 19. I don't see the relevance of that.

MR. HOLZAPFEL: I'm inclined to agree with Mr. Reale. I'm admitting strictly the photograph of the individual with the charges.

MAYOR MENNA: So only the --

MR. HALL: Only 20 comes in.

MAYOR MENNA: Only the photograph of the individual that is part of the charge is admitted.

(RB 20 received in evidence.)

Q All right. Now, Mr. Limon, what was his date of birth -- withdrawn. Did you take pedigree information from Mr. Limon and Mr. Santamaria?

A Yes.

Q Okay. What was Mr. Limon's date of birth?

A 9-5 -- September 5th, 1989.

Q Okay. And that makes him 16 on July 7th, 2006. Is that correct?

A Yes.

Q Where did Mr. Limon live?

A 39 West Bergen, Red Bank, New Jersey.

Q Okay. About how far is 39 West Bergen from 75 Leighton, approximately?

A 10 blocks.

Q Okay. How old was -- withdrawn. Did you take pedigree information from John Santamaria?

A Yes, I did.

Q How old is John Santamaria?

MR. REALE: Objection. Relevance.

MR. HOLZAPFEL: Sustained. I recommend that we confine it to the individuals.

MR. HALL: This goes to show that because of the actions of the licensee you have a 15-year-old or someone else, another youth, getting alcohol. So I think it's highly relevant.

MAYOR MENNA: Was he charged as a juvenile?

MR. HALL: He's not charged with it, but it's a direct and proximate result of this licensee's violations of the law.

MR. REALE: I'm not even sure where to begin to respond to that. We're not charged with it. He's not inside of the property. There's no evidence at all that anyone inside of Best Liquors dealt with him, unless this officer is going to change his testimony and essentially change his reports.

MR. HALL: You got Limon goes into the store. He buys 2 bottles of beer. He comes out and gives it right to Santamaria. I think the age of Jon Santamaria is directly relevant because there's no causal break in the transfer of liquor from Best Liquors to Mr. Santamaria. You can do whatever you want with the evidence, but I think it's relevant.

MR. HOLZAPFEL: Does the causal link go to the violation as part of the charges?

MR. REALE: The answer to that is no. There is no part of any charge here that involves the other individual, Santamaria. Santamaria is outside. The testimony from this officer is that Limon goes outside and puts the 2 bottles of beer in the backpack. There is nothing that in any way that's been testified to so far or that appears in any of the reports prepared by this detective to suggest otherwise.

MAYOR MENNA: Okay.

MR. HALL: And he rides off into the sunset with Santamaria.

MR. REALE: And that's not relevant.

MAYOR MENNA: Before we decide that, I think Detective Ramos wanted to add something. I think you were itching to say something.

THE WITNESS: They were both arrested. Santamaria was arrested for possession.

MAYOR MENNA: Santamaria was arrested?

THE WITNESS: For possession. Sergio for purchasing. It's right here in the report.

MAYOR MENNA: Was he charged?

THE WITNESS: Yes.

MR. DUPONT: Did he plead?

THE WITNESS: It's a juvenile. They have --

MAYOR MENNA: It was diverted to juvenile because of his age. That's why I asked if there was juvenile proceedings.

MR. HOLZAPFEL: My recommendation, Mr. Mayor, is that we move on from this subject. Regarding Santamaria, the objection is sustained. I think it's proper that we move on.

MAYOR MENNA: Let's move on.

MR. HALL: I ask that we have marked and move into evidence presently RB 3 and 4.

MR. REALE: No objection.

MR. HALL: Thank you.

MAYOR MENNA: Let's move them directly into evidence.

MR. HALL: For the record, RB 3 is a certified record of conviction by Pankaj Sharma guilty to Borough Ordinance 6-4.4. The fine is \$506. And RB 4 is the transcript of the guilty plea by Mr. Sharma. I move both into evidence, 3 and 4 into evidence.

MR. HOLZAPFEL: No objection?

MR. REALE: No objection.

(RB 3 and 4 received in evidence.)

BY MR. HALL:

Q One last question. From the time Mr. Santamaria -- Mr. Limon, excuse me, left the store until you stopped him, did you ever lose sight of him?

A No.

MR. HALL: Your witness.

MR. REALE: Mr. Mayor, as trial counsel knows and lawyers, we all know that court reporters --

MAYOR MENNA: I was going to say it's 7:30. She has union regulations. She's been at her desk for two and a half hours. I was going to take a 5-minute break so the court reporter can stretch her fingers.

(Recess is taken.)

MR. REALE: Would you mark these as exhibits, please.

(L 1 and L 2 marked for identification.)

MAYOR MENNA: We're back on. It's 20 to 8 and we're all accounted for.

CROSS EXAMINATION BY MR. REALE:

Q Detective Ramos. Right?

A Yes.

Q You say you've been in Best Liquors?

A Yes.

Q How many times have you been in Best Liquors?

A Oh, my God.

MAYOR MENNA: Mr. Reale.

Q Detective, how many times have you been in Best Liquors?

A Over 20.

Q Now, how familiar are you with the interior of Best Liquors?

A Pretty familiar.

Q There's an ATM machine in Best Liquors?

A Yes, there is.

Q Okay. Now, when you interviewed Mr. Valdez, Mr. Valdez told you that he left to go to an ATM machine?

A Yes, he did.

Q Didn't you find it strange that there was an ATM machine right in Best Liquors?

A No. I didn't know if it was working or not.

Q All right. After you interviewed Mr. Valdez, when did you go in and interview Mr. Sandel?

A I didn't.

Q So everything that you had in this particular investigation came from Mr. Valdez who you had arrested?

A And my observations.

Q We'll get to that in a second. But everything you learned by way of comment or statement other than your personal observation that you told us about came from the interview of Mr. Valdez and did not include any conversation with Mr. Sandel?

A Yes.

Q You would agree with me, would you not, that an ATM machine in a store would be a lot closer than going down several blocks to go to a 7 Eleven or another ATM machine?

A Yes.

Q Now, can I have the Pennsylvania driver's license?

A It's here. It's in evidence.

Q Could we have it, please?

MAYOR MENNA: While he's getting that -- I don't know what the relevance is. In any event, he's going to get it.

MR. REALE: We'll move on.

Q You never interviewed Mr. Sandel?

A No.

Q What did you retrieve out of the trunk of the car?

A 12 pack of Miller Lite, a bottle of Bicardi Razz, other loose beer. It was over 40 something cans of beer.

Q Okay. And what did Mr. Valdez tell you as to the source of that other alcoholic -- group of alcoholic beverages?

A He just told us he had it and they were going to have a party at his house, him and his friend.

Q Well, when you asked him where he got it --

A I didn't question him about that.

Q You didn't question him about the other liquor in the car?

A I asked what did he have this for, and he said for a party.

Q Officer, your job was to conduct a thorough and complete investigation. Correct?

A Yes.

Q You would agree with me that when you had the trunk, in other words, when you saw the Miller 12 pack, it was in the trunk. Right?

A Yes.

Q So you had probable cause to understand that there was alcohol in the trunk by way of alcohol that had been purchased from Best Liquors?

MR. HALL: Objection. Calls for legal conclusion.

MR. REALE: I'll rephrase.

Q Detective, how long have you been an officer?

A 19 years.

Q Did you attend academies?

A Yes, I did.

Q Which academy?

A Monmouth County.

Q When did you attend that academy?

A In 1988.

MAYOR MENNA: Why don't you just jump in the question. You're going to get there anyhow. Can you answer the question?

Q Detective --

MAYOR MENNA: Did you think that you had probable cause to investigate?

THE WITNESS: Of course I did.

Q When you opened the trunk and you saw the liquor, the alcohol, by that I mean the beer that you saw being carted out of Best Liquors, you also found other liquor?

A Yes.

Q And you would agree with me that the other alcoholic beverages in the vehicle would also be an offense for Mr. Valdez and anyone else in the vehicle. Right?

A He was charged with it. Right.

Q But you did not see fit in doing your investigation to ask him where he had gotten this other alcoholic beverages. Correct?

A As far as that one, no. I just --

Q Now, you would agree, though, you were confronted with evidence that there was other criminal conduct that had taken place?

A It was all in the same context. He was charged with possession.

Q Detective, listen to my question, please. When you looked in that trunk and you saw the other alcoholic beverages that were there and you knew that the only thing purchased at Best Liquors was a 12 pack, you knew that you had evidence of alcohol having been purchased by Mr. Valdez or someone else in that car from other sources. Correct?

MAYOR MENNA: He answered that question, number one. First of all, the parents could have bought that alcohol and kept it in the trunk. I mean how do we know that?

MR. REALE: We don't know because the detective didn't see fit to ask any questions.

MR. MENNA: How does he know that Mr. Valdez purchased that alcohol that was in the trunk? It could have been purchased by somebody else. He didn't see him buy -- he didn't see him purchase that alcohol.

MR. REALE: If I may.

MAYOR MENNA: Yes.

MR. REALE: The question isn't what he knew or what he learned from Valdez. The question is what his job was when he opened that trunk and he saw all the alcoholic beverages, what he was supposed to do. You're being asked in a case where there's absolutely no testimony from Mr. Valdez, there's no interview of Mr. Sandel, there's a Pennsylvania driver's license in play, and an ATM inside of the Best Liquors, that this was a thorough and complete investigation by this detective; and this licensee has a right to challenge the nature and the extent and the quality of that investigation and that's the thrust and the direction of the question.

MAYOR MENNA: Go ahead.

MR. REALE: It goes to this detective's credibility and as to what weight, if any, you want to provide his testimony.

MAYOR MENNA: The fact that there was other alcohol I don't think really goes to the heart of what we're dealing with here. The other alcohol could have been in that trunk for 6 months. We don't know. It could have been purchased by the parents. It could have been purchased by a third party. Whether or not he investigated something that did not happen when he observed whatever he was charging Mr. Valdez with committing, I don't think it particularly goes to the heart of what we're being here for tonight.

MR. REALE: I respectfully disagree, but I would like to ask one more question.

MAYOR MENNA: Sure. Go ahead.

BY MR. REALE:

Q Detective, you've done investigations related to the unlawful purchase of alcoholic beverages in the past. Correct?

A Yes.

Q And you've had situations where you found people in possession of alcoholic beverages other than what you saw being purchased. Correct?

A Not often.

MR. HALL: Objection as to relevance. He's not being charged with possession of this other alcohol.

MR. HOLZAPFEL: On the same grounds, Counselor, I'm going to sustain that objection. We didn't venture outside the charges as to other purchases that Mr. Hall was directing and we're not going to do it on cross.

MR. REALE: On the issue of credibility, then, I would ask to be allowed to continue because it is important in a case such as this where you don't have Valdez, you don't have any other interviews by this officer, and this officer having the conclusion that there was a sale or a purchase of unknown alcohol by an undercover to basically preclude the licensee from examining why he chose not to do any other investigation is relevant as to this officer's testimony and his motivation but I'll continue. It's on the record.

MR. HOLZAPFEL: Thank you.

MAYOR MENNA: It's noted.

BY MR. REALE:

Q You knew there was an ATM machine in the store?

A Yes.

Q Did you ever inquire of Mr. Valdez why he didn't use that ATM?

A No, I did not.

Q You didn't go in and talk to Mr. Sandel about it, did you?

A No, I did not.

Q So you really don't know what was going on personally, firsthand information. You don't know what was transpiring or what was being said between Mr. Valdez and Mr. Sandel?

A No, I do not.

Q Now, you said that you were located and you referred to I think it's RB 24. Is that correct?

A The board?

Q Yes.

A It looks like it, yes.

Q On RB 24 you place your vehicle on Catherine Street, and I take it you're facing towards 75 Leighton. Correct?

A Yes.

Q Now, how far from your vantage point to the front door?

A Depends how wide the street is south from the corner to where my car was maybe 25 feet.

Q 130 feet, 140 feet?

A Whatever, 25, whatever street, however wide it is.

MR. HALL: 25 feet from what corner?

THE WITNESS: From the corner – see where my car is?

MR. HALL: Indicate it for us or point to it and we'll put it on the record.

THE WITNESS: This here. I'm parked.

MR. HALL: 25 feet from the southwest corner of Leighton and Catherine Street.

Q Now, this is at night?

A Yes.

Q It's dark out?

A Yes.

Q You're using binoculars?

A Yes.

Q Would you agree with me that binoculars, the use of binoculars restricts the field of your vision?

MR. HALL: Objection. It's not expert testimony.

MAYOR MENNA: He can answer the question, as you know.

A When you say "restrict", makes it smaller?

Q Yes.

A I would disagree.

Q Based on what?

MAYOR MENNA: He answered it.

Q Based on a wider field of vision for you?

A Yes. You see a lot more.

Q And the store was opened.

A The store, yes, it was opened.

Q All right. There were lights on in the store?

A Yes.

Q And your testimony was that in the context of the Valdez incident that you could see back towards the beer coolers?

A No, I did not say that. I said he walked past towards that.

Q Okay.

A I know where they are at.

Q At what point did you lose sight of Mr. Valdez?

A Once he walked in the front door, the counter where the clerk would be behind, it extends all the way to the rear, I would say, midway inside.

Q Let me show you what's been marked for our purposes as L 2. Do you recognize the scene depicted there?

A Yes.

Q What's the scene depicted there, if you could tell us?

A It's the front of the Best Liquors.

Q Is that a night time view?

A Yes, it is.

Q Would that be consistent with the view you would see if you were sitting in your car looking across the street at Best Liquors at night, as you've described for us?

MR. HALL: Objection. Without binoculars.

MR. REALE: That's not the question at this point.

A I don't know exactly where you're at in this picture.

Q You're familiar with Leighton and Catherine?

A I don't know how far you are. I can see the stop sign. It looks like what it would look like that night in front of the place.

Q Without binoculars that's the scene. You would agree that's the scene you would see if I looked out my windshield of my car across the street towards Best Liquors?

A I would say so.

Q Okay. And you also had an opportunity to approach Best Liquors at night and have a closer view of it. Correct? You've been in and out of there at nighttime?

A Yes.

Q Let me show you what's marked as L 1. Let me show you L 1. You recognize the scene depicted there?

A Yes.

Q What's the scene depicted there?

A The close-up picture of Best Liquors.

Q Is that consistent with your recollection as to how Best Liquors appeared on July 6th and 7 of 2006?

A Yes. Except the door was opened.

Q The door was opened?

A The door is closed in this picture.

Q The door was opened?

A Yes.

Q Could you tell us what's in the windows? On either side there's windows on either side of the door?

A Neon lights from advertisements.

Q Okay. And with the use of binoculars, L 1, I'll bring you back to L 1.

A Okay.

Q The use of binoculars that would bring you closer in to have a closer perspective of what's going on in whatever you're watching. Agreed?

A Correct.

Q And would you agree with me that L 1 depicts the scene as it would appear to you using your binoculars looking in towards the store?

A The door is closed.

Q With the exception of the door being closed?

A Right. Well, I don't know with binoculars, I don't know if it would look like that.

Q Well, did it look like that?

A Closer. You're talking about binoculars. That's with a camera.

Q When you looked through the binoculars?

A It doesn't look like that.

Q I'm sorry?

A It wouldn't look like that.

Q How would it differ?

A I would be closer up.

Q You would be closer up?

A Depending on what I'm looking at.

Q Would you agree that when you were closer up with the use of binoculars, as it's reflected on L 1, the scene with the door opened, that the field of vision that you have inside this store would be around the counter area?

A Yes. A little bit past the counter, past the lottery machine.

Q Okay.

A You can't see that in the picture because the door is closed.

Q Do you know where inside the store the ATM is located?

A It depends. At one time it was up-front, another time it was in the back.

Q So that -- you've never used that ATM?

A Oh, yes, I have.

Q You have.

A Yes, sir.

Q You saw from your observation Valdez who you later identified handing something to Mr. Sandel?

A Yes.

Q You, in fact, retrieved a fake ID?

A Yes, I did.

Q The photograph in that ID was, in fact, a photograph of Mr. Valdez, wasn't it?

A Yes, it was.

Q And that photograph -- and that license -- rather, the Pennsylvania driver's license reflected an age that would make Mr. Valdez on that license over the age of 21?

A Yes.

Q Now, can you tell me what was fake about that license?

A Just in appearance. It just looks fake.

Q Can you be more specific?

A Dull looking. I don't know. The way it was made. It doesn't look like my New Jersey license. You can tell.

Q Have you ever had a Pennsylvania driver's license?

A No.

Q Now, in the context of this Pennsylvania driver's license that was fake, you knew it was fake because you knew the age was wrong?

A Once I looked at his New Jersey driver's license, then I knew it was wrong.

Q If you had not had the Jersey driver's license as a back-up, you would agree with me that you wouldn't have any way of making a comparison as to whether the Pennsy license was good or bad?

MR. HALL: Objection. Speculation.

MR. REALE: Rephrase.

Q Detective, you made your decision that the Pennsylvania license was a fake based on the fact that you had recovered a New Jersey license.

A No. I had already suspected it was fake by looking at it. The fact that it was on the ground that tells me he was trying to hide it and didn't want me to see it for some reason. That's when I suspected. Once I got the driver's license I knew.

Q Okay. But you never went back to Mr. Sandel and asked Mr. Sandel what, if anything, he saw in that exchange between Mr. Valdez and Sandel?

A No, I did not.

Q Turn to Mr. Limon. What's his ethnic background?

A Mexican.

Q What's his height?

A 54.

Q Consistent with Mexican, Mexican background?

MAYOR MENNA: I think that's an improper question.

MR. DUPONT: This community is filled with, you know, Latinos, and Mr. Ramos is Latino, so you're saying -- that's a slight.

MR. REALE: No. Quite frankly, I'm offended by the suggestion, Mr. Mayor. It's an appropriate question to ask. Height, weight, appearance, whether it was consistent with ethnic background because this is an individual by way of the photograph the question is going to be, one of the questions you have to ask is whether the individual presented himself in such a way that an individual might believe he was, in fact, was 21.

MAYOR MENNA: Okay.

MR. HALL: Ask the question.

MR. CURLEY: As a council liaison with the Human Relations Committee, I find the question to be offensive. I find it to be a generalization and an attack on an ethnic group. I think it's completely inappropriate.

MR. REALE: Counsel.

MR. HOLZAPFEL: What's the purpose for the question?

MR. REALE: The purpose is that one of the issues you have to determine is whether the individual who presented himself -- who's been identified as Mr. Limon, if you were dealing with that individual would you have come to a conclusion that he was either over or under the age of 21.

MR. HOLZAPFEL: Is that relevant, Counsel?

MR. REALE: Certainly it's relevant under 3:1-77.

MR. HOLZAPFEL: As I understand the statute, he doesn't have an affirmative obligation to request identification.

MR. REALE: No. There is no affirmative obligation that anybody -- there is no affirmative obligation on a licensee or any licensee employee to ask for an identification unless that person believes the individual in front of him is under the legal age.

MR. DUPONT: So what's the purpose in asking them his height and his general background and everything related to his race?

MR. REALE: Because it's relevant as to who the individual was. It's not castigating an ethnic race or class of individual. It's just simply asking about this individual by way of height, weight, and appearance, whether, in fact, he looks younger or older.

MR. DUPONT: That wasn't the question asked. You asked the question regarding his race.

MR. HALL: It's stereotypical of some racial group. Ask him his height. Your asking him whether his height is stereotypical is completely improper and unfounded. I mean you can ask him his height. You can ask him his weight. You can ask him his complexion. You can ask him what kind of clothes he's wearing, whether -- if the witness knows whether a particular size is characteristic of a particular racial group. I don't think this witness could know it. Frankly, it's an inappropriate question.

MAYOR MENNA: That's why I said that. I agree. You can get around that by asking specific questions and that's what I'm asking.

BY MR. REALE:

Q How tall was Mr. Limon?

A About 5 4.

Q What was his weight?

A 150, 145.

Q How long have you known Mr. Limon?

A If I can, I've dealt with him on cases. I know him from knowing my son.

MAYOR MENNA: I think the question was can you approximate how many years or months you've known him?

THE WITNESS: Maybe 3 or 4 years.

MAYOR MENNA: Okay. Three or 4 years. That's your answer.

Q The photograph you've identified as RB 20, do you agree, is, in fact, an accurate representation of how he looked on the evening you arrested him?

A That's actually a year later. That's in is 2007.

Q I'm sorry, this is what?

A That's in 2007.

Q This photograph was taken in 2007?

A That's another arrest.

Q Can you tell me then why the arrest date on here is showing as 7-7-06?

A I'm sorry. I'm confused. This is when it was printed out, on April 5th. This is it.

Q Okay.

A I looked at the date up top.

Q I don't mean to confuse you. I don't want counsel to be confused.

A This is a photo when he was arrested in July.

Q That accurately reflects the individual you arrested on that night, Mr. Limon?

A Yes, it does.

Q Did I ask you what Mr. Limon's weight is?

A Yes, you did.

Q You don't have that arrest report in front of you?

MAYOR MENNA: I think he answered 150. That's my recollection.

Q Do you have the --

A I don't have the actual arrest report. It should be in the file. I don't have the actual case file.

Q When you processed Mr. Limon, who did you turn him over to?

A Probably his parents.

Q Okay.

A Usually the case.

Q When you searched him, what did you find?

A Nothing.

Q Did you in fact search him?

A Yes. If he was arrested, he was searched. We found nothing.

Q How much money did he have on him when you searched him?

A If there was any money on him, it would be in the prisoner property report, which would be in the case file. I only have the narratives.

Q Are there more reports that aren't here?

A I don't know what you have or don't have.

Q But you're saying there's property reports that would reflect whatever, in fact --

A If he had anything, anything was counted or taken, it would be reflected.

MAYOR MENNA: His answer is that would be in the property inventory once the person is processed through his arrest. That's what he's saying.

MR. REALE: I believe the license has arrived. I'll have this marked for identification as L 3.

(L 3 marked for identification.)

MR. HOLZAPFEL: That's the license.

Q All right. Detective, I show you what's been marked for our purposes as L 3. Do you recognize the item?

A Yes.

Q Okay. What is it?

A The Pennsylvania driver's license taken from Mark Valdez.

Q All right. And is there a photograph apparent on that license?

A Yes.

Q And is the photograph -- the individual represented in the photograph was that, in fact, Mr. Valdez?

A Yes, it was.

Q And what's the date of birth that appears on that driver's license?

A It says on here August 11th of 1984.

Q Which would have made him 21 years -- over the age of 21 years on July 6th of 2006. Correct?

A Yes, sir.

Q What happened to the alcohol that you seized from Mr. Valdez that night?

A It would be placed into property.

Q Is it still in property?

A I would assume they would destroy it after a certain time.

MAYOR MENNA: Was the municipal court proceeding terminated or over at some point?

THE WITNESS: I wouldn't --

MAYOR MENNA: So that in the normal course the alcoholic beverages would be destroyed after the municipal court proceeding is over.

Q So, Detective, am I to understand correctly that the alcoholic beverage has been destroyed in the last month?

A I don't know. I don't deal with records.

Q Who would?

A Lieutenant McDonough.

Q Okay. Do you know whether -- just out of curiosity, do you know whether the alcohol was ever sent out for analysis?

A I do not.

MAYOR MENNA: Normally that is not done in the normal course. I do a lot of that stuff.

MR. REALE: Just asking, Mayor.

MAYOR MENNA: Thank you.

MR. REALE: That series of rote questions just popped out.

MAYOR MENNA: You're not going to get any answer.

MR. REALE: If I may have a moment.

Q Detective, one final question. What did you charge Mr. Limon with?

A Purchasing.

Q Did you charge him with hindering?

A No.

Q You could have charged him with hindering?

MR. HOLZAPFEL: He can answer the question, if he knows.

A For what, hindering what?

Q He did lie to you. Correct?

A That's -- I would never charge him with hindering.

MR. REALE: Okay. Nothing further.

MR. HOLZAPFEL: Thank you.

MR. REALE: Other than to move --

MAYOR MENNA: Any recross --

MR. REALE: Other than to move 1, 2 and 3 in.

MR. HOLZAPFEL: Any objections to the exhibits?

MR. HALL: Which ones?

MR. HOLZAPFEL: Ls 1, 2 and 3. Any objections?

MR. HALL: No. I have no objection to any of the exhibits.

(L 1, 2 and 3 received in evidence.)

RE-DIRECT EXAMINATION BY MR. HALL:

Q Take a look at what's been marked as L 1 and L 2. Can you tell from looking at those photos whether they were taken at the same distance from your vantage point on Catherine Street?

A From where I was, no, there's no way of me telling.

MR. HALL: I have nothing further.

MAYOR MENNA: Thank you. Your next witness.

MR. HALL: Yes.

MR. CURLEY: Could I ask the detective a question? Is that appropriate?

MAYOR MENNA: Yes.

MR. CURLEY: Detective, you stated that you found the Pennsylvania license on the ground. Did you witness Mr. Valdez disposing of that license?

THE WITNESS: No.

MAYOR MENNA: Any other questions, Councilman?

MR. CURLEY: No.

MAYOR MENNA: Thank you.

MR. HALL: I call Police Officer Steven Adams.

MAYOR MENNA: Officer, raise your right hand.

S T E V E N A D A M S, called as a witness, having been first duly sworn, testified as follows:

MAYOR MENNA: Please state your full name as well as your professional relationship with the Borough.

THE WITNESS: Steven Adams, police officer in the patrol division.

DIRECT EXAMINATION BY MR. HALL:

Q Patrolman Adams, pull your seat in and pull the microphone to you and speak to the mike. We'll tell you if you're talking too loud. Patrolman, how long have you been with the Red Bank Police Department?

A Five years.

Q Okay. Did you have any law enforcement jobs prior to that?

A No, I didn't.

Q And let me direct your attention to July 14th, 2006, were you working on that day?

A Yes.

Q Were you in plain clothes or in uniform?

A Uniform.

Q Were you on foot or in a vehicle?

A In a vehicle.

Q Was that vehicle parked or moving at that time?

A It was marked.

Q Where were you parked?

A I was parked on Catherine Street west of Leighton Avenue.

Q Here in Red Bank?

A Yes.

Q What was your purpose in being there?

A I was watching the liquor store for ABC violation.

Q What liquor store was that?

A 75 Leighton, Best Liquors.

Q And about what time did you get there that night?

A About 9 o'clock.

Q And did you have any visual aids with you?

A Yes.

Q Okay. What did you have?

A I had binoculars.

Q Okay. And were you looking at the store through the binoculars?

A Yes, I was.

Q Okay. What could you see in the store?

A Basically, the contents of inside of the store. I could see.

Q How were you able to see inside of the store? Were you looking through any openings in the building?

A You could see through the front door is glass and through the window.

Q Was there anything obstructing your view between the place you were parked at Catherine Street and 75 Leighton?

A No.

Q Now, could you see from your vantage point who was working the counter on that day?

A Yes.

Q Who was it?

A It was Sunny.

Q When you say Sunny, who do you mean?

A Mr. Sharma, Pankaj.

Q On that date, July 14th, did you know Mr. Sharma?

A Yes, I did.

Q How did you know him?

A Just from previous dealings with him.

Q Do you see Mr. Sharma here in the courtroom today?

A Yes.

MR. HOLZAPFEL: It's stipulate.

Q And were you looking at Mr. Sharma during that entire half hour period when you arrived until 9:30?

A I wasn't focused just on him during that period, but I saw him during that period, yes.

Q Okay. From time to time he left your field of view?

A Yes.

Q All right. Let's bring you up to about 9:30. What, if anything, happened in relation to this case?

A A small Ford SUV pulled up, Ford Escape. A female exited the vehicle. As she walked to the store, she looked particularly young, so I gave a little closer attention to her.

Q What happened next?

A I saw her go through the front door. She walked towards the back where the beer cooler is. I saw her go for where the beer is and then walk towards the counter with a 30 pack of Natural Lites beer.

Q What's the next thing that happened?

A She placed the beer on the counter. It looked like a money transaction took place. She took the beer and went out to her car. I waited until she rounded the corner and I pulled her over.

Q What happened next?

A From that point I advised her my reason for the stop. I identified myself. I stated what my observations were, and she was very cooperative and she understood, and she actually told me that she saw me when my car was behind her why I stopped her.

Q Did you find anything in her car?

A Yes.

Q What did you find?

A 30 pack of Natural Lites beer.

Q Is that what you saw Ms. Rosato -- withdrawn. The woman that you saw, did you know her at that time?

A No, I didn't.

Q Did you later learn her identity?

A Yes, I did.

Q What did you learn it to be?

A It was Nicole Rosato.

Q Okay. You saw Ms. Rosato put the 30 pack in her car?

A Yes.

Q Did you ever lose sight of her car from the time you saw her put the 30 pack in her car until the time you pulled her over?

A No.

Q Did you ever lose sight of her from the time she left 75 Leighton with the 30 pack and put it in her car?

A No.

Q All right. Please continue. What happened next?

A So after I was speaking with her, I asked her to see her identification. She showed me her license. She said that she was only 19 years old, which the license confirmed. I told her at that point in time that she was under arrest for the underage purchase of alcohol, and she was placed in the rear of the police car.

Q And you took -- did you take her to the police headquarters?

A Yes, I did.

Q Was she searched at police headquarters?

A Yes. I did a pat down search of her.

Q Did you find any other identifications other than the New Jersey driver's license you just testified to?

A No.

Q I show you what's been marked as RB 17 in evidence. Does that fairly and accurately depict Ms. Rosato's appearance on July 14th, 2006?

A Yes.

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

A Yes, I did.

Q And what was her date of birth?

A I have it in my report, if I can look at the report.

Q Refresh your recollection.

A It's January 20th, 1987.

Q That made her 19-years-old at the time?

A Yes.

Q And where does she live?

A She lives in Middletown.

Q Do you know the address?

A Garryford Court.

Q Would you like to refresh your recollection?

A Yes. It's 30 Garryford Drive.

MR. HALL: Nothing further.

MAYOR MENNA: Thank you. Mr. Reale.

CROSS EXAMINATION BY MR. REALE:

Q Patrolman, I take it you're familiar with Best Liquors. Correct?

A Yes.

Q And this patrol you were on, you weren't on a station -- that wasn't a fixed station, correct, that night?

A That wasn't an assignment, no.

Q It wasn't an assignment. How long had you been parked at the intersection of Leighton and Catherine?

A Well, I wasn't really parked at the intersection.

Q All right. How long were you parked on Catherine?

A For about 30 minutes.

Q Okay. And, now, you said something on direct but I wonder if you can explain to us, your testimony was that the person ultimately identified as Ms. Rosato looked to be particularly young?

A Yes.

Q All right. How young was that?

A Under 21.

Q Well, what led you to that conclusion, sir?

A Her appearance.

Q Well, could you be more elaborative as to what her appearance was?

A Other than the fact that she appeared to be young.

MAYOR MENNA: You want him to describe characteristics that he suspected as to her age?

MR. REALE: Yes.

MAYOR MENNA: Does that help?

A Sure. Just her, you know, her face, her look appeared to be young.

Q Now, did you make this observation using binoculars or just unassisted?

A I had the binoculars, yes.

Q That was my question, did you use the binoculars to view this person?

A Yes.

Q And she looked particularly young?

A Yes.

Q That would be how you describe her today?

A Yes.

Q And you put an age range as what to what, then, for "particularly young"?

A Under 21.

Q Well, what would be the range under 21? It would fall within your category as you describe it as particularly young?

A I guess it would vary per person.

Q So you would agree with me then that some other person looking at this same individual might come to a decision as to her age different from what you came to?

A It's possible.

Q Now, let me show you what's been marked for our purposes as L 1. You recognize the scene depicted there?

A Yes.

Q What is the scene?

A That's the front of the liquor store, 75 Leighton.

Q Does that accurately reflect the scene, to the best of your recollection, as it would have existed on July 14th, 2006?

A No.

Q How is it different, sir?

A There's some different signs out front, and I don't believe that there was nearly as many Neons in the window.

Q Now, you say the signs out front, you're talking about signs on the brick fascia. Correct?

A Yes.

Q And you would agree with me that there were Neon signs in both windows?

A Yes.

Q You just don't recall how many in each?

A Right.

Q How many are depicted in that -- in L 1 as to the number of Neon lights in the windows?

A Five.

Q And which window is that?

A Well, there's three in the left and two on the right.

Q Okay. You agree there are Neon lights, you just don't know how many?

A Correct.

Q Are the Neon lights on that evening similar to, leaving aside the number for a moment, are the Neon lights on at the time you're making your observations?

A I don't recall.

Q You don't recall. Now, if they were on, would they have impacted your ability to see in the store?

A No.

Q Why not?

MAYOR MENNA: Mr. Reale, do you have any more questions of L 1 and L 2?

MR. REALE: Not at this particular time.

MAYOR MENNA: Could you pass them because the council members would like to see them.

MR. REALE: Certainly.

MAYOR MENNA: Thank you.

Q Now, Patrolman, the individual that you arrested ultimately is Ms. Rosato. Correct?

A Yes.

Q Okay. At what point did you go into the store and interview whoever was in there by way of working in the store?

A No interview was taken.

Q So you never went in and interviewed anybody inside the store as to what had taken place with respect to Ms. Rosato?

A Correct.

Q Now, we have RB 24 over here. I believe we have a red pen, if I may do so -- if I may borrow Mr. Hall's pen. Would you go to RB 24 and draw for us where your car was parked when you were making the observations that you're telling us about this evening?

A Sure. Approximately right where this is.

Q I'll tell you what, why don't you put --

MR. HALL: His initials next to it.

Q Your initials in red next to it.

A Okay.

Q Now, what type of car were you driving?

A Marked patrol car, Crown Victoria.

Q And you weren't under cover. Correct?

A No.

Q You were in uniform?

A Yes.

Q Marked car. Kind of hard to hide a Crown Victoria?

A No.

Q Now, let me ask you this question. How far from your vantage point to the front door of 75 Leighton?

A How far?

Q Yes.

A About 120 to 150 feet.

Q All right. Now, would you be kind enough with your red pen to draw where you recall the front door is located on 75 Leighton?

A Sure.

MR. HALL: Put a D over that.

MR. REALE: Yes. Close it off.

Q Now, that's the door you've drawn for us. Correct?

A Correct.

Q There are windows that flank that door on either side?

A Yes.

Q Would you draw those in for us in red as well. Now --

MR. HALL: Let the record reflect that he wrote Ws over the window drawings and D over the door drawing.

MAYOR MENNA: It's not to scale.

MR. REALE: Not to scale.

MAYOR MENNA: Thank you.

Q But, Patrolman, your line of sight, you would agree, would put you looking through the door towards the back far corner of the store at best. Correct?

A Yes. Not limited to but yes.

Q Okay. Let me ask you this: Patrolman, I wonder if you would now be kind enough to take the blue pen and show us from your vantage point where you were sitting that night, the sum total of the inside of the store that you could view from your vantage point?

A Sure. I would say here -- basically, the whole north side to about the other half of the store, the north side of the store.

Q All right. Now, where are the beer coolers located in the store?

A Back to the red?

Q Sure. Go back to the red.

A The coolers are back here.

Q Now, on the night of July --

MR. HALL: Put a B there.

Q On the night of July 14th, 2006, did you have anything obstructing your view from the door back to the beer coolers?

A Yes.

Q There were beer cases stacked in the middle of the store. Weren't there?

A Yes.

Q So isn't it a fact as you sat in your car that evening you could not have a clear perspective from the angle that you had of what was going on back in the cooler area?

A Yes, I do.

Q It's not correct?

A No.

Q You could see what was going on back there?

A Yes.

Q With the aid of your binoculars?

A Yes.

Q You can take your seat again. Thank you, Officer. You've been an officer for 5 years?

A Yes.

Q And what academy did you graduate from?

A Monmouth Academy.

Q When did you graduate from that academy?

A June 4th, 2003.

Q All right. Are you familiar with the policies and procedures of your department as it relates to the arrest and transportation of individuals in police vehicles?

A Yes.

Q Is there not, in fact, a policy in place in Red Bank wherein anyone being placed inside of the patrol car as a result of an arrest is to be searched?

A I wouldn't say searched.

MAYOR MENNA: You mean pat down, Mr. Reale.

MR. REALE: Search.

MAYOR MENNA: Search.

Q Search.

A No, I wouldn't say search.

MR. HALL: That's a vague term. Pat down is a full blown strip search. You have to be more specific.

MAYOR MENNA: That's why I'm asking.

Q Did you pat down Ms. Rosato?

A She was patted down.

Q Did you physically inspect her bag?

A Yes.

Q By the --

A Yes.

Q You reached inside her bag?

A She opened it up for me.

Q She opened it up for me. This outside in the dark?

A No.

Q No?

A That's once inside.

Q Once inside where?

A Headquarters.

Q You transported an individual -- did you handcuff her?

A Yes.

Q You transported an individual handcuffed but you hadn't searched her bag before you put her in the car?

A Correct. I had it in my custody.

Q Did you ever search that bag to determine whether or to what extent Ms. Rosato had IDs in her bag?

A I did.

Q You did?

A Yes.

Q When did you do that?

A Once inside of headquarters she opened it up for me.

Q I asked you specifically -- when did you specifically take the bag and examine each and every one of the contents of that bag?

A Once inside headquarters.

Q You did?

A Yes.

Q Okay. What did you discover and find inside of the bag?

A Just various papers and her license.

Q You found a driver's license?

A Yes.

Q Did you retrieve the driver's license or did she hand it to you?

A I believe she handed it to me.

Q Now, who did you see inside the liquor store?

A At which point?

Q At the point Ms. Rosato is inside making a purchase, who did you see?

A I saw Mr. Sharma and Ms. Rosato.

Q And you saw Mr. Sharma without any question that's the individual who you thought you saw?

A I don't think I saw him. I know I saw him.

Q You know you saw him?

A Yes.

Q What type of vehicle?

A He has a BMW and a Jeep.

Q Did you see either one of those vehicles there that night?

A Not that I remember, no.

Q You didn't in fact -- and this identification of Mr. Sharma was from your vantage point across the street using the binoculars at night through the doors?

A Yes.

Q Now, am I correct in understanding that you saw Ms. Rosato go to the back of the store and actually take this beer out of the cooler?

A I saw her go to the cooler, didn't see actually her hand reach into it. I saw a cooler door open and I saw her walking away with the 30 pack in her hand.

Q Have you ever testified that you, in fact, saw her take the beer out of the cooler?

MR. HALL: Objection.

MR. REALE: That's a question. He can answer yes or no.

MR. HALL: It's not a proper impeachment.

MR. HOLZAPFEL: The question is did you ever give testimony that you saw her take beer out of a cooler?

MR. REALE: That's the question.

MAYOR MENNA: That's the question.

MR. HOLZAPFEL: He can answer it.

MAYOR MENNA: It's a proper question.

Q I'm sorry?

A Am I answering this?

Q Yes.

A As far as I remember, it's possible that I did, yes.

Q I'm sorry. It's possible that --

A It's possible, that's what I said, yes.

Q If that's something you said before, that would be inaccurate?

A No, it's not.

Q It's not?

A No.

Q So did you see her take the beer out of the cooler or not?

A I saw her walk to the cooler, open the door, and then walk away from the cooler with the beer in her hand.

Q And there was nothing that obstructed your view back in that area?

A No.

Q Now, I apologize, I recognize that this isn't necessarily to scale but you're sitting where you made your initials reflected by the car on RB 24. Correct?

A Yes.

Q The building actually for 75 doesn't actually sit right along the curbline, does it?

A No, it's about two feet in.

Q Two feet in or 6 feet in because of the sidewalk that runs on Catherine Street and goes across in front of Leighton?

A I don't know exactly how much.

Q Is there a sidewalk?

A There is one, yes.

Q And the building is not on the curbline as is drawn on here. Correct?

A Correct.

Q So you would agree with me that actually from your positioning if we're setting this building up it actually has to be moved towards this left side what I'll call the north side of the diagram?

A Yes.

Q You would agree with me that that would increase the angle at which you would be looking through the door of the windows. Correct?

A No.

Q It wouldn't?

A No.

Q Describe the windows for me.

A They are clear glass, about three by five.

Q How far off the ground are they?

A Approximately, 3 feet.

Q Okay.

MR. REALE: May I borrow back L 1 and 2.

Q Let me show you what's been marked for our purposes as L 1 again. Based upon that – in fact, that depicts the scene in front of the building as you know it. Correct?

A Yes.

Q And based on your review of that photograph how far off the ground are the windows at 75 Leighton?

A I'd say about 3 feet.

Q Three feet. Okay. Now, you were sitting in a car. Correct?

A Yes.

Q And correct me if I'm wrong, when you're looking through the front windshield with your binoculars --

A Yes.

Q -- you would be looking up and across the street. Correct?

A Yes.

Q From that vantage point.

A Yes.

Q You would agree as you were to look through the door of the windows as reflected in L 1, again, leaving aside the number of Neon signs, you would agree with me that as you were looking you would be looking up.

A Correct.

Q Okay. Patrolman, why didn't you go back that night and interview the person you say was Mr. Sharma?

A It's just not something that I've done in the past.

Q Well, you're trying to do a complete investigation. Correct?

A Correct.

Q And wouldn't it be useful to know what transpired between Nicole Rosato and the person inside who made the sale?

A Correct.

MR. HALL: Objection. Withdrawn.

Q But you didn't see the need to do that, did you?

A No, I did see what happened.

Q You did see what happened?

A Yes.

Q Did you ever go into the store on July 6th, 7th -- I'm sorry, July 14th or any other date and ever interview Mr. Sharma who you say was the individual inside the store then?

A No.

Q How many employees worked at Best Liquors in July of 2006, to your knowledge?

A I'm not sure.

Q Well, one, two, more than two?

MR. HALL: Objection.

Q If you know.

A I don't know.

Q You said you've been in the store. Right?

A Yes.

Q Well, how many other individuals besides Mr. Sharma did you have contact with?

A I couldn't say.

Q Well, when was the last time you had been in Best Liquors before July 14th, 2006?

A I'm not sure.

Q Do you recall why you were in Best Liquors?

A Prior to July 14th?

Q Yes.

A Various calls, alarms, 911 hang-ups.

Q But you don't have any information or recollection as to who you dealt with?

A Oh, I have information. It's just not with me. It's documented at the time of the call.

Q But you have no idea how many individuals worked at Best Liquors?

MR. HOLZAPFEL: Asked and answered.

MR. HALL: Asked and answered.

MR. REALE: Okay. I'll move on.

Q Patrolman, since July 14th of 2006 have you ever gone back to that location and measured by a walker or a tape measure?

A No.

Q Have you been on post there since July 14th of 2006?

A I've been on patrol in the area. There's no specific post.

Q Well, have you ever sat out in front of Best Liquors since July 14th of 2006?

A Yes.

Q When was the last time you did that?

A I couldn't tell you the exact date.

Q Within the last 30 days?

A Yes.

Q Okay. Made any arrests as a result of any of the times you've been out there watching?

MR. HALL: Objection. Relevance.

MR. HOLZAPFEL: Relevance?

MR. REALE: Well, quite frankly, earlier Mr. Hall was positing that you should be considering the earlier warning.

MR. DUPONT: Which you objected to that and it was excluded. We got to really move on the cross-examination. It's going nowhere, this cross-examination.

MAYOR MENNA: Let's get on with it.

Q Patrolman, you would agree with me that the lights, the Neon lights, would, in fact, hinder your ability to see through the windows?

MR. REALE: Objection.

MR. HALL: He answered. With all due respect, he answered the question that did not --

MR. REALE: I'm sorry.

THE WITNESS: I answered no earlier.

Q Lights were on inside?

A Yes.

Q Were there any other people inside the store beside Ms. Rosato and the person you say was Mr. Sharma?

A No.

Q Had anyone come into Best Liquors other than Ms. Rosato during the time you were stationed out front?

A Not during the time that Ms. Rosato was in there, no.

Q Okay. The entire time that you were there that evening were other individuals entering and leaving the store having made purchases?

A Yes.

MR. HALL: Objection. Relevance.

MR. HOLZAPFEL: He answered it.

MAYOR MENNA: Let's get on with it.

Q Did you stop any of the other individuals that went in that night?

A No.

Q Have you stopped -- Patrolman, can you estimate for us the number of times between July 14th of 2006 and tonight that you have conducted a surveillance of Best Liquors from a position on Catherine at Leighton?

MR. HALL: Objection. Relevance.

MR. HOLZAPFEL: Sustained. It's irrelevant.

Q Patrolman, how many individuals between July 14th, 2006 and tonight, as we sit here, have you walked up and asked to produce ID as a result of observations you made?

MR. HALL: Objection. Relevance.

MR. HOLZAPFEL: Sustained.

Q Patrolman, between July 14th, 2006 and tonight, how many individuals have you charged with purchasing alcoholic beverages being under the legal age?

MR. HALL: Objection.

MR. HOLZAPFEL: It's a standing objection and the sustaining of the objection as to how many arrests, notices, whatever he conducted between July 2006 and the present date my recommendation that such evidence not be admitted and considered.

Q Patrolman, how high is the counter inside the Best Liquors there at the cash register with the lottery machine?

A I would estimate standard counter height, 40, 45 inches.

Q What's in front of that counter?

A Front of the counter?

Q Yes. What's in front of the counter?

A Nothing.

Q What did -- all right. On July 14th of 2006 from your vantage point, leaving aside what else you know about Best Liquors from your visits, was there anything in front of the counter?

A There's candy at the counter. There's various candy and ice cream.

Q So there, in fact, is a cooler at the front of the counter?

A I think that's actually the counter. I think there's a counter top on top of the --

Q With an ice cream cooler in front?

A From what I recall.

Q Is there an ATM machine in that building?

A I don't recall.

Q Have you ever used that ATM machine?

A I don't recall.

Q How much money did Ms. Rosato have on her when you arrested her?

A I don't recall.

Q Did you retrieve or attempt to retrieve any money that was used to make this purchase from Best Liquors?

A No.

Q Did you inquire of Ms. Rosato how she paid for it? By that I mean what denominations of money she paid?

A No.

Q Did you ask her how much she paid for the beer?

A No.

Q And when Ms. Rosato's case was resolved in municipal court, you were present in the backroom with the Prosecutor and Ms. Rosato when her case was being discussed. Correct?

A Yes.

Q And the Prosecutor was discussing it with her, the options, and the various penalties, and the methodology by which her charges could be resolved. Correct?

MR. HALL: Objection.

MR. REALE: I'm sorry.

MR. HOLZAPFEL: Before he answers, could you read the question back, please.

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

MR. HOLZAPFEL: If you could rephrase, Counselor, I'm not sure if I understand it.

MR. REALE: It's compounded and a little obtuse.

Q Patrolman, when you were in the back with the Prosecutor and Ms. Rosato, the Prosecutor was explaining to Ms. Rosato the penalties that could be imposed with respect to a conviction or a plea to the disorderly persons offense for being an underage person. Correct?

A I don't know.

Q You don't know?

A I don't know.

MR. REALE: I have nothing further.

MAYOR MENNA: You don't have anything else, do you?

MR. HALL: I'm sorry, I do.

MAYOR MENNA: Make it quick. Councilman DuPont has an emergency.

MR. DUPONT: I have a family emergency.

MR. HALL: Three or four questions.

MAYOR MENNA: Go ahead. Quick.

RE-DIRECT EXAMINATION BY MR. HALL:

Q Now, say you saw the vehicle – you could see the vehicle in the back from your vantage point. Right?

A Yes.

Q What parts of that vehicle could you see?

A I could see the door, top half.

Q Okay. Now, you testified you saw Ms. Rosato go back to that vehicle. Correct?

A Yes.

Q Okay. Did you see what she was doing while she was at that beer cooler -- withdraw it. Could you see what her hands were doing when she was back at that beer cooler?

A I could see she was reaching for the inside of the cooler.

Q Okay. Ms. Rosato went to the counter. Right?

A Yes.

Q When you saw her at the counter, was she holding the 30 pack of beer?

A Yes.

Q You could see that clearly?

A Yes.

Q Okay. So based on all of those observations you made, you reached the conclusion that Ms. Rosato got the beer from that cooler. Correct?

A Yes.

Q Now, did you ever find any kind of fake ID in your patrol car on July 14th, 2006?

A No.

Q Now, take a look at L 1 and L 2. Could you tell the distance from which L 1 was taken of the store?

A I would say pretty close.

Q Could you tell the distance that L 2 -- from the store that L 2 was taken?

A I can't really tell the distance but closer than where I was.

Q Okay. So neither L 1 or L 2 fairly depict the distance from which your vantage point was in relation to 75 Leighton?

A No, I don't.

Q Okay. Does L 1 or L 2 fairly depict the angle of your view of 75 Leighton?

A No, it doesn't.

Q All right.

MR. HALL: Thank you for the indulgence.

MR. HOLZAPFEL: Mr. Reale.

MR. REALE: I'll have recross --

MR. DUPONT: I'll wait a few minutes.

MAYOR MENNA: Could it be quick to finish with him?

MR. REALE: I'll wait.

MR. DUPONT: I have no problem.

MR. REALE: I'll wait.

MR. DUPONT: If you want to go ahead, ask. I know this officer can hopefully complete his testimony this evening.

MR. REALE: I'll do it quick.

RE-CROSS EXAMINATION BY MR. REALE:

Q Patrolman, L 1 and L 2, you agree they are photographs depicting the front of Best Liquors. Correct?

A Yes.

Q Is there any doubt that that's how the front of the building looked in July of 2006?

A Yes.

Q There is a doubt?

A Yes.

Q What's the difference, then?

A It --

Q Besides the signs that you told us about in the front and you're not sure of the numbers of the Neon signs, what's different?

A That's enough to be different.

Q That's enough. Okay. All right. Irrespective of where you're sitting --

A Yes.

Q -- you would agree that without the binoculars from across on Catherine Street looking across that's the type of view you would have of Best Liquors?

A No.

Q You don't. Why is it different?

A It's up a lot farther towards the intersection.

Q So you would have been further away from what the scene is depicted here?

A Yes, on a more straight angle.

Q On a more straight angle. You would be down further -- you would agree with me -- if we walked over to RB 24, you would say this photograph is somewhere between here and the corner, correct, since you can see the crosswalks?

A Correct.

Q You would be further back?

A Yes.

Q And you're saying that being further back you had a better line of sight. Is that what you're telling us?

A Yes.

MR. REALE: Okay. Nothing further.

MAYOR MENNA: Ladies and gentlemen, I thank you for your attention. Councilman DuPont, you may be excused. Best wishes.

As I indicated at the commencement of the hearing, we did not think we would be able to finish the hearing. We set a sunset provision of 9 o'clock and we basically made it. What remains in the case is I believe, Mr. Hall, you are completed on your direct?

MR. HALL: I have one more witness.

MAYOR MENNA: Who is that?

MR. HALL: Broadley.

MR. REALE: Officer Broadley.

MAYOR MENNA: After Mr. Hall finishes, Mr. Reale may or may not introduce witnesses on his client's behalf. Just so we can schedule, how many witnesses would you anticipate?

MR. REALE: Probably no more than three.

MAYOR MENNA: If you call any witnesses.

MR. REALE: If I call any, probably no more than three. What I'm not sure of is whether I may call a member of the department.

MAYOR MENNA: Okay. So definitely we're going to have to have a second hearing to complete the State's case and also to hear from the licensees and their witnesses and then ultimately from the public. The hearing will not be concluded this evening. We put in about 4 hours of testimony. Council has engagements early in the morning and the public has worked all day, so I would ask the council to adjourn the hearing to a later date.

I don't know if we have to firm that up tonight or whether we can check our respective schedules and try to come up with a date that accommodates all parties.

MR. CURLEY: You need a motion?

MAYOR MENNA: Is that acceptable, gentlemen?

MR. HALL: Acceptable to the Borough.

MR. REALE: Yes.

MAYOR MENNA: We are in communication with residents in the area. They definitely will know when the next hearing will be. Check everyone's schedules. I anticipate we can do it within the next 30 days or less just to keep it moving. Probably sooner than that.

MR. REALE: Mayor, just a frame of reference. I'm looking at my calendar and it indicates I have court appearances the evenings of June 12th, 19th and 26th, which are Tuesdays.

MAYOR MENNA: 12, 19 and 26 are bad for you. Carol has that.

MR. REALE: I don't have anything booked into July at this point.

MAYOR MENNA: We're definitely doing it in June.

MR. REALE: I didn't know if Tuesday was the night when everyone was available.

MR. HALL: My only really bad days in June are the 20th through the 22nd. I'll be in tax court all day. I rather not spend the day in tax board, if possible.

MAYOR MENNA: You get less fire works in tax court.

MR. HALL: I also fall asleep.

MR. REALE: Thursdays would be better.

MAYOR MENNA: Probably Thursday – two Thursdays out of the month the zoning board meets in the room. They have a hectic schedule. Mondays, two Mondays in the month the planning board meets in room. The council meets two Tuesdays of the month and various other boards meet, which we can move them upstairs because they are smaller, but the zoning board and planning board have full calendars. Probably in the next 2 weeks we'll set up another date.

MR. REALE: I indicate the 27th I'm available.

MAYOR MENNA: Carol has it. Motion to adjourn?

ADJOURNMENT

Mr. Murphy offered a motion, seconded by Mr. Curley to adjourn the meeting.

ROLL CALL:

AYES: Curley, Murphy, Lee, Cangemi

NAYS: None

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

Respectfully submitted,

Carol A. Vivona