

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF SUFFOLK : PART 43

3 -----x
4 In The Matter of the Application of INDEX No.
5 DEAN MURRAY, 14-14422

6 Candidate-Aggrieved,
7 Petitioner,
8 -against- ELECTION LAW
9 HEARING

10 EDWARD HENNESSEY,
11 Respondent-Candidate,
12 - and-
13 THE SUFFOLK COUNTY BOARD OF ELECTIONS,
14 Respondent.
15 -----x

16 **Friday, August 1, 2014**
17 Suffolk Supreme Court
18 Riverhead, New York

19 B E F O R E: HONORABLE ARTHUR G. PITTS
20 Supreme Court Justice

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

22 WILLIAM DUFFY, ESQ.
23 Attorney for Candidate-Aggrieved, Petitioner
24 96 South Ocean Avenue
25 Patchogue, New York 11772

LAWRENCE H. SILVERMAN, Attorney at Law
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350 Veterans Memorial Highway
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SUFFOLK COUNTY DEPARTMENT OF LAW
Attorney for The Suffolk County Board of Elections
100 Veterans Memorial Highway
Hauppauge, New York 11788
BY: LEONARD G. KAPSALIS, ESQ.
Deputy Bureau Chief

BARBARA J. SKINDER
Senior Court Reporter

1 COURT OFFICER: All rise.

2 THE CLERK: Supreme Court, State of New York,
3 County of Suffolk, Part 43 is now in session, the Honorable
4 Arthur G. Pitts presiding.

5 THE COURT: Good morning, everyone. Thank you.
6 Please be seated.

7 THE CLERK: Good morning, Judge.

8 In the Matter of the Application of Dean Murray
9 against Edward Hennessey and the Suffolk County Board of
10 Elections.

11 Counsel, your appearance for the record, please.

12 MR. DUFFY: Good morning, Your Honor. William
13 Duffy, 96 South Ocean Avenue, Patchogue, New York for
14 Petitioner Dean Murray.

15 MR. SILVERMAN: Good morning, Your Honor.
16 Lawrence A. Silverman, 350 Veterans Memorial Highway,
17 Commack, New York for Assemblyman Hennessey.

18 MR. KAPSALIS: Good morning, Your Honor. Leonard
19 G. Kapsalis of the office of Dennis A. Brown, Suffolk County
20 Attorney, for the Board of Elections, 100 Veterans Memorial
21 Highway, Hauppauge.

22 THE COURT: All right. It was brought to the
23 Court's attention this morning that subpoenas were
24 apparently served on the Respondent Edward Hennessey
25 together with another individual last evening. It was this

1 Court's intention to direct the Petitioner to call his first
2 witness and I also directed Counsel for Mr. Hennessey to
3 call him and tell him to come here. Apparently
4 Mr. Hennessey is here already.

5 Therefore the provisions of CPLR 4011 which allow
6 this Court to determine the order of issues to be tried, the
7 need for this Court to invoke its authority under that
8 provision is now obviated because Mr. Hennessey is here, so
9 I'm going to permit the Petitioner to call Mr. Hennessey as
10 his first witness.

11 Do you wish to make an opening argument, Counsel?

12 MR. DUFFY: No, thank you.

13 THE COURT: Mr. Silverman, do you wish to make any
14 opening argument?

15 MR. SILVERMAN: No, Your Honor.

16 THE COURT: Mr. Kapsalis?

17 MR. KAPSALIS: No. Thank you, Your Honor.

18 THE COURT: All right. Counsel, you may call your
19 first witness.

20 MR. DUFFY: Thank you, Judge. At this point I'd
21 like to call Assemblyman Hennessey, please.

22 COURT OFFICER: When you get a second, sir, please
23 step up. Right this way, please.

24 EDWARD HENNESSEY: Can I bring a bottle of water
25 with me?

1 THE COURT: I'll let you bring a bottle of water up
2 because we have no jury here, but I normally don't allow
3 water bottles in the courtroom because there was a case in
4 the city where a juror was bringing water bottles in the
5 courtroom everyday, they were filled with vodka.

6 EDWARD HENNESSEY: Not for me.

7 COURT OFFICER: Good morning, sir. Just watch your
8 step coming up to the witness chair.

9 Ask that you please remain standing, raise your
10 right hand, face the Clerk of the Court which is straight
11 ahead.

12 **E D W A R D H E N N E S S E Y, after having been**
13 **duly sworn by the Clerk of the Court, was examined**
14 **and testified as follows:**

15 THE CLERK: Have a seat, please.

16 Please give your full name, spelling your last
17 name, and your town of residence.

18 THE WITNESS: My name is Edward Hennessey.

19 H-E-N-N-E-S-S-E-Y. I live in Shirley in the Smith Point
20 section.

21 THE CLERK: Thank you.

22 THE COURT: Good morning, Assemblyman. I want to
23 just advise you that the lady seated in front of you is our
24 Court Reporter. It's her job to take down every word that's
25 said during this trial, so as the lawyers ask you questions,

1 I'm going to ask you to please make an effort to wait until
2 they've finished the inquiry before you start to respond to
3 it because if you anticipate the question and you jump in in
4 the middle and two people speak at the same time, you make
5 her life miserable. Okay?

6 THE WITNESS: Yes.

7 THE COURT: Counsel, you may inquire.

8 MR. DUFFY: Is it okay if I pull the podium around?

9 THE COURT: Sure.

10 MR. SILVERMAN: Your Honor, if I may, first, before
11 we begin the testimony, it appears that a witness in this
12 case is in the courtroom. I ask he be excluded at this
13 time.

14 THE COURT: Mr. Duffy, do you wish to be heard on
15 that motion?

16 MR. DUFFY: No. I forgot he was here. He should
17 wait outside.

18 THE COURT: Step outside.

19 MR. SILVERMAN: Thank you, Your Honor.

20 MR. DUFFY: May I inquire?

21 THE COURT: Yes.

22 DIRECT EXAMINATION BY

23 MR. DUFFY:

24 Q Good morning, Assemblyman.

25 You're an Assemblyman. Can you tell the Court when you

1 were elected to the Assembly?

2 A November of 2011. 2012. Excuse me.

3 Q Where did you reside at that time?

4 A East Moriches.

5 Q Can you give the address?

6 A 4 Annette Lane, East Moriches.

7 Q And after your election, is it true you had a certain
8 amount of time -- well, withdrawn.

9 To your knowledge, is Annette Lane located within your
10 Assembly District?

11 A No.

12 Q And after the election, you had a certain amount of
13 time with which to move into the District that you were
14 representing, correct?

15 A That's my understanding and that's what I did.

16 Q When did you do that?

17 A October 1 of 2013.

18 Q What is the address that you moved to?

19 A 2 Trafalgar Drive, that's -- Trafalgar is
20 T-R-A-F-A-L-G-A-R. And that's in Smith Point, New York.

21 Q In addition to being a member of the Assembly, you're
22 also an attorney, correct?

23 A I am.

24 Q And you maintain a law practice?

25 A I do.

1 Q Where is your office located?

2 A 483 William Floyd Parkway, Smith Point, New York.

3 Q What type of practice would you say you have? What
4 type of law do you practice?

5 A I practice to the best of my ability and it's a
6 successful practice, certainly not as successful as I would like
7 it to be.

8 Q Any particular areas of law that you focus your
9 practice on?

10 A I do real estate, foreclosure litigation these last
11 several years, a significant amount of criminal and family court
12 work and other litigation.

13 Q Do you own any motor vehicles?

14 A Yes.

15 Q Could you tell us what vehicles you own?

16 A I own a 2012 Honda Civic, a 2013 Honda Civic, a 2004
17 Ford Expedition and I'm not sure my wife's car is in my name,
18 but there is a 2004 Jaguar that's either entitled to me or my
19 wife. I'm not sure.

20 Q Is one of those Civics registered to your law practice?

21 A Yes.

22 Q Which one is that?

23 A The 2012 Civic.

24 Q Is there a particular car that you primarily drive?

25 A The 2012.

1 Q As part of your duties as an Assembly person, you're
2 required to go up to Albany, correct?

3 A Yes.

4 Q Is there a particular day of the week that you're
5 usually required to be up in Albany?

6 A Monday mornings. Well, Monday afternoon session
7 starts. I typically travel up on Sunday.

8 Q And when would you usually return to the Island?

9 A That depends on the schedule.

10 Q Does it usually go by what month of the session it is
11 or is there any regularity to how long you're up there,
12 depending on the month?

13 A The months of March, May and June tend to keep us up
14 there three to four days a week every week. January, two or
15 three days a week depending on the week. February it increases,
16 but two to three days a week you can say in February. March is
17 a full month. I don't know if I mentioned that earlier. March
18 is about four days a week.

19 Q When you moved to Trafalgar, did your family move with
20 you or did they still reside at Annette Drive?

21 A They still reside on Annette.

22 Q You're married, correct?

23 A I am.

24 Q And you have children?

25 A I do.

1 Q How many?

2 A Two boys.

3 Q Tell the ages.

4 A 15 and 19.

5 Q When you come back, when you come back from Albany,
6 what is your usual practice, do you go to see your family in
7 East Moriches or do you go to Trafalgar?

8 A I don't know. I would say intermittent I believe.
9 Depends on, you know, how I was feeling at the time. If I
10 needed to go to sleep right away or the time of day I'd go to
11 Trafalgar, but if I had some energy left, I would -- and I would
12 try to visit my family in East Moriches.

13 Q How many nights a week would you say you spend in
14 Trafalgar?

15 A Just about every night that I've been home from Albany.

16 Q So in April of this year, any night that you were on
17 Long Island you would stay at Trafalgar?

18 A April of this year we had some significant time off, so
19 I spent more time than the previous year in East Moriches
20 visiting my family.

21 Q How about May of this year, how many nights would you
22 say you spent at Trafalgar when you were home on the Island?

23 A Well, I only recall sleeping over in Trafalgar in 2014
24 -- I mean, excuse me -- in East Moriches in -- just withdraw
25 that. Sorry.

1 In 2014 my recollection is that I only spent one night
2 away from Trafalgar when I was on Long Island.

3 Q You said in May of 2014 one night or you're saying all
4 of --

5 A I don't know which dates they were, but it was just one
6 night that I didn't make it home to Trafalgar.

7 Q I'm sorry. I thought you previously just said in April
8 of this year that you spent more time at home, you spent more
9 time in East Moriches than Trafalgar?

10 MR. SILVERMAN: Objection, Your Honor.

11 THE COURT: The objection's overruled.

12 A I did say that, yes.

13 Q So you're saying you spent time there, but you didn't
14 stay over?

15 A That's correct.

16 Q Does your family ever come to see you at Trafalgar?

17 A My older boy has.

18 Q Does he spend nights there too or just come to visit?

19 A He may have spent sometime there when I wasn't present.
20 I did give him a key, but he spent time in the house. Mostly
21 with his girlfriend rather than his father, but...

22 Q You took title to the Trafalgar house, is that correct?

23 A I did.

24 Q Do you remember what date that was?

25 A I think it was in April of 2013.

1 Q April?

2 A I believe so, yeah.

3 Q And do you remember the type of instrument, the type
4 that you took title to the house with?

5 A By deed and in a corporate name.

6 Q Can you tell the Court the type of deed you used?

7 A A quit-claim deed.

8 Q Did you represent yourself at that closing?

9 A Yes.

10 Q Any reason why you took title in the name of the
11 corporation instead of taking it in your own name?

12 A Yes.

13 Q Can you tell us what that reason was?

14 A There's an outstanding mortgage that wasn't being
15 serviced at the time I took title to it.

16 Q Did the holder of that mortgage commence a foreclosure
17 action against the property?

18 A Yes.

19 Q Do you know if that's still pending?

20 A It is.

21 Q In taking title to that house, do you pay property
22 taxes on it?

23 A No.

24 Q Did anybody else live at that house with you?

25 A Yes.

1 Q Who's that?

2 A Robert Mercado.

3 Q How long have you known Mr. Mercado?

4 A 10, 12 years maybe. Maybe 15. I'm not sure.

5 Q How did you meet Mr. Mercado?

6 A He's a painter. I met him as a painter.

7 Q Was he already living at the house when you took title
8 to it or did he come to live there after you took title?

9 A He came, he would -- he went to the house after I took
10 title.

11 Q Did you charge him rent to live at the house?

12 A Beginning in January of this year.

13 Q Can you describe the type of residence this is, is it a
14 single-family dwelling, is it a two-family house?

15 A It's a single-family dwelling with a former accessory
16 apartment permit that became invalid when the previous owner
17 took title to it in a corporate name.

18 Q Does Mr. Mercado stay in the accessory apartment area
19 or does he stay in the main part of the house?

20 A He stays in the main part of the house.

21 Q And where do you stay?

22 A I stay in the upstairs, above a former garage which was
23 formerly the accessory apartment section of the house.

24 Q Did you obtain a rental permit from the Town of
25 Brookhaven for this property?

1 A I did.

2 Q When did you get that rental permit?

3 A It was issued in May of 2014.

4 Q And you're still on the title at 4 Annette Lane,
5 correct?

6 A Yes.

7 Q Do you know if that property still receives a STAR
8 exemption?

9 A I believe it does, yes.

10 Q Does that house have a mortgage on it?

11 A It does.

12 Q Is that mortgage current?

13 A It is.

14 Q Does the mortgage company pay the property tax or do
15 you pay?

16 A The mortgage company does.

17 Q The 2012 Honda we spoke about earlier, that's the car
18 you usually drive, is that the car you take to Albany?

19 A Yes.

20 Q Would you say exclusively that's the car you took to
21 Albany?

22 A I would say so, yes.

23 Q And we were talking this year, you said there's only
24 one night you didn't stay at Trafalgar, correct?

25 A That's my recollection, yes.

1 Q 2013, when you took title, how often would you stay at
2 Trafalgar?

3 A I only started to stay at Trafalgar beginning in
4 October of 2013.

5 Q When you took title?

6 A No, after I took title.

7 MR. SILVERMAN: Objection.

8 THE COURT: I'm sorry, Counsel?

9 MR. SILVERMAN: That wasn't it.

10 THE COURT: Objection?

11 MR. SILVERMAN: Withdrawn.

12 Q You only started staying there after you took title to
13 the Trafalgar?

14 A Correct.

15 Q And from October of 2013 through December of 2013, how
16 many nights a week would you say you stayed at Trafalgar?

17 A Excuse me, could you repeat the question?

18 Q From when you took title in October of 2013 until
19 December of 2013, how many nights a week would you stay at
20 Trafalgar?

21 A I took title in April of 2013.

22 Q I'm sorry. When you started living there in October of
23 2013.

24 A Yes.

25 Q From when you started staying there and took residency

1 in October of 2013 at Trafalgar, how many nights a week would
2 you say you stayed there?

3 A I'm not sure. I'm not sure. I'm really focused on --
4 I'm not sure, really, between, you know, October and November,
5 December. Not sure.

6 MR. DUFFY: I have nothing further, Judge.

7 THE COURT: Okay. Mr. Silverman, you wish to
8 inquire?

9 MR. SILVERMAN: Thank you, Your Honor.

10 CROSS EXAMINATION BY

11 MR. SILVERMAN:

12 Q Good morning, Assemblyman.

13 MR. SILVERMAN: Can I have this marked for
14 identification, please?

15 THE COURT: Mark that as Respondent's A for
16 identification only.

17 COURT OFFICER: This is Respondent's A for I.D.
18 only.

19 MR. DUFFY: I'd like to see what's being marked.

20 THE COURT: After it's been marked, show it to
21 Counsel.

22 COURT OFFICER: (Handing to Counsel.)

23 MR. DUFFY: It's already marked in, the deed.

24 COURT OFFICER: Would you like that shown to the
25 Witness?

1 MR. SILVERMAN: Thank you very much.

2 COURT OFFICER: Respondent's A for identification
3 purposes only is presented to the Witness.

4 Q Mr. Hennessey, directing your attention to Exhibit A
5 for identification, do you recognize that document?

6 A Yes.

7 Q Can you tell us what that is?

8 A This is the deed to my Trafalgar property.

9 Q And is that the deed you referenced earlier when you
10 were asked about --

11 A It is.

12 Q -- when you took title --

13 A It is.

14 Q -- to the Trafalgar property?

15 A Excuse me?

16 Q Is that, you were referring -- you were referring to
17 that same Trafalgar property earlier in your testimony?

18 A Yes.

19 Q And does that refresh your recollection as to when you
20 took title in the corporate name to the Trafalgar property?

21 A It does.

22 Q And when was that?

23 A Looks like the deed was signed in March of 2013 and
24 recorded beginning of April of 2013.

25 Q Now, you described in your testimony that there was an

1 accessory apartment at the time that you acquired title,
2 correct?

3 A That's correct.

4 Q Was there a process that you went through
5 administratively with the Town of Brookhaven so as to legalize
6 the premises in some fashion?

7 A Yes.

8 Q Could you describe for us what that was from the time
9 that you first acquired an interest in the property?

10 A Right.

11 Q When I say you, of course I'm referring to the
12 corporation.

13 A There was outstanding violations on the property for
14 the illegal accessory apartment and litter, I believe. So the
15 disposition was entered in District Court, Sixth District Court
16 in Patchogue, Town of Brookhaven. An agreement in that
17 disposition was that the appropriate application would be filed
18 to correct the violation.

19 Q Let me stop you there. The disposition that you're
20 referring to, was there a particular respondent in that case?

21 A There was. There was the previous owner. He was --
22 the respondent was a Michael Galizio who was the principal of
23 the former corporation KAG Realty.

24 Q And at that stage, what was your role?

25 A I was the attorney for Mr. Galizio and his corporation

1 KAG Realty.

2 Q Thank you. Why don't you continue.

3 A So a corporate substitution was made in Sixth District
4 Court where East Point Realty property management took title to
5 the property, showed title to the property to the Town
6 Attorney's Office in the Town of Brookhaven and a disposition
7 was entered under the new corporate owner. And that disposition
8 required an application to be filed to correct the violations
9 and that first attempt to correct the violation was filed in
10 July of 2013.

11 I was directed by the chief building inspector that a
12 corporation could not file or obtain an accessory apartment
13 permit and that I would either have to appeal to the review
14 board for accessory apartments -- there is an accessory
15 apartment review board in the Town of Brookhaven -- or change
16 the application or change the title owner to an individual. I
17 chose to change the application and withdraw the accessory
18 apartment from it.

19 Subsequently I hired an expeditor professional with
20 experience in the Town of Brookhaven building and land use
21 procedures who prepared the new application for a rental permit,
22 obtained any other necessary permits that I would be required to
23 obtain, I believe it was a building permit, and I did the work
24 that was required as directed by the expeditor and the building
25 inspector that subsequently came to the residence and once that

1 review process was complete, the rental permit was issued.

2 Q When was that?

3 A The rental permit was issued finally in May of 2014.

4 Q Now, you described earlier that someone else resided
5 with you in the premises prior to that time?

6 A That's correct.

7 Q At that time, was there an application pending to the
8 Town of Brookhaven with respect to the accessory apartment?

9 A I think he moved in shortly after I took title so there
10 was no application pending at that time, no. When he moved in
11 there was no application then.

12 Q And did he perform some work on the property?

13 A He did, yeah.

14 Q Did there come a time that you were first elected as a
15 public servant in Suffolk County?

16 A I was first elected in Suffolk County in, as a member
17 of the -- I was elected to the Brookhaven Town Board.

18 Q When was that?

19 A In November of 1993. Took office in January of 1994.

20 Q And what portion of Brookhaven did you represent at
21 that time?

22 A I represented the entire Town of Brookhaven as an at
23 large member of the Brookhaven Town Board and served in a dual
24 capacity as a trustee of the Town of Brookhaven.

25 Q And did there come a time that that office, in a sense,

1 expired for some reason?

2 A Yeah. There was an election for, a referendum election
3 to create a new system of representation called councilmanic
4 districts in Brookhaven Town and I believe it was a special
5 election in February of 2002 if my recollection serves me
6 correctly.

7 Q Would it be fair to say for about eight years your
8 representation as a council person in the Town of Brookhaven
9 included the geographical area that is now the Third Assembly
10 District?

11 A Yes, sir.

12 Q And did there come a time after the referendum that you
13 continued to serve in some capacity as new council person in the
14 Town of Brookhaven?

15 A I did. I was elected in a special election in the new
16 councilmanic districts in 2002 and that was -- the new system
17 called for two year term and the first election we just
18 completed that year, for like a ten-month term, and then there
19 was a re-election and I was elected to one full year term as a
20 member of the Brookhaven Town Board representing the Sixth
21 Council District.

22 Q Now, is there a portion of the Sixth Council District
23 that falls within the current Third Assembly District?

24 A Yes.

25 Q And could you approximate that in some fashion in terms

1 of what portion of the Assembly District includes the Sixth
2 Councilmanic Districts?

3 A Yeah. Portions of the -- portions of the Hamlets of
4 Shirley, Mastic and Mastic Beach.

5 Q So would it be fair to say that in serving as an
6 Assemblyman in the Third Assembly District, you have
7 continuously represented a significant portion of the area for
8 how many, 14 years?

9 A Yes, I represented the portions of the Third Assembly
10 District that overlapped with the Sixth Council District for 12
11 years continuously as a member of the Brookhaven Town Board and
12 then there was a reapportionment of the Assembly District lines
13 and then I had the opportunity to represent the area, those
14 areas again, the Hamlets of Mastic Beach, Shirley and Mastic as
15 a member of the New York State Assembly.

16 Q Now, where is your law office located with respect to
17 the Third Assembly District?

18 A It's in the Second Assembly District, my law office.

19 Q What I meant to ask is, what is the proximity of your
20 law office to the Third Assembly District?

21 A I'm about a quarter mile south of the Third Assembly
22 District line. My law office is about a quarter mile south of
23 the Third Assembly District line measuring from Mastic Boulevard
24 in Mastic at the intersection of Mastic Boulevard and William
25 Floyd Parkway and then on the south side of my law office on

1 William Floyd Parkway it's maybe a half mile, three-quarters of
2 a mile before the district line comes across Shirley to south
3 part of Shirley into the new village of Mastic Beach.

4 MR. SILVERMAN: Your Honor, I don't believe I did
5 so, but I would move the deed that Mr. Hennessey identified
6 as Exhibit A into evidence.

7 THE COURT: Do you have any objection?

8 MR. DUFFY: No objection.

9 THE COURT: Please mark Respondent's A received in
10 evidence.

11 COURT OFFICER: Respondent's A previously for I.D.
12 now marked and received into evidence.

13 Q Assemblyman, did there come a time that you arranged to
14 have electrical service provided at 2 Trafalgar Drive?

15 A Yes.

16 Q When was that?

17 A Shortly after I took title I arranged to have
18 electrical service.

19 Q And have you paid for the electricity continuously
20 since that time up until today?

21 A Yes, I have.

22 Q And do you receive your salary as an Assemblyman and
23 reimbursement for expenses at 2 Trafalgar Drive?

24 A I do.

25 Q And are you also responsible for the payment of the

1 water bill for the property?

2 A I am responsible, but I ask the tenant to pay -- the
3 housemate to pay that; Mr. Mercado.

4 Q And you explained earlier that you do not pay real
5 estate taxes at this time on the property. Could you tell us
6 why?

7 A Yeah. The property's in financial distress and I have
8 not yet put myself in a position to take the mortgage over or
9 re-negotiate the mortgage with the current holder of that
10 mortgage.

11 Q Are you in the process of attempting to resolve that --

12 A I am, yes.

13 Q -- settle that?

14 MR. SILVERMAN: Your Honor, I would ask this be
15 marked as Exhibit B for identification.

16 THE COURT: Please mark that as Respondent's B for
17 identification only.

18 COURT OFFICER: To the Witness?

19 MR. SILVERMAN: Thank you.

20 COURT OFFICER: Respondent's B for I.D. only being
21 shown to the Witness.

22 Q I show you what's been marked as Exhibit B for
23 identification and ask you to review that. Tell us if you know
24 what that is.

25 A This is --

1 MR. SILVERMAN: Let the record reflect it's two
2 pages. They're not stapled.

3 A I do recognize this as an online receipt for a STAR
4 registration. STAR exemption registration.

5 Q Have you seen that before?

6 A I have.

7 Q And for what property is that?

8 A That's for --

9 MR. DUFFY: Objection, Judge. If he's going to
10 read from the document, it should be in evidence.

11 THE COURT: You can refresh your recollection from
12 it.

13 THE WITNESS: Okay. Thank you, Judge.

14 Q Okay. Do you recall what property that's for?

15 A That's for my property at 4 Annette Lane in East
16 Moriches.

17 Q And how did that document come into your possession?

18 A My wife gave it to me.

19 Q Did your wife have any role in making the STAR
20 application for the property?

21 A She made the application.

22 Q Do you know if she did it by mail or online?

23 A She did it online.

24 MR. SILVERMAN: And I would move that into
25 evidence, Your Honor.

1 THE COURT: Objection, Counsel?

2 MR. DUFFY: Can I look at it one more time?

3 THE COURT: Sure.

4 COURT OFFICER: (Handing to Counsel.)

5 MR. DUFFY: No objection.

6 THE COURT: Okay. Please mark Respondent's B
7 received in evidence.

8 COURT OFFICER: B previously for identification is
9 now marked and received into evidence. That's before the
10 Witness.

11 Q Assemblyman, does that document reflect your status as
12 to whether or not you reside at 2 Annette Drive -- I'm sorry,
13 Annette Drive?

14 A 4 Annette Drive. Yes, it does.

15 Q And what does that say with respect to your residence
16 there?

17 A That I am an owner, non-resident.

18 Q And does it reflect who the owner is, and resident?
19 I'm sorry.

20 MR. SILVERMAN: Withdrawn.

21 Q Does it reflect who the resident is?

22 A It does.

23 Q Who's that?

24 A My wife.

25 MR. SILVERMAN: I have no further questions.

1 THE COURT: Okay. Mr. Duffy, any Redirect?

2 MR. DUFFY: Some, Judge, please.

3 THE COURT: I'm sorry. Does the County Attorney
4 have any questions?

5 MR. KAPSALIS: I have no questions. Thank you,
6 Your Honor.

7 REDIRECT EXAMINATION BY

8 MR. DUFFY:

9 Q When did you move into Annette Drive?

10 A I think it was March of 1993.

11 Q When were you first elected to the Town Board?

12 A I was elected in November of that same year.

13 Q Is it fair to say that the entire time you were a
14 council person for the Town of Brookhaven you resided in Annette
15 Drive?

16 A Yes.

17 Q When they went to councilmanic districts, Annette Drive
18 was in the Sixth Council District, correct?

19 A It was and it still is.

20 Q And you said you're in the process of trying to
21 re-negotiate or negotiate a settlement to the outstanding
22 mortgage, correct?

23 A I'm in the process of getting myself in a position to
24 do that.

25 Q But there's a chance that may not happen, you could

1 wind up losing Trafalgar, correct?

2 A Could.

3 Q That STAR exemption application that was marked into
4 evidence where it says owner/non-resident, that's filled out by
5 the person who made the application, correct?

6 A Yes. It wasn't filled out by me.

7 Q Your wife filled in owner/non-resident, correct?

8 A That's what she told me, yeah.

9 MR. DUFFY: That's all I have, Judge. Thank you.

10 THE COURT: Any Recross?

11 MR. SILVERMAN: Just one other thing for
12 clarification.

13 RECROSS EXAMINATION BY

14 MR. SILVERMAN:

15 Q What portion of the East Point Realty Company do you
16 own?

17 A One hundred percent.

18 MR. SILVERMAN: I have no other questions, Your
19 Honor.

20 THE COURT: Okay. Anything further?

21 MR. DUFFY: No. Thank you, Judge.

22 MR. KAPSALIS: No.

23 THE COURT: You may step down. Just watch your
24 step getting out of there. I've seen numerous people trip.

25 THE WITNESS: Not used to being in the box.

1 THE COURT: Let's take a five minute break and
2 we'll put the next witness on.

3 COURT OFFICER: All rise.

4 **(At which time there was a pause in the**
5 **proceedings.)**

6 THE COURT: Counsel, you may call your next
7 witness.

8 MR. DUFFY: Judge, I'd like to call Adam
9 Rosenblatt, please.

10 (Whereupon, the Witness entered the courtroom.)

11 THE CLERK: This way, sir.

12 COURT OFFICER: You can follow me. Watch your step
13 coming up to the witness chair.

14 Again just ask you to remain standing, raise your
15 right hand, face the Clerk of the Court.

16 **A D A M R O S E N B L A T T, after having been duly**
17 **sworn by the Clerk of the Court, was examined and**
18 **testified as follows:**

19 THE CLERK: Have a seat, please.

20 Please give your full name, spelling your last
21 name, and your town of residence.

22 THE WITNESS: Adam Rosenblatt.

23 R-O-S-E-N-B-L-A-T-T. 25 Dolly Drive in Commack.

24 THE CLERK: Thank you.

25 THE WITNESS: 11725.

1 THE COURT: Good morning, Mr. Rosenblatt.

2 THE WITNESS: Good morning.

3 THE COURT: Have you testified in court before?

4 THE WITNESS: Yes, I have.

5 THE COURT: Counsel, you may inquire.

6 MR. DUFFY: Thank you, Judge.

7 DIRECT EXAMINATION BY

8 MR. DUFFY:

9 Q Mr. Rosenblatt, can you tell the Court what you do for
10 a living, please?

11 A Yes. I own a security company. I also own a training
12 company and I own a snow removal company.

13 Q What is the name of your security company?

14 A Rose Group Security Services Incorporated.

15 Q When you say it's a security company, do you also
16 conduct investigations?

17 A Yes.

18 Q Do you have a license to do so?

19 A Yes, I'm a licensed investigator.

20 Q How long have you owned that company?

21 A Since 2004.

22 Q Prior to owning your company, what did you do?

23 A I had worked in the security industry.

24 Q For how long had you done that?

25 A Approximately, in total, about 23 years.

1 Q Do you hold any degrees?

2 A Yes. An associates degree in criminal justice.

3 MR. SILVERMAN: I ask the Witness to speak up a
4 bit.

5 A Associates degree in criminal justice.

6 MR. SILVERMAN: I'm still having difficulty
7 hearing.

8 THE COURT: We'll have the Court Reporter read back
9 the last answer and we'll try to have the Witness speak a
10 little louder.

11 THE WITNESS: Will do.

12 THE COURT: Read back the last answer.

13 (Record read as requested.)

14 Q Did you receive any other training in conducting
15 investigations?

16 A Yes. I was in the loss prevention industry in the
17 retail market and that was, in fact, investigating the law side
18 in retail establishments be it internal or external losses,
19 internal being employees and external being shoplifters and
20 others.

21 Q Did you serve in the military?

22 A Yes.

23 Q What was your military specialty when you were in the
24 military?

25 A I had two. I was a 13 BRAVO, which is a field

1 artillery man, and a 95 BRAVO, which is a military policeman.

2 Q As a military policeman, did you receive training on
3 conducting investigations?

4 A Yes, I did.

5 Q Did there come a time when you were hired to
6 investigate Assemblyman Hennessey?

7 A Yes.

8 Q When was that?

9 A In early March 2014.

10 Q And who hired you?

11 A Mr. James Walsh.

12 Q Who do you know Mr. Walsh to be?

13 A Mr. Walsh is an upstate attorney.

14 Q What did he ask you to do with regards to investigating
15 the Assemblyman?

16 A Mr. Walsh had indicated to me that there was a
17 suspicion that Mr. Hennessey was in violation of the law in
18 that his residency wasn't within his currently held Assembly
19 District.

20 MR. SILVERMAN: Objection.

21 THE COURT: Grounds for the objection?

22 MR. SILVERMAN: As to what he said, the person
23 believed. It's hearsay.

24 THE COURT: Objection's overruled. Next question.

25 Q When did you begin your investigation?

1 A If I can refer to my notes, approximately -- well,
2 actually specifically March 17 of 2014.

3 Q And what did you do to start your investigation?

4 A The first thing I did was I made some informal
5 pass-by's of the three specific properties that were identified
6 early on with Mr. Hennessey, those being 4 Annette Lane in East
7 Moriches, 2 Trafalgar Drive in Shirley and also his law office,
8 483 I-believe-it-is William Floyd Parkway.

9 Q What did you garner by doing these informals?

10 A Initially all I was doing was scouting these locations,
11 writing down various different plates of vehicles that were
12 parked at the various different locations, looking for the
13 layout of all the various driveways and actually just seeing
14 these things for the first time. That was the ideology of a
15 pass-by.

16 Q And then what did you do?

17 A Well, following multiple pass-by's, ultimately what I
18 did at that point was I took these plates that I had assembled
19 and I ran them through the New York State Department of Motor
20 Vehicles records to determine ownership.

21 Q Well, what were the vehicles that you observed?

22 A So, the vehicles that I found --

23 MR. SILVERMAN: Your Honor, I apologize. Is the
24 Witness reading from a document?

25 THE WITNESS: I am referring to some notes.

1 THE COURT: He had indicated earlier that he needed
2 to refresh his recollection from his notes.

3 I'll just remind you, you're not permitted to read
4 from your notes. You can use them to refresh your
5 recollection and testify from your recollection.

6 THE WITNESS: Yes, Your Honor.

7 MR. SILVERMAN: Your Honor, may we have them marked
8 for identification, please?

9 THE COURT: You can mark them. Mark them as
10 Petitioner's 3 for identification only.

11 Sir, how many pages of notes are there?

12 THE WITNESS: I don't know exactly. One, two,
13 three, four. One, two, three and this is my --

14 THE COURT: Okay. Total of seven pages of notes
15 should be marked as Petitioner's 3 for identification.

16 COURT OFFICER: Okay. Petitioner's 3 for I.D.
17 only. I'll put it on this and at the end I'll collect both.

18 THE COURT: Counsel, you may inquire.

19 MR. DUFFY: Thank you.

20 Q You said you observed vehicles at these certain
21 properties?

22 A Yes.

23 Q Can you tell us what vehicles you observed and where
24 you observed them?

25 A Yes. So on the 17th, roughly 8:55, there were two

1 vehicles I observed in two separate driveways at Trafalgar, at
2 the 2 Trafalgar address. One was in the westward facing
3 driveway and that was a green -- 1996 green Isuzu, New York
4 registration GBK 211. Parked in the southward facing driveway
5 was a 2004 white Ford, New York registration FJW 6773.

6 On that same day I passed by the Annette address, but
7 found no vehicles -- I'm sorry. I correct myself. I found that
8 there was a Honda in the driveway, but I could not read that
9 plate because of lighting.

10 On Friday, March 21, about 9:43 P.M. another pass-by at
11 2 Trafalgar was conducted. I found again that same 1996 green
12 Isuzu with the same registration, GBK 211, parked again in the
13 westward driveway.

14 I did in fact use video that night, but because of the
15 ambient lighting I only got essentially a silhouette of that
16 vehicle. There was no vehicle in the southward facing driveway
17 at that residence.

18 Later in that same evening, at approximately
19 10:15 P.M., I did a pass-by of 4 Annette in Moriches.
20 I found a late model Honda with New York State registration
21 FXB 5507.

22 Q What was the next thing you did in your investigation?

23 A Once I established the vehicles that were associated
24 with Mr. Hennessey and also this other one which I came later to
25 know was associated with an individual named Robert Mercado, I

1 ran what's called a vehicle sightings report with the idea being
2 that we were trying to figure out which one -- which of these
3 vehicles was Mr. Hennessey's specifically.

4 The vehicle sightings report was run based on the fact
5 that one of those vehicles was registered to his law office
6 address. I assume that would be his daily driver.

7 Q Which vehicle was that?

8 A That was a 2000 -- 2012 grey Honda with New York State
9 registration FXB 5507.

10 Q After you made a determination that that was the daily
11 driver of Mr. Hennessey, what did you do next in your
12 investigation?

13 A Right. So then I ran what's called a vehicle sightings
14 report which is essentially a report of gathered data and it
15 shows where ever the vehicle's been recorded by various
16 different instruments like tow trucks where they have these
17 cameras on the side, parking violation vehicles have these
18 cameras, police vehicles sometimes have these cameras. That
19 data records the exact latitude, longitude, time, date and even
20 takes a picture of the vehicle.

21 I used that report to try and figure out, you know, the
22 whereabouts of Mr. Hennessey's vehicle other than his house.

23 Q And after you ran that report, what did you do?

24 A Okay. So following the vehicle sightings report
25 information, I queried the court calendar because that also

1 showed us in the vehicle sightings report that he was often at
2 the Central Islip Court Complex on Fridays, which made sense
3 versus his Assembly schedule, and it became clear that was
4 probably his daily driver.

5 And so what we did at that point was we found that he'd
6 be at the courthouse in Central Islip on Friday, the fourth,
7 scheduled to be there at 2:00 P.M. We set up a surveillance at
8 that point in order to attach a GPS unit to his vehicle so that
9 we can then therefore track that particular vehicle's
10 whereabouts.

11 Q So you planned to do that. Did you actually attach a
12 GPS tracker?

13 A Yeah, we did accomplish that task. That same day,
14 Friday, at approximately 2:30 in the afternoon Mr. Hennessey
15 arrived, went into the courthouse and I was able to attach the
16 GPS unit to the underside of his vehicle.

17 Q And would you say you personally attached it to the
18 vehicle?

19 A Yes, I personally attached it.

20 Q What type of GPS tracker is this?

21 A It's a commercially available tracker.

22 Q Where did you get it from?

23 A It's a retail outfit called Brickhouse.

24 Q How does the tracker work?

25 A So the GPS tracker simply is communicating with

1 satellites and also using cell tower signals to report back the
2 latitude, longitude of its given point in time. And it's
3 recorded also.

4 Q When you say it reports its longitude and latitude, how
5 do you get that, is it on a computer, is it stored on the GPS
6 unit itself; how do you get that data?

7 A Right. So it's actually sent to a centralized computer
8 owned by Brickhouse. It's then disseminated into a portal that
9 I have password access to. It's also set up and designed to
10 e-mail and text me under certain conditions.

11 Q What are the conditions that it sends you this
12 notification?

13 A Right. So there are a variety of things you can set
14 the device to report on. In this particular case, because there
15 were three properties potentially that Mr. Hennessey could go to
16 at any point in time, I set up a Geo-fence, what's called a
17 Geo-fence, and that is simply a defined area on a map of
18 latitude, longitude and the GPS recognizes it as a set point so
19 that if it penetrates this Geo-fence, it reports back that it
20 has, you know, penetrated or entered the Geo-fence and exited
21 the Geo-fence. They were done on all three locations.

22 Q How do you physically set up this Geo-fence, is it
23 through the computer or how do you do that?

24 A It's entirely by the computer. I access my portal, my
25 password protected portal, and I defined these particular areas.

1 I can draw a circle around a location, I can set a route. In
2 this case I chose a circle. It's just a more concrete way of
3 gathering data.

4 Q And where did you set up these Geo-fences?

5 A So all three of the previous mentioned locations,
6 483 William Floyd Parkway, the law office, the home at
7 2 Trafalgar Drive in Shirley and the home at 4 Annette Lane in
8 East Moriches.

9 Q Did you set up any other conditions where you would be
10 notified?

11 A Yes. I also set up a speed limit on the device of
12 55 miles per hour with the goal of that to not only see how
13 fast the individual is driving, but also to produce more data.

14 Q So if it hits a certain speed, it will alert you that
15 the car was going a certain speed?

16 A That is correct.

17 Q And in this case you set it for a certain speed?

18 A 55 miles an hour.

19 Q Any other conditions that you set on the GPS?

20 A No.

21 Q So when you log onto this site and there's -- how do
22 you see where he's been, does it produce a report of some kind
23 or how do you know where he's going?

24 A Yeah, there's a couple of different methods. It does
25 have a historical report data that you can access of where the

1 unit has been. You can also look in realtime live; we call it
2 live tracking. You can live track the device as well.

3 MR. DUFFY: If I can have this marked as
4 Petitioner's 4 for identification.

5 THE COURT: Let's mark that as Petitioner's 4 for
6 identification only.

7 COURT OFFICER: This is Petitioner's 4 for
8 identification purposes only being presented to the Witness.

9 Q Do you recognize the document that was just presented
10 before you?

11 A Yes, I do.

12 Q What is that?

13 A This is a printout of all the available data that had
14 been acquired from the device.

15 Q And this is printed from where?

16 A I printed this myself.

17 Q From your computer?

18 A Yes, sir.

19 Q You log into the site and you print it off?

20 A Yes, sir. You log into the computer, you define the
21 dates that you want the data from and during that defined period
22 you can then export it to an Excel file and download it and
23 print your Excel file.

24 Q Is there anyway to manipulate this data?

25 A No.

1 Q And does that document before you accurately portray
2 what you saw when you logged into the website to check on this
3 GPS tracker?

4 A It accurately portrays the report that is pulled from
5 the data that's -- you know, the unit is obtaining, yes.

6 MR. SILVERMAN: I didn't hear that response, Your
7 Honor.

8 THE COURT: We'll have the Reporter read back what
9 she got.

10 (Record read as requested.)

11 MR. DUFFY: I'm sorry. I lost my train of thought.

12 Q So this is a printout, a report that you got from the
13 Bricks Mar (phonetics) is it, or the site?

14 A Yes, from logging into my, my password protected
15 access, the GPS unit itself has its own identification marker in
16 case you were to own or use more than one. You just simply
17 identify that unit, you calibrate it to tell you which dates of
18 information you are querying and then it downloads this Excel
19 report which is then printable.

20 Q And this is the report from the GPS tracker placed on
21 the Honda?

22 A Yes.

23 Q And which Honda again was this?

24 A This is the one that's registered to the law firm. If
25 I refer to my notes here, it is the 2012 grey Honda with

1 New York State registration FXB 5507.

2 Q Now, does this record, this report, is the data logged
3 into that report at or near the time that the events occurred?

4 A Yes.

5 Q Is it your regular course of business to make such
6 reports?

7 A I don't normally download the report unless there's
8 need to do it. It exists, so unless there's actual reason like
9 we're dealing with now, I wouldn't necessarily download this
10 report.

11 Q But the report itself is something that's regularly
12 generated in your business, correct?

13 A Yes.

14 Q I'm not saying that you necessarily always download and
15 print it out, but you always have these reports for your
16 trackers?

17 A Yes, absolutely.

18 MR. DUFFY: At this time I'd like to offer the
19 report into evidence.

20 THE COURT: Counsel, you wish to be heard?

21 MR. SILVERMAN: Voir dire, Your Honor?

22 THE COURT: Sure.

23 VOIR DIRE BY

24 MR. SILVERMAN:

25 Q Good morning, Mr. Rosenblatt.

1 A Good morning.

2 Q My name is Lawrence Silverman and I represent
3 Assemblyman Hennessey.

4 A Good morning, sir.

5 Q With respect to this report, without referring
6 specifically to dates, I know it embraces approximately a
7 two-month period of time, the dates listed on here?

8 A It's, yes, April 4 through June 7, 2014.

9 Q So that's approximately two months, correct?

10 A Roughly, yes, sir.

11 Q Is that the period of time during which the device was
12 allegedly attached to the vehicle you described?

13 A Yes, sir.

14 Q Was it detached from the vehicle after that?

15 A Actually it was detached on the 7th. At the end of
16 this report is when it is detached.

17 Q And is the device that you described as a GPS tracking
18 device something that's regulated by law in the State of New
19 York in terms of your ability to use it?

20 A No, not that I'm aware of.

21 Q Is it certified in any fashion as accurate by any
22 authority in this State?

23 A I don't know the answer to that.

24 Q Are you an expert in the computerized tracking and
25 reporting losses that you described?

1 A I don't know what your definition of an expert is, sir,
2 but I do this a lot.

3 Q With respect to this report that you're offering here,
4 the attorney's offering into evidence, what, if any, basis do
5 you have for understanding that this is a true and accurate
6 reflection of the data that's in here, of the facts, I should
7 say, of where that vehicle was at any given time?

8 A I don't understand your exact question, sir. Could you
9 rephrase it?

10 Q Sure. In this report it appears that there are
11 descriptions of whether the particular vehicle to which the
12 device was attached, as you've explained it was either moving or
13 idle and at different addresses, what is the basis for, how do
14 we know that this is accurate in all respects?

15 A It's -- the only thing I can tell you it's
16 un-manipulatable. You know, this device doesn't think for
17 itself. It's a computer. It just simply reports where it is
18 and when it is and that's it.

19 Q But you described earlier that you could change the
20 settings on the Geo-fence --

21 A Correct.

22 Q -- within the period of time reflected in this report
23 to either reflect or not reflect proximity to a particular
24 address, correct?

25 A No, not to not reflect. It can only determine when it

1 is reflecting.

2 Q Thank you. So you can change that at any given date to
3 remove the Geo-fence and then on another date put the Geo-fence
4 back in to the tracking?

5 A That is a true statement, yes.

6 Q What is the name of the company that produces the
7 device to which you attached to the vehicle?

8 A It's sold through Brickhouse, the company I mentioned
9 before. It's called the Spark Nano, but I don't know who
10 manufacturer's it specifically.

11 Q So the company that you acquired from is a distributor,
12 is that right?

13 A I would assume so, yes, sir.

14 Q Are you familiar with any reports, with respect to the
15 manufacturer of this device, that certifies the accuracy of the
16 data that's produced?

17 A I'm not aware of any reports like that.

18 Q Did I understand you to say that this printout was
19 produced by you at one time, on one occasion as opposed to
20 different pages being printed out on a daily basis?

21 A This report was printed at one time, yes.

22 Q When was that?

23 A Printed it one time. Actually this one was printed
24 yesterday.

25 Q Other than the dates that are reflected here, are there

1 other dates of surveillance that are contained in your computer,
2 for example, with respect to this vehicle?

3 A None other than the ones I mentioned during my
4 surveillance, my physical surveillance.

5 Q So this is a complete rendition, according to you, of
6 the movement of this vehicle for the period of time shown and
7 there's no other data available at any other period of time with
8 respect to the movement of this particular vehicle, is that
9 right?

10 A That is true, sir.

11 Q What is the computer program that you use to move this
12 data into Excel?

13 A It's web-based so if it's -- in other words it would be
14 Internet Explorer or Google Chrome.

15 Q So it's in a cloud, in effect, all that data, and you
16 just pull it down?

17 A No, it downloads to your terminal via, you know,
18 Internet Explorer or Chrome, whichever one you're using, and at
19 that point you're opening up into the program of Excel.

20 Q So the data that's the basis for this report is not
21 contained in your computer, correct?

22 A Oh, it is in fact saved at some point in my computer as
23 well. In the course of the investigation I save the data for
24 safety's sake so that it is protected.

25 Q And did you save it periodically or did you save it at

1 a given time?

2 A There was only a couple of times during this
3 investigation that I did in fact download and save the data.

4 Q And so if we asked that that be produced, those
5 intermittent reports if I can call it that, that you just
6 described, you would be capable of printing those out?

7 A Absolutely.

8 Q Is it your belief that they would be reflective of the
9 same data that's contained in this report?

10 A They would be identical.

11 Q On how many occasions, other than this occasion, have
12 you produced reports such as this based on the GPS tracking
13 device that you described?

14 A To my recollection, there's only one other time and
15 that was when Mr. Walsh asked for a report of findings.

16 Q With respect to Assemblyman Hennessey?

17 A Yes, sir.

18 Q So would it be accurate to say that this is the only
19 instance during which you used this particular tracking device
20 and system to track anyone?

21 A No, no. It's used quite often, but it's --

22 Q I'm sorry. Maybe I didn't ask the question accurately.

23 A Yeah.

24 Q Other than the investigation that you conducted with
25 respect to Assemblyman Hennessey, have you used this tracking

1 device on other subjects?

2 A Yes.

3 Q And you've downloaded reports on other subjects?

4 A Yes.

5 Q On how many occasions have you done that?

6 A I couldn't say with certainty.

7 Q More than ten?

8 A Yes.

9 MR. SILVERMAN: Your Honor, I'm going to object to
10 this going into evidence. Based on the testimony of the
11 Witness, this is clearly hearsay. This is data from a cloud
12 device. It's not something that he can testify as to its
13 accuracy. He doesn't know the name of the manufacturer of
14 the system that reports this data. We have no way of
15 determining many things about this, the least of which the
16 accuracy of various intervals of time with which, you know,
17 this data was gathered and I don't think it's been
18 adequately presented as a document kept in the ordinary
19 course of business.

20 THE COURT: The objection's overruled. I don't
21 think it affects it's admissibility. It may affect it's
22 weight. The objection's overruled.

23 Please marked Petitioner's 4 received in evidence.

24 COURT OFFICER: Petitioner's 4 previously for I.D.
25 is now marked and received into evidence. Handed back to

1 the Witness.

2 MR. DUFFY: May I inquire, Judge?

3 THE COURT: Yes, you may.

4 CONTINUED DIRECT EXAMINATION BY

5 MR. DUFFY:

6 Q Are there any conditions that affect the GPS tracking
7 device and its reporting to the website or reporting to the
8 computer?

9 A Yeah, there could be.

10 Q And what are those?

11 A Weather, road surface conditions. Based on the
12 placement of the GPS, typically it's underneath the vehicle and
13 reflects a signal off the pavement surface, so different
14 pavement surfaces reflect better than others. And also weather
15 could affect it, cloud cover, anything in the way of the signal
16 getting to the satellites or the cell towers.

17 Q So it picks up like a cell phone does, it bounces off
18 cell towers and satellites and reports its location?

19 A Correct.

20 Q So just like a cell phone, if you have an area where it
21 doesn't have a signal, you're not going to necessarily get a hit
22 on the GPS tracker?

23 A That's correct. It would be relying on the satellite
24 solely at that point.

25 Q You were asked by Counsel about manipulating the

1 Geo-fences, that you do have the ability to do that if you
2 wanted to. During your investigation, at any point did you
3 alter the Geo-fences for any of the three properties?

4 A Not to my recollection, no. Never touched the
5 Geo-fences once they were established.

6 Q Did you alter any of the other reporting conditions
7 while you were -- while the GPS was attached to Mr. Hennessey's
8 car?

9 A Could you restate that?

10 Q Did you ever change the parameters of the recording of
11 the GPS tracker when it was attached to Mr. Hennessey's car?

12 A No, not to my recollection. No.

13 Q If you can look at the report, if you can look at day
14 four/five, April 5, 2014 on that first page, do you see where it
15 says Frowein Road, it reports a hit on Frowein Road in Center
16 Moriches?

17 A Yes, I see it.

18 MR. SILVERMAN: What line is that? What time?

19 MR. DUFFY: 11:55:06 A.M.

20 MR. SILVERMAN: Thank you.

21 MR. DUFFY: Off the record.

22 (Discussion held off the record.)

23 MR. SILVERMAN: I apologize, Your Honor. I would
24 just ask that Counsel, if he's going to refer to a document,
25 to please give us some time on each entry.

1 THE COURT: Okay.

2 Q Where is Frowein?

3 A It's in close proximity to the 4 Annette address in
4 Moriches.

5 Q Was it within the Geo-fence that you set up for
6 4 Annette Lane?

7 A I believe Frowein was in fact inside that Geo-fence.

8 Q So in a perfect world you would have an alert that it
9 went into the Geo-fence, correct?

10 A That is correct.

11 Q But in this case it's showing that it's within the
12 Geo-fence, but you didn't get the alert that it went in there?

13 A That's correct.

14 Q Can you explain why that is?

15 A Again, the device is affected by weather and road
16 conditions. In the course of this investigation, I was often
17 physically watching on my phone the same, you know, information
18 that's being recorded here and many evenings, as I anticipated
19 that Mr. Hennessey would go to 4 Annette and go home, the data,
20 the GPS just simply dropped off. My assumption is that there is
21 some kind of road condition or tree cover or something in that
22 area, it's a dense -- densely treed area, that is affecting the
23 signal.

24 Q Go to the fifth page, on April 8 of 2014. If you would
25 look at 12:56 P.M. It says "start". Where did the GPS tracker

1 pick up the car?

2 A That's I-87 in Bethlehem, Albany, New York traveling at
3 71 miles an hour.

4 MR. SILVERMAN: I apologize, Your Honor. Can we
5 have that again, the date and time?

6 MR. DUFFY: On the fifth page, April 8, 2014, 12:56
7 P.M. It's about a quarter of the way down.

8 MR. SILVERMAN: Thank you.

9 Q It shows the car that the tracker was placed on in
10 Albany, correct?

11 A That's correct.

12 Q And as it goes throughout the day on April 8, which
13 direction does the car seem to be moving in?

14 A Are you referring to east, west, north, south?

15 Q Yeah, sure.

16 A I mean -- well, it doesn't give you actually -- I mean
17 it gives you a latitude and longitude, which I can't translate
18 to north, south, east or west, but what I can tell you is that
19 the vehicle is coming back to Long Island, it appears.

20 Q Turn over to the next page and the entry for April 8,
21 2014 at 9:52 P.M., you got an alert at that time?

22 A Yes.

23 Q When was that for?

24 A It's a Geo-fence getting triggered and it says alert
25 entered Geo-fence and it quotes 4 Annette which is the label I

1 gave that Geo-fence.

2 Q And anytime on April 8 of 2014, does the GPS tracker
3 have it entering the Geo-fence for 2 Trafalgar?

4 A I do not see any alerts. I'd have to go the other
5 direction.

6 No, I don't see any alerts at all for Trafalgar at that
7 date.

8 Q On the next day, April 9, 2014, does it show the GPS
9 tracker going near the Trafalgar property?

10 A (No response.)

11 Q If you would, I can direct you to April 9, 2014 at
12 10:15:42 seconds A.M.

13 A Okay. It says that it's idle at 6 Trafalgar Drive in
14 Shirley on that entry.

15 Q According to this report, how long after it's shown to
16 be at Trafalgar is it moving again?

17 A It begins moving once -- it's idle at 10:15 which means
18 the unit has ceased to move at the Trafalgar address and then it
19 begins to move again at approximately 10:21. So six minutes.

20 Q You had opportunities to review this report before,
21 correct?

22 A Yes.

23 Q Did you find any time that he spent a night or a
24 significant amount of time at Trafalgar, the Trafalgar
25 Geo-fence?

1 MR. SILVERMAN: Objection.

2 THE COURT: Overruled.

3 A Yeah, the vehicle did go to Trafalgar on a couple of
4 occasions and spend some time there. And my definition of some
5 time there is a few hours.

6 MR. DUFFY: I have nothing further, Judge. Thank
7 you.

8 THE COURT: Okay. Off the record.

9 (Discussion held off the record.)

10 CROSS EXAMINATION BY

11 MR. SILVERMAN:

12 Q Directing your attention to the portion of the report
13 that you just referred to, April 8 and April 9 and particularly
14 the afternoon of April 8, the vehicle's moving toward Long
15 Island, you described, and eventually on Long Island, I guess on
16 two pages, and would it be fair to say that the data's been
17 transmitted about every three minutes during that period of time
18 while that trip was being made to Long Island?

19 A Yes, roughly every three minutes.

20 Q And when you get to 5:41 P.M. on April 8, the report
21 says 83 Thornwood Drive in Shirley; do you see that?

22 A Yes, sir.

23 Q And then the next entry is 9:43 and it has a William
24 Floyd Parkway address, the cap of about four hours; do you see
25 that?

1 A Yes, sir.

2 Q Could you explain the fact that there's no entry in
3 between those two lines that would reflect where that vehicle is
4 traveling or whether it's idle?

5 A No, I could not explain why that is.

6 Q So based on this report, do you have any knowledge as
7 to where the vehicle that was being tracked was during that
8 four-hour period?

9 A No. I only have the information on the report. I
10 don't have anything other than that.

11 Q Now, following the trip that began at 9:43, or
12 continued as the case may be, it's again being tracked every two
13 or three minutes; do you see that?

14 A Yes, sir.

15 Q Now, and that's until 111 Frowein Road which Counsel
16 asked you about, correct?

17 A Correct.

18 Q Now, there are two time entries. They're identical.
19 One says "moving" and one says "alert" Geo-fence 4 Annette.

20 A Correct.

21 Q Is there a particular size of the Geo-fence that you
22 set the tracking device for or the computer system that tracks
23 the device?

24 A There is no defined size. You're literally just
25 creating a circle as large or small as you want to create.

1 Q Well, how large or small of a circle was created --
2 withdrawn.

3 Am I assuming that 4 Annette Drive is in the center of
4 that circle that you set the Geo-fence for?

5 A Yes, sir. That's correct.

6 Q So how big a radius around 4 Annette Drive did you set
7 that Geo-fence for?

8 A I don't have the exact diameter of that radius, but I
9 could get you that information. The Geo-fence still exists and
10 I can tell you --

11 Q Had you changed the Geo-fence setting at anytime during
12 the two months that this tracking was taking place?

13 A No, not to my recollection.

14 Q Was it more or less than a mile, the radius?

15 A I couldn't say with certainty.

16 Q You can't say whether it's -- okay. Very well.

17 A I can speculate.

18 Q So the vehicle's moving three minutes after it entered
19 the Geo-fence at 9:55:59 seconds; do you see that entry?

20 A Yes, sir.

21 Q Now, during that -- at that point, during that second,
22 is that vehicle still within the Geo-fence?

23 A I couldn't say with certainty.

24 Q There is no speed indicated, correct?

25 A No, there seems to be a 28 mile an hour speed

1 associated with that entry.

2 Q I'm sorry. That's on the right?

3 A Yes, sir.

4 Q And that's a snapshot of the speed at that point,
5 correct?

6 A Yes, sir.

7 Q That's not an average from the last entry?

8 A No.

9 Q So do you know how far 262 Montauk Highway is from 111
10 Frowein Road?

11 A I could not testify to it. I do not know.

12 Q Would you be able -- okay, obviously we can determine
13 that if we just did a Map Quest, but do you know whether that's
14 within the Geo-fence --

15 A I do not --

16 Q -- of 4 Annette Drive?

17 A I do not know with certainty.

18 Q Now, the next entry is 5:05 A.M. at 565 William Floyd
19 Parkway. Are you familiar with that address?

20 A No, I am not familiar with that address.

21 Q Is that approximately where Mr. Hennessey's office is?

22 A That is approximately in that area, yes, sir.

23 Q Can you explain to us why, for the seven-hour period of
24 time, between 9:55 and 5:05 A.M. there are no entries?

25 A No, I could not explain that.

1 Q So would it be fair to say that it's possible within
2 that time interval that vehicle was at 2 Trafalgar Drive?

3 A I couldn't testify to that.

4 Q But it's possible, is it not, based on the data that
5 you have here?

6 A Yes. You can subject this to a possibility.

7 Q There's no way to exclude that possibility based on
8 this report, correct?

9 A Well, I'll agree with you on that, yes.

10 Q And you have no data other than this report with which
11 you can determine whether or not that vehicle was at 2 Trafalgar
12 Drive on the night of April 8, 2014, correct?

13 A Correct.

14 MR. SILVERMAN: Your Honor, thank you. We'll
15 continue after lunch at 2:00.

16 THE COURT: All right. We'll recess until 2:00.
17 Have a good lunch everyone.

18 And I have to pack things up here, so you can get
19 up and move around. It's not disrespectful.

20 MR. SILVERMAN: Could Your Honor ask that there be
21 no discussion between the Witness and Counsel with respect
22 to the testimony this morning by this Witness until we
23 reconvene?

24 THE COURT: Yes. There should be no discussion of
25 the testimony in the midst of Cross Examination, okay?

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: You may step down. Just watch your
3 step getting down.

4 **(At which time there was a luncheon recess.)**

5 COURT OFFICER: All rise.

6 THE COURT: Thank you, gentlemen. Please be
7 seated. Both sides ready to proceed?

8 MR. SILVERMAN: Your Honor, if I may, before we
9 continue with Cross Examination, there was some other
10 witnesses. I expect their testimony to be fairly brief and
11 I would like permission, if there is no objection, to take
12 them out of order so we can finish. I expect Cross
13 Examination to be quite time consuming and rather not have
14 the other witnesses standing by.

15 THE COURT: Any objection, Mr. Duffy?

16 MR. DUFFY: No, Judge.

17 MR. SILVERMAN: Thank you very much.

18 Okay. Mr. Mercado. Robert Mercado.

19 **(Whereupon, the Witness entered the courtroom.)**

20 COURT OFFICER: Follow me to the witness chair.

21 THE WITNESS: Sure.

22 COURT OFFICER: Watch your step. Ask that you
23 please remain standing, raise your right hand, face the
24 Clerk of the Court straight ahead.

25 **R O B E R T M E R C A D O, after having been duly**

1 **sworn by the Clerk of the Court, was examined and**
2 **testified as follows:**

3 THE CLERK: Have a seat, please.

4 In a nice clear voice, give your full name,
5 spelling your last name, and your town of residence.

6 THE WITNESS: Okay. Robert Mercado.
7 M-E-R-C-A-D-O. Then it's Shirley. Long Island, New York,
8 of course.

9 THE CLERK: Thank you.

10 THE COURT: Good afternoon, Mr. Mercado.

11 THE WITNESS: Hi.

12 THE COURT: Mr. Mercado, as you testify at this
13 trial today, I'd like you to try to keep two things in mind.
14 Firstly is if you could try to speak to the back row of
15 seats in the courtroom.

16 THE WITNESS: Of course.

17 THE COURT: I want to be sure everyone will be able
18 to hear you.

19 THE WITNESS: Right.

20 THE COURT: The other thing is the lady seated in
21 front of you is our Court Reporter. It's her job to take
22 down every word that's said here today.

23 THE WITNESS: Okay.

24 THE COURT: So to help her do that, when the
25 lawyers are asking you questions, please make an effort to

1 wait until they finish their question before you start to
2 respond because if you jump in in the middle and two people
3 speak at the same time, it makes her life miserable. Okay?

4 THE WITNESS: Okay.

5 THE COURT: Okay.

6 Counsel?

7 THE WITNESS: Thank you.

8 DIRECT EXAMINATION BY

9 MR. SILVERMAN:

10 Q Good morning, Mr. Mercado.

11 A Good morning.

12 Q My name is Lawrence Silverman and I represent
13 Assemblyman Hennessey. Other than in the hallway this morning,
14 have you and I ever spoken?

15 A Um, no, not at all.

16 Q And when we spoke in the hallway, did we speak about
17 the facts of this case?

18 A No.

19 Q When did you first meet Assemblyman Hennessey?

20 A Oh, I'm a -- I work for the family. I do, you know,
21 self-employed, do their painting and stuff like that. You know,
22 for years, his father, you know.

23 Q You've known the family for 12 years?

24 A For years. Probably 12 years. I don't know exactly.

25 Q Is it fair --

1 A Oh, probably --

2 Court Reporter: I'm sorry.

3 THE COURT: Time out. This is exactly what we
4 can't do because she can't do that.

5 THE WITNESS: I know.

6 MR. SILVERMAN: I apologize.

7 THE COURT: Why don't you start with your question.

8 Q Okay. How long do you know the Hennessey family?

9 A Many years.

10 Q Did there come a time that you first became involved in
11 some respect with 2 Trafalgar Drive?

12 A Yes.

13 Q And do you remember when that was?

14 A I would say in March of 2013 I'm pretty sure.

15 Q And what happened at that time?

16 A Well, reason being is because I was living in another
17 house and I lost everything, my business went down, and so, of
18 course, we bartered, well, I can fix the house, so he gave me a
19 place to stay.

20 Q What is your business, sir?

21 A It's self-employed painter, spackler, whatever.

22 Q In addition to painting and spackling, do you do
23 anything else?

24 A Yeah, I can do everything.

25 Q You're a handyman?

1 A That's a good way of putting it.

2 Q So at that time, what arrangement, if any, did you make
3 with Assemblyman Hennessey?

4 A Well, that I would repair the house and it would be a
5 barter way and he'd help me, you know, otherwise I'd be in the
6 streets, so I did that and then in time, you know, then we make
7 a deal that I can, you know, share the place and, you know, take
8 care of the property for him and that's what I've been doing. I
9 make sure everything's working, in order.

10 Q And during the time, were you aware that there was an
11 application pending before the Brookhaven Town to have the
12 building legalized in some way?

13 A Yes.

14 Q The residence?

15 A Yes.

16 Q Are you familiar with that?

17 A I'm not very familiar with that. I'm getting familiar
18 with it now, as we -- you know, I don't --

19 Q Okay. Were there renovations done to break walls and
20 make the premises legal?

21 A Yes. They were going through it to make it a one
22 occupied flow. And that's to break through, you know, into the
23 apartment so it's one building.

24 Q And did there come a time when Mr. Hennessey moved into
25 that house?

1 A Yes. I think it was in October. He's there every
2 night.

3 Q Okay. But just my question was: Did there come a time
4 when he made an arrangement to live in the house with you?

5 A I would have to make the arrangement with him because
6 he's my boss.

7 Q Okay.

8 A No, but he -- you know, when given time because he
9 worked in Albany, you know, like they -- you know, that's when
10 it all started happening.

11 Q And you said that was in October?

12 A Yeah, about October.

13 Q Of what year?

14 A 2013. Where are we.

15 Q And where do you -- at that time, in October of 2013,
16 when you and Mr. Hennessey resided in the house, where did you
17 reside?

18 A I resided --

19 Q That's your bed.

20 A Oh, my bed is in the main part because I had to fix
21 that other part first, so I'm slowly but surely working my way
22 around. I'm in the main part. It's both me. They're both big,
23 so.

24 Q Okay. There was previously an accessory apartment that
25 was not connected, correct?

1 A Right.

2 Q And then it was connected by breaking a wall, correct?

3 A Yes, yes.

4 Q When you say "the main part", you resided in one part
5 of the house that wasn't the accessory apartment, is that right?

6 A Right.

7 Q And where did Mr. Hennessey reside in October of 2013?

8 A In the other side, the accessory apartment.

9 Q The portion that had been the accessory apartment, is
10 that right?

11 A Yes.

12 Q And has that arrangement continued until this time?

13 A Yes.

14 Q And does Mr. Hennessey spend a significant -- well,
15 withdrawn.

16 Are you aware of Assemblyman Hennessey's profession?

17 A Yes.

18 Q Are you aware of the fact that his profession takes him
19 out of the residence for periods of time?

20 A I don't -- what do you mean?

21 Q He goes to Albany?

22 A Oh, yes.

23 MR. DUFFY: Objection, Judge.

24 A Yes.

25 MR. SILVERMAN: I will withdraw.

1 THE COURT: Hold it. Time out.

2 A Yes.

3 THE COURT: Time out. The objection's sustained.
4 You're leading, Counsel.

5 MR. SILVERMAN: Thank you. I'll withdraw it.

6 Q Focusing on the period of time from October 2013 to the
7 present, how would you characterize the amount of time that
8 Mr. Hennessey spends in the home?

9 A A lot because I wasn't used to not having privacy.
10 No, he's there all the time. I would say three-quarters he's,
11 you know -- besides when he's working, you know, he's not there
12 and then he comes in the evening and --

13 Q Okay. Are there certain times of the day that he's not
14 there?

15 A Well, when I'm working I really don't know, you know,
16 first of all, but yes, during the day, you know, he goes to work
17 at his office and especially when he's in Albany he don't come
18 back for days, I guess three or four days.

19 Q When you're working, you're not working in that house?

20 A Yes because I'm trying to rebuild my business like I
21 had.

22 Q So during the day there are times that you're not in
23 the house?

24 A Right, of course. There are lots of times. I'm
25 starting to work many hours again.

1 Q And in the evenings, what time does Mr. Hennessey get
2 home generally, if there is a general time?

3 A Okay. I would say between 6:00, 8:00 and maybe the
4 latest 9:00, you know.

5 Q Are there times that he's not home when you go to sleep
6 in the evening?

7 A Generally I see his car pull in because my bedroom's
8 right there. He's always actually there when I'm there. You
9 know, if I'm sleeping I don't know when he comes in because I
10 don't wake up, but I mean he's always there during the -- at
11 nighttime, yeah.

12 Q What motor vehicles does Assemblyman Hennessey drive?

13 A He has a white, I don't know what you call it,
14 suburban. I don't know. It's a big white truck, four door.
15 And what's that, Honda. Not a Honda. I don't know much about
16 cars, you know. A smaller car.

17 Q A compact car --

18 A Yeah.

19 Q -- would it be fair to say?

20 A Yeah, grey. He has it here, I guess.

21 Q And have you seen both of those cars parked at
22 2 Trafalgar Drive?

23 A Yeah. Matter of fact right now they are, yeah. And
24 his trailer and his boat, you know. You know, I mean he has his
25 stuff there.

1 MR. SILVERMAN: I have no further questions.

2 THE COURT: Okay. Mr. Duffy, you may inquire.

3 CROSS EXAMINATION BY

4 MR. DUFFY:

5 Q Good afternoon, Mr. Mercado.

6 A How you doing.

7 Q We've met before, correct?

8 A Yes.

9 Q I came to your house yesterday?

10 A Yeah.

11 Q And when I came, I gave you a subpoena to appear today,
12 correct?

13 A Yes.

14 Q Do you remember at that time, when I gave you the
15 subpoena, you asked me what it's about and I said it was about
16 coming to court today, correct?

17 A Right.

18 Q At that time you told me Mr. Hennessey had already told
19 you to be in court today?

20 A Yeah, we knew -- I knew that.

21 Q When was the first time he had talked to you about
22 coming to court?

23 A Oh, geez. I think it was two days ago, I mean, you
24 know, when it all happened. I'm not very keen when it comes to
25 that stuff. It's -- I try to keep it in the back.

1 Q Did he tell you what the case was about?

2 A In certain words. I could figure it all out. I mean,
3 you know, I read it in the papers, you know, stuff like that,
4 you know, computer.

5 Q Did he tell you what you were going to be asked about
6 today?

7 A No, not really. I really didn't talk to him until
8 here. All he said was just tell the truth. That's all.

9 Q What are your general sleeping habits; is there a
10 certain time you usually go to bed at night?

11 A Yeah, depends if I'm working outside, you know,
12 painting, it's very hot. It will be 9:00, sometimes 11:00.

13 Q And what time do you usually get up in the morning?

14 A I would say 6:00, you know.

15 Q Is it your testimony here today that usually
16 Mr. Hennessey is at 2 Trafalgar before you go to bed?

17 A Oh, yeah, yeah. Like I said, when I go to bed
18 sometimes I am awakened and he's pulling in because the lights
19 shine right into the room and I look out because I watch, watch
20 out for the property, make sure no one's trying to break-in and
21 stuff.

22 Q And it's your testimony here today that Mr. Hennessey's
23 still there in the morning when you wake up?

24 A Yes.

25 MR. DUFFY: Nothing further, Judge. Thank you.

1 THE COURT: Okay. Counsel, any Redirect?

2 MR. SILVERMAN: Nothing further.

3 THE COURT: Okay. Mr. Mercado, you may step down.

4 Thank you very much.

5 THE WITNESS: Thank you. Thank you.

6 THE COURT: Watch your step going down.

7 THE WITNESS: Yeah, thanks for the water.

8 **(Whereupon, the Witness exited the courtroom.)**

9 MR. SILVERMAN: Angelo Pecora, please.

10 COURT OFFICER: Follow me, please.

11 **(Whereupon, the Witness entered the courtroom.)**

12 COURT OFFICER: Watch your step coming up. Just
13 watch your step.

14 If you can just please remain standing for a second
15 and you're going to face the Clerk of the Court.

16 THE CLERK: Just raise your right hand, please.

17 **A N G E L O P E C O R A, after having been duly**
18 **sworn by the Clerk of the Court, was examined and**
19 **testified as follows:**

20 THE CLERK: Okay. Have a seat, sir.

21 Can you give us your full name?

22 THE WITNESS: Angelo Pecora.

23 THE CLERK: Please spell your last name.

24 THE WITNESS: P-E-C-O-R-A.

25 THE CLERK: And what town do you live in, sir?

1 THE WITNESS: Shirley, New York.

2 THE CLERK: Thank you.

3 THE COURT: Good afternoon, Mr. Pecora.

4 THE WITNESS: Good afternoon.

5 THE COURT: Mr. Pecora, I'm going to ask you to try
6 to keep two things in mind as you testify here.

7 THE WITNESS: Okay, yeah.

8 THE COURT: First is try to speak to the back row
9 of seats in the courtroom; that way everyone will be able to
10 hear you.

11 Second thing is, the lady in front you is our Court
12 Reporter. It's her job to take down every word that's said
13 here. So as the lawyers ask you questions, I'm going to ask
14 you to please wait until they finish speaking before you
15 start to respond.

16 THE WITNESS: Okay.

17 THE COURT: If you start to answer while they're
18 still asking the question and two people speak at the same
19 time, it makes her job very difficult.

20 THE WITNESS: Okay.

21 THE COURT: All right. Counsel, you may inquire.

22 MR. SILVERMAN: Thank you.

23 DIRECT EXAMINATION BY

24 MR. SILVERMAN:

25 Q Good afternoon, Mr. Pecora.

1 A Good afternoon.

2 Q My name is Lawrence Silverman and I represent
3 Assemblyman Hennessey. Have you met me before?

4 A You?

5 Q Yes.

6 A No.

7 Q Did we meet in the hallway?

8 A Oh, yeah, in the hallway this morning, yeah.

9 Q And did we discuss anything about the facts of this
10 case?

11 A I don't think so.

12 Q Where do you reside?

13 A 82 Grand View Drive.

14 Q And where is that in relation to 2 Trafalgar Drive?

15 A It's almost on the corner. Grand View is here and
16 Trafalgar over here (indicating).

17 Q Do you see Trafalgar Drive if you're standing in the
18 front of your house?

19 A Yes.

20 Q To Trafalgar Drive?

21 A Yeah.

22 Q And can you see the driveway on 2 Trafalgar Drive from
23 sitting in front of your house?

24 A Yes.

25 Q And how long have you known Assemblyman Hennessey?

1 A '87.

2 Q Pardon me?

3 A I don't get the question right.

4 Q How long -- how many years have you known Assemblyman
5 Hennessey?

6 A It's about a couple of years.

7 Q And when did you first meet him?

8 A In his office.

9 Q In his --

10 A Use it for a lawyer once or twice.

11 Q And did there come a time that you became aware that he
12 had something to do with 2 Trafalgar Drive?

13 A Yes.

14 Q And how long ago was that?

15 A Since last October more or less.

16 Q What year was that?

17 A '13. October '13.

18 Q And what do you remember about that time?

19 A Well, I seen him come in at night, he leaves in the
20 morning, we sat down, we exchange a couple of words, how you
21 doing or whatever, and then he would take off and I take off to
22 do my work.

23 Q And do you see him come and go at different times of
24 the day?

25 A During the day because I'm busy, I will go to work or

1 whatever, I wouldn't see so much during the day. Maybe once in
2 awhile. At night I would see more or in the morning.

3 Q And are you familiar with whether he has any motor
4 vehicles that he keeps?

5 A Yes.

6 Q At the house?

7 A Yes.

8 Q And can you describe them?

9 A One is, what do you call them -- one is Honda, the car,
10 and the other one is -- oh, I can't remember the name now. It's
11 a nice big truck, you know, four doors truck.

12 Q It's a truck?

13 A Yeah.

14 Q Does it have an open back or is it closed?

15 A No, it's closed. It's closed.

16 Q It's like a van?

17 A Yeah, more or less, yeah.

18 Q And what color is it?

19 A White.

20 Q And does Mr. Hennessey come and go from the house with
21 both vehicles from time to time?

22 A Yeah.

23 Q How long have you lived in that neighborhood,
24 Mr. Pecora?

25 A '87.

1 Q Since 1987?

2 A Yeah.

3 Q Are you familiar with the streets in the neighborhood
4 other than Trafalgar Drive and your street?

5 A Yeah, the most -- see, I don't remember the name. I
6 know all of the street because I go up and down everyday.

7 Q If I was to mention the names of some of the streets,
8 would you be able to possibly tell me whether they're near or
9 how close they are to Trafalgar Drive?

10 A Yeah.

11 Q Are you familiar with Palmetto Drive?

12 A Yes. It's way down going from my house or Trafalgar,
13 go down to like north, it's the last block. You go down the
14 last block. That's my problem, with names. There's one block
15 first before you can get to Palmetto.

16 Q How many blocks is Palmetto Drive from your house and
17 Assemblyman Hennessey's house, approximately?

18 A It's one, two, three, four, the fifth block.

19 Q Five blocks?

20 A Yeah.

21 Q Is it in Shirley?

22 A Yeah.

23 Q And how about Brushwood Drive, are you familiar with
24 that?

25 A Brush, I don't know if you come on this side. It's on,

1 on his side or William Floyd Parkway.

2 Q How many blocks do you believe that is from your house,
3 if you know?

4 A Yeah, yeah. Well, you have Lombardi, then you have
5 Trafalgar, then Saint George, then you have another one, I can't
6 remember the name, and then you have -- gee. Yeah, it's -- I
7 know them. I can't remember all the name.

8 Q Approximately. I don't need the name of the streets.
9 Just I didn't want to interrupt you. Just approximately the
10 numbers of blocks away it is from your house, if you know.

11 A Well, I have one, two, three, four on the south side
12 and about five on the north side from my house.

13 Q So about nine blocks away?

14 A Yeah, yeah.

15 Q And is that in Shirley?

16 A Yeah.

17 Q How about Rugby Drive?

18 A Yeah, Rugby. Yeah, that's before -- yeah, after Saint
19 George it comes Rugby.

20 Q Approximately how many blocks away is Rugby Drive?

21 A Oh, it's three. Trafalgar, Saint George and then it
22 comes Rugby.

23 Q So is that three blocks?

24 A Yeah.

25 Q Is that in Shirley?

1 A Yeah.

2 Q And Havenwood Drive, how about Havenwood Drive. How
3 many blocks is that, approximately, if you know?

4 A That's, that's again is on his side. I don't know too
5 much about on his side of William Floyd.

6 Q It's on the other side of William Floyd Parkway from
7 your house?

8 A Yeah, yeah.

9 Q So you can't answer that one?

10 A Yeah.

11 Q Is it in Shirley, do you know?

12 A Well, the way I believe, Shirley is supposed to finish
13 on John Neck, end over in there, Shirley. I think it's in
14 Shirley, yeah.

15 MR. SILVERMAN: I have no further questions. Thank
16 you, Judge.

17 THE COURT: Okay.

18 MR. SILVERMAN: Thank you, sir.

19 THE COURT: You're welcome. Mr. Duffy?

20 CROSS EXAMINATION BY

21 MR. DUFFY:

22 Q Good afternoon.

23 A Good afternoon.

24 Q You testified you used Mr. Hennessey as your attorney
25 in the past?

1 A Once or twice, yeah.

2 Q And what type of matters were those?

3 A I think I had a problem -- oh, no. One of my tenants
4 wants to buy the house and I went to him to see which way to do,
5 you know, the --

6 Q Where is his law office?

7 A It's William Floyd nearby King Kullen.

8 Q How far away would you say it is from your house?

9 A It's about closer to couple miles I would say.

10 MR. DUFFY: I don't have any other questions,
11 Judge. Thank you.

12 THE COURT: Okay. Counsel on Redirect?

13 MR. SILVERMAN: No. Thank you, Judge.

14 THE COURT: Mr. Pecora, you may step down. Just
15 watch your step getting out of there.

16 THE WITNESS: Yeah, thank you very much.

17 **(Whereupon, the Witness exited the courtroom.)**

18 MR. SILVERMAN: Next witness is Frank Mitola.

19 **(Whereupon, the Witness entered the courtroom.)**

20 COURT OFFICER: Follow me up to the witness chair.
21 Watch your step.

22 Just please remain standing, raise your right hand,
23 face the Clerk of the Court.

24 **F R A N K M I T O L A, after having been duly sworn**
25 **by the Clerk of the Court, was examined and**

1 testified as follows:

2 THE CLERK: Have a seat, please.

3 Please give your full name, spelling your last
4 name, and your town of residence.

5 THE WITNESS: Frank Mitola.

6 THE CLERK: Spell your last name.

7 THE WITNESS: M-I-T-O-L-A. Rocky Point. 212 Sound
8 View Drive, Rocky Point, New York.

9 THE CLERK: Thank you.

10 THE COURT: Good afternoon, Mr Mitola.

11 THE WITNESS: Hi. Good afternoon.

12 THE COURT: Mr. Mitola, as you testify at this
13 trial, I'm going to ask you to try to keep two things in
14 mind. First is, if you can try to speak to the back row of
15 seats in the courtroom, everyone will be able to hear you.

16 The other thing is, the woman that's seated in
17 front of you is our Court Reporter. It's her job to take
18 down every word that's said during the trial, so it's
19 important that as the lawyers ask you questions, you let
20 them finish the question before you start to respond, okay?

21 THE WITNESS: I sure will, Your Honor.

22 THE COURT: All right. Counsel, you may inquire.

23 MR. SILVERMAN: Thank you.

24 DIRECT EXAMINATION BY

25 MR. SILVERMAN:

1 Q Good afternoon, Mr. Mitola.

2 A Good afternoon.

3 Q My name is Lawrence Silverman and I'm the attorney for
4 Assemblyman Sweeney. How are you today?

5 A Good.

6 THE COURT: Hennessey.

7 MR. SILVERMAN: I'm sorry. Assemblyman Hennessey.

8 Q Mr. Mitola, have you and I met before?

9 A No, I have never met you before.

10 Q Could you tell us when you first became acquainted with
11 Assemblyman Hennessey?

12 A It would be the early part of September 2013.

13 Q And in what connection was that?

14 A In order to secure at first an accessory apartment
15 permit and then ultimately a rental permit. I do expediting
16 which is permit work at the Town of Brookhaven. I'm not
17 affiliated with the Town of Brookhaven. I do work there though
18 securing permits for homeowners.

19 Q And did you become aware that there had been pending an
20 application for accessory apartment?

21 A Yes, I was.

22 Q And are you familiar with the history of that
23 particular endeavor?

24 A Yes. Yes, I am.

25 Q And how are you familiar with it?

1 A I'm familiar with it, I -- number one, I do many, many
2 accessory apartments throughout the years. I'm very familiar
3 with the accessory apartment applications. This was in, I
4 believe it was Eastport Management which it cannot be, as far as
5 an accessory, going forward with an accessory apartment
6 application, can't be in a commercial endeavor.

7 Q And with respect to that application, what happened to
8 it?

9 A Basically what I did at that point in time, I go out to
10 jobs, kind of see what the situation is, see not so much a
11 remedy, but see which way can be done as far as how the Town is
12 going to want us to go forward.

13 In this situation, what it basically was was that house
14 was an accessory apartment through many years. From 1996
15 through 2008 it had legal documentation for an accessory
16 apartment meaning that there's a main portion of the house and
17 an accessory apartment.

18 In this case, Ed, as far as the way we had to go about
19 it was to open up a wall --

20 Q Let me just stop you there to get the -- there was an
21 application for accessory apartment use?

22 A Correct.

23 Q Did there come a time that it was granted or denied?

24 A That accessory apartment application was denied because
25 of the commercial aspects of it.

1 Q Because, if I may, just because it was owned by a
2 corporation --

3 A Correct.

4 Q -- as opposed to an individual?

5 A Correct.

6 Q So what, if anything, did you do as a result of the
7 denial of that application to legalize the premises?

8 A We did a rental permit and in order to secure a rental
9 permit, one of the jobs that I do is I draft plans. I get a lot
10 of plans approved down at the Town of Brookhaven. I know
11 exactly, you know, what the plan examiners are looking for. I
12 know construction very well. So I had my plans looked at. That
13 was September 23, September 24 that they were looked at. At
14 that -- pretty much about a week before that, they had said that
15 there was a violation against the property for an accessory
16 apartment.

17 Q Who's they?

18 A The building department.

19 Q Okay.

20 A When I go to the plans examiners, they have everything
21 on the computer to state what's going on with the property.

22 Back in 2008, just to bring us back, 2008, the
23 homeowner at that time had gotten a removal of an accessory
24 apartment CO which I have. On that -- but in the interim, there
25 was another violation put against the property, so we had to

1 have an inspector go out there.

2 I had let Mr. Hennessey know what the Town is actually
3 going to be looking for construction-wise, I'm very versed in
4 the construction end as well, so basically what, you know --
5 showed him what needed to be performed. The building inspector
6 at that point in time wanted a few things done, but was allowing
7 us to go -- it was sufficient enough that we could go forward
8 with the rental permit itself. That was -- the rental permit
9 was secured on September 24, 2013 -- well, the plans got
10 approved on September 24.

11 Q Of 2013?

12 A Yeah. Actually I'm going to take that back. I
13 apologize. On September 24 they were looked at originally, then
14 there was the interim of time when the inspector had to go out
15 there. February they were actually approved at that point in
16 time.

17 In February I was allowed to take out the permit, once
18 that -- once those plans got approved. That was the duration of
19 time and I apologize on that. The duration of time, and I have
20 everything here, was from September, late September to February
21 was the inspections by the inspector. He wanted a couple things
22 on a couple of times.

23 MR. SILVERMAN: Okay. I would ask that this be
24 marked as Exhibit -- I think we're up to C for
25 identification.

1 COURT OFFICER: C. Correct.

2 THE COURT: Please mark it as Respondent's C for
3 identification only.

4 COURT OFFICER: C for I.D. only to the Witness.

5 Q Sir, I'm going to ask you to take a few moments to look
6 over those pages that are stapled together and tell me if you've
7 seen them before; if so, what they are.

8 A Have I seen these before? I haven't seen these
9 particular ones before, but I do land use applications through
10 the Town of Brookhaven.

11 Q Are you familiar with what that is?

12 A Yes. It's for -- it's various things as far as the
13 land use application. Now, on this one, it's saying --

14 Q Okay. I'm going to stop you there because the rules
15 don't permit us to talk about the contents until it's in
16 evidence.

17 A Okay. Yes, I'm very familiar with the application.
18 Not this particular application as far as that. The Town of
19 Brookhaven application I'm very familiar with.

20 Q Okay. So you haven't seen that before in connection
21 with your work?

22 A No.

23 Q Do you have any documents with you in your file that
24 will show the portion of work you just described wherein an
25 application to the Town was made in or about September 2013?

1 A Yes, I do.

2 Q Could you please produce those?

3 A Okay. I have them here.

4 MR. SILVERMAN: Okay. Your Honor, may I?

5 THE COURT: You may approach, yes.

6 THE WITNESS: (Handing to Court Officer.)

7 COURT OFFICER: (Handing to Counsel.)

8 MR. SILVERMAN: I'll take that back. We won't use
9 it.

10 COURT OFFICER: (Returning Respondent's C.)

11 MR. SILVERMAN: Your Honor, may I please have this
12 marked as Exhibit D for identification?

13 THE COURT: Collectively marked as Respondent's D
14 for identification only.

15 MR. SILVERMAN: Thank you.

16 COURT OFFICER: Do you need to see this, Counsel?
17 (Handing to Counsel).

18 MR. DUFFY: Thank you.

19 COURT OFFICER: Would you like this back to the
20 Witness?

21 MR. SILVERMAN: Thank you very much.

22 COURT OFFICER: For the record, this is
23 Respondent's D for identification purposes only being
24 presented to the Witness.

25 MR. SILVERMAN: Thank you.

1 Q Mr. Mitola, can you tell us what the documents that
2 have been marked collectively as Exhibit D are?

3 A The documents that I have here was, number one, the
4 plans that I originally did. They're dated September 21, 2013.

5 Q Is that your writing on that?

6 A That's my writing on here, yes.

7 Q Does your writing include the date on the document?

8 A Yes, it does. And I do have, if I can add, since --

9 Q Let's just stay with the document we've already marked
10 so the record is clear.

11 A Sure.

12 Q Okay?

13 A So this one, this one was approved on February 24 of
14 2014.

15 Q Okay. You've answered the question. There's other
16 documents that I'd ask you to identify.

17 A Sure. The other one is survey of the property itself.
18 That's needed as a requirement for the Town of Brookhaven permit
19 process.

20 Q And what are the other documents?

21 A The other one is dated September 23, 2013. It's a
22 record number. When I hand everything in, they give me a record
23 number that -- now they've got a whole new computer system there
24 at the Town of Brookhaven, but this shows that I have applied
25 for the rental permit; in this case the rental permit. The HR

1 is house rental. That shows that it's a house rental.

2 Q And what is the last document you have?

3 A There's actually two more documents. One is the
4 temporary rental registration. Town of Brookhaven, if you get
5 your plans approved, you can take out your permit right then and
6 there as long as you have all the other required permit process
7 items. Here the plans got approved on the 24th of February and
8 the permit was issued on the 24th of February.

9 Q Of what year?

10 A Of 2014.

11 Q Okay.

12 A And they give you three months to have a first
13 inspection which we had the inspection --

14 Q We're just talking about the documents right now.

15 A Okay. And then the last document is dated May 1, 2014.
16 This is a provisional house rental license. That means that
17 everything had gotten inspected, everything was secured by the
18 Town of Brookhaven as far as saying yes, they have met all the
19 qualifications, everything that needs to be done for that. So
20 this, this is good until it got issued on 5/1/2014 and expires
21 5/28 of 2015.

22 Q Are those documents that you actually presented to the
23 Town of Brookhaven on behalf of Assemblyman Hennessey's
24 corporation?

25 A Yes, I did.

1 MR. SILVERMAN: I'll move them into evidence, Your
2 Honor.

3 THE COURT: Mr. Duffy?

4 MR. DUFFY: No objection, Judge.

5 THE COURT: There being no objection, please mark
6 them collectively as Respondent's D in evidence.

7 COURT OFFICER: Respondent's D previously I.D. now
8 marked into evidence.

9 MR. SILVERMAN: That needs to stay out of the file
10 because that's now an Exhibit, but we'll be able to make a
11 copy for you so you have it for your file.

12 THE WITNESS: I'm sorry.

13 Q Mr. Mitola, are you familiar with the reason that
14 Assemblyman Hennessey asked you to make this application to
15 legalize these premises?

16 A Yes, I have not -- to tell you the truth, I have not
17 followed the news, I'm not very --

18 Q I don't mean the politics of this case.

19 A No.

20 Q I just mean did there come a time that Assemblyman
21 Hennessey told you anything with respect to his intentions in
22 these premises, for the purpose of which he was doing it?

23 A Yeah, without elaborating, he just asked me if I can
24 come testify at a certain date and I said no problem.

25 Q When he first inquired of you to do the work, did he

1 tell you in what connection he was going to be using this
2 property, if any?

3 A No, not that I recall. It was just the fact that he
4 needed to, you know, get a rental permit. I do rental permits
5 for many, many homeowners.

6 MR. SILVERMAN: Okay. Thank you. I have no
7 further questions.

8 THE COURT: Okay. Mr. Duffy, you want to inquire?

9 CROSS EXAMINATION BY

10 MR. DUFFY:

11 Q Good afternoon, Mr. Mitola.

12 A Good afternoon.

13 Q Did you know Mr. Hennessey prior to being retained to
14 secure a rental permit for this property?

15 A Just through name, you know, being affiliated with the
16 Town of Brookhaven from 1987 through working basically at the
17 Town obviously I do know Mr. Hennessey. Not personally, just
18 through name.

19 Q You said you do rental permits for a lot of homeowners,
20 correct?

21 A Correct.

22 Q Do you agree that there are homeowners that have rental
23 permits on their house and don't live in the house?

24 MR. SILVERMAN: Objection.

25 THE COURT: Overruled. You can answer.

1 A A majority, a majority of them, yes, that is a fact,
2 but I do many in Gordon Heights area, Stony Brook area where the
3 Town is requiring the homeowner, since they live there, and if
4 they rent out, I'm not privy to that, but if they're using the
5 house not in the definition of a boarding house, if they are
6 saying that it's not a family unit, okay, and it's a very
7 complex situation down at the Town of Brookhaven and I deal with
8 it on an everyday basis, that if you are renting out a room to
9 various people in there, they do require a building permit. I
10 have -- I can give you a couple of ones that the homeowner lives
11 in the house and are required to get a rental permit. I can
12 give you two right off the bat.

13 Q I'm just asking you, there are -- yes or no, there are
14 homeowners that secure rental permits on the house and never
15 live in the house?

16 A Correct. That don't live in the house and also ones
17 that do live in the house, yes.

18 MR. DUFFY: Thank you. That's all I have.

19 THE COURT: Any Redirect?

20 MR. SILVERMAN: No. Thank you.

21 THE COURT: Sir, you may step down. Watch your
22 step as you get up from there. The documents that were
23 marked we have to keep. If you need copies, we can make
24 arrangements for that.

25 THE WITNESS: Sure. Thank you, Your Honor.

1 THE COURT: Take a brief recess and we'll make some
2 copies of that. Do you have any other witnesses?

3 MR. SILVERMAN: Just one and it will also be brief.

4 THE COURT: Okay. Let's make the copies so the
5 fellow doesn't have to wait around.

6 COURT OFFICER: All rise.

7 **(At which time there was a pause in the**
8 **proceedings.)**

9 THE COURT: Okay. Counsel, call your next witness.

10 MR. SILVERMAN: Rudy Scala.

11 **(Whereupon, the Witness entered the courtroom.)**

12 COURT OFFICER: Follow me, please. Be careful
13 coming up.

14 Just going to ask that you remain standing, your
15 going to raise your right hand, face the Clerk of the Court
16 straight ahead.

17 **R U D Y S C A L A, after having been duly sworn by**
18 **the Clerk of the Court, was examined and testified**
19 **as follows:**

20 THE CLERK: Have a seat, please.

21 Please give your full name, spelling your last
22 name, and your town of residence.

23 THE WITNESS: Okay. Rudolph A. Scala, S-C-A-L-A,
24 and I live in Shirley.

25 THE CLERK: Thank you.

1 THE COURT: Good afternoon, Mr. Scala.

2 Mr. Scala, I'm going to ask you, as you testify
3 here today, to try to keep two things in mind. First is if
4 you can try to speak to the back row of seats in the
5 courtroom, I'm sure everyone will be able to hear you.

6 Second thing is, the lady that's seated in front of
7 you is our Court Reporter. It's her job to take down every
8 word that's said here. So in conjunction with that, I'm
9 going to ask you to please make an effort to when the
10 attorneys ask you questions, let them finish their question
11 before you start to respond because if you jump in in the
12 middle of a question and two people speak at the same time,
13 it makes her life difficult.

14 THE WITNESS: Right. Okay. I'll try my best.

15 THE COURT: Thank you.

16 Counsel, you may inquire.

17 DIRECT EXAMINATION BY

18 MR. SILVERMAN:

19 Q Good afternoon, Mr. Scala. My name is Lawrence
20 Silverman and I represent Assemblyman Hennessey.

21 A Could you speak a little louder? I have a hearing aid.

22 Q Thank you. I will.

23 A Thank you.

24 Q I'll say it again. Good afternoon, Mr. Scala. My name
25 is Lawrence Silverman and I represent Assemblyman Hennessey.

1 A Great.

2 Q Have you and I met before?

3 A No.

4 Q Or spoken?

5 A No.

6 Q When did you first become acquainted with the Hennessey
7 family?

8 A Oh, well, I came out here in '69, in Shirley, and I met
9 his father and his wife -- and his mother and I started to know
10 the Hennessey brothers and a couple of sisters, I believe, when
11 they went to school with my children.

12 Q And when was that, approximately?

13 A Oh, I would say 1980 or '75, somewhere like that.

14 Q And did there come a time that you became aware that --
15 withdrawn.

16 And that includes Assemblyman Ed Hennessey, correct?

17 A Excuse me, I didn't catch that.

18 Q Part of that family was Assemblyman Ed Hennessey,
19 correct?

20 A Oh, yes, when he ran a couple of years ago, right, that
21 was? Yes, but I knew him much before that, you know.

22 Q And do you know his mother?

23 A Yes, I do.

24 Q And you've known -- have you known her continuously
25 since that time when you first met her?

1 A Yes.

2 Q And where do you see her? Do you see her from time to
3 time?

4 A I do. I see her almost every Sunday at 9:30 mass in
5 Saint Jude. I'm an usher there.

6 Q And where is Saint Jude's?

7 A Saint Jude's is in Mastic Beach.

8 Q And what is the address?

9 A That I really don't --

10 Q What's the road it's on?

11 A It's uh --

12 Q All right. We'll find out.

13 A Neighborhood. I think Neighborhood Road and I just
14 don't remember the --

15 Q Okay.

16 A Let me just explain something. I'm not a young guy.
17 I'm 87 years old.

18 Q Well, you don't look it.

19 A And sometimes, you know, I don't remember streets and
20 things like that, you know.

21 Q That's fine. It's not important. It's just by way of
22 background.

23 A Right.

24 Q Okay. Did there come a time that you became aware that
25 Assemblyman Hennessey -- withdrawn.

1 Did there come a time that Assemblyman Hennessey came
2 to church to worship with his mother in the past few years?

3 A Oh, yes, I see him quite frequently. On the 9:30 mass
4 on Sundays, he comes in there on and off, you know. I can't
5 remember everyday -- I mean every week, but I do see him quite a
6 bit in there.

7 Q Okay. And do you perform any particular role at the
8 church at those masses?

9 A Yes, I do. I'm an usher, you know. I'm the head usher
10 at the 9:30 mass.

11 Q And within the last two years, have you seen
12 Mr. Hennessey at Sunday mass frequently?

13 A Yes, I did.

14 Q And could you approximate how many times a month?

15 A Well, I'd see him at least two times a month or maybe
16 more, but the thing is I can't see everybody walking in, you
17 know. I don't know if he's there every Sunday. He might be
18 there three Sundays or two Sundays, but I do see him quite
19 frequently with the mother.

20 Q With his mother?

21 A Yes, and they sit in the corner somewhere where I'm not
22 in that corner. I'm usually down the middle aisle, something
23 like that.

24 Q When did you last see him before today?

25 A Maybe about a week ago, maybe. Yeah, about a week ago.

1 MR. SILVERMAN: Thank you. I have no further
2 questions, Your Honor.

3 THE COURT: Counsel, any questions?

4 MR. DUFFY: No questions. Thank you.

5 THE COURT: Mr. Scala, you may step down. Thank
6 you very much. Just watch your step getting out of there.

7 THE WITNESS: Okay. Thank you. Have a nice
8 weekend.

9 THE COURT: You too.

10 **(Whereupon, the Witness exited the courtroom.)**

11 THE COURT: Okay. Back to the previous Witness?

12 MR. SILVERMAN: Continue with Cross Examination.

13 MR. DUFFY: I have an extra copy of the report for
14 Your Honor if there is no objection to it, if you want to
15 look at it if he's going to be referring to it.

16 THE COURT: Sure.

17 MR. SILVERMAN: No objection.

18 **(Whereupon, the Witness entered the courtroom.)**

19 COURT OFFICER: Watch your step coming up here.
20 You can have a seat.

21 THE CLERK: Mr. Rosenblatt, you're reminded you're
22 still under oath.

23 THE WITNESS: Yes, sir.

24 COURT OFFICER: I will give you back your notes
25 which is Exhibit 3 for I.D. only and also the Exhibit 4

1 which is the GPS records.

2 THE WITNESS: Thank you.

3 COURT OFFICER: You're welcome.

4 THE COURT: Counsel, you may inquire.

5 MR. SILVERMAN: Thank you.

6 CONTINUED CROSS EXAMINATION BY

7 MR. SILVERMAN:

8 Q Good afternoon, Mr. Rosenblatt.

9 A Good afternoon, sir.

10 Q During the break for lunch, did you discuss anything
11 with Counsel for the Petitioner?

12 A Nothing at all.

13 Q In reviewing Exhibit 4, which is I understand the list?

14 A Yes, sir.

15 Q Is that right, is it marked 4?

16 A Marked 4.

17 Q Which is a printout of various pieces of information
18 that you testified to earlier. Over the lunch break I noticed
19 that there are many instances in which the streets named
20 Trafalgar or streets which we understand to be near Trafalgar
21 did not bear the Geo-fence marking whereas other entries do. Do
22 you understand my statement?

23 A I do understand what you're saying, yes.

24 Q Can you explain why it would be that in some instances
25 Trafalgar -- addresses at Trafalgar, but not 2 Trafalgar, or

1 streets near 2 Trafalgar Drive are not noted to have been
2 entered and exited with a Geo-fence note?

3 A Yeah. The primary reason would be because they're not
4 inside of the Geo-fence. Trafalgar's a long street. The
5 Geo-fence doesn't cover the entire street and that's the simple
6 explanation. If the, if that unit doesn't cross where ever that
7 sphere of that Geo-fence is on Trafalgar, it wouldn't have
8 registered, the Geo-fence.

9 Q Now, I think you testified earlier that you could not
10 tell us how large the radius had been set by you --

11 A That's correct.

12 Q -- for the Geo-fence proximate to 2 Trafalgar Drive, is
13 that right?

14 A Yes, I can't give you specific, you know, denominations
15 of distance, but I can speculate it's, you know, an eighth of a
16 mile, quarter of a mile.

17 Q We're not going to ask you to speculate.

18 A Okay.

19 Q Now, I note that the entries of the time on the
20 left-hand side of this printout seem to be sequencing in terms
21 of sometimes every two to three minutes, is that fair to state?

22 A It seems to be roughly that, yes.

23 Q Now, is there any particular reason why those -- how
24 are those intervals determined?

25 A The intervals are determined by what's called a ping,

1 P-I-N-G. Okay. So the device is pinging the satellite or the
2 nearby cell tower. It's communicating.

3 Q So the device is pinging periodically, is that correct?

4 A Correct.

5 Q Are you able to set the parameters of that ping in
6 terms of its frequency?

7 A Yes, I do have some level of control over that, but to
8 do that I must call up Brickhouse and ask them to increase or
9 decrease the pings and the reason I would do that is for battery
10 life. The more it communicates, the faster it would burn up the
11 battery and the less it would ping, the slower it would burn up
12 the battery. Early on I did ask them to increase the pings. I
13 believe we got it down to one minute pings.

14 Q Well, when you say you believe that, I direct your
15 attention to the first page of the printout that's Exhibit 4.
16 Could you show us where on that page the pings are being
17 recorded in one minute intervals?

18 A This would be the earlier time frame where there was a
19 longer, a longer time set between pings.

20 Q Can you show us where in the report it might reflect a
21 shorter interval between pings?

22 A Yeah. It's -- the first thing is that these times are
23 not necessarily --

24 Q Could you just answer the question, I would
25 respectfully ask you to?

1 A Could you repeat it?

2 THE COURT: We'll have the Reporter read it back,
3 please.

4 (Record read as requested.)

5 A Yeah, it would take me some time, but I would have to
6 go through this report and look at the individual times.

7 (Witness perusing document.)

8 It's hard to speculate with this report actually.

9 Q I'm not asking you to guess. So you can't tell, is
10 that right? That's the answer to the question?

11 A The only thing I can do is reference to the e-mail when
12 I contacted them because for various reasons it's the way pings
13 work.

14 Q Was there any particular reason that you asked to
15 change the frequency of the pings?

16 A Yes.

17 Q What was --

18 A Essentially the more the ping, the more data you're
19 going to collect.

20 Q So why wasn't that done at the outset of the
21 investigation?

22 A It was just a typically set scenario for average use
23 and for long term battery life and in this case I felt it
24 important to get as much data as possible.

25 Q So why did you decide in the midst of the investigation

1 to change it?

2 A It was just a simple over -- you know, I overlooked it
3 in the early stages as I installed it and once I recognized it,
4 went to correct it.

5 Q So would it be correct to say that the frequency of the
6 pings makes the information more reliable?

7 A No. No, it does not.

8 Q Then why would you change the frequency of the pings?

9 A It increases amount of data. It increases the amount
10 that the device is communicating and reporting back its
11 location.

12 Q And when you say the amount of the data, what is it
13 that you're referring to that it increases?

14 A It's circular, but it's increasing the pings, so it's
15 increasing the time that it's talking to the central computers.
16 It's the time it's reporting back its location. That's the
17 increase. Not the specificity of the location, but the quantity
18 of the times of where it is.

19 Q It increases the frequency with -- correct me if I'm
20 wrong. Making the adjustment you're describing between pings to
21 be shorter increases the frequency of reporting to the satellite
22 where that vehicle is, right?

23 A That's correct.

24 Q And would it be fair to state that in the interval
25 between two pings, nothing's being reported to the satellite?

1 A Yes, that's true.

2 Q So, for example, directing your attention to the page
3 that bears the afternoon of April 9. Let's start with April 9
4 at 2:25 P.M. Tell me when you get to that page.

5 A I think I'm there. Where it says "start"?

6 Q The line that says "start".

7 A Yes, I am there.

8 Q Do you see that?

9 A Yes.

10 Q So on the line that says "start", it says 4 Brushwood
11 Drive in Shirley, correct?

12 A Correct.

13 Q And yet the line just before that appears to be
14 approximately or almost exactly actually four hours earlier; do
15 you see that?

16 A Now, you're referencing the 4/9 at 10:25 A.M. prior to
17 that?

18 Q Correct.

19 A Yes, I see that.

20 Q So there's a four-hour interval between the entry at
21 347 William Floyd Parkway and 4 Brushwood Drive, is that
22 correct?

23 A That looks correct, yes.

24 Q Okay. Now, what, if anything, does this tell us about
25 the location of the car in that four-hour period of time?

1 A It does not. It does not say anything at all.

2 Q So is there any way of knowing where that vehicle that
3 has that transmitter attached to it was for the four-hour period
4 of time between 10:25 and 2:25 on April 9?

5 A No. Not by this report, no.

6 Q Now, on the entry just below the 2:25 it says "2:27
7 moving, 39 Trafalgar Drive"; do you see that?

8 A I do.

9 Q That's the afternoon of April 9, correct?

10 A Yes.

11 Q Now, it doesn't say anything about entering or exiting
12 the Geo-fence, correct?

13 A That's correct.

14 Q Now, would it be fair to state, with a reasonable
15 degree of certainty, sir, that the vehicle's proximity to
16 39 Trafalgar Drive at 2:27 P.M. suggests, given the interval
17 that takes place between pings, that the vehicle was at
18 2 Trafalgar Drive or other places on Trafalgar Drive I should
19 say, in that interval between 2:25, 2:27? I'm leaving out the
20 seconds for simplification.

21 A Yeah.

22 Q Do you understand my question?

23 A Yeah. If I can ask it back to you, you're asking me
24 between 2:25 and 2:27, he could have gone from 4 Brushwood Drive
25 in Shirley to 39 Trafalgar Drive and in between had gone to 2

1 Trafalgar Drive?

2 Q Correct.

3 A Yes. I mean the answer can only be yes.

4 Q So looking at this report, even though it doesn't say
5 2 Trafalgar Drive and it doesn't say entered or exited Geo-fence
6 on that afternoon, we can say with some degree of certainty that
7 this vehicle was near 2 Trafalgar Drive, if not at it, correct?

8 A That you can say, it was near it if not at it. You
9 know, I would speculate or I would say that is speculating, but
10 certainly it's near it. It's on Trafalgar.

11 Q And the same could be said for the entry at 10:15 A.M.
12 on April 9, that morning where it says 6 Trafalgar Drive?

13 A Absolutely same answer, yes.

14 Q And experience would tell us, wouldn't it, that 6
15 Trafalgar Drive and 2 Trafalgar Drive are pretty close to one
16 another, correct?

17 A Yes.

18 Q And yet there is no entry on that date that the car,
19 the vehicle entered the Geo-fence on the morning of April 9,
20 correct?

21 A That's correct.

22 Q Now, given your statement earlier that you had set the
23 Geo-fence approximately quarter mile or half a mile --

24 A Right.

25 Q -- how could you explain the absence of the Geo-fence

1 marking?

2 A There is no way I can explain it except to say that the
3 unit itself is acting on its own and reporting data on its own.
4 I'm interfacing a dashboard where -- from my computer I am
5 setting up and establishing this Geo-fence and how that
6 Geo-fence communicates with the unit is beyond my expertise. I
7 don't understand exactly why it wouldn't have registered a
8 Geo-fence.

9 Q Thank you for your candor, sir.

10 Directing your attention to April 10, 2014 at 1:18 P.M.
11 I'll give you a moment to find that.

12 A Say the time again, please?

13 Q 1:18 and I'm leaving off the seconds because it seems
14 to be superfluous.

15 A Yes, I found it. I am with you on that. I found it.

16 Q In that case, there's an entry at that time for 78
17 Trafalgar, correct?

18 A Correct.

19 Q And then the next entry two minutes later,
20 approximately, shows an entry into the Geo-fence that afternoon,
21 correct?

22 A Correct.

23 Q And it doesn't reflect 2 Trafalgar Drive, it reflects
24 27 Trafalgar Drive at 1:52, correct, that it exited? See that
25 entry 1:52?

1 A Yes.

2 Q So in that instance it appears to have operated
3 correctly a day after?

4 A Correct.

5 Q And when I say "correctly", I mean it noted the
6 Geo-fence. Can you think of any reason why on the day before it
7 wouldn't have accurately reflected that entry?

8 A Yes. The GPS unit is not impervious to road conditions
9 where it reflects its signals, it's not impervious to weather or
10 cloud cover.

11 Q So it's affected by cloud cover?

12 A Absolutely.

13 Q And it's also affected by trees that are proximate to
14 where the vehicle is driving, correct?

15 A Yes, could be.

16 Q And it's also subject to error if a vehicle's parked
17 under a tree, correct?

18 A Well, yes, but you have to differentiate that normally
19 that would be a satellite scenario where the satellites would
20 pick it up, but if there's cloud cover, the satellites couldn't
21 pick it up, the cell towers could, or could not.

22 Q I understand what you're saying. You're saying there's
23 different ways --

24 A Yes.

25 Q -- in which the signal can be picked up --

1 A That's correct.

2 Q -- either by satellite or by cell tower?

3 A Yes, sir.

4 Q But in an instance where -- I'm going to assume for the
5 sake of my question there's a large tree in the driveway of
6 2 Trafalgar Drive, would it not be possible then that the GPS
7 unit is not transmitting to either the cell tower or the
8 satellite the data the fact that that car is at 2 Trafalgar
9 Drive?

10 A Yes. The answer is yes.

11 Q The answer is yes, it's possible that it would not be
12 transmitting the presence of that vehicle at 2 Trafalgar
13 Drive --

14 A Yes.

15 Q -- assuming, as I said, there is a tree or some other
16 obstruction?

17 A Yes. Given all the conditions I stated, yes.

18 Q Okay. Thank you.

19 Now, on the line summary just after 1:20 P.M. that day
20 I see there is a total 33.48 on the right side. Is that the
21 number of miles traveled in the particular trip?

22 A I believe that's an accumulated distance for a set
23 period of time. From summary to summary.

24 Q And when there's a -- when it indicates "start", when
25 there's a notation "start" in the column to the right of the

1 time, what does that signify?

2 A That signifies the unit itself is actually moving so
3 therefore it's starting.

4 Q So that's like the first transmission, the first
5 bleep --

6 A Yes.

7 Q -- after a period in which the vehicle isn't moving?

8 A Correct.

9 Q And "finish", what does that indicate?

10 A "Finish" tends to indicate when it goes to sleep; when
11 there is no movement.

12 Q Now, a few lines down at 3:42 P.M., there is an
13 indication says "idle". What does that indicate?

14 A Normally "idle" is when the vehicle hasn't moved in a
15 period of time.

16 Q So would that be an indication as to whether the
17 vehicle was on or off?

18 A No, it has no relation to the vehicle itself. It's the
19 unit.

20 Q Now, do you have a retainer agreement or other contract
21 with the people that hired you?

22 A Yes.

23 Q And you said it was a Mr. Walsh, an attorney, correct?

24 A Yes, correct.

25 Q Is he the individual that paid you?

1 A Yes.

2 Q And do you know from what source that money came?

3 A I do not.

4 Q Do you know what affiliation, if any, Mr. Walsh has
5 with any political organization?

6 A I would be speculating. I do not.

7 Q And when you are engaged by someone to track another
8 citizen's movements, do you inquire as to why you're being asked
9 to do this?

10 A Absolutely.

11 Q And you were asked to do this for political purposes,
12 correct?

13 A The specific reason I was asked to do this was to prove
14 or disprove Mr. Hennessey's residency.

15 Q And can you explain that to me?

16 A What do you mean?

17 Q Well, you were asked to prove or disprove his
18 residence. What was, I should have said -- I'm sorry. Let me
19 make it clearer.

20 What was asked of you by Mr. Walsh or anyone in his
21 organization with respect to Mr. Hennessey?

22 A It was explained to me that he was potentially in
23 violation of the Election Law, that as of redistricting he had
24 to move his house from the 4 Annette address to the Trafalgar
25 address and they didn't believe that he was in fact domiciling

1 in Trafalgar and that was the crux of the case, try and find a
2 way to prove that or disprove that.

3 Q Did anyone explain to you that under New York State Law
4 Mr. Hennessey can reside in two residences?

5 A No.

6 Q Does anything in the data that you've produced with
7 Exhibit 4 show that Mr. Hennessey is residing at Annette Drive
8 principally as opposed to 2 Trafalgar? I'm sorry. Annette what
9 is it, Lane, as opposed to 2 Trafalgar Place?

10 A What the data does tell me is that he visits Annette on
11 a much more regular basis than Trafalgar and for much longer.

12 Q And what's the basis upon which you reach that
13 conclusion?

14 A Well, the GPS data that you see --

15 Q No, I don't mean in general terms. I mean
16 specifically, did you enumerate the numbers of occasions he was
17 proximate to Annette as opposed to Trafalgar?

18 A No, I have not.

19 Q So how did you reach that determination?

20 A Because I was watching each of these hits or most of
21 these hits, I should say. I was watching in realtime on my cell
22 phone.

23 Q But the only thing you were watching was the data that
24 was transmitted that's reflected in these sheets, correct?

25 A I was actually watching the unit itself live.

1 Q You were watching the unit transmit the data that shows
2 up on these sheets, correct?

3 A Correct.

4 Q But you were looking at data coming in in realtime?

5 A In realtime.

6 Q And what conclusions did you draw from the fact that
7 he's at Trafalgar some time and Annette some time?

8 A Well, the only conclusion I can come to is that he had
9 the Trafalgar house for the purpose of, you know, appearing to
10 be within the district as he was required.

11 Q But how would you know what Assemblyman Hennessey's
12 purpose was without being told by some political operative that
13 that's what they were trying to conclude?

14 A Well, that was what they told me they thought was going
15 on.

16 Q But this data -- independent of that hypothesis, this
17 data doesn't suggest anything more than he had two residences,
18 isn't that a fact?

19 A That's true.

20 Q Other than you, did anyone else analyze this data?

21 A No, just Bill, the attorney before you.

22 Q Just the attorney for the Petitioner?

23 A Yes. And, I'm sorry, a copy was sent to Mr. Walsh as
24 well in data form.

25 Q Did there come a time that you became aware that

1 Mr. Walsh is associated with the Republican organization in the
2 State of New York?

3 A No, I didn't know Mr. Walsh's background.

4 Q Now, did there come a time that you observed -- in your
5 early observations of Assemblyman Hennessey, did there come a
6 time that you became aware that he drove a motor vehicle other
7 than the Honda with the plate ending in 5507?

8 A When you say, you know -- can you just clarify your
9 question because I had pulled the DMV records for all the
10 vehicles that Mr. Hennessey owned.

11 Q Okay. Very well. And you listed -- and I recall
12 you're saying that in your Direct testimony. You identified two
13 Hondas and a white Ford Expedition and a green Isuzu at
14 2 Trafalgar which turned out not to be Mr. Hennessey's, correct?

15 A That's correct.

16 Q Or associated with Mr. Hennessey's law office, correct?

17 A That's correct.

18 Q Did you look to see whether or not there were vehicles
19 titled to Mr. Hennessey care of his law office address?

20 A No, I was very specific -- well, actually the DMV --
21 the way the DMV search works is by name, so anything under his
22 name would have come up.

23 Q So if it was listed as a law office of Ed Hennessey, it
24 should have come up?

25 A It did come up. It came up under his name.

1 Q Okay. Did there come a time when you became aware that
2 Mr. Hennessey or his law office was associated with a Ford
3 truck?

4 A Yes, I have seen that Ford truck parked in the south
5 side driveway on occasion and then on another occasion I saw it
6 in the parking lot of his law office and on a third occasion at
7 his house at Annette.

8 Q And describe that vehicle, please.

9 A It's a Ford Expedition, a white Ford Expedition.

10 Q That's the white Ford Expedition?

11 A Yes.

12 Q And so you saw that vehicle at his office, is that
13 correct?

14 A In the parking lot, yes.

15 Q And you saw that vehicle at Trafalgar, 2 Trafalgar,
16 right?

17 A Yes, parked on the south driveway.

18 Q Was there a reason why you didn't put a GPS -- or maybe
19 you did. I shouldn't assume. Did there come a time that you
20 put a GPS tracking device on that vehicle?

21 A I did not.

22 Q And why not?

23 A The reason I made the decision not to track that
24 vehicle was because the sole Honda that came back to the law
25 firm clearly, you know, obviously belonged to Mr. Hennessey as a

1 daily driver and we were looking for a daily driver.

2 Q I'm sorry, what?

3 A A daily driver. A car that would, you know, would
4 typically be driven.

5 Q Is that a term of art in your business, a daily driver?

6 A Yes. Well, I mean, you know, in a family where there's
7 multiple vehicles, you know, most families don't just pick up
8 the keys that happen to be nearby. They have an assigned daily
9 driver. This is the vehicle I drive and this is my wife's
10 vehicle and we were looking for his vehicle. We didn't want to
11 track his wife, I didn't want to track his kids or anything like
12 that. Tried to be narrow in tracking Mr. Hennessey.

13 Q But you saw the white Ford Expedition at 2 Trafalgar on
14 occasion, correct?

15 A Correct.

16 Q So who, if anyone, did you determine was the driver of
17 that vehicle?

18 A I never determined who was the driver of that vehicle.
19 Only the registered address of it.

20 Q So for all you know, Mr. Hennessey, at the times that
21 he wasn't in the vehicle to which you attached the GPS device
22 was driving the Ford Expedition, correct?

23 A It is possible.

24 Q And if that's the case, then you wouldn't know his
25 comings and goings from anyplace, correct?

1 A That's true.

2 Q In fact you also wouldn't know if someone else was
3 driving his Honda at any given time to and from Annette Drive,
4 correct?

5 A That's true.

6 Q You wouldn't know, for example, whether his son was
7 visiting him at 2 Trafalgar, borrowed his car, that is
8 Assemblyman Hennessey's car, to go back to his residence at
9 Annette, correct?

10 A Yes, sir.

11 Q So this entire report contains assumptions about
12 Assemblyman Hennessey's travel; it assumes the fact that he's in
13 the vehicle and assumes the fact that it's the only vehicle he
14 drives and it assumes further that when it's parked in a
15 particular place, that he remains there, correct?

16 A Yes, sir.

17 Q All those three assumptions are correct, correct?

18 A Yes, sir.

19 THE COURT: Counsel, we're going to take a recess,
20 give the Reporter a break, and we'll go on.

21 MR. SILVERMAN: I can use one too. Thank you.

22 THE COURT: Sir, you may step down. Just watch
23 your step.

24 THE WITNESS: Thank you.

25 **(At which time there was a pause in the**

1 **proceedings.)**

2 COURT OFFICER: Come to order.

3 Ready for the Witness, Your Honor?

4 THE COURT: Yes.

5 COURT OFFICER: You can step up.

6 **(Whereupon, the Witness resumed the stand.)**

7 THE COURT: Okay. Mr. Rosenblatt, you're reminded
8 you're still under oath.

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: Counsel, you may inquire.

11 MR. SILVERMAN: Thank you.

12 Q Mr. Rosenblatt, you mentioned earlier that you have
13 different companies --

14 A Yes, sir.

15 Q -- through which you render professional services as an
16 investigator, correct?

17 A Yes, sir.

18 Q Did you employ any other techniques other than the GPS
19 tracking device and the observations you made which you
20 described in your Direct testimony in connection with this case?

21 A Yeah, I do a little video recording.

22 Q And other than video recordings, is there anything else
23 that you did?

24 A No, sir.

25 Q So what other types of techniques are used by

1 investigators to determine say things in this case such as where
2 people reside and their comings and goings from those premises?

3 A Can you be more specific? I mean there are tons of --

4 Q For example, if I came to you as an investigator and I
5 wanted to know if you could tell me who my wife is seeing and
6 where she's going or how she's spending her time, what, if
7 anything else, might you do other than use a GPS tracking
8 device?

9 A Video surveillance would be the norm.

10 Q And would that involve following her?

11 A It could.

12 Q Did you do anything in this case to follow Assemblyman
13 Hennessey? Were you hired to follow him and tail him, if that's
14 the right term, to determine his comings and goings from those
15 two premises?

16 A No.

17 Q But that technique could have been employed in this
18 case to assist you in arriving at some conclusion as to his
19 whereabouts and his frequency with respect for which he sees or
20 visits these two premises, correct?

21 A Yes, sir.

22 Q And that was not done, correct?

23 A No.

24 MR. SILVERMAN: I have no further questions.

25 THE COURT: Okay. Mr. Duffy, Redirect?

1 MR. DUFFY: Thank you.

2 REDIRECT EXAMINATION BY

3 MR. DUFFY:

4 Q Mr. Rosenblatt, beginning after lunch we started
5 talking about ping frequencies and the timing in between the
6 ping frequencies. Do you recall testifying about that earlier?

7 A Yes.

8 Q At a certain point in these reports it says "finish",
9 right, and it goes into a sleep mode, is that correct?

10 A Correct.

11 Q What causes the GPS to go into sleep mode?

12 A The lack of motion.

13 Q And in this case, what was the -- how long did there
14 have to be a lack of motion before it would go into a sleep
15 mode?

16 A I'm not aware of the time frame in this device's, you
17 know, set mode to go to sleep.

18 Q You spoke of an e-mail you sent to the company to
19 change the pinging frequency, is that correct?

20 A That's correct.

21 Q Do you have an idea of when you sent that e-mail?

22 A It was in the early course of the dates between April 4
23 and the end of the GPS report. I do have the e-mails, but I
24 don't recall exactly when they are.

25 Q If I can just draw your attention to April 27 in the

1 report in Exhibit 4. Did you find that date in the report?

2 A I did, yes.

3 Q And as you look at the beginning of April 27, what are
4 the frequencies there between reports?

5 A It appears that we're dealing with one minute -- one
6 minute intervals it appears like. 26, 27. When it switches
7 from the 26th to the 27th.

8 MR. SILVERMAN: Your Honor, could I ask the Witness
9 to keep his voice up?

10 THE WITNESS: Yeah.

11 THE COURT: You have to speak louder.

12 THE WITNESS: I'm sorry. It does appear it
13 switches there to one minute pings.

14 Q Could you switch to find May 24 in the report?

15 A Okay.

16 Q And the time frequency there is approximately -- how
17 often is it sending data?

18 A In the first entry it varied. It looked like roughly
19 four minutes and then this goes to one minute intervals and then
20 it jumps to two minute intervals.

21 Q You testified earlier that weather and other factors
22 can affect the GPS device, correct?

23 A That's correct.

24 Q Would that affect how often then a signal is sent to
25 the device?

1 A Yes. This is why you see these changes in times. It's
2 having trouble communicating.

3 Q Now, how does the weather affect the GPS device, does
4 it give incorrect data or it's just not sending the data based
5 on those conditions?

6 A No. It's never incorrect data. Once it's locked on to
7 latitude, longitude, it's correct. It would not give the data
8 at that point if it was an obstruction.

9 THE COURT: Your Honor, I'm sorry. I'm still
10 having trouble hearing the Witness.

11 THE WITNESS: I had my head down. I will have to
12 pick it up.

13 THE COURT: You need the last answer read back?

14 MR. SILVERMAN: Thank you.

15 THE COURT: Would you read the last answer, please?

16 (Record read as requested.)

17 MR. DUFFY: I have nothing further, Judge. Thank
18 you.

19 THE COURT: Recross, Counsel?

20 MR. SILVERMAN: No, thank you, Judge.

21 THE COURT: All right, sir. You may step down.
22 Thank you very much. Just watch your step getting out of
23 there.

24 COURT OFFICER: His notes that were I.D. only, can
25 these go back to him?

1 THE COURT: Any objection to returning the Witness'
2 notes to him which were marked for I.D. only?

3 MR. SILVERMAN: None, Your Honor. Thank you.

4 MR. DUFFY: No objection.

5 THE COURT: Thank you, Officer.

6 COURT OFFICER: (Handing to Witness.)

7 **(Whereupon, the Witness exited the courtroom.)**

8 THE COURT: Mr. Duffy, do you wish to call any
9 further witnesses?

10 MR. DUFFY: No, thank you, Judge. The Petitioner
11 rests.

12 THE COURT: Mr. Silverman?

13 MR. SILVERMAN: Your Honor, very briefly. As I
14 mentioned to you off the record, with regard to -- I'm going
15 to call Mr. Hennessey, but before I do that, just as a
16 matter of record, we're moving to dismiss the petition.

17 As Your Honor probably knows or I will certainly
18 cite case law to you, and I don't want to take the time now
19 to do that unless Your Honor would like it specifically, is
20 the petitioner in this type of case has the burden of
21 proving by clear and convincing evidence that the respondent
22 does not reside in the district and has not resided in the
23 district for one year prior to the date that he would take
24 office -- I'm sorry, one year prior to the date of election
25 under the New York State Constitution, and I don't believe

1 the evidence that's presented comes anywhere close to
2 meeting that standard without reviewing it.

3 I think, you know, Your Honor's familiar with the
4 fact that there's been no conclusive evidence at all that
5 Mr. Hennessey does not reside at 2 Trafalgar Drive in
6 Shirley, so it's necessary that I move to dismiss the
7 petition.

8 THE COURT: Mr. Duffy, do you wish to be heard?

9 MR. DUFFY: Thank you, Judge.

10 Election Law, specifically Section 1-104, defines
11 residence as a term resident shall be deemed to mean that
12 place where a person maintained a fixed, permanent,
13 principal home and to which he, where ever temporarily
14 located, always intends to return. Where a candidate may
15 have two residences, the courts have held responding
16 candidate having two residences may choose to negotiate a
17 permanent, significant and continuing attachment as to the
18 residence for purposes of Election Law.

19 Given the procedural posture of this motion,
20 evidence has to be in the light most favorable to the
21 non-movant. I think they've established that the permanent,
22 significant and continuing attachment is to Annette Drive,
23 not to Trafalgar, and that's just an address of convenience
24 to be located in the District, so I ask that that motion be
25 denied.

1 THE COURT: All right. Decision reserved on the
2 motion.

3 Counsel, you wish to call a Witness?

4 MR. SILVERMAN: Call Assemblyman Hennessey.

5 COURT OFFICER: Sir, just watch your step going up
6 to the chair, please.

7 THE WITNESS: Thank you.

8 THE CLERK: I remind you you're still under oath.

9 THE WITNESS: Thank you.

10 THE COURT: Counsel, you may inquire.

11 MR. SILVERMAN: May I please have this marked as
12 Respondent's D?

13 THE COURT: I think it's E as in Edward.

14 COURT OFFICER: E for identification is present
15 before the Witness.

16 DIRECT EXAMINATION BY

17 MR. SILVERMAN:

18 Q Good afternoon, Mr. Hennessey.

19 Directing your attention to Exhibit E, could you tell
20 me, have you seen that before and what that is?

21 A This is a copy of an online change of address form that
22 I completed shortly after I moved into Trafalgar Drive, the
23 Smith Point section of Shirley.

24 Q And to who or what did you submit that?

25 A I submitted that to the Department of Motor Vehicle in

1 an online application.

2 Q And for what purpose was that?

3 A The purpose of it was to be in compliance with the DMV
4 requirements as I understand them that when you change your
5 address, you need to update DMV.

6 MR. SILVERMAN: I offer that into evidence and just
7 for the record, that was a document that was produced today
8 by the Board of Elections, those two pages, that apparently
9 they received.

10 THE COURT: Show Counsel, please.

11 COURT OFFICER: (Handing to Counsel.)

12 MR. DUFFY: No objection, Judge.

13 THE COURT: Please mark Respondent's E received in
14 evidence.

15 COURT OFFICER: E is now marked and received into
16 evidence.

17 MR. SILVERMAN: I ask this be marked for
18 identification as Exhibit F.

19 THE COURT: Respondent's F for identification only.

20 COURT OFFICER: Respondent's F as in "Frank" for
21 identification purposes before the Witness.

22 Q Directing your attention to Exhibit F, do you recognize
23 that?

24 A I do.

25 Q What is it?

1 A It's the receipt for my attorney registration.

2 Q And does it bear your home address?

3 A It does.

4 Q What's that address?

5 A 2 Trafalgar Drive, Smith Point, New York.

6 MR. SILVERMAN: I offer that into evidence.

7 MR. DUFFY: No objection.

8 THE COURT: Please mark F received in evidence.

9 COURT OFFICER: F has now been received into
10 evidence.

11 Q Assemblyman, did there come a time that you registered
12 to vote with the Suffolk County Board of Elections with the
13 address at 2 Trafalgar Drive, Smith Point, New York?

14 A Yes.

15 Q When approximately was that?

16 A I believe it was September 30, 2013.

17 Q And did there come a time thereafter that you actually
18 voted in the District?

19 A I did, yes.

20 Q At that address. In the election district within which
21 that address --

22 A I voted twice at the new home address.

23 Q And do you recall what elections they were?

24 A Yes.

25 Q Which were they?

1 A They were the general election in November of 2013 and
2 then the school district election at William Floyd School
3 District in I believe May of 2014.

4 MR. SILVERMAN: May I have this marked as Exhibit
5 G.

6 THE COURT: Exhibit G for identification only.

7 COURT OFFICER: G for I.D. to the Witness.

8 THE WITNESS: Thank you.

9 Q Directing your attention to the pages that are clipped
10 together as Exhibit G. Can you tell me what they are?

11 A This is the absentee ballot application envelope and a
12 copy of my notice of polling place from the Suffolk County Board
13 of Elections. The absentee ballot was the William Floyd School
14 District elections. I was in Albany at the time that that
15 occurred and the notice of the polling place is a standard form
16 that the -- standard card that the Board of Elections sends to
17 every new or renewed registration notifying the new voter, in
18 this case me, of what the new polling place is, where to
19 physically go and vote.

20 Q Now, I notice that was sent to 483 William Floyd
21 Parkway. What is that address?

22 A That's the mailing address that I noted to the Board of
23 Elections in my registration.

24 Q And when you refer to the absentee ballots, it appears
25 from these documents to be envelopes, is that not correct?

1 A That's correct.

2 Q And what, if anything, what relationship, if any, do
3 they bear to the absentee or application?

4 A The school district administered their own election
5 process, so I had to request an application first from the
6 school district and then complete the application and then wait
7 for a second mailing which would be the actual ballot itself, so
8 I believe this is the two envelopes reflecting one, first the
9 absentee ballot application, and then the ballot itself.

10 MR. SILVERMAN: I apologize. If Your Honor would
11 bear with me one moment. I may have mis-marked the, marked
12 the wrong thing.

13 THE WITNESS: You can put them all in one.

14 MR. SILVERMAN: If there is no objection, I would
15 like to substitute the original envelopes for the
16 photocopies that I presented together with the enclosures in
17 the form of the envelopes.

18 THE COURT: Any objection?

19 MR. DUFFY: No objection.

20 THE COURT: So they would become G.

21 MR. SILVERMAN: Marked these collectively as
22 Exhibit G. I apologize.

23 COURT OFFICER: Again, this is G for I.D. only back
24 before the Witness.

25 MR. SILVERMAN: I offer that into evidence and

1 just -- I'm sorry.

2 Q Assemblyman, I note now, in addition to the envelopes,
3 there are actually some documents that were contained within one
4 of the envelopes. Do they relate to one another in some
5 fashion?

6 A Yeah. This is the absentee ballot application which I
7 made a copy of before I completed it and returned it.

8 MR. SILVERMAN: I'd offer that into evidence.

9 THE COURT: Any objection?

10 MR. DUFFY: Can I have a brief voir dire?

11 THE COURT: Sure.

12 MR. DUFFY: Assemblyman, these three white pieces
13 of paper, this is the application or a copy of the
14 application for the absentee ballot?

15 THE WITNESS: It is.

16 MR. DUFFY: Did this come in one of these
17 envelopes?

18 THE WITNESS: It did, yes.

19 MR. DUFFY: Which one, the white envelope or the
20 tan envelope; do you know?

21 THE WITNESS: It came in the latter date envelope.

22 MR. DUFFY: There's one marked 4/28/2014 and one
23 marked 5/13/2014?

24 THE WITNESS: That's correct. It would have been
25 the second one.

1 MR. DUFFY: And what came in the 5/13/2014
2 envelope, is that the actual ballot came in this envelope?

3 THE WITNESS: Yeah, I believe -- yeah, one was the
4 application and one was the ballot.

5 MR. DUFFY: And you did vote by absentee ballot?

6 THE WITNESS: I did, yes.

7 MR. DUFFY: No objection.

8 THE COURT: Okay. Please marked Defendant's G
9 received in evidence.

10 COURT OFFICER: G now marked and received into
11 evidence.

12 Q Assemblyman, where do you receive your mail, official
13 mail from the Assembly in terms of your employment and benefits
14 and payments, payroll?

15 A At Trafalgar Drive.

16 MR. SILVERMAN: May I please have this marked as
17 Exhibit H.

18 COURT OFFICER: This is Respondent's H for
19 identification purposes presented to the Witness.

20 Q Directing your attention to Exhibit H, can you tell us
21 what that is?

22 A This is a printout of a debit card for the periods from
23 October 1, 2013 through yesterday, July 31, 2014.

24 Q Is that your debit card?

25 A That's the debit card I use for my expenses, yeah.

1 Well, my day-to-day payments to vendors and other, you know,
2 daily, you know, cost of living expenditures.

3 Q And are there any entries on this debit card list,
4 history, if I can call it that, that reflect any vendors or
5 other merchants that you patronize near or about -- oh, okay.

6 MR. SILVERMAN: I offer that into evidence.

7 MR. DUFFY: No objection.

8 THE COURT: No objection, please mark it received
9 in evidence.

10 COURT OFFICER: H is now marked and received into
11 evidence.

12 THE WITNESS: Just if I can just make one request
13 to the Court, that this is the original copy and I
14 redacted -- I took the liberty of redacting certain
15 confidential, you know, like balances and member numbers,
16 but the redacted copy you can actually see-through, so if
17 it's possible to get the copy into evidence, it would give
18 me more security.

19 MR. SILVERMAN: Any objection?

20 MR. DUFFY: No.

21 THE WITNESS: I do have people, uh --

22 THE COURT: We'll make a copy of it on the break.

23 MR. SILVERMAN: I have an extra copy.

24 THE WITNESS: Yeah.

25 COURT OFFICER: Thank you very much.

1 (Re-marking Exhibit.)

2 Q Directing your attention to Exhibit H in evidence, does
3 that history of debit expenses reflect payments to vendors or
4 suppliers or merchants in areas near 2 Trafalgar Drive?

5 A It does, yes.

6 Q And could you just identify for us some of them by
7 date?

8 A July 30, William Floyd Diner.

9 Q Is that near your office?

10 A It's -- my office -- it's between where my office is
11 and my residence on Trafalgar. It's south of my office, north
12 of Trafalgar.

13 Freshy Fresh Bagels which is near both my office and my
14 residence.

15 Extra Gas, Shirley.

16 Again the Diner.

17 July 22 Mona Lisa's Pizza.

18 Q I notice there are many entries for gas at Hess --

19 A Hess Station.

20 Q -- in Shirley?

21 A That's correct.

22 Q Is that near --

23 A That's on William Floyd Parkway, north on William Floyd
24 Parkway. North of my residence, north of my office. It's one
25 of my frequent stops.

1 Q Is that closer to Annette Drive or to Trafalgar?

2 A Trafalgar.

3 There is an entry here for Rekhi, Inc. which is the dry
4 cleaner that I use in Shirley.

5 THE COURT: Can you spell that for the Reporter?

6 THE WITNESS: R-E-K-H-I.

7 A I suspect that that appears frequently between now and
8 October of 2013, now being August 1.

9 Q And if I could, in the interest of time, since it's in
10 evidence, I just direct your attention to the last page which
11 dates back to October of 2013 and if you can just identify for
12 us those purchases that you made at -- near or at or about your
13 2 Trafalgar residence.

14 A Well, there's a Netflix entry which is consistent with
15 my Trafalgar Drive.

16 Q Where is that?

17 A The last entry in October. The last -- on the last
18 page. The last entry on the last page.

19 Q What other entries on that page are near your Trafalgar
20 residence?

21 A October 9, Hess Station in Shirley.

22 There's then October 28 Hess Station in Shirley.

23 October 31, William Floyd Diner. Oh, no. I'm sorry.

24 That's just a withdrawal. Sorry about that.

25 Q I'm sorry, could you explain that?

1 A That was just a withdrawal.

2 Q Okay. So that was --

3 A Yeah, a debit withdrawal.

4 Q Debit withdrawal.

5 A Then there's a November 5, '13 is another Netflix
6 billing.

7 Q How do you know that that's a purchase that you made at
8 2 Trafalgar Drive?

9 A I use Netflix for my movie viewing with DVD's at
10 Trafalgar. I chose not to incur a third cable bill so I rely on
11 Netflix for \$7.00 and change a month.

12 Q Thank you.

13 Now, could you just describe for us the arrangement
14 that you had for the improvements or alterations made at the
15 premises at 2 Trafalgar Drive in order to bring it into
16 compliance?

17 A Yeah. The property had been empty for approximately
18 two years. It had been occupied by squatters. There was -- the
19 property was the recipient of a number of different complaints
20 to the town; litter, squatters in the property. It was a drug
21 activity house and it was significantly destroyed. The piping,
22 plumbing was stripped out of it, holes in the walls, debris
23 throughout, mouse feces, you know, all kinds of stuff.

24 So the property needed to be secured. First it needed
25 to be cleaned up and secured before the application process

1 really could start. Those were the first two things that took
2 place.

3 So the work that had to be done was the property needed
4 to be cleaned out, the rugs needed to be stripped out, the
5 plumbing needed to be repaired, the boiler needed to be rebuilt.
6 Sheetrock had to be re-installed. Windows fixed, locks changed.
7 Mold cleaned off of both the interior and exterior walls, the
8 interior of the house, both the former accessory apartment and
9 the main house and as well the outside of the house on the vinyl
10 siding. Repairs to the roof. Stop leaking.

11 Q And in terms of the alterations that were made in order
12 to solve the problem with the violations that this Court has
13 heard about earlier, what work was done?

14 A There was, the main alteration that had to be done was
15 the accessory apartment was not connected to the main house. It
16 was an old house and they were built at separate times, two
17 cinder block walls, and I was required to break through two
18 cinder block walls to create a continuous flow from the former
19 accessory apartment into the main house and because they're on
20 different levels it required a stairs to be built in addition to
21 the cinder blocks walls being opened up. They needed to be
22 secured, you know, through skilled carpentry and some steel
23 reinforcements. And then the actual stairs were built into the
24 house, you know, to connect the main house to the former
25 accessory apartment.

1 And that work was done and it was inspected and
2 subsequently we received the rental permit as a result of that
3 work.

4 Q And there came a time that you employed Mr. Mercado to
5 help you with that work?

6 A Yeah, Mr. Mercado was -- I employed him because I was
7 aware that he needed to be out of his former residence and I
8 knew he was a skilled craftsman, carpenter, painter, he could,
9 you know, make anything look good and this property needed the
10 attention of a skilled craftsman, so -- and I needed somebody to
11 secure the facility while I was not there which would be a
12 significant period of time because of my law schedule and my
13 duties in Albany.

14 So Mr. Mercado, I offered him an opportunity to do the
15 initial work while he stayed there and he did. He agreed to do
16 that. And that existed for the year of 2013. I think he moved
17 in there in April 2013. And then in January he started paying
18 me reduced rent which still took into consideration the work
19 that he continues to do on the property and allow some income to
20 come in to payoff some of the expenses that I incurred to render
21 the property into the zoning compliance.

22 Q How do you share the use of the premises with
23 Mr. Mercado at the times that you're there?

24 A Part of the remediation work to -- included finishing
25 what the previous owner didn't do which was completely removing

1 the plumbing that supplied a second kitchen, so I removed the
2 plumbing to the second kitchen and that requires us to share a
3 kitchen which we do. And I reside in the upstairs two bedrooms
4 in the former accessory apartment area and I have a separate
5 bathroom. And then he's in the upstairs which would be the
6 primary residence and he stayed there. That wasn't the original
7 plan, but he did such a good job in the former accessory
8 apartment that I chose to take that as my place to stay and
9 live.

10 Q And can you describe your activities within the
11 District when you're not in Albany essentially in terms of your
12 work as an Assemblyman or your private life in terms of church
13 going?

14 A Well, I grew up in Mastic Beach and I took the
15 opportunity when I moved back into the community, Shirley,
16 Mastic Beach are right next to each other and the Trafalgar
17 residence is in the south part of Shirley, we call it Smith
18 Point, so I chose to return to my original parish which is Saint
19 Jude's Parish and -- excuse me. So that's what I've done.

20 Q Okay.

21 A I'm sorry.

22 Q And did some aspects of your decision to move to
23 Trafalgar have to do with your relationship with your wife?

24 A Yes, it did.

25 MR. SILVERMAN: I have no further questions.

1 THE COURT: Mr. Duffy?

2 MR. DUFFY: Do you need a minute, Mr. Hennessey?

3 THE WITNESS: No, I'm fine. Thank you.

4 CROSS EXAMINATION BY

5 MR. DUFFY:

6 Q With regard to the absentee ballot application and
7 eventual absentee ballot being sent to Trafalgar, they were sent
8 there because you asked they be sent to that address, correct?

9 A Oh, yes.

10 Q Same thing with the benefits that you get through
11 working for the Assembly, they send that to Trafalgar because
12 that's where you told them to send that, correct?

13 A That's correct.

14 Q Are you familiar with Long Island Radio News Station?

15 A I am.

16 Q On April 9 or 10 of this year -- withdrawn.

17 You know who Jesse Garcia is, correct?

18 A Yes, I do.

19 Q And who is he?

20 A He is a former colleague.

21 Q You also know him as a chairman of the Brookhaven
22 Republican Party?

23 A I do.

24 Q Did you become aware of him going on Long Island Radio
25 News around April 9 of this year?

1 A No.

2 Q Never heard of him going on, making statements
3 regarding the property, your property taxes or your residency?

4 A No. Not on the radio, no.

5 Q Did you learn of him making a statement through some
6 other media regarding your taxes and your residency?

7 A Yes.

8 Q What media did you learn about him doing that?

9 A I learned about it from other sources. I didn't
10 directly review media.

11 Q Somebody told you he made these statements?

12 A Yes.

13 Q And when was that that you learned about that?

14 A I guess it would have been around -- don't recall it
15 being in April, but I remember it happened, but I don't recall
16 it being April. I thought it was a little later than that.

17 Q Of this year, April or maybe May of this year?

18 A Right.

19 MR. DUFFY: No further questions, Judge. Thank
20 you.

21 THE COURT: Okay. Any Redirect?

22 MR. SILVERMAN: Nothing else, Your Honor.

23 THE COURT: Assemblyman, you may step down.

24 Remember, watch your step getting out.

25 THE WITNESS: Thank you, Judge.

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MR. SILVERMAN: Respondent rests, Your Honor.

THE COURT: Okay. Both sides having rested and it being 4:30 on Friday afternoon, we will recess until 10:30 on Monday morning.

MR. SILVERMAN: Thank you.

MR. DUFFY: Thank you.

(Whereupon, the Court retired to chambers.)

(Whereupon, the matter was adjourned to Monday, August 4, 2014 at 10:30 A.M.)

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C E R T I F I C A T I O N

I, Barbara J. Skinder, a Senior Court Reporter for the Supreme Court of the State of New York, County of Suffolk, do hereby certify that the foregoing transcription of the within proceedings held on Friday, August 1, 2014 before Honorable Arthur G. Pitts is a true and accurate transcription of my stenographic notes.

Barbara J. Skinder