

To Be Argued By:  
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New York County Clerk's Indictment No. 4039/06

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# New York Supreme Court

APPELLATE DIVISION — FIRST DEPARTMENT



THE PEOPLE OF THE STATE OF NEW YORK,  
*Plaintiff-Respondent,*  
*against*

BRYAN WINGFIELD,  
*Defendant-Appellant.*

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## **BRIEF FOR DEFENDANT-APPELLANT BRYAN WINGFIELD**

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SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF  
NEW YORK,

v.

BRYAN WINGFIELD,

Defendant-Appellant.

**PRELIMINARY STATEMENT**

This is an appeal from the judgment of the Supreme Court, New York County, rendered on January 4, 2008, convicting appellant, Bryan Wingfield, after a jury trial, of Criminal Possession of a Weapon in the Second Degree and Criminal Possession of a Weapon in the Third Degree and subsequently sentencing him to concurrent sentences of seven and five years in prison (Tejada, J., at suppression hearing, Allen, J., at trial and sentence).

Timely notice of appeal was filed. On July 28, 2009, this Court granted appellant leave to appeal as a poor person, assigning Steven Banks, Esq., as counsel. Mayer Brown LLP has agreed to serve as volunteer co-counsel on appeal.

Appellant has not petitioned for a stay pending appeal and is currently incarcerated pursuant to the judgment herein appealed.

## **QUESTIONS PRESENTED**

1. Whether the police had reasonable suspicion to pursue an individual based solely on the fact that he was running away from the sound of gunfire. U.S. Const., Amends. IV, XIV; N.Y. Const., art. I. § 12.
2. Whether appellant was denied a fair trial when the court refused to instruct the jury on the prosecution's duty to preserve evidence that was central to the defense. U.S. Const., Amends. VI, XIV; N.Y. Const., Art. I, § 6.

## **INTRODUCTION TO THE BRIEF**

The New York Constitution requires that police have “reasonable suspicion” when they begin a pursuit. The police here lacked that suspicion when they seized the appellant. The officers who initiated pursuit testified that their sole basis for pursuing Mr. Wingfield was that they heard gunfire and then saw Mr. Wingfield running down a crowded street. Beyond that, both officers could point only to their intuition, which the Court of Appeals has held repeatedly to be not only insufficient to justify pursuit, but *irrelevant* to that calculus. The trial court's decision below would allow the police to pursue and detain anyone running away from the sound of gunfire—a perfectly rational response in that situation—based upon nothing more than an officer's inarticulable intuition that the individual was somehow involved in a crime. All of the People's evidence that Mr. Wingfield possessed a gun was derived from that illegal chase. The trial court's ruling that Mr. Wingfield “abandoned” the gun was also erroneous, because the evidence

established that he merely dropped the gun during the illegal chase. Because that result conflicts with long-established precedent, the conviction should be vacated, the gun suppressed, and the indictment dismissed. U.S. Const., Amends. IV, XIV; N.Y. Const., art. I. § 12.

The trial court also erred by refusing, without explanation, to instruct the jury that the police had a duty to preserve recordings of a radio call made by Officer Ayala as he chased the suspect. According to his testimony, that call contained a physical description of the suspect, and that call was what led two other officers to pursue Mr. Wingfield from the opposite direction. In violation of that duty, the police destroyed those recordings, leaving the defense to cross-examine the officers with only “Sprint reports,” which are incomplete summaries, not “duplicative equivalents,” of the calls. The thrust of the defense was that the four officers had chased one or more other suspects, not Mr. Wingfield. They disagreed among themselves on the description of the suspect and even on who handcuffed the person who was arrested. The recorded description could have shed light on this issue and perhaps contradicted the testimony of some or all of the officers. But when confronted with only the Sprint reports, the officers were able to brush them off as incomplete. The court agreed that a *Rosario* violation had occurred, and told the jury that it could draw inferences from the prosecution’s decision not to present the recordings at trial, but it also explained that the recordings were not

presented at trial because they had not been preserved. The defendant was denied a fair trial when the court refused to give that instruction teeth by further instructing, as requested by defense counsel, that the prosecution violated a legal duty by allowing the tapes to be destroyed. U.S. Const., Amends. VI, XIV; N.Y. Const., Art. I, § 6.

The defendant was convicted of Criminal Possession of a Weapon in the Second Degree and Criminal Possession of a Weapon in the Third Degree and sentenced to concurrent terms of seven and five years.

## **STATEMENT OF FACTS**

### ***The Suppression Hearing***

The defense moved to suppress the gun that the police recovered from the vicinity of Mr. Wingfield's arrest. A hearing was held on April 16, 2007. The arresting officer, Joseph Ayala, testified for the prosecution. Officer Ayala testified that on August 1, 2006, a very hot and sunny day, he and Lieutenant Louis Zaneri were driving south on Seventh Avenue in Harlem. H. 6-7.<sup>1</sup> They were in

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<sup>1</sup> "H." refers to the Suppression Hearing conducted on April 16, 2007. "D." refers to the decision on the motion to suppress, announced on May 10, 2007. "Tr." refers to the transcript of the trial on November 7, 8, and 9, 2007. "S." refers to the transcript of the sentencing hearing conducted on January 4, 2008.

plain clothes and drove an unmarked car.<sup>2</sup> *Id.* at 5. Officer Ayala testified that, at approximately 1:00 p.m., he heard several gunshots “towards my right ear.” *Id.* at 5–6. He did not see “muzzle fire or anything like that.” *Id.* at 15. Officer Ayala pulled the car over onto West 121st Street, and “as [he was] stepping out of the driver’s side of th[e] vehicle [he] s[aw] Mr. Wingfield running northbound on Seventh Avenue between 121st and 122nd Street.” *Id.* at 6–7. In fact, “there were a lot of people running” (*id.* at 8, 15), but “the only one running away from the actual shots was Mr. Wingfield” (*id.* at 8). “Once [Officer Ayala] caught sight of [Mr. Wingfield] he never got out of [Ayala’s] vision.” *Id.* at 9. Officer Ayala indicated, without explaining, that his “attention was on him more than anyone else” who was running. *Id.* at 15. Officer Ayala also testified that Mr. Wingfield was “about half a block” away (*id.* at 7), and he did not see Mr. Wingfield carrying “anything in his hand at that point.” *Id.* at 8.

Nonetheless, Officer Ayala immediately took off after Mr. Wingfield. “When [Officer Ayala] got out of the vehicle, [he] pulled out [his] firearm in [his] right hand and [he] had [his] police radio in his[] left hand.” H. 7–8. When asked why he singled out Mr. Wingfield so quickly, to the exclusion of all others, Officer Ayala admitted that “[i]t’s hard to say.” *Id.* at 16. He could point only to

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<sup>2</sup> Their assignment that day was to follow “a robbery pattern”; the police and prosecution never suggested that Mr. Wingfield had anything to do with that robbery pattern. *Id.* at 4–5.

“[i]nstant . . . [a]bout making gun arrest.” *Id.* That instinct, he said, is “hard to describe, you have to feel it.” *Id.* As described below, Officer Ayala’s partner Lieutenant Louis Zaneri joined in the pursuit. Other officers did as well, but only based on Ayala’s description of the person whom he was chasing, a description that he called in during the chase. *Id.* at 21. As also explained below, by the time of trial the police had destroyed the recording containing that description.

At one point during the chase, according to Officer Ayala, Mr. Wingfield dropped “what I believe was the firearm,” though “all [he] could see” was “just a dark object.” H. 8, 20. According to the officer, Mr. Wingfield “backed up, picked it up and put it in a white towel.” *Id.* at 8–9. After picking up the object, Mr. Wingfield continued to run, “proceed[ing] from West 122nd Street towards West 123rd Street,” crossing Seventh Avenue (*id.* at 9), with Officer Ayala in pursuit and other officers converging from other directions (*id.* at 10). Finally, Mr. Wingfield was “grabbed” and tackled by “a lot of cops” as he attempted to enter a bodega at West 123rd Street. *Id.* at 10, 24, 25.

According to the officers’ testimony, Mr. Wingfield dropped a towel a second time, “about five feet” from the place of arrest. H. 25–26, 32. Officer Ayala was specifically asked, “[d]id he throw it or did it fall out of the towel?” *Id.* at 25. He responded that “[h]e just dropped [it].” *Id.* Lieutenant Zaneri kept his foot on the

towel while Mr. Wingfield was being arrested. *Id.* at 11. After making the arrest, Officer Ayala went back to the towel and recovered a gun inside it. *Id.*

It was clear from Officer Ayala's testimony that he began the pursuit before Mr. Wingfield dropped the towel. After stating that he had called in "a description of what the defendant was wearing at the time and the direction that he was traveling in" (H. 8), Ayala was asked:

Q. From where you were standing, could you see anything in his hand at that point?

A. No, I did not.

*Id.* Then, the prosecutor asked:

Q. What did you do after you made that transmission?

A. I continued to run after Mr. Wingfield.

Q. And what did you do next?

A. At one point Mr. Wingfield had dropped what I believe was the firearm.

*Id.*; *see also* H. at 36 ("Mr. Wingfield takes maybe three to five steps, turns around. I'm *still* proceeding.") (emphasis added).

Officer Ayala's partner, Lieutenant Zaneri, also testified at the suppression hearing. He testified that after he and Ayala left their car, he saw "a male running north." H. 46. Based on the gunshots and that observation alone, he and Ayala both "began to chase him." *Id.* at 46. After Mr. Wingfield "ran another block up on the west side" of Seventh Avenue, Lieutenant Zaneri testified, "he dropped

something in a white towel, picked it up.” *Id.* He further stated that Mr. Wingfield again dropped the towel as he tried unsuccessfully to enter a bodega immediately before his arrest, and that the towel contained a gun. *Id.* at 47–48. Lieutenant Zaneri acknowledged that he could not see anything in the towel while he chased Mr. Wingfield or when Wingfield first dropped the towel. *Id.* at 57.

Like Officer Ayala, Lieutenant Zaneri testified that he chased Mr. Wingfield based on instinct, not observations. When the court asked “when you saw the defendant with this object running, what did you believe he had in the towel?” Zaneri responded, “Unknown to me, sir. I just instinctively ran north with him based on the circumstances.” H. 57. The “circumstances” were “[s]hots being fired, I approached a location and a male runs.” *Id.* Also like Officer Ayala, Lieutenant Zaneri testified that the pursuit began before Mr. Wingfield dropped the towel. He said that first “Officer Ayala began to chase him,” and then “[he] went up, *ran another block* up on the west side, he dropped something in a white towel, picked it up.” *Id.* at 46 (emphasis added).

### ***Decision on the Suppression Motion***

Following the hearing, both sides submitted legal memoranda on the motion to suppress. In pertinent part, the defense argued that “flight alone cannot justify a reasonable suspicion nor provide probable cause for an arrest,” particularly when the defendant was merely running away from gunfire, a natural human response.

Memo dated May 3, 2007, at 6.<sup>3</sup> The People argued that the gun was seized legally or, alternatively, that Mr. Wingfield abandoned it during the chase. D. 2.

In its decision, the court described the chase as follows:

On that day, Officer Ayala<sup>4</sup> was with his partner, Lieutenant Louis Zaneri. Because there had been gunshots heard, the lieutenant drew his gun and gave a description of the defendant over the radio. The defendant was the only person running from the area where gunshots had been heard. He was wearing a white T-shirt, green shorts and white sneakers. At some point, the defendant dropped what appeared to Officer Ayala to be a gun and picked it up and placed it in a towel. At that point, Officer Ayala had probable cause to believe the defendant had committed a crime. The defendant then proceeded to continue running with the police in pursuit.

D. 3–4.

The court then ruled both that the seizure was legal and that Mr. Wingfield had abandoned the gun, holding that there was:

probable cause to arrest the defendant based on the observations of Police Officer Ayala, who saw the defendant initially drop what he believed to be a gun . . . . Further, at the scene of 123rd Street, the defendant, incident to his arrest, was searched and all items retrieved from that search were incident to a lawful arrest.

D. 5. The court further held that “in addition, the defendant abandoned that gun near the 123rd Street location.” *Id.*

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<sup>3</sup> The defense also pointed to various factual inconsistencies in the officers’ testimony and argued that the testimony was not credible. *See id.*

<sup>4</sup> Officer Ayala’s and Lieutenant Zaneri’s names were misspelled in the transcripts. These errors have been corrected in the excerpts in this brief.

## *The Trial*

### The People's Case

At trial, the prosecution called eight witnesses. Officer Ayala gave much the same testimony that he had at the suppression hearing. He testified that “the first thing that [he] saw” when he got out of his car was Mr. Wingfield, running north (Tr. 34), and there were “a few bystanders out there running” as well, but “not in the same direction” (*id.* at 60). The officer gave no explanation for characterizing the other runners as “bystanders,” rather than suspects, and he stated that he did not see anyone on the other side of the street because his “attention was the immediate location and Mr. Wingfield.” *Id.* Officer Ayala testified that he never lost sight of Mr. Wingfield during the chase, “not at all.” *Id.* at 40. On direct examination, he also testified that he first chased Mr. Wingfield up the sidewalk, but on cross-examination, Ayala admitted that he began the chase in the street, with a line of parked cars between him and the sidewalk. *Id.* at 61–62.

Officer Ayala also testified that he made a radio transmission at some point during the chase (Tr. 37) and that he gave a description of the suspect and the location (*id.* at 38). His testimony was that he described Mr. Wingfield as wearing “a white T-shirt, green shorts, white sneakers.” *Id.* at 38. The “Sprint report” that supposedly summarized his radio call, however, gave the description only as “Black male with white T-shirt,” with no mention of green shorts or white

sneakers. *Id.* at 65. Officer Ayala admitted that such a description would do little to distinguish anyone in Harlem on a summer day, because there were other African-American males wearing white T-shirts in the area. *Id.* at 64. Officer Ayala brushed off the differences between his recollection of the radio call and the truncated version in the Sprint reports—which the People later described as “contain[ing] the same substantive information” as the destroyed recordings (Opp. to Post-Trial Mot. ¶ 11)—stating that he recalled giving more information in the radio call than appeared in the Sprint report. Tr. at 66. Another officer, Andrew Dickerson (whose testimony is mentioned below) testified that the description of the suspect that came over the radio was “a male black with blue jeans and a white T-shirt.” *Id.* at 135. Officer Dickerson further testified that when he spotted the suspect, he was “a male black with blue jeans and white shirt.” *Id.* at 136.

Lieutenant Zaneri likewise testified at trial. At the suppression hearing, the lieutenant had testified that after leaving the car, “I saw a male running north and myself and Officer Ayala began to chase him.” H. 46. At trial, however, he testified that when he got out of the car, he did not see Mr. Wingfield or anyone else running. Tr. 96. The first time that he saw Mr. Wingfield, he testified, Officer Ayala already was running after him. *Id.* Lieutenant Zaneri did confirm the testimony at the suppression hearing that Mr. Wingfield dropped, and did not throw, the towel to the ground. *Id.* at 103–04.

Two other officers at the scene, Officer Lennox Symon and Officer Dickerson, also testified. Each claimed to have handcuffed the appellant in front of the bodega that day. Tr. 124, 143. Officer Dickerson could not identify Mr. Wingfield in court, but he did say that the person whom he handcuffed—presumably Mr. Wingfield—was not wearing green shorts. *Id.* at 143–44.

An NYPD criminalist, Jean Chin, testified that she examined the gun and did not find any fingerprints on it. Tr. 155. Three other police officers testified about ballistics tests and two bullets that were recovered from an SUV near where the gunshots were heard (*id.* at 165).<sup>5</sup> None said anything to connect Mr. Wingfield to either the gun or the bullets.

#### The Missing *Rosario* Material

According to the prosecution, “well before hearings were conducted,” prosecutors requested the recordings of Officer Ayala’s radio transmission. Tr. 212; *id.* at 210. They were unable to obtain the recordings, however, apparently because they had been destroyed by the police. *Id.* at 212. The defense requested the tapes no later than December 26, 2006. *See* Notice of Motion ¶ 2, dated Dec. 26, 2006. The defense also made a pretrial motion to dismiss the indictment or, in the alternative, to exclude the testimony of Officer Ayala and Lieutenant Zaneri,

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<sup>5</sup> Two detectives, qualified as ballistics experts, testified that the gun was operable (Tr. 183) and that the rounds recovered at the scene were fired from the gun that Officer Ayala recovered near Mr. Wingfield (*id.* at 199–200).

based on the People's failure to preserve and produce the original recording of the radio call that Officer Ayala made on the day of the incident. Mot. in Limine (Nov. 7, 2007, supplemented Nov. 8, 2007, in Supreme Court file), at 2. At the outset of trial, the court deferred ruling on that motion. Tr. 2, 4–7.

After the close of the People's case, the defense again called the court's attention to the missing radio run and moved to have the charges dismissed or, in the alternative, to have Officer Ayala's and Lieutenant Zaneri's testimony stricken. Tr. 203–04. Counsel argued that the recordings were especially important in light of the officers' inconsistent testimony concerning the description of the suspect and the gun. *Id.* at 205. In lieu of either of those two preferred remedies, defense counsel acknowledged that an adverse inference charge was an alternative but that he would “ask for a very strong adverse inference charge.” *Id.* at 204.

The Assistant District Attorney stated that he believed that he had requested the recordings within 90 days of the arrest. Tr. at 212. He explained that the recordings ordinarily would have been preserved at least until that point, but they had been destroyed by the time he made the request. *Id.* The ADA argued that the Sprint reports contained the “same substantive information” as the recordings and that the defense was able to use the Sprint reports on cross-examination. *Id.* at 213. He conceded, nevertheless, that during cross-examination, some of the officers “when confronted with the Sprints, [] indicated they were not entirely

accurate and then filled in the blank” by testifying to information that the Sprint reports did not include. *Id.*

The court decided to give a permissive adverse inference instruction, “the language of which we can play with a little bit.” Tr. 215. The court proposed that the jury be instructed that it could infer that the missing recordings “would not support or would even contradict the People’s case.” *Id.* at 310. Defense counsel objected and requested that the instruction “include the fact that the government had the duty to provide and produce the radio transmissions in this case and failed to do so.” *Id.* at 249. The court denied that request without explanation. *Id.* at 249–50.

The defense raised the *Rosario* issue again in a motion to set aside the verdict. Mot. to Set Aside Verdict CPL § 330.30(1), Affirmation at 6–7, in Supreme Court file. The court denied that part of the motion on the ground that the defense had not requested the radio recordings “during the 90-day period following the defendant’s arrest” and had not “shown any bad faith or lack of due diligence on the part of the People.” Decision dated Dec. 14, 2007, at 2–3.

#### The Defense Case

The defendant, Bryan Wingfield, testified that at the time of his arrest he lived at 2248 Seventh Avenue. Tr. 217. He was 26 years old at the time of trial and

worked in a child care position a few blocks from his home.<sup>6</sup> *Id.* He testified that he had parked his car on 121st Street (*id.* at 220) and was on his way to visit his daughter (*id.* at 219), who lived on 124th Street (*id.* at 218). On the way, he stopped at the corner of 122nd Street to talk to a man and woman on the sidewalk. *Id.* at 220–22. While they were talking, the man exchanged words with a passerby, and a fistfight ensued, in which Mr. Wingfield did not take part. *Id.* at 232. After the two combatants left, Mr. Wingfield continued to talk with the woman. *Id.* at 222. During that conversation, gunshots ran out, and Mr. Wingfield “ducked and ran to the right.” *Id.* at 223. Others ran as well, in the same direction. *Id.* at 225. When he reached 123rd Street, he was tackled by several police officers. *Id.* at 226. He denied having either a white towel or a gun. *Id.* at 223–24.

### Verdict and Sentence

The jury returned guilty verdicts on both counts of the indictment, Criminal Possession of a Weapon in the Third Degree and Criminal Possession of a Weapon in the Second Degree. Tr. 328. The court recognized that even the minimum was “a stiff sentence” and pointed out that Mr. Wingfield had “behaved [him]self while at liberty” and appeared at the sentencing “knowing that [he was] going to jail.” S. 11. The court imposed the minimum sentences of seven and five years in prison, to run concurrent to each other. *Id.* at 10–11.

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<sup>6</sup> Mr. Wingfield conceded that he had been convicted of a felony in 2005. *Id.* at 218.

## **ARGUMENT**

### **POINT I**

#### **THE POLICE DID NOT HAVE REASONABLE SUSPICION TO PURSUE THE DEFENDANT SOLELY BECAUSE HE WAS RUNNING AWAY FROM THE SOUND OF GUNFIRE. U.S. Const., Amends. IV, XIV; N.Y. Const., art. I. § 12.**

The central piece of evidence in this prosecution for gun possession was the gun that the police say they recovered from the defendant. The police obtained that gun after chasing Mr. Wingfield through the streets of Harlem. At the outset of that pursuit, however—the critical point at which the legality of the pursuit is determined—the police had no reasonable suspicion that Mr. Wingfield had committed a crime. Rather, after hearing gunshots, Officer Ayala jumped out of his car and begin chasing the defendant only because he saw that the defendant, among others on the street, was running. That, combined with the officer’s “intuition,” was the sole reason for the pursuit. Because running away from gunfire is not the type of suspicious activity that validates a police pursuit and seizure, this Court should hold that the seizure was illegal, the gun should have been suppressed, and the indictment dismissed. U.S. Const., Amends. IV, XIV; N.Y. Const., art. I. § 12.

#### **A. A Seizure Occurs When Police Begin Pursuit.**

Article I, Section 12 of the New York Constitution provides that “[t]he right of the people to be secure in their persons . . . and effect, against unreasonable

searches and seizures, shall not be violated.” The Fourth Amendment of the U.S. Constitution also prohibits “unreasonable searches and seizures.” New York courts interpret the State Constitution and “State common law” as requiring “reasonable suspicion” before the police *initiate* a pursuit. *See People v. Hollman*, 79 N.Y.2d 181, 195–96 (1992). “Police pursuit of an individual ‘significantly impede[s]’ the person’s freedom of movement and thus must be justified by reasonable suspicion that a crime has been, is being, or is about to be committed.” *People v. Holmes*, 81 N.Y.2d 1056, 1057–58 (1993). Thus, this Court has held that “[i]n evaluating the propriety of the police action, we must consider whether it was justified at its inception.” *People v. Jaiman*, 169 A.D.2d 589, 590 (1st Dep’t 1991); *see also People v. De Bour*, 40 N.Y.2d 210, 215 (1976); *People v. Cantor*, 36 N.Y.2d 106, 111 (1975). The People bear the burden of showing the legality of any seizure in the first instance. *See People v. Berrios*, 28 N.Y.2d 361, 367 (1971).

The officers who initiated the pursuit of Mr. Wingfield were Officer Ayala and Lieutenant Zaneri. The relevant question, then, is whether they had a reasonable suspicion of Mr. Wingfield at the time that they *began* the chase. The trial court elided this important point by referring to events out of order. The court stated that “[a]t some point, the defendant dropped what appeared to Officer Ayala to be a gun and picked it up and placed it in a towel.” D. 3–4. The court concluded that “[a]t that point, Officer Ayala had probable cause to believe the defendant had

committed a crime.” *Id.* at 4 (emphasis added); *see also id.* at 5. Finally, the court found that “[t]he defendant then proceeded to continue running with the police in pursuit.” *Id.* That account makes it sound as if “Officer Ayala had probable cause” before the defendant ran “with the police in pursuit.” But it was undisputed that the point at which the court found that Officer Ayala had probable cause, he *already* had begun the pursuit.

As described at pages 6 and 7 above, when Officer Ayala radioed in his description of the suspect, “at that point,” he could not see anything in Mr. Wingfield’s hand. Then, “*after* [Ayala] made that transmission,” he “*continued* to run after Mr. Wingfield.” H. 6. “[*N*]ext,” Mr. Wingfield dropped the gun (*id.*)—the event that triggered the trial court’s finding that “Officer Ayala had probable cause.” According to Lieutenant Zaneri, the dropping of the gun happened a full block up Seventh Avenue from where the chase had begun. *Id.* at 46. The order of events clearly indicate that Officer Ayala began the pursuit—and under New York law the seizure occurred (*see Hollman*, 79 N.Y.2d at 195–96; *Holmes*, 81 N.Y.2d at 1057–58)—*before* Mr. Wingfield dropped the gun, at a time when the officer could not see anything in Mr. Wingfield’s hand. H. 8.

**B. Officer Ayala Lacked Reasonable Suspicion When He Began Pursuit, Making the Seizure and the Arrest Both Unlawful.**

Even accepting all of Officer Ayala’s testimony at face value, he lacked reasonable suspicion when he began the pursuit. Officer Ayala identified three

factors that led him to chase Mr. Wingfield: (1) he heard gunfire, (2) Mr. Wingfield was running away from it, and (3) his unarticulated “intuition.” New York law dictates, however, that such limited observations do not establish the reasonable suspicion necessary to justify a pursuit and that officers’ “hunches” and “intuitions” cannot substitute for articulable suspicion.

1. Officer Ayala had nothing to tie Mr. Wingfield to the gunshots.

The sound of gunshots is not relevant to whether Officer Ayala had reasonable suspicion to seize *Mr. Wingfield*, because there was nothing to connect Mr. Wingfield, out of the other people on the crowded street, to those shots. The Constitution requires that the police have “a reasonable suspicion that a *particular person* has committed, is committing or is about to commit a felony or misdemeanor” before pursuing that person. *De Bour*, 40 N.Y.2d at 223 (emphasis added); *see also People v. Grant*, 164 A.D.2d 170, 172 (1st Dep’t 1990) (“The necessary predicate for the forcible stop and detention of a particular person is a reasonable suspicion that *such person* has committed, is committing or is about to commit a crime.”) (emphasis added). It is irrelevant that the police believe that *someone* may have committed a crime; they must have reasonable suspicion of the *particular person* whom they decide to pursue. Officer Ayala testified only that he heard between three and five shots somewhere toward his “right side.” H. 33. As noted above, he had not heard from any witness who pointed out Mr. Wingfield.

*Id.* at 60. Thus, the gunshots not only could not create reasonable suspicion standing alone, they add nothing to the analysis, because there wasn't anything to connect them to Mr. Wingfield.

Nor, for the same reason, can the gunshots *combined* with Mr. Wingfield's running create reasonable suspicion. As explained in the following section, even flight from the police (which is not what occurred here) is not enough standing alone. And while "[f]light, combined with other specific circumstances indicating that *the suspect* may be engaged in criminal activity, could provide the predicate necessary to justify pursuit" (*Holmes*, 81 N.Y.2d at 1058 (emphasis added)), that principle, too, requires circumstances that tie "the suspect" to the "criminal activity," not the mere whiff of criminality in the neighborhood. *See also People v. Robbins, decided sub nom. People v. Sierra*, 83 N.Y.2d 929, 930 (1994) (emphasis added) ("a defendant's flight *in response* to an approach by the police, *combined* with other specific circumstances indicating that the suspect may be engaged in criminal activity, may give rise to reasonable suspicion").

Rather, the "other specific circumstances" must "indicat[e] *the suspect's* possible engagement in criminal activity," such as "a description of the perpetrator." *People v. Reyes*, 69 A.D.3d 523, 526 (1st Dep't 2010) (emphasis added). Thus, in *Reyes*, when the police received a 911 call about a knife fight, two individuals at the scene had pointed at the defendant (albeit "without accusing

him of any specific acts,” and the defendant fled when they arrived, this Court held that the police lacked reasonable suspicion to warrant a pursuit. *Id.*; accord *In re Manuel D.*, 19 A.D.3d 128, 129 (1st Dep’t 2005) (no reasonable suspicion where a radio call reported only a burglary in progress involving four males, and one of four men standing in street fled when officers approached). Here, not only is there is no evidence that Mr. Wingfield “fled” “in response” to the police approach (as discussed below), there also are no “specific circumstances” indicating that *he* was involved in criminal activity. In fact, unlike in both *Reyes* and *Manuel D.*, there was not even a clear indication of where the criminal activity had occurred: all the police knew was that there was gunfire somewhere within their range of hearing and that Mr. Wingfield was running down the street.

2. Running away from gunfire does not create reasonable suspicion.

The second factor that Officer Ayala cited, and the only one that was specific to the defendant, was that Mr. Wingfield was running down the street, away from the gunshots. It is well-established, however, that “flight alone is an insufficient indication of criminality” to warrant police pursuit. *People v. Campbell*, 245 A.D.2d 191, 193 (1st Dep’t 1997); *People v. Brogdon*, 8 A.D.3d 290, 292 (2d Dep’t 2004) (“flight alone or in conjunction with equivocal circumstances that might permit a request for information is insufficient to justify pursuit”). Thus, in *Robbins*, the Court of Appeals found that where “the officers knew only that, after

exiting from the back seat of a livery cab that had been stopped for defective brake lights, defendant grabbed at his waistband and then fled,” the officers lacked a “reasonable suspicion to pursue defendant,” and evidence that “he abandoned in response to the illegal pursuit should have been suppressed.” 83 N.Y.2d at 930; *see also People v. Forbes*, 283 A.D.2d 92, 96 (2d Dep’t 2001) (“In *Campbell and Robbins*, the only event that prompted the search of the defendant was his attempted flight from the scene, conduct which carries no indicia of criminality.”).

Here, the officers pursued Mr. Wingfield because he was running down the street. That cannot establish reasonable suspicion for two reasons. First, there was no suggestion in the record that Mr. Wingfield fled “*in response* to an approach by the police,” as *Robbins* requires. 83 N.Y. 2d at 929 (emphasis added). To the contrary, the police testified that they “approach[ed]” Mr. Wingfield in the first place because he was *already* running, *before* they arrived. Officer Ayala testified that first “I saw him running,” then “he saw me,” and then “he took off.” H. 16. As confirmed by Officer Ayala’s own testimony, “there were a lot of people” doing exactly the same thing as Mr. Wingfield (*id.* at 8)—running—which is hardly surprising given that shots had just been fired. *Cf. De Bour*, 40 N.Y.2d at 225 (finding no reasonable suspicion where officer “did not check to see whether there were other Black men in red shirts [fitting the description given by an informant] present, and a concession that there might well have been”). *Compare*

*People v. Johnson*, 51 A.D.3d 508, 509 (1st Dep’t 2008) (defendant’s “direction of flight as compared with that of other persons at the scene, suggested that, unlike the others, he was fleeing from the police *rather than* escaping from danger”) (emphasis added). While the court found that Mr. Wingfield was “the only person running from the area” of the gunshots, it did not find that he ran from the police (until the police themselves initiated pursuit). Running away from *gunfire* is “at best equivocal and readily capable of an innocent explanation.” *Grant*, 164 A.D.2d at 173 (“leaving the moving vehicle while clutching his waist, . . . although somewhat unusual,” did not establish reasonable suspicion).

Second, even if Mr. Wingfield had fled from the approaching officers, that, as a matter of law, would not create reasonable suspicion. *See, e.g., People v. Martinez*, 80 N.Y. 2d 444, 447 (1992). As this Court explained in *People v. Madera*, “flight alone cannot, as a matter of law, constitute a sufficient basis for a detentive stop or for the functionally equivalent intrusion constituted by pursuit.” 189 A.D.2d 462, 464 (1st Dep’t 1993), *aff’d*, 82 N.Y.2d 775, 777 (1993). This case illustrates why: Officer Ayala, who initiated the pursuit, testified that “there were a lot of people running.” H. 8. In fact, he “saw several people running away” from him and the other police. *Id.* at 15. Yet neither he nor Lieutenant Zaneri could give any explanation for why they picked out Mr. Wingfield to pursue, other than their intuition, which as shown in the following section, is irrelevant.

3. “Intuition” cannot substitute for reasonable suspicion.

Even though Mr. Wingfield was only one of several people running away from the sound of the gunfire, “[o]nce [Ayala] caught sight of [Wingfield] he never got out of [Ayala’s] vision” (H. 9), and Ayala’s “attention was on [Wingfield] more than anyone else” who was running (*id.* at 15). Why the laser focus on Mr. Wingfield? Officer Ayala explained that he pursued Mr. Wingfield because of “[i]nstant. . . . It’s hard to describe, you have to feel it. . . . It’s hard to say.” *Id.* at 16. When asked why his “attention was on [Wingfield] more than anyone else,” Officer Ayala responded, “[i]nstant . . . [a]bout making gun arrest.” *Id.* at 15–16. Lieutenant Zaneri, too, “just instinctively ran north with him based on the circumstances”; what Mr. Wingfield had in his hands was “[u]nknown to me.” *Id.* at 57.

The law is clear that police officers cannot rely on hunches to bootstrap into reasonable suspicion: “To justify such an intrusion, the police officer must indicate specific and articulable facts which, along with any logical deductions, reasonably prompted that intrusion.” *People v. Cantor*, 36 N.Y.2d 106, 113 (1975); *see also, e.g., People v. May*, 52 A.D.3d 147, 151–52 (1st Dep’t 2008) (“professional hunch” insufficient); *People v. Stock*, 57 A.D.3d 1424, 1425 (4th Dep’t 2008) (fact that “defendant was leaving the parking lot of a closed group home shortly after midnight” is “no more than a mere ‘hunch’ or ‘gut reaction’”

and “is insufficient to create the requisite reasonable suspicion”) (internal quotation marks omitted). Treating an officer’s intuition as a basis for an otherwise-illegal seizure turns the officer into a judge, and an unreviewable one at that. New York law expressly forecloses that result, holding that “[t]he privacy interest of our citizens is far too cherished a right to be entrusted to the discretion of the officer in the field.” *People v. Howard*, 50 N.Y.2d 583, 589 (1980) (quoting *People v. Belton*, 50 N.Y.2d 447 (1980)).

In short, the prosecution’s evidence shows that the officers seized Mr. Wingfield when they began to pursue him based upon hearing gunshots and seeing him run away. Those facts fall far short of the reasonable suspicion required to commence a pursuit under New York law, and the officer’s “instinct” adds nothing to the equation. Accordingly, the defense motion to suppress the gun should have been granted.

### **C. There Was No Abandonment.**

The trial court also found that Mr. Wingfield abandoned the gun, depriving him of standing to challenge the illegal seizure. The court stated that “when an individual discards contraband in an effort to rid himself of incriminating evidence, that constitutes an abandonment, and when one abandons property, he has no standing to challenge the seizure by the police.” D. 5. That conclusion was wrong,

because the disposal of an item during an *illegal* search or seizure is not a legal abandonment and does not affect standing.

“It is the People’s burden to overcome the presumption against abandonment by demonstrating the intentional relinquishment of a known right.” *Campbell*, 245 A.D.2d at 194. “The test to be applied is whether defendant’s action [that reveals the evidence] was spontaneous and precipitated by the illegality or whether it was a calculated act not provoked by the unlawful police activity and thus attenuated from it.” *People v. Wilkerson*, 64 N.Y.2d 749, 750 (1984); *see also People v. Ramirez-Portoreal*, 88 N.Y.2d 99, 110 (1996) (“Even where abandoned, moreover, if the abandonment is coerced or precipitated by unlawful police activity, then the seized property may be suppressed because it constitutes ‘fruit’ of the poisonous tree.”). Abandonment is rare, and courts “must be guided by the principle that a presumption exists against the waiver of one’s constitutional rights. . . . Courts . . . should conclude that an abandonment has occurred only in the clearest of cases.” *People v. Torres*, 115 A.D.2d 93, 99 (1st Dep’t 1986).

This Court and the Court of Appeals have held repeatedly that merely dropping an item during an illegal police pursuit does not meet that standard. In *Howard*, the Court of Appeals held that:

it cannot be found that defendant’s act in dropping or throwing the case in the corner while seeking to open or break down the door and window in the basement was an act “involving a calculated risk” rather than a

spontaneous reaction to the necessity of evading his pursuers or that he purposefully divested himself of possession of the vanity case. Under those circumstances he cannot be said to have knowingly waived his constitutional protection against warrantless search of the case.

*Howard*, 50 N.Y.2d at 593 (citation and footnote omitted); *see also People v. Rodriguez*, 178 A.D.2d 381, 381 (1st Dep’t 1991) (no abandonment where “[d]uring the pursuit that followed, defendant threw an object to the ground”).

Here, Mr. Wingfield allegedly dropped the towel while the police were in hot pursuit. Such circumstances do not allow for the type of “calculated risk” to waive a privacy right that New York courts require before finding abandonment. As in *Howard*, “the act of defendant holding on to the case during the entire chase belies intention to abandon.” 50 N.Y.2d at 593. Further, the police testimony was that Mr. Wingfield merely “dropped it,” not that he threw it or otherwise actively tried to dispose of it. *See H. 25* In fact, not only did Mr. Wingfield hold on to the towel for most of the chase, he even stopped to pick it up after first dropping it (*id.* at 23–24), another fact that negates any suggestion of deliberate abandonment.

*Campbell* involved facts strikingly similar to those here: the officer testified that “he only ‘saw a bag leaving [defendant’s] hand and falling on to the sidewalk.’” 245 A.D.2d at 194 (alteration in original). This Court held that “[t]he police officer’s testimony is equally susceptible to the interpretation that the bag fell to the ground by accident, requiring the conclusion that defendant retained a

reasonable expectation of privacy in the contents.” *Id.* Likewise, in *Howard*, the Court of Appeals held that “when the individual, cornered by his pursuers in the basement of a building and while looking for a way out of the basement, drops or throws a package he was carrying into a pile of junk,” no abandonment has occurred that would “make a warrantless search and seizure permissible.” 50 N.Y.2d 583, 586 (1980); *id.* at 593 (“Since Dragaj and the police were in hot pursuit, it cannot be found that defendant’s act in dropping or throwing the case in the corner while seeking to open or break down the door and window in the basement was an act involving a calculated risk rather than a spontaneous reaction to the necessity of evading his pursuers or that he purposefully divested himself of possession of the vanity case.”) (citation and internal quotation marks omitted).

In sum, because the police illegally seized Mr. Wingfield when they began chasing him without reasonable suspicion, the trial court erred when it denied suppression below. U.S. Const., Amends. IV, XIV; N.Y. Const., art. I., §12. Because the gun should have been suppressed, and there is no evidence remaining to support the indictment for gun possession, the conviction must be vacated and the indictment dismissed. *See People v. Cosby*, 104 A.D.2d 1000, 1002 (2d Dep’t 1984) (“Because no evidence remains to support the charge in the indictment, the indictment is dismissed.”); *People v. Caban*, 4 A.D.3d 274, 288 (1st Dep’t 2004)

(where only evidence was legally insufficient, “the judgment of conviction should be reversed and the indictment dismissed”), *aff’d*, 5 N.Y.3d 143 (2005).

## **POINT II**

### **THE TRIAL COURT DENIED APPELLANT A FAIR TRIAL BY REFUSING TO INSTRUCT THE JURY ON THE PROSECUTION’S DUTY TO PRESERVE RADIO RECORDINGS THAT CONTAINED INFORMATION THAT WAS CENTRAL TO THE DEFENSE. U.S. Const., Amends. VI, XIV; N.Y. Const., Art. I, § 6.**

Although the trial court agreed to charge the jury that the an adverse inference could be drawn against the prosecution based on the destruction of the radio run, the trial court refused to also inform the jury that the police had a duty to preserve this evidence. It was undisputed that the police destroyed their recording of the radio call in which Officer Ayala called in his description of Mr. Wingfield, and it also was undisputed, as a legal matter, that the police had a duty to preserve that recording. Officer Ayala testified regarding the contents of that radio call, and the People introduced summaries of the call.

Yet the court instructed the jury only that it could infer that the recordings might not support, or even would contradict, the officer’s testimony; the court refused to instruct the jury that the police had an affirmative duty to preserve that evidence. The defense objected specifically to that omission, but the court overruled the objection with no explanation whatsoever. Tr. 249. Mistaken

identity was the primary thrust of the defense case at trial, and the police testimony on the perpetrator's clothing was inconsistent. Had the jury known that the People not only opted not to present the radio recordings—which contained the purported description—but in fact allowed them to be destroyed in violation of a clear legal duty to preserve them, the jury would have been far more likely to draw an adverse inference. The court's refusal to include that language in the proposed defense charge deprived Mr. Wingfield of a fair trial, and the judgment must be vacated and a new trial ordered. U.S. Const., Amends. VI, XIV; N.Y. Const., Art. I, § 6.

**A. The People Violated Their Duty To Disclose Recorded Statements Of Their Own Witness.**

The People are obligated to turn over to the defense “any written or recorded statement . . . made by a person whom the prosecutor intends to call as a witness at trial, and which relates to the subject matter of the witness's testimony.” C.P.L. § 240.45(1)(a); *see also People v. Rosario*, 9 N.Y.2d 286 (1961). Of course, the People must observe that requirement by preserving evidence in the first place: “A necessary corollary of the duty to disclose is the obligation to preserve evidence until a request for disclosure is made.” *People v. Kelly*, 62 N.Y.2d 516, 520 (1984). It was undisputed that the recording of Officer Ayala's radio transmissions was *Rosario* material. The People, therefore, were obligated to preserve and turn over those pre-trial statements.

The defense is entitled to original material or its “duplicative equivalent.” *People v. Joseph*, 86 N.Y.2d 560, 567 (1995) (“[T]he failure to make [a] timely disclosure will not lead to any sanctions if the undisclosed matter is the ‘duplicative equivalent’ of material that has previously been disclosed.”). A transcript, and an abbreviated one at that—the so-called “Sprint Report”—is *not* the “duplicative equivalent of” an audio tape. *See id.* at 569 (“A statement cannot be a ‘duplicative equivalent’ if it contains even minor differences resulting from errors in transcription.”); *People v. Hagen*, 247 A.D.2d 405, 406 (2d Dep’t 1998) (“The defendant correctly contends that the ‘Sprint reports’ are not the ‘duplicative equivalents’ of 911 tapes”). In fact, the Court of Appeals has expressly held that “a document that has been lost or destroyed”—as the recordings were here—“and is therefore no longer available for judicial inspection cannot be deemed the ‘duplicative equivalent’ of *Rosario* material that has previously been disclosed.” *Joseph*, 86 N.Y.2d at 569; *see also People v. Huynh*, 232 A.D.2d 655, 656 (1st Dep’t 1996) (“under this circumstance where the 911 tape was destroyed and was thus no longer available for judicial inspection, it cannot be deemed the ‘duplicative equivalent’ of the so-called ‘Sprint report’ which was disclosed to the defendant”); *People v. Burch*, 247 A.D.2d 546, 547 (2d Dep’t 1998) (“Where the 911 tape was destroyed and was thus no longer available for judicial inspection, it

cannot be deemed the ‘duplicative equivalent’ of the so-called ‘Sprint report’, the contents of which were disclosed to the defendant”).

Where, as here, “the People fail to exercise due care in preserving *Rosario* material, and the defendant is prejudiced thereby, the court *must* impose an appropriate sanction.” *Joseph*, 86 N.Y.2d at 570 (emphasis in original; internal quotation marks omitted). This is so even when the police destroy evidence in good faith and pursuant to departmental policy. *See Kelly*, 62 N.Y.2d at 520 (holding that even though police practice of returning stolen property to decoy officers may “demonstrate the absence of any intent to harm these defendants, it falls far short of satisfying the People’s burden of establishing that they are not accountable for the loss. The only question, then, is what sanctions were necessary.”).

Below, the People argued that there was no meaningful *Rosario* violation because defense counsel “was certainly able to cross-examine these witnesses.” Tr. 213 They argued that “when confronted with the Sprints, the witnesses indicated they were not entirely accurate and then filled in the blank.” *Id.* at 213 (“Officer Ayala at one point indicated, I think, that the description was partial and he filled in the blanks.”). That is exactly the point. Officer Ayala agreed that the Sprint report stated that he described the suspect as “male black, white T-shirt, white sneakers” (*id.* at 66), but he stated that he had actually given more

information over the radio—specifically, that the perpetrator also wore green shorts—which was not captured in the Sprint summary (*id.* at 37–38). Officer Dickerson then testified that the description that *he* received over the radio was of a male black, wearing a white-t-shirt and *blue jeans*. *Id.* at 135. The missing radio run could have been used by defense counsel on cross-examination to cast further doubt on Mr. Wingfield’s identity, a critical issue in light of the officers’ inconsistent description of the suspect that they pursued and two different officers’ claims that they each handcuffed the suspect. *Id.* at 124, 143, 205–06. Material that the witness can simply contradict is of little use when challenging the witness’s credibility; the tapes would have been far more useful to prove that the officers’ recollections were faulty. As the Court of Appeals observed in *Joseph*, “[e]ven where a document has purportedly been transcribed verbatim”—which is not the case with Sprint reports—“inadvertent errors, omissions and deletions can occur, giving rise to precisely the kind of discrepancies that are most useful in cross-examination.” *Joseph*, 86 N.Y.2d at 570.<sup>7</sup>

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<sup>7</sup> The People argued below that no violation occurred because the defense did not request the tapes promptly. *See* Resp. to Def.’s Mot. to Set Aside Verdict at 4 (citing *People v. Brock*, 293 A.D.2d 294 (1st Dep’t 2002) and other cases). That reasoning, adopted by the trial court (Decision on C.P.L. 330.30 Motion, dated Dec. 14, 2007 (citing *People v. Randolph*, 261 A.D.2d 154 (1st Dep’t 1999)), conflates *Rosario* material with evidence relevant only to the defendant’s affirmative case. All but one of the cases cited by the People and the court involved not *Rosario* material—prior statements by the People’s own witnesses—but 911 tapes—statements by non-testifying civilians. Here, because the tapes

**B. The Court’s Curative Instruction Was Wholly Inadequate To Cure The *Rosario* Violation.**

In addressing *Rosario* violations, “the overriding concern must be to eliminate any prejudice to the defendant while protecting the interests of society.” *Kelly*, 62 N.Y.2d at 520. Here, the defense proposed a curative instruction that was correct in all respects, but the trial court, without explanation, decided to give only part of the instruction. Specifically, the court instructed the jury that “the law permits you, but does not require you, to infer from the People’s failure to produce these recordings at trial that they would not support or would even contradict the People’s case.” Tr. 310.

The defense requested that the court further instruct the jury “that the government had the duty to provide and produce the radio transmissions in this case and failed to do so.” Tr. 249. There is no dispute that that instruction would have been correct—as the cases cited in the previous section show, the People *do* have a duty to preserve radio recordings about which their witnesses will testify at trial. Such a charge would have made it more likely that the jury would have drawn the adverse inference against the prosecution. Merely being given the adverse inference charge in the abstract failed to signal the import of the prosecution’s failure to preserve the evidence: had the jury been told that the

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were *Rosario* material containing out-of-court statements of the People’s witnesses, it was the People’s obligation to preserve them. *See* C.P.L. § 240.45(1)(a).

destruction of the radio run was a dereliction of the prosecution's duty they would have been more likely to think it suspicious or alarming that the evidence was destroyed. Indeed, if the prosecution did not have a duty to preserve this evidence, why then should the jury "punish" them for not having the evidence at trial?

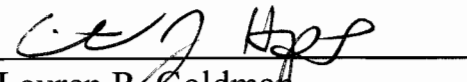
The trial court gave no explanation for its refusal to include the charge as requested by the defense. Tr. 249–50. The failure to give that instruction, which was legally correct and supported by evidence, deprived Mr. Wingfield of a fair trial. *See, e.g., People v. Cleveland*, 122 A.D.2d 536, 537 (4th Dep't 1986) ("Inasmuch as the request was a correct statement of the law and supported by the evidence, defendant was entitled to the jury instruction pertaining to his defense"). Accordingly, the judgment must be vacated and a new trial ordered. U.S. Const. Amends. VI, XIV; N.Y. Const., Art. I, § 6.

**CONCLUSION**

FOR THE REASONS STATED IN POINT I, THE COURT SHOULD REVERSE THE CONVICTION AND DISMISS THE INDICTMENT. FOR THE REASONS STATED IN POINT II, THIS COURT SHOULD REVERSE THE CONVICTION AND ORDER A NEW TRIAL.

Dated: New York, New York  
April 21, 2011

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SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF  
NEW YORK,

v.

BRYAN WINGFIELD,

Defendant-Appellant.

**STATEMENT PURSUANT TO RULE 5531**

1. The docket number in the court below was 4039/2006.
2. The full names of the original parties were People of the State of New York and Bryan Wingfield. There has been no change of parties on this appeal.
3. This action was commenced in the Criminal Term, Supreme Court, New York County.
4. This action was commenced by the filing of an indictment on August 11, 2006.
5. This appeal is from a judgment, convicting appellant, after a jury trial, of Criminal Possession of a Weapon in the Second Degree and Criminal Possession of a Weapon in the Third Degree, and sentencing him to seven years imprisonment.

6. This appeal is from a judgment of conviction rendered on November 8, 2007 and a sentence of imprisonment imposed on January 4, 2008 (Allen, J., at trial and sentence).

7. Appellant has been granted permission to appeal as a poor person on the original record. The appendix method is not being used.

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF  
NEW YORK,

v.

BRYAN WINGFIELD,

Defendant-Appellant.

**STATEMENT PURSUANT TO RULE 640.3(C)**

Defendant-Appellant Bryan Wingfield is presently incarcerated.

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF  
NEW YORK,

v.

BRYAN WINGFIELD,

Defendant-Appellant.

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