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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY
INDICTMENT NO. 02-9-1247
APPELLATE NO. A-006934-0371

STATE OF NEW JERSEY, :
 :
 Complainant, :
 :
 vs. :
 :
 RENATO SANTOS, GREGORY MAPLES, :
 MARVIN WORTHY and JAMES IRWIN, :
 :
 Defendants. :

STENOGRAPHIC
TRANSCRIPT
OF
JURY TRIAL
FILED
APPELLATE DIVISION
OCT 2004

Jan Flynn
Place: Ocean County Courthouse
120 Hooper Avenue
Toms River, New Jersey
Date: May 6, 2004

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1 (The following is heard without the presence
2 of the jury.)

3 (The following exhibits are marked for
4 identification:

5 S-5, an autopsy photograph.

6 S-6, an autopsy photograph.

7 S-7, an autopsy photograph.

8 S-8, an autopsy photograph.

9 S-9, a death certificate of the victim.)

10 (The following is heard without the presence
11 of the jury.)

12 THE COURT: Good morning.

13 Mr. Heisler, are you ready to proceed?

14 MR. HEISLER: Yes, Judge. I believe there
15 was a matter Mr. Zager wanted to place on the record.

16 THE COURT: Mr. Zager, you want to put
17 something on the record?

18 MR. ZAGER: Yes, your Honor. Good morning.

19 THE COURT: Good morning.

20 MR. ZAGER: Your Honor, I've had an
21 interesting situation occur with regard to my
22 investigator. I have been trying to find three
23 witnesses whose addresses are two years old. My
24 investigator has gone to the last known addresses and
25 has left business cards with certain relatives asking

1 them to contact her.

2 In following up yesterday, she made a phone
3 call to one of the relatives. And, by happenstance,
4 one of the witnesses she was trying to locate answered
5 the phone. My investigator had a conversation with
6 her, confirmed what she said relevant to what she told
7 the police two years ago, and I intend to serve her
8 with a subpoena to testify.

9 In the course of my investigator's
10 conversation with this witness, she advised -- she
11 inquired from the witness, "Why didn't you, you know,
12 return my call? I left my card."

13 She said, "I never got your card."

14 She said, "Well, I've been leaving cards with
15 everyone."

16 And from what I understand, it was relayed to
17 my investigator that apparently the three witnesses and
18 their relatives are somehow related to Sondra Roy who
19 is the victim's mother, whether they be first cousins,
20 second cousins once removed, and the relatives who have
21 received the business cards are apparently taking them
22 to the matriarch of the family, and she apparently is
23 hoarding the business cards and interfering or
24 obstructing my ability to locate the witnesses.

25 I would ask your Honor to allow a Rule 104 so

1 I could put my investigator on the witness stand, and
2 then perhaps put Ms. Roy on the witness stand, so that
3 I can get around the interference that I'm having in
4 trying to locate the witnesses.

5 THE COURT: Well, first of all, I must say my
6 curiosity is peeked that this witness that you're
7 talking about apparently told your investigator or
8 allegedly told your investigator that the business
9 cards are being taken to someone else. Well, if that's
10 so, then she had to know that there were business cards
11 from your office looking for her and chose not to
12 contact you.

13 MR. ZAGER: No. She advised me, your Honor,
14 she never saw the business card. She understood that
15 the relatives of a different generation, the older
16 generation, have been taking the business cards to
17 Ms. Roy, because apparently Ms. Bennett lives with her
18 aunt, and her aunt didn't give her the business card,
19 but sent it over somehow to the victim's mother,
20 Ms. Roy.

21 THE COURT: Well, you have now spoken with
22 this witness or your investigator has?

23 MR. ZAGER: Yes.

24 THE COURT: I presume that witness will be
25 available here. So I need not have a hearing or put

1 the mother of the victim in this case -- and everybody
2 agrees that there is a victim in the case; it's just a
3 denial of responsibility for that victim. I think you
4 all said in your opening that Rashon Roy was murdered.

5 I see no purpose in putting his mother on the
6 stand. And I fail to, based upon your representations
7 -- based upon your representations, I've accepted them,
8 but I fail to see any interference with regard to your
9 defense in this matter, so I'll deny the hearing.

10 Ready to proceed?

11 MR. HEISLER: Yes, Judge.

12 THE COURT: All right. Jury out.

13 (The following is heard in the presence of
14 the jury.)

15 THE COURT: Good morning to each of you.

16 It's good to see all of you back again.

17 Mr. Heisler?

18 MR. HEISLER: Thank you, your Honor.

19 Dr. Hydow Park, please?

20 HYDOW PARK, sworn.

21 THE COURT CLERK: Would you state your name,
22 please?

23 THE WITNESS: Hydow Park, H Y D-O W, P-A R K.

24 THE COURT: Mr. Heisler?

25 MR. HEISLER: Thank you, your Honor.

1 DIRECT EXAMINATION BY MR. HEISLER:

2 Q Good morning, doctor.

3 A Good morning.

4 Q Doctor, you're licensed to practice medicine
5 in several states?

6 A Yes.

7 Q What states would that be?

8 A In New Jersey and Pennsylvania.

9 Q And how long have you been a medical doctor
10 for?

11 A About forty years, yes.

12 Q And would you tell us what your educational
13 background is, please?

14 A Yes. I graduated medical schooled in Korea in
15 1964, and I came to this country in 1967. And I
16 received a total of five years training in pathology,
17 and then I worked at different hospitals.

18 Q And when you worked at those hospitals, did
19 you work as a pathologist?

20 A Yes.

21 Q Do you have any specific training in forensic
22 pathology?

23 A Yes. I start working as a forensic pathologist, a
24 full-time forensic pathologist, in 1988.

25 Q And do you hold any certifications in

1 forensic pathology?

2 A Yes.

3 Q What would that be?

4 A That would be a subspecialty in forensic
5 pathology. I have basic pathology specialty board
6 before I became forensic pathologist, yes.

7 Q So you're Board certified in pathology?

8 A Yes.

9 Q And doctor, doctor, also, tell us, generally,
10 what is forensic pathology?

11 A Forensic pathology is a subspecialty in pathology.
12 Pathology is the study of diseases and dealing with
13 diagnostic work at hospitals. But forensic pathologist
14 perform -- most forensic pathologists perform autopsies
15 to investigate the death, to determine cause of death.

16 Q And in connection with your work as a
17 forensic pathologist, have you held positions as a
18 medical examiner?

19 A Yes.

20 Q Starting when, and where?

21 A I started working as an assistant medical examiner
22 in Philadelphia, at Philadelphia Medical Examiner's
23 Office, for approximately eight years.

24 Q And since that time, what positions have you
25 held?

1 A And then I started working for Ocean County as a
2 designated pathologist. Whenever they need me, they
3 call, and I come to autopsies for Ocean County for
4 approximately ten years. And then, currently, I have
5 full-time position as a county medical examiner in
6 Atlantic County.

7 Q So right now, you're the county medical
8 examiner in Atlantic County, New Jersey?

9 A Yes, that's correct.

10 Q Are you also still a designated pathologist
11 for Ocean County?

12 A Yes.

13 MR. HEISLER: Judge, at this point --

14 Q Well, let me ask you one more question,
15 doctor. How many autopsies have you performed?

16 A Approximately 4,000, conservatively, 3,000
17 autopsies, yes.

18 MR. HEISLER: Your Honor, at this point, I
19 would offer Dr. Park as an expert witness in forensic
20 pathology.

21 THE COURT: Any objection, counsel?

22 MR. ZAGER: No, sir.

23 MR. SOMERS: No.

24 MR. WELLE: No.

25 MR. KINARNEY: No, sir.

1 THE COURT: Ladies and gentlemen of the
2 jury, based upon the doctor's background, training,
3 education and experience, I'm going to authorize him to
4 testify as an expert in the filed of forensic pathology
5 and to give you testimony in the form of opinion. I'm
6 doing so, as I say, because of his background, training
7 education and experience.

8 The fact that I'm authorizing him to testify
9 as an expert witness does not mean I endorse his
10 testimony, because the merit and worth of this
11 testimony, as well as all testimony that will be heard
12 here is, strictly up to you to decide. I'm merely
13 ruling that he's entitled to give you his opinion as an
14 expert.

15 Q Okay. Dr. Park, in your capacity as a
16 designated pathologist for Ocean County, were you
17 called upon to perform an autopsy on April 29, 2002, on
18 one Rashon J. Roy?

19 A Yes.

20 Q And would you describe for the jury how an
21 autopsy proceeds, and what you did in this case?

22 A I start the autopsy -- before I start autopsy, I
23 have to examine the clothing. And then I undress the
24 body and examine the exterior of the body to examine,
25 specifically, the wounds, where the wounds are located,

1 etcetera. And then I open the body and examine the
2 internal organs.

3 Q When you did your external examination, what
4 were your findings?

5 A In this case, I found gunshot wounds, yes.

6 Q And starting -- generally, where were the
7 gunshot wounds?

8 A He was shot four times, so there is four entrance
9 wounds. One was in the left upper back, and the other
10 one was -- can I look at my drawing or autopsy report?

11 Q Please do?

12 A And another one was in the right flank area. And
13 another one was on the left side of the buttock. And
14 another one was in the left forearm.

15 Q So you found four entrance wounds apparently
16 caused by bullets?

17 A Yes.

18 Q Were there exit wounds associated with any of
19 those bullet wounds?

20 A Yes. Two of them had exit wounds.

21 Q And an exit wound is where the bullet comes
22 out?

23 A Yes.

24 Q And which of those wounds had exit wounds?

25 A The one in the left forearm exited from the arm.

1 And then the one with the left buttock, the bullet
2 exited through the left groin area.

3 Q Doctor, let me shown you a series of
4 photographs that have been marked S-5 through S-8.
5 Also, could you tell us what S-5 shows?

6 A Yes. This picture shows the back of the entire
7 body. And I can see three entrance wounds, one in the
8 left upper back, and one on the left side of the
9 buttock, and one in the right flank area.

10 Q And let me show you S-6. Can you tell the
11 jury what that shows?

12 A Yes. This picture shows the body with the left
13 arm. I can see the through-and-through wound in the
14 left arm.

15 Q Now, there are two wounds on that arm. Is
16 that correct?

17 A Yes. One is entrance and the other is exit.

18 Q Which is the entrance and which is the exit?

19 A The one in -- we call this -- the back of the arm,
20 and the other one is the front of arm, yeah.

21 Q In that picture, the wounds, I would describe
22 them top and bottom?

23 A Yes. The one in the top was the entrance wound.

24 Q Okay. And the exit one is the bottom one?

25 A Yes.

1 Q Okay. And let me show you S-7. Can you tell
2 the jury what that shows?

3 A Yes. This picture shows the left forearm, and the
4 picture shows a metal probe that I placed into the
5 wound showing the entrance and exit.

6 Q And let me show you S-8. Could you tell us
7 what that shows?

8 A This picture shows a picture of the left groin
9 area showing the exit wound.

10 Q And that's the exit wound that's correlated
11 with the entrance wound on the left buttock?

12 A Yes, that's correct.

13 MR. HEISLER: Judge, at this time, I would
14 offer these photos into evidence and ask to publish
15 them to the jury.

16 MR. KINARNEY: Judge, could I just look at
17 them for a second?

18 MR. WELLE: Can I see them?

19 THE COURT: Sure.

20 Any objection?

21 MR. KINARNEY: No.

22 MR. WELLE: No.

23 THE COURT: It may be marked in evidence S-5
24 through S-8.

25 (S-5 through S-8, previously marked for

1 identification, are marked into evidence.)

2 (The jury views S-5 through S-8 in evidence.)

3 THE COURT: While that's being done, could I
4 just see counsel, without the reporter, at side bar?

5 (A side bar conference take place off the
6 record.)

7 Q Now, Dr. Park, after you conducted your
8 external examination of Mr. Roy, what was your next
9 procedure?

10 A The next procedure was to open the body by making
11 a skin incision on the body and also the head.

12 Q And what's your purpose in doing that?

13 A Just to examine the internal organs and where the
14 bullet went through in this case, yes.

15 Q And were you able to track the route that the
16 bullets took through Mr. Roy's body?

17 A Yes.

18 Q Okay. Why don't we start with the wound at
19 the left upper back. Could you tell us what you found
20 there?

21 A Yes. The bullet went into the chest cavity and it
22 went through the lung, it perforated the lung, and also
23 a big artery, right subclavian artery -- let me -- the
24 left subclavian artery, which is one of the major
25 arteries that comes out of the heart, yes.

1 Q Okay. Could you just generally indicate, on
2 yourself, where is this subclavian artery located?

3 A Subclavian artery is below the collarbone, yes.

4 Q And on the left side, that's close to the
5 heart?

6 A It's away from the heart, but it's still major
7 artery, yes.

8 Q Where is it in relation to the aorta?

9 A Aorta is the main artery that -- the main blood
10 vessel coming out of the artery. This is the branch of
11 the aorta.

12 Q And the bullet lacerated that subclavian
13 artery?

14 A Yes.

15 Q And what other path did it take from there?

16 A Before it hit the artery, it perforated the lung.
17 It went through the lung, left lung.

18 Q And did you find a bullet in Mr. Roy
19 associated with that upper back wound?

20 A Yes. The bullet was in the first rib. It was
21 imbedded in the rib.

22 Q And that was on which side?

23 A On the right side.

24 Q So could you tell us how this bullet traveled
25 from the time it entered, the direction?

1 A It went through -- the direction was slightly
2 rightward and upwards and frontwards.

3 Q And when you opened Mr. Roy up, associated
4 with that wound that lacerated the artery and the lung,
5 did you find blood in his chest cavity?

6 A Yes.

7 Q Was there anything significant about that?

8 A Yes. There was approximately 2 liters -- 2 liters
9 will be about 5 pint -- yeah, a lot of blood in the
10 chest cavity.

11 Q And how does that relate to the total amount
12 of blood that's in an average body?

13 A It's approximately half of the total blood of
14 body.

15 Q And this was internal?

16 A Yes.

17 Q While we're on that subject, doctor, with
18 gunshot wounds, is bleeding always external?

19 A No.

20 Q Would the large amount of blood indicate that
21 most of the bleeding here was internal?

22 A Yes.

23 MR. ZAGER: Objection to the leading nature.

24 THE COURT: Try not to lead.

25 Q What about the wound to the right flank?

1 A Right flank went through the liver, but there was
2 only small amount of blood in the body cavity, the
3 abdominal cavity.

4 Q And did you recover a projectile associated
5 with that wound?

6 A Yes.

7 Q Where was that?

8 A That was on the right rib cage on the front.

9 Q Did that bullet, aside from lacerating the
10 liver, did it do any damage? Did it affect any other
11 ribs or any other organs?

12 A No, not significantly. The main injury was in the
13 liver.

14 Q And based on the entrance and where you found
15 the projectile, could you tell us the path that that
16 bullet took?

17 A Yes. That was frontwards and right -- slightly
18 upwards. Yes, frontwards and slightly upwards.

19 Q And was there any direction to it, right or
20 left?

21 A Let me -- let me make correction.

22 Q Take your time.

23 A Slightly leftwards, frontwards and upwards.

24 Q And with respect to the gunshot wound in the
25 left hip or left buttock, what did you find there,

1 doctor?

2 A That blunt -- that bullet went frontwards and
3 rightwards and slightly upwards again.

4 Q And there was an exit wound associated with
5 that bullet?

6 A Yes.

7 Q So you didn't find a bullet?

8 A That's correct.

9 Q Now, a gunshot wound in that area, what kind
10 of body parts does that travel through?

11 A It travels through skin, muscle and bone, yes.

12 Q And is the skin, muscle and bone in that area
13 sufficient to remove velocity from a bullet as it goes
14 through?

15 A Yes.

16 Q And with respect to the gunshot wound on the
17 left arm, what were your findings there?

18 A This bullet came into the left arm's skin and
19 muscle and then went out. The entrance -- the exit
20 wound was 2-and-a-half inch away from the entrance
21 wound, yeah.

22 Q And, again, because there was an exit wound,
23 there was no projectile?

24 A That's correct.

25 Q What did you do with the projectiles that you

1 did recover from the wounds in the victim's left upper
2 back and right flank?

3 A I handed it over to the detective, yes.

4 Q And when you do an autopsy in a case like
5 this, are there police officers or sheriff's officers
6 present at the autopsy?

7 A Yes.

8 Q And you turn your evidence over to them?

9 A Yes.

10 Q And that would include the victim's clothing,
11 as well, if he's wearing any?

12 A Yes.

13 Q Let me ask you to assume for a second,
14 doctor, that this victim was in a sports utility
15 vehicle when the first shots were fired, and at some
16 point he's moving from the passenger's seat, over a
17 console, through the driver's seat, and out the
18 driver's door. And then he's running with somebody
19 chasing him and shooting.

20 MR. ZAGER: Judge, I would object. He's
21 using facts that aren't in evidence.

22 MR. HEISLER: It's a hypothetical, Judge.

23 THE COURT: It's a hypothetical.

24 I presume you're going to supply a factual
25 basis for it sometime during the course of the trial?

1 MR. HEISLER: Yes.

2 THE COURT: Okay.

3 Q You're still with me, doctor, with what I'm
4 asking you to assume?

5 A Yes.

6 Q Based on your findings, can you tell where
7 any -- anybody who shot at this man was when these
8 gunshot wounds were inflicted?

9 A What was your question, the last part?

10 Q Okay. Let me ask --

11 A No, no, the front part.

12 Q Okay. Assume the victim is in the
13 passenger's side of the sports utility vehicle.

14 A Yes.

15 Q A jeep Cherokee.

16 A Yes.

17 Q And at some point, at or about the time the
18 shooting starts, he's climbing over the console,
19 climbing out of the driver's seat to get out the
20 driver's side door.

21 A Yes.

22 Q Can you tell us where anybody who shot him
23 might have been located, based on the trajectory of
24 these wounds?

25 A No. I cannot locate the shooter, no.

1 Q And why is that?

2 A Because -- because shooter can be anywhere, I
3 mean, anytime. No, just looking at the body, there's
4 no way of locating the shooter.

5 Q And would the movement of the body during the
6 shooting affect that?

7 A Yes. Of course, yes.

8 Q Can you conclude whether the shooters were
9 behind him or not?

10 A General direction was from the back of the body to
11 the front, so the only thing I can say was shooter was
12 behind and --

13 Q But, otherwise, you can't say anything?

14 A And the victim was facing the other way, he was
15 facing straight frontward, yeah, right.

16 Q And was there any particular one of these
17 wounds that would have been fatal, in and of itself?

18 A Yes.

19 Q Which one is that?

20 A The one in the upper back, that is the bullet that
21 caused most injury in this case because of bleeding,
22 massive bleeding, into the body cavity, yeah.

23 Q What happens when you get massive bleeding
24 into a body cavity?

25 A If you -- if one loses blood, especially more than

1 one-third of blood, very rapidly, the person will --
2 the blood pressure will drop and heart will not have
3 enough blood to pump; in this case, half of the blood.
4 So, eventually, the heart would try to pump, but
5 there's not much blood, and then everything gradually
6 stops, yes.

7 Q Were there any other factors, other than
8 gunshot wounds, that you found contributed to this
9 man's death?

10 A No.

11 Q And did you make a determination, doctor, as
12 to what the cause of death was?

13 A Yes.

14 Q And what was that?

15 A Multiple gunshot wounds.

16 Q And did you make a determination as to the
17 manner of death?

18 A Yes.

19 Q What was that?

20 A Homicide.

21 Q And, "homicide," meaning?

22 A Means killed by another person, yes, person or
23 persons.

24 Q And let me show you, doctor, S-9. Could you
25 tell us what that is?

1 A Yes. This is the certificate of death.

2 Q And that's for Rashon Roy?

3 A Yes.

4 Q Thank you.

5 MR. HEISLER: I have nothing further for
6 Dr. Park, Judge.

7 THE COURT: Mr. Welle?

8 MR. WELLE: Yeah.

9 CROSS-EXAMINATION BY MR. WELLE:

10 Q Doctor, you said in your initial preparation,
11 before examining the body, that you examined the
12 clothing of the victim.

13 Is that correct?

14 A Yes. In this case, there's no clothes. I don't
15 think I -- the body was received unclothed.

16 Oh, I'm sorry, the body was received with two
17 white -- I'm sorry. These are sheets, sheets and
18 blankets. Clothes I never examined in this case, yes.

19 Q In this case, you didn't examine the
20 clothing?

21 A No, I didn't examine the clothing.

22 Q Had that clothing been there for you to
23 examine -- and in a gunshot case, are there any things
24 that an examination of clothing might present to you
25 that would assist you in your autopsy and evaluation?

1 A Yes, primarily, the range of shot, the range, how
2 far the muzzle was from the body. If it's close, the
3 clothing will have some gunpowder residue and soot and
4 etcetera, yes.

5 Q All right. So there are -- there are ways of
6 making some estimation about how far a gun was from the
7 victim?

8 A Yes, that's correct.

9 Q And would it be fair to say that depending
10 upon the nature of the gun and the characteristics of
11 the ammunition, with people that have some degree of
12 expertise, they might be able to determine how far a
13 gun was from the victim?

14 A Yes, that's correct.

15 Q Is it also true that you can look at gunshot
16 wounds in a body and possibly make some determination
17 as to how far a weapon may have been away from the
18 body?

19 A Yes, that's correct.

20 Q And why would that be? What kind of indicia
21 would you see?

22 A Same thing, essentially. Sometimes we see soot
23 when the gun is very close. And if the gun is between
24 6 inches and a foot, sometimes we see these little
25 stipplings -- that is what we call the gunpowder,

1 stipplings -- small particles that travel with the
2 bullet, hit the skin and leave a mark there, so
3 gunpowder tattooing or stipplings. But in this case, I
4 did not see anything --

5 Q You saw nothing --

6 A -- on the skin.

7 Q -- on the skin?

8 A That's correct.

9 Q And if we're assuming that the person was
10 clothed, depending on how far away the weapon was,
11 there could be or might not be gunpowder residue or
12 something indicative of a gun being fired on this
13 victim's clothes?

14 A Yes, that's correct.

15 Q But the investigators didn't bring any of the
16 clothing that the man had on him when he was shot to
17 you?

18 A Yes, I didn't see any clothes, yes.

19 MR. WELLE: Judge, I have no further
20 questions.

21 THE COURT: Mr. Kinarney?

22 MR. KINARNEY: Judge, could I have an exhibit
23 marked?

24 THE COURT: I think it's DS-3 maybe?

25 THE COURT CLERK: Yes, DS -3.

1 (DS-3, a medical examiner's report, is marked
2 for identification.).

3 CROSS-EXAMINATION BY MR. KINARNEY:

4 Q Good morning, doctor.

5 A Good morning.

6 Q Could you tell, based upon your examination,
7 whether there was more than one shooter?

8 A No.

9 Q So would it be fair to say, then, it could
10 have been one shooter or more than one shooter?

11 A That's correct.

12 Q Okay. You talked about stippling. You
13 indicated that there was no stippling when you examined
14 the body. And you indicated that there would be
15 stippling if the shooter was -- shooter or shooters was
16 between 6 inches and one foot.

17 Is that correct?

18 A Yes. It depends on the ammunition, but the
19 general handguns, usually, yeah.

20 Q So assuming handguns, would it then be a fair
21 statement to say that if the shooter or shooters was
22 greater than a foot away from the victim, there would
23 be no stippling?

24 A Greater than I would say -- sometimes it can be
25 just greater than 6 inches and there might not be

1 stippling, yes.

2 Q Okay. So certainly if it possibly could be
3 greater than 6 inches, then it certainly could be
4 greater than a foot or more, obviously; correct?

5 A Yes.

6 Q You indicated that due to the amount of blood
7 that was in the chest cavity, let's call it half the
8 blood in the body, the heart wouldn't have enough blood
9 to pump.

10 Is that correct?

11 A Yes, that's correct.

12 Q And in that scenario, would the heart then
13 fail?

14 A Yeah, eventually, heart fails.

15 Q Okay. So, theoretically, a person can die
16 due to gunshot wounds, from heart failure caused by
17 those gunshot wounds; correct?

18 A Yes.

19 Q Doctor, I show you what's been marked for
20 identification as DS-3, which purports to be a report
21 of investigation by medical examiner. Okay?

22 A Yes.

23 Q Can you take a look at this document and tell
24 me if you're familiar with it?

25 A Yes.

1 Q In that document, it indicates that the
2 decedent had been shot six times in the history;
3 correct?

4 A Yeah. I think they just counted the number of
5 holes and then --

6 Q Okay.

7 A So it's a mistake, yeah.

8 Q So would it be fair to say that this report
9 was prepared by another individual besides yourself?
10 You didn't prepare this?

11 A Yeah. That's prepared by medical examiner's
12 office. It's called synopsis of circumstances.

13 Q Okay.

14 A And that just help me -- helps me, you know, where
15 to look. That's the main purpose. So, the information
16 is not always correct.

17 Q So when it says, as part of the synopsis of
18 history, and I quote, "The decedent had been shot six
19 times," is what you're saying there were four shots and
20 two exit wounds?

21 A Yes, that's correct.

22 Q Four, plus two, equals six?

23 A Yes, yes.

24 Q Thank you.

25 MR. KINARNEY: Nothing further.

1 THE COURT: Mr. Zager?

2 CROSS-EXAMINATION BY MR. ZAGER:

3 Q Good morning, Dr. Park.

4 A Good morning.

5 Q Dr. Park, did you find evidence in Mr. Roy's
6 chest cavity of a prior shooting?

7 A Yes. There was an old bullet, yes.

8 Q Old bullet in his chest?

9 A In the chest wall, yes.

10 Q Not related to the shooting which caused his
11 death on April 28th?

12 A Yes, that's correct.

13 Q And that would lead you to believe he was
14 shot before?

15 A Yes.

16 Q And during the course of your autopsy, you
17 take blood, urine and stomach samples; correct?

18 A Yes.

19 Q And you have those tested?

20 A Yes.

21 Q And those test results revealed
22 methylamphetamine?

23 MR. HEISLER: Objection, Judge. I would like
24 to be heard at side bar.

25 THE COURT: Okay.

1 (The following is heard at side bar.)

2 THE COURT: Yes, Mr. Heisler?

3 MR. HEISLER: Yes, Judge. I don't see the
4 relevance of getting into the toxicology report. The
5 doctor just said nothing else contributed to this man's
6 death. This is just an attempt to smear the victim.

7 THE COURT: Mr. Zager?

8 MR. ZAGER: Judge, it's certainly relevant
9 for this jury to have a full picture of what happened.
10 There's testimony that three days later -- three days
11 before his killing, the victim was engaging in Ecstasy.
12 There's going to be testimony, if I call that witness,
13 that the victim was doing drugs the night before. And
14 I think it's certainly relevant to the story in Yonkers
15 when his half-brother Halim Shabazz testified to that
16 they were all under the effects of Ecstasy. That may
17 affect the victim's ability to recall, etcetera.

18 THE COURT: The victim's ability recall? The
19 victim has no ability to recall. He's dead.

20 MR. KINARNEY: I think he means about
21 Yonkers. I hope he does.

22 MR. ZAGER: About Yonkers and things that
23 occurred Friday night, Saturday night, and up to that
24 morning.

25 THE COURT: What is it that you're going to

1 get into? You said something about --

2 MR. ZAGER: There's evidence in his stomach
3 of methylamphetamine and amphetamine, if I'm
4 pronouncing it right. And then the only other question
5 would be, Because it's in his stomach, that would
6 indicate recent use? And that's it.

7 THE COURT: All right. Of course, you do
8 understand that all of the testimony seems to indicate
9 that he spent an awful lot of time with your client and
10 was with your client recently?

11 MR. ZAGER: There's two edges to a sword.

12 THE COURT: Yes. Fine. I'll allow it.

13 MR. ZAGER: Thank you.

14 (Side bar is concluded.)

15 Q Doctor, you tested the contents of the
16 stomach and subjected them to a toxicology report?

17 A Yes. I collected specimen. And specimen is sent
18 to a laboratory and tests were done, yes.

19 Q And you're familiar with that toxicology
20 report?

21 A Yes.

22 Q And as a result of those tests, in Mr. Roy's
23 stomach was amphetamine. Is that correct?

24 A Stomach, yes. Stomach contained amphetamine, yes;
25 methylamphetamine, yes.

1 Q Two?

2 A Yes, two different chemicals.

3 Q Amphetamine and methylamphetamine?

4 A Yes.

5 Q And because it's in his stomach, that would
6 be consistent with recent use; correct?

7 A Yes, recent use, yes, that's correct.

8 Q Thank you.

9 A And the urine also had the same drugs, and also
10 other chemicals, yeah, other drugs. These are
11 recreational drugs, not prescription drugs, yes.

12 Q And what were those drugs, sir?

13 A Marijuana, I think he smoked marijuana, and also
14 MDA and MDMA. These are all related drugs.

15 Q MDA and MDMA?

16 A Yes.

17 Q Is the active ingredient in marijuana, or
18 it's something different?

19 A Yes, one can be metabolite, and the other -- these
20 are all related chemicals yes.

21 Q Okay. Thank you, sir.

22 THE COURT: Mr. Somers, any questions?

23 MR. SOMERS: No questions, Judge.

24 THE COURT: Mr. Heisler?

25 MR. HEISLER: Just a couple to follow-up on

1 Mr. Welle's questions about gunshot.

2 REDIRECT EXAMINATION BY MR. HEISLER:

3 Q Doctor, also, stippling on the skin would
4 also depend on how much clothing somebody was wearing.
5 Is that correct?

6 A Yes. Clothing can filter some, yes.

7 Q So if a bullet passes through clothing even
8 at close range, the stippling would -- may not occur on
9 the skin?

10 A Yeah. Depending on how many layers of clothes a
11 person is wearing, yes.

12 MR. HEISLER: Thank you.

13 THE COURT: Anyone else?

14 RECROSS EXAMINATION BY MR. WELLE:

15 Q Doctor, while you may not have stippling, if
16 the gun is close, there may be gunpowder or other
17 residue on the clothing; correct?

18 A Yes, if gun was close.

19 THE COURT: Anyone else?

20 (No response).

21 THE COURT: Okay. Thank you, doctor. You're
22 excused.

23 (The witness is excused.)

24 THE COURT: Mr. Heisler?

25 MR. HEISLER: Judge, at this point, it would

1 probably be appropriate for our mid-morning break.

2 THE COURT: You have to get another witness
3 here?

4 MR. HEISLER: Yes, sir.

5 THE COURT: All right. We'll take a
6 mid-morning break so we can get another witness here.

7 (A short recess was taken.)

8 (S-10, an aerial photograph, and S-11 through
9 S-14, separate photographs, are marked for
10 identification.)

11 (The following is heard in the presence of
12 the jury.)

13 THE COURT: Your next witness, Mr. Heisler?

14 MR. HEISLER: Janet Mullen.

15 THE COURT: Janet Mullen, please?

16 JANET MULLEN, sworn.

17 THE COURT CLERK: Would you state your name,
18 please?

19 THE WITNESS: Janet Mullen.

20 THE COURT CLERK: Thank you.

21 THE COURT: Mr. Heisler?

22 MR. HEISLER: Thank you, Judge.

23 DIRECT EXAMINATION BY MR. HEISLER:

24 Q Good morning, Mrs. Mullen.

25 A Good morning.

1 THE COURT: Excuse me. Please try to keep
2 your voice up so that the jury can hear?

3 THE WITNESS: Okay.

4 Q Where do you live, ma'am?

5 A 199 White Road, Jackson.

6 Q Were you living there on April 28, 2002?

7 A Yes.

8 Q What kind of property do you own there at 199
9 White Road?

10 A Well, we have -- the house is way back off the
11 road. It's in the woods. It's surrounded by the
12 woods.

13 Q And how large is your property?

14 A It's an acre .1, something like that.

15 Q And are there other woods surrounding your
16 property?

17 A Yes.

18 Q Now, let me direct your attention to the
19 afternoon of April 28, 2002, around 2:15 or
20 thereabouts. What were you doing?

21 A I had taken a walk. There's a trail that leads
22 through the woods, around the back and the side of the
23 house, and I usually take a walk as much as I can every
24 day.

25 Q And while you were taking this walk on your

1 property, did you come across anything that struck you
2 as unusual?

3 A Yes. I came across a van that was parked on the
4 trail.

5 Q And what was unusual about that?

6 A It should not have been there.

7 Q Was anybody around it?

8 A No.

9 Q And when you encountered this vehicle, what
10 did you do?

11 A Actually, I looked in the glove compartment. At
12 first, I thought maybe someone was hurt somehow. I
13 hollered into the woods if there was anyone that was
14 hurt. I looked in the glove compartment to see who the
15 owner was. I saw the windshield wipers were going.
16 Then I realized this is not right, so I want home.

17 Q You say "the windshield wipers were going."
18 Was the engine running?

19 A No.

20 Q What, if anything, led you to believe that
21 somebody might have been hurt?

22 A I believe the hatch of the van was open. And just
23 the fact that it was on the property was very
24 questionable.

25 Q Okay. Do you remember what color this

1 vehicle was?

2 A I'm going to say green, a dark -- it was a dark
3 color.

4 Q Okay. And at that point, when you realized
5 that something wasn't right about that, what did you
6 do?

7 A Went home. I told my husband, brought him out to
8 where the van was, and then we called the police.

9 Q Okay. And did the police come?

10 A Yes.

11 Q Let me show you a series of photographs that
12 have been marked. Let's start with S-13. Do you
13 recognize that, ma'am?

14 A Yes.

15 Q What is that?

16 A That's the van as I found it, as I was coming
17 around towards the front on my trail.

18 Q And that's where it was when you found it?

19 A Um-hum, yes.

20 Q And as I look at that, the gas tank door
21 seems to be open. Is that the condition it was in when
22 you found it?

23 A Yes.

24 Q And let me show you S-12. Did you get a look
25 at the front of that vehicle?

1 A Yes. That's how it was.

2 Q When you say, "That's how it was," this
3 picture shows damage --

4 A Yes.

5 Q -- in the right front area.

6 A Yes, quite a bit, yes.

7 Q And did you notice that when you first saw
8 the vehicle?

9 A Yes.

10 Q And S-14, do you recognize that?

11 A Yes.

12 Q What's that?

13 A That's the open gas tank. And at the time, I
14 believe there was some newspaper stuffed into it.

15 MR. HEISLER: Judge, can we move these and
16 show them to the jury, please?

17 THE COURT: S-11, S-12, S-13 and S-14?

18 MR. HEISLER: Yes, Judge.

19 THE COURT: Any objection?

20 MR. ZAGER: No, sir.

21 MR. WELLE: No.

22 MR. KINARNEY: No.

23 MR. SOMERS: No, your Honor.

24 (S-11 through S-14, previously marked for
25 identification, are marked into evidence.)

1 MR. HEISLER: While we're doing that, officer,
2 can we have the easel?

3 (The jury views S-11 through S-14 in
4 evidence.)

5 Q Mrs. Mullen, I'm going to ask you to step
6 down here with me.

7 A Yes.

8 (The witness steps down and walks over to the
9 diagram board.)

10 Q I'm going to ask you to take a look at this
11 aerial photograph that's been marked S-10. Are you
12 familiar with what that shows?

13 A Yes.

14 Q I'm going to ask you to step back so we don't
15 block anybody's view. Just use the pointer, if you
16 would, please?

17 Would you show us your property on this
18 aerial photograph?

19 A In this area here.

20 (The witness indicates.)

21 Q You say your house is set back pretty far
22 from the road?

23 A Yes.

24 Q Do you see your house on there?

25 A It should be right here.

1 Q Okay. But this --

2 A Yeah, but back here more.

3 Q This is your property, right in this area?

4 A Yes.

5 Q Roughly, where was the Jeep?

6 A It would have been over here.

7 Q Now, are there fire trails or trails back in
8 these woods?

9 A Yes.

10 Q Do they all show on here?

11 A Well, one comes off of Maplehurst, and then it
12 comes around this way, and then it also comes off of
13 527.

14 Q And 527 is shown on here as what?

15 A Whitesville Road.

16 Q Okay.

17 MR. HEISLER: I believe that's all I have for
18 Mrs. Mullen, Judge.

19 THE COURT: Thank you.

20 Mrs. Mullen, you may resume the stand, if you
21 would, please?

22 (The witness resumes the witness stand.)

23 THE COURT: Mr. Welle?

24 MR. WELLE: I have no questions, Judge.

25 THE COURT: Mr. Zager?

1 MR. ZAGER: No questions.

2 THE COURT: Mr. Kinarney.

3 MR. KINARNEY: Just one.

4 CROSS-EXAMINATION BY MR. KINARNEY:

5 Q Did you touch anything else besides the glove
6 compartment?

7 A I really don't remember. I'm trying to think.
8 The door I don't think was open, so I probably opened
9 the door.

10 MR. KINARNEY: Thank you.

11 THE COURT: Mr. Somers?

12 MR. SOMERS: Yes, your Honor. I have a few
13 questions.

14 If I could ask to just have that bulletin
15 board there moved?

16 CROSS-EXAMINATION BY MR. SOMERS:

17 Q Mrs. Mullen, I'd like to show you some
18 pictures that you were shown before. They are S-14,
19 S-12 and S-13. I ask you to identify them.

20 A This is the trail that I walk on that goes around
21 the back of my house, and I would be coming up towards
22 the front of the vehicle.

23 Q Okay. And you see this vehicle pictured in
24 S-13?

25 A Yes.

1 Q Is that the way it looked on the day that you
2 found it?

3 A Yes, yes.

4 Q Nothing changed?

5 A No.

6 Q S-12 I'll show you, and I ask you if you can
7 identify that?

8 A Yes, that's the front of the vehicle as I would
9 have approached it from the way I was walking on the
10 trail.

11 Q Is it exactly the way you saw it on that day?

12 A What I remember, yes.

13 Q Nothing has been changed?

14 A No.

15 Q I'll ask you to identify S-14. Can you
16 identify that?

17 A That's when I walked around the back of the
18 vehicle, that's how I found it with the gas cap open.

19 Q Okay. That's exactly the way you found it?

20 A I believe so. There was paper in there. That is
21 what is showing on the picture.

22 Q You indicated that there was newspaper
23 stuffed in there?

24 A Um-hum, yes.

25 Q Is that newspaper shown in this picture?

1 A I don't know. I can't tell.

2 Q I'd like to show you what's been marked S-11,
3 and I ask you to identify that.

4 A That's the gas -- open gas cap.

5 Q Okay. That's exactly the way you saw it on
6 that particular day?

7 A Yes, yes.

8 Q Nothing changed; correct?

9 A Correct.

10 Q No newspaper is shown in that picture, is
11 there?

12 A No.

13 Q Yet, you maintain that this is exactly the
14 way you saw it?

15 A Yes. There was newspaper when I saw it.

16 Q But it isn't shown in the picture, is it?

17 A No.

18 Q Do you know who might have removed that?

19 A No.

20 Q When the police arrived, did anyone remove
21 that newspaper from the tank?

22 A I don't know.

23 Q Can you identify what this is around the gas
24 tank?

25 A No, I cannot.

1 Q And there was nobody around the car; correct?

2 A Correct.

3 Q You didn't tell them, the police, about the
4 newspaper, did you?

5 A I thought I had.

6 MR. SOMERS: Could I have this marked?

7 THE COURT: DI-1 for identification.

8 MR. SOMERS: Sure.

9 (DI-1, a report by Officer Webster, is marked
10 for identification.)

11 Q Mrs. Mullen, I'd like to show you exhibit
12 DI-1. I ask you to look it through and read it to
13 yourself.

14 A (The witness complies.)

15 Q Now, I'll ask you again, Mrs. Mullen, did you
16 tell the police about this newspaper?

17 A Perhaps I didn't. I thought I had.

18 Q You sound unsure.

19 A Yes.

20 Q You're not sure.

21 Certainly that would have been an item that
22 you would have wanted to tell the police about,
23 wouldn't it?

24 A Yes.

25 Q Now, had it been raining that day?

1 A It was misty, overcast. There was probably some
2 rain.

3 Q I'll ask you to review these pictures again,
4 could you?

5 A Yes.

6 Q Are there any -- all of them, if you would?
7 Does the ground appear wet to you?

8 A No, it really does not.

9 Q Are there any puddles?

10 A No, no.

11 Q Any moisture on the car, itself? Rain drops?

12 A No. This part of the trail is usually very dry to
13 begin with. There is a depression on a bend that
14 actually fills with water, but some of this trail does
15 stay fairly dry.

16 Q And the car was fairly dry, too, wasn't it?

17 A Yes.

18 Q The car was dry, wasn't it?

19 A It looks dry, yes.

20 Q Okay.

21 MR. SOMERS: No further questions.

22 THE COURT: Anything further, Mr. Heisler?

23 MR. HEISLER: Just a couple.

24 REDIRECT EXAMINATION BY MR. HEISLER:

25 Q Mrs. Mullen, you said it had rained earlier?

1 A Yes. I thought it was misty and kind of rainy.

2 Q Was it also breezy that day?

3 A Perhaps.

4 Q And you encountered this vehicle sometime in
5 the afternoon. Is that correct?

6 A Yes.

7 MR. HEISLER: That's all I have, Judge.

8 THE COURT: Anything further?

9 (No response).

10 THE COURT: Ma'am, thank you. You're
11 excused.

12 THE WITNESS: Thank you.

13 (The witness is excused.)

14 THE COURT: Mr. Heisler?

15 MR. HEISLER: Allen Mullen.

16 THE COURT: Allen Mullen.

17 ALLEN MULLEN, sworn.

18 THE COURT CLERK: Please state your name?

19 THE WITNESS: Allen Mullen.

20 THE COURT: Mr. Heisler?

21 MR. HEISLER: Thank you, your Honor.

22 DIRECT EXAMINATION BY HEISLER:

23 Q Good morning, Mr. Mullen.

24 A Good morning.

25 Q Mr. Mullen, are you married to Janet Mullen?

- 1 A Pardon?
- 2 Q You're married to Janet Mullen?
- 3 A Yes.
- 4 Q And where do you live, sir?
- 5 A 199 White Road.
- 6 Q And that's in Jackson?
- 7 A In Jackson.
- 8 Q And you lived there in April of 2002?
- 9 A Right.
- 10 Q Let me direct your attention back to April
11 28th, a Sunday afternoon. Did there come a point in
12 time when your wife drew your attention to something on
13 your property or near your property?
- 14 A Right.
- 15 Q Just generally describe for us, what's your
16 property like?
- 17 A Well, it goes back, like, 1800 feet.
- 18 Q From White Road?
- 19 A Right. And it goes all the way back. My daughter
20 is up in the front, and our house is in the back.
- 21 Q Okay. And are there woods in the area of
22 your house?
- 23 A All woods, all woods.
- 24 Q Okay. And what was it that your wife drew
25 your attention to?

1 A She said there was a car back in the woods, off
2 the side of the road, and I went to look at it.

3 Q Okay. And when you got there, did you, too,
4 find this car, as well?

5 A Yeah.

6 Q Do you recall what it was, what kind of car?

7 A I forgot the car.

8 Q Okay. When you got there, what did you find?

9 A Well, the first thing I noticed, the windshield
10 wipers were running, so I got there and turned the key
11 off.

12 Q What position was the key in?

13 A It was in regular park, because the motor must
14 have been running and it run out of gas.

15 Q Did you also notice the gas gage?

16 A No, that was empty.

17 Q Okay.

18 A But the gas cap was off in the back.

19 Q Okay. And the gas gage showed empty?

20 A Right.

21 Q But the key was in the regular on position to
22 have the motor running?

23 A Well, for the wipers to run, the key had to be
24 turned on.

25 Q Okay. And what did you do at that point?

1 A Well, I just looked in the back, I looked in --
2 turned the key off naturally, I walked around it, and
3 then we left and went to the house to call it in.

4 Q Okay. What else did you notice about the car
5 as you walked around it, if anything?

6 A Well, I noticed there was paper in the back and it
7 was burnt.

8 Q Where was that?

9 A In the gas cap.

10 Q And did you notice any damage on the front of
11 the car?

12 A No.

13 Q Let me show you some pictures, sir. This one
14 is marked S-13. Do you recognize that?

15 A Oh, yeah.

16 Q What's that?

17 A That's the car that's parked there.

18 Q Okay. Is that the car you found that day?

19 A Yeah. I thought the deck lid was open, because I
20 looked in the back.

21 Q When you say deck lid, do you mean the
22 tailgate?

23 A Yeah.

24 Q Okay. And let me show you S-14. What does
25 that show?

1 A There's something sticking out of the gas tank
2 now; right? It's damaged a little bit.

3 Q You're seeing damage there?

4 A Yeah.

5 Q Okay. And then let me show you S-12. Do you
6 remember seeing that front-end damage that day?

7 A Now that I look at it, I remember, but the front
8 end was damaged.

9 Q Okay. I'm going to ask you just to come
10 right over here with me, if you would?

11 A (The steps down from the witness stand and walks
12 over to the diagram board.)

13 Q You can stand right over here, and I'll stand
14 here, and we'll see if we can't stand out of
15 everybody's way.

16 Take a look at this aerial photograph here.
17 Do you see White Road on here?

18 A Right.

19 Q Do you recognize your property?

20 A Yeah. It runs all the way back. Ours goes --
21 that's our property line here, and there's my house,
22 and my daughter's house is up there.

23 Q Okay.

24 A That's a pool in there.

25 Q Okay. Hang on one second, and let me get a

1 marker.

2 Would you circle your house and your property
3 on there?

4 A (The witness complies.)

5 Q Okay. Right in the middle of it, if you can,
6 just put an "M," for Mullen.

7 A (The witness complies.)

8 Q And approximately where did you find that
9 Jeep?

10 A Going back, it was on this side of the road. This
11 is probably our property line, and it was probably
12 sitting right here.

13 Q Okay. Mark it "J," for Jeep?

14 A (The witness complies.)

15 Q Okay. Now, how many ways are there to get in
16 to where that Jeep was found that you know of being the
17 property owner?

18 A Well, you could come in from main /PURL /HUFRTS
19 (Maplehurst). You could come in from Faraday Road, and
20 you come up -- there's another passageway here.
21 There's all different fire routes in there.

22 Q Okay.

23 A Half dozen.

24 Q So there's a lot of ways you can get in
25 there?

1 A Yes.

2 Q You can get in there from Maplehurst?

3 A Yes.

4 Q Could you get in from Bellevue?

5 A Well, yeah, you could.

6 Q Okay.

7 A You could.

8 Q Okay. You can take your seat again, if you
9 would, sir?

10 A (The witness resumes the witness stand.)

11 Q From the time your wife came back and got
12 you, and you went out and looked at the car, and you
13 went home and called the police, how much time elapsed?

14 A I'd say around a half hour.

15 Q Okay. Thank you.

16 MR. HEISLER: That's all I have, Judge.

17 THE COURT: Mr. Welle?

18 MR. WELLE: No questions, Judge.

19 THE COURT: Mr. Kinarney?

20 CROSS-EXAMINATION BY MR. KINARNEY:

21 Q Did you -- in addition to turning the key
22 off, you said you looked in the back; correct?

23 A Yeah.

24 Q And you're talking about the inside of the
25 Jeep? When you looked in the back, were you looking

1 inside the Jeep, is what I'm getting at?

2 A I had to open the door to get in to turn the
3 wipers off.

4 Q Okay.

5 A Then I went around the back.

6 Q Did you go inside the Jeep at all?

7 A No.

8 Q Did you touch anything else, besides the key
9 area?

10 A The key area; the door handle, probably.

11 Q Okay. But that's the extent of it?

12 A Yeah.

13 Q Thank you.

14 THE COURT: Mr. Zager?

15 MR. ZAGER: No, sir.

16 THE COURT: Mr. Somers?

17 MR. SOMERS: Yes, your Honor. Thank you.

18 CROSS-EXAMINATION BY MR. SOMERS:

19 Q Mr. Mullen, I'm George Somers. I'd like to
20 show you these pictures. S-13, I'd like you to look at
21 that.

22 Is that the car that you saw?

23 A Right.

24 Q It wasn't raining that day, was it?

25 A I don't think it was raining, 'cause I was working

1 outside, so I doubt it was raining.

2 Q And your wife was walking?

3 A Through the woods.

4 Q You don't know her to go out walking in the
5 rain, do you?

6 A No.

7 Q Okay. Was it breezy that day?

8 A Not especially.

9 Q Okay. I'd like to show you S-11 and ask you
10 if you can identify that?

11 A Yeah, that's where the paper was in the back of
12 it.

13 Q Okay. Now, as you look at this picture, do
14 you see the paper?

15 A Nope.

16 Q Do you know how the --

17 A And the paper was -- in other words, it was burnt,
18 as if they put out the flame, but it was just stuck in
19 there.

20 Q Just stuck in there?

21 A Right.

22 Q But you don't see it in there now?

23 A No.

24 Q And you don't know who removed it?

25 A (No response).

1 Q Did you tell the police about this newspaper?

2 A I'm just trying to think. I told somebody about
3 it. I don't know whether it was the police or the
4 person that came around, the detective.

5 Q Did you see them -- did you see anybody
6 remove that newspaper?

7 A No, no. We left and went back. And when they
8 come in, I started to go back with them, and they said
9 they knew where it was at and they would find it.

10 Q Okay. So when you arrived at the scene, that
11 newspaper was in there; right?

12 A Right, and the cap was open like that.

13 Q Okay.

14 A I don't know whether that looks like it was there.

15 Q Can you tell what that is?

16 A That's why I say, it looks like a burn mark there,
17 residue.

18 Q Okay. It could also be dirt, couldn't it?

19 A Pardon?

20 Q Could it also be dirt?

21 A Well, it's a little different than everything
22 around it.

23 Q Um-hum.

24 A See, it's all clear here, and this is blackish.

25 Q Okay. So when you left this car, the

1 newspaper was in that tank?

2 A Yeah.

3 Q And you indicated the windshield wipers were
4 running?

5 A Right. I noticed that right away, because they
6 were going back and forth.

7 Q And the car was in park?

8 A Pardon me?

9 Q The car was in park?

10 A Alls I did was turn the keys off. I noticed they
11 were going. And when I did it, the windshield wipers
12 stopped.

13 Q Okay. But you didn't know if the car was in
14 park or not?

15 THE COURT: You mean parking gear?

16 MR. SOMERS: Parking gear.

17 A It probably had to be.

18 Q Okay. But you don't know for sure?

19 A No.

20 Q Okay.

21 A Because the keys are on, and you can't do that
22 when they aren't on.

23 Q Thank you.

24 MR. SOMERS: No further question.

25 THE COURT: Anything further, Mr. Heisler?

1 REDIRECT EXAMINATION BY MR. HEISLER:

2 Q Mr. Mullen, do you remember whether it had
3 rained earlier in the day?

4 A I don't remember that, but I was working outside.
5 That's when Jan came to pick me up.

6 Q Okay. Were you home all day?

7 A Yes.

8 Q Do you remember what time you started working
9 outside?

10 A Oh, maybe around 8:30, nine o'clock.

11 Q Do you recall going out at any point during
12 the morning?

13 A No, just down to the mailboxes, that's it.

14 Q Okay. Thank you.

15 MR. HEISLER: That's all I have, Judge.

16 THE COURT: Anything else?

17 (No response).

18 THE COURT: If not, thank you, sir. You're
19 excused.

20 THE WITNESS: Okay.

21 (The witness is excused.)

22 THE COURT: Mr. Heisler?

23 MR. HEISLER: Sergeant Webster.

24 THE COURT: Sergeant Webster?

25 CHARLES D. WEBSTER, III, sworn.

1 THE COURT CLERK: Would you state your name,
2 please?

3 THE WITNESS: Sergeant Charles D. Webster,

4 III.

5 THE COURT: Mr. Heisler?

6 MR. HEISLER: Thank you, Judge.

7 DIRECT EXAMINATION BY MR. HEISLER:

8 Q Sergeant Webster, by whom are you employed?

9 A The Jackson Police Department, sir.

10 Q In what capacity?

11 A I'm a patrol sergeant.

12 Q Were you a police officer in Jackson Township
13 in April of 2002?

14 A Yes, sir, I was. I was a police officer.

15 Q Let me direct your attention specifically to
16 April 28th. Were you dispatched to an area near 199
17 White Road?

18 A Yes.

19 Q Could you tell us what time you were
20 dispatched?

21 A I believe it was 2:43 p.m., sir.

22 Q What were you dispatched to that address for?

23 A For a vehicle that was out in the woods.

24 Q And did you go there?

25 A Yes, sir.

1 Q And when you got there, what did you find?

2 A Well, I met Mr. and Mrs. Mullen who explained that
3 Mrs. Mullen had been walking up --

4 MR. ZAGER: Objection to anything they said,
5 your Honor. Hearsay.

6 THE COURT: Sustained.

7 Q Did you speak to Mr. and Mrs. Mullen?

8 A Yes, sir.

9 Q At some point, did they take you on or near
10 their property?

11 A Yes, sir, in the rear of their property, out in
12 the woods on a trail, where they showed me a vehicle.

13 Q And what was that vehicle?

14 A It was a green Jeep Cherokee four door, I believe
15 a '99.

16 Q And did you look this vehicle over?

17 A Yes, sir, from a distance, because we had had an
18 alert earlier for a vehicle matching that description
19 from Lakewood that was involved in a homicide.

20 Q And did you take steps to determine nobody
21 was around it or in it?

22 A That's correct.

23 Q And then what did you do? Did you approach
24 it?

25 A I approached the vehicle standing off quite a

1 distance, because I didn't want to disturb anything
2 that wasn't disturbed already, and I notified my
3 headquarters after I got all the pertinent information
4 as far as the registration and whatnot.

5 Q And what observations did you make of the
6 condition of the vehicle?

7 A The vehicle was just sitting in the woods. The
8 gas tank had burn -- parts of a wick out of it. The
9 cap was off. The cap was off when I was there. The
10 doors were closed, and that was it.

11 Q Did you notice any front end damage on it?

12 A I don't recall any damage, no, sir.

13 Q Okay. Let me just show you a few photographs
14 here. Start with S-13. Do you recognize that?

15 A Yes, sir. That's it.

16 Q And is that in the position where you first
17 encountered it?

18 A Yes, sir.

19 Q And S-14?

20 A Yes, sir.

21 Q Can you tell us what that is?

22 A That's the gas tank.

23 Q When you first encountered the vehicle, was
24 there something else in that area on the car?

25 A Yes, sir. I don't recall this -- the cap being on

1 it. There was a wick hanging from it that was burned
2 up.

3 Q When you say "a wick," do you know what it
4 was, what material?

5 A I don't recall for sure. I think it was some kind
6 of cloth material. I mean, that's what it normally is.

7 Q Okay. So by the time that photograph was
8 taken, whatever was in there when you first saw it
9 wasn't in the picture?

10 A No. Like I say, mostly -- this, like it is here,
11 like you could see here, was mostly burnt. So I can't
12 tell you for sure exactly what the material was, but it
13 was like that, and it was burned up.

14 Q Okay. And S-12?

15 A Okay. That's the front end. I really -- I don't
16 remember that damage, but it's there.

17 Q Okay. And at some point, did some other
18 agencies come out there?

19 A Yes, sir. We notified Lakewood and Ocean County,
20 our detectives, and we even had a sheriff's officer dog
21 to go from the vehicle to see if they could find any
22 sent.

23 Q When you say you notified Ocean County, what
24 agencies from the county responded?

25 A The Ocean County detectives, as well as the CIU.

1 Q The prosecutor's detectives, and then the
2 Sheriff's Department CIU?

3 A Yes, sir.

4 Q Okay. Just take a quick step back here, if
5 you would, sergeant?

6 A Yes, sir.

7 (The witness steps down and walks over to the
8 diagram board.)

9 Q Do you recognize the Mullens' property on
10 S-10 here?

11 A Yes, sir, right here off White Road. Theirs is
12 the property that goes way back. Their house is back
13 here. There's another house in front of it.

14 Q Okay. Would you point out for us
15 approximately where you found this Jeep in relation to
16 the Mullens' house?

17 A It would be back here in the woods somewhere. I
18 can't say specifically, exactly, but it was in the back
19 here along a trail. There's a lot of trails back here.
20 You can come in from this area. You probably could
21 come in through here. In fact, I know they came in
22 through Faraday and off Maplehurst.

23 Q Okay. In relation to this "J" that was
24 marked here by somebody else, could you tell us where
25 you believe the Jeep was?

1 A I would tell you it was probably up in this area
2 here somewhere.

3 Q Just on top of the "J"?

4 A Yes, sir, somewhat. And I can't be that specific,
5 but it wasn't that far from the house, but it was on
6 the trail up and away from the house.

7 Q Okay. Thank you, sergeant.

8 (The witness resumes the witness stand.)

9 MR. HEISLER: That's all the questions I
10 have, Judge.

11 THE COURT: Mr. Welle?

12 MR. WELLE: No questions, your Honor.

13 THE COURT: Mr. Kinarney?

14 MR. KINARNEY: No question.

15 MR. ZAGER: No questions, your Honor.

16 THE COURT: Mr. Somers?

17 MR. SOMERS: Thank you, your Honor.

18 CROSS-EXAMINATION BY MR. SOMERS:

19 Q Officer, you were the first police officer on
20 the scene; correct?

21 A Myself and Officer Franco, yes, sir.

22 Q When you arrived at the scene and looked at
23 the car, did you see a newspaper, a burned newspaper,
24 anywhere around?

25 A I don't recall it.

1 Q You didn't see a burnt newspaper sticking out
2 of the gas tank?

3 A Again, I don't remember the exact composition.
4 All I remember is seeing a lot of ash. It was evident
5 that it was a wick. I had investigated arsons before.

6 Q What kind of wick was it?

7 A Well, it was burnt. I can't tell you the exact
8 material.

9 Q You mean like a wick you would light on a
10 bomb or --

11 A On a Molotov Cocktail, yes, sir.

12 Q A wick.

13 Did you find any burned cloth?

14 A I didn't get involved in that aspect, sir. I
15 observed it, and I let the people that followed me take
16 care of that. It was not my job to get involved in
17 collecting evidence.

18 Q I see. Did you recover the gas cap?

19 A No, sir.

20 Q Did you look for it?

21 A No, sir.

22 Q Did anyone look for it?

23 A I can't tell you. I don't know. Again, my
24 initial investigation, I observed the vehicle, I called
25 in the registration, and I called the other agencies.

1 It was up to them to follow-up.

2 MR. SOMERS: Thank you. I have no further
3 questions.

4 THE COURT: Anything further Mr. Heisler?

5 MR. HEISLER: No, sir.

6 THE COURT: Thank you, sergeant. You're
7 excused.

8 THE WITNESS: Thank you.

9 (The witness is excused.)

10 THE COURT: Mr. Heisler?

11 MR. HEISLER: Fred Kahane, please?

12 FRED KAHANE, sworn.

13 THE COURT CLERK: Would you state your name,
14 please, and spell your last name, please?

15 THE WITNESS: Fred Kahane, K-a-h-a-n-e.

16 THE COURT CLERK: Thank you.

17 THE COURT: Mr. Heisler?

18 MR. HEISLER: Thank you, your Honor.

19 DIRECT EXAMINATION BY MR. HEISLER:

20 Q Good morning, Mr. Kahane.

21 A Good morning.

22 Q Sir, where do you live?

23 A Jackson.

24 Q And what's your street address?

25 A 59 White Road.

1 Q And how long have you lived at that address?

2 A Twenty-one years.

3 Q Let me direct your attention back to Sunday,
4 April 28th, 2002. Were you at home that day, sir?

5 A Yes, I was.

6 Q And around noon or early afternoon, what were
7 you doing?

8 A I was in a garage. I was putting a floor down in
9 my dining room.

10 Q So you were putting a floor down in your
11 dining room and doing some of the work in the garage?

12 A I was cutting the material in the garage, yes.

13 Q Okay. Did you have your garage door open?

14 A Yes, I did.

15 Q And did there come a point in time when you
16 were approached by someone?

17 A Yes.

18 Q And who was that?

19 A There were two gentlemen walking up the street --
20 my driveway. I have a very long driveway. And they
21 had indicated their car broke down up the street and
22 asked if they could use my phone to call a cab.

23 Q And what did these two gentlemen look like?

24 A They were, I would say, in their mid-twenties --
25 early twenties. One was shorter than the other.

1 Q And what race were they?

2 A They were black.

3 Q And did you let them use your telephone?

4 A Yes, I did.

5 Q And did one of them make a phone call?

6 A Yes, they did.

7 Q And what did they do after they made the

8 phone call?

9 A They initially called, like, the cab company. And
10 then they were talking about whether they wanted to get
11 a hold of a friend, instead, and they made a second
12 phone call and they called that person.

13 Q So they made a second phone call?

14 A Yes.

15 Q And after the second phone call, what did you
16 do, and what did they do?

17 A I told them they could sit out front. I have a
18 porch out front. They sat there together. My dining
19 room was just outside of the window. I went back to
20 work, and they were just waiting for their ride.

21 Q And how long did they wait for their ride?

22 A I'd say about twenty minutes.

23 Q And at some point, did somebody come to pick
24 them up?

25 A Yes, they did.

1 Q Do you know who that was?

2 A No, I don't know the person; but, yes, there was a
3 car that came up the driveway. I believe it was a
4 Grand Am. I have a horseshoe driveway. So it came
5 around the front of the house, and I happened to see
6 the car, itself. I just happened to pick up my head
7 and saw the car.

8 Q You lived in the house for a number of years.
9 Are you familiar with the area around your house?

10 A Yes.

11 MR. HEISLER: Officer, could I have the
12 easel, please?

13 Q I'm going to ask you to step down in a
14 second.

15 Would you step down here, Mr. Kahane, please?

16 A Sure.

17 (The witness steps down and walks over to the
18 diagram board.)

19 Q I'm going to ask you to take a look at this
20 aerial photograph that's been marked S-10, and I ask
21 you to step back so we don't block anybody's view;
22 okay?

23 A Sure.

24 Q Do you recognize what's on that aerial?

25 A Yes.

1 Q Now, locating White Road, could you point out
2 -- use a pointer first, and then I'll ask you to mark
3 it, where your house is.

4 A My house is right there.

5 (The witness indicates.)

6 Q Okay. Would you mark that with a circle, and
7 then put a "K" in the middle of it?

8 A (The witness complies.)

9 Q Now, are you also familiar in this area with
10 the High Point Apartments on Prospect Street, in
11 Lakewood?

12 A Yes.

13 Q Okay. Could you tell us, do you see them on
14 here?

15 A That would be right here.

16 (The witness indicates.)

17 Q Okay. Would you put a big circle around
18 that, please, and mark that, "HP"?

19 A (The witness complies.)

20 Q Approximately how far are the High Point
21 Apartments from your house?

22 A It's 2-and-a-half to 3 miles.

23 Q Okay. Do you know Mr. and Mrs. Mullen who
24 were just in here earlier?

25 A No.

1 Q Okay. Aside from your description that these
2 two individuals that came to your home were black and
3 were in their early twenties, and one was shorter than
4 the other, did you take any particular note of either
5 one of them, their appearances?

6 A No, I did not.

7 Q And would you be able to identify either one
8 of them?

9 A After two years, I would say probably not.

10 Q Okay. Thanks. That's all I have. You can
11 resume your seat, sir.

12 (The witness resumes the witness stand.)

13 THE COURT: Mr. Welle?

14 MR. WELLE: No questions, Judge.

15 THE COURT: Mr. Kinarney?

16 MR. KINARNEY: None, your Honor.

17 THE COURT: Mr. Zager?

18 MR. ZAGER: Yes, please, Judge. Thank you.

19 CROSS-EXAMINATION BY MR. ZAGER:

20 Q Mr. Kahane, what color was the Grand Am?

21 MR. HEISLER: Objection, Judge.

22 I'm thinking Grand Cherokee.

23 THE COURT: Right. It's Grand Am.

24 A It was very dirty. I'm going to say a bluish
25 color, bluish-gray.

1 Q Okay. It wasn't red?

2 A Not that I can recall.

3 MR. ZAGER: Okay. Thanks.

4 THE COURT: Mr. Somers?

5 MR. SOMERS: Yes.

6 CROSS-EXAMINATION BY MR. SOMERS:

7 Q Mr. Kahane, were you ever asked to view a
8 photo array of pictures --

9 A No.

10 Q -- by the police?

11 A No.

12 MR. SOMERS: No further questions.

13 THE COURT: Anything further, Mr. Heisler?

14 MR. HEISLER: No, sir.

15 THE COURT: Thank you, sir. You're excused.

16 (The witness is excused.)

17 THE COURT: Mr. Heisler?

18 MR. HEISLER: Judge, it's too nice a day to
19 be in here any longer, and I'm out of witnesses until
20 1:30.

21 THE COURT: Well, you could be excused until
22 1:30. If you report back to the central jury area at
23 1:30, we'll bring you over here, and hopefully the
24 witnesses that we need will be here at that time. It's
25 moving along rather quickly. I'm not being critical of

1 anybody. I'm happy to see it's moving along so
2 quickly.

3 We'll see you at 1:30.

4 (S-9 and S-10, previously marked for
5 identification, are marked into evidence.)

6 (A luncheon recess was taken.)

7 (The following items are marked for
8 identification:

9 S-15, a diagram of the scene.

10 S-16 through S-38, separate photographs.

11 S-39, a three-part chart.)

12 (The following is heard without the presence
13 of the jury.)

14 THE COURT: Are you ready to proceed,
15 Mr. Heisler?

16 MR. HEISLER: Yes, Judge.

17 Before we call the jury out, I should
18 indicate for the record that as we were breaking this
19 morning, without objection from defense counsel, we
20 moved S-9, the death certificate, and I believe it's
21 S-10 into evidence. Nobody seemed to have a problem
22 with that.

23 THE COURT: I don't either, so it's in
24 evidence.

25 MR. HEISLER: Thank you, Judge.

1 THE COURT: Jury out.

2 (The following is heard in the presence of
3 the jury.)

4 THE COURT: Good afternoon to each of you.

5 Mr. Heisler?

6 MR. HEISLER: Thank you, your Honor.

7 Detective Scott Frey?

8 SCOTT FREY, sworn.

9 THE COURT CLERK: Would you state your name,
10 please, and spell your last name?

11 THE WITNESS: Scott Frey, F-r-e-y.

12 THE COURT CLERK: Thank you.

13 THE COURT: Mr. Heisler?

14 MR. HEISLER: Thank you, your Honor.

15 DIRECT EXAMINATION BY MR. HEISLER:

16 Q Detective Frey, by whom are you employed?

17 A The Ocean County Sheriff's Department.

18 Q And how long have you been a Sheriff's
19 Officer in Ocean County?

20 A About sixteen years.

21 Q And what's your current assignment?

22 A I'm currently assigned to the Criminalistic
23 Investigations Unit.

24 Q How long have you been assigned there?

25 A Ten years.

1 Q And could you tell us what the Sheriff's
2 Department's Criminalistic Investigation Unit does?

3 A It's a crime-scene unit. We respond to crime
4 scenes and process crime scenes for evidence.

5 Q What's your function within the Criminalistic
6 Investigation Unit?

7 A I'm a road detective.

8 Q And your duties include what?

9 A Crime-scene processing.

10 Q You go out to scenes and look for evidence?

11 A Yes, sir.

12 Q And do you have training in that particular
13 area?

14 A Yes, sir.

15 Q And you've been doing that for ten years?

16 A Yes.

17 Q Let me direct your attention specifically to
18 April 28, 2002. Were you dispatched to the High Point
19 Apartments on Prospect Street, in Lakewood?

20 A Yes, sir, I was.

21 Q And what was the nature of your being
22 dispatched there?

23 A It came in as a shooting.

24 Q And when you got to the High Point
25 Apartments, what steps did you take?

1 A Initially, we put up crime-scene tape and secured
2 the scenes that we felt were important.

3 Q And were you briefed by other officers who
4 were present?

5 A Yes.

6 Q So you received some information about what
7 had happened?

8 A Yes, that's correct.

9 Q And once you put up your crime-scene tape and
10 got briefed, what were you looking for?

11 A Any evidence of a shooting: bullets, projectiles,
12 casings, guns.

13 Q And at that point, were you aware that
14 somebody had been shot?

15 A Yes.

16 Q When you inspected the scene, where did you
17 look? What did you look for? And, generally, what did
18 you find?

19 A The scene was comprised of the parking lot on the
20 east side of the building of the apartment complex, the
21 High Point Apartment Complex. In that parking lot, we
22 were looking for -- we had a number of cars along the
23 east side of the parking lot. We had some debris over
24 there, some bottles and cans, etcetera, that we
25 believed may or may not be related. But I found

1 initially, upon my arrival, there was a projectile
2 found in the center of the parking lot.

3 Q A by "projectile," you mean a spent bullet?

4 A Yes.

5 Q And what did you do about that?

6 A We coned it and documented its location.

7 Q When you say "coned it," what do you mean?

8 A We marked it so we could you come back to it
9 later.

10 Q Okay. You put a number near it?

11 A Yes.

12 Q From there, after you put the cone near that
13 spent projectile, what steps did you take in the area?

14 A The first thing we do is we document the scene.
15 We take video, we take still photos, and then we
16 proceed with the evidence collection and search.

17 Q And as you were searching, what were you
18 looking for?

19 A Again, we were looking for any evidence of a
20 shooting.

21 Q Did you examine the cars in the parking lot?

22 A Yes.

23 Q For anything specific?

24 A Bullet holes.

25 Q And as you did that, did you find any cars

1 that had bullet holes in them?

2 A No. We didn't find bullet holes, but we found a
3 bullet ricocheted off the door of a car.

4 Q And that was in just your general look at the
5 scene?

6 A That's correct.

7 Q What was it, the vehicle, that looked like it
8 had a bullet ricocheted off the door?

9 A A green mini-van.

10 Q Where was that parked?

11 A On the east side of the lot.

12 Q Do you recall how many spaces in from the
13 inside of the parking lot?

14 A Not offhand. I can check my report.

15 Q I'll show you a sketch in a few minutes, but
16 what was it that led you to believe this particular
17 mark on this mini-van was ricocheted?

18 A There was no rust mark. There was no rust around
19 the hole for the ricochet. The paint was missing so.
20 It was a fresh mark. We had striations in the metal of
21 the door that were unrested, so we assumed it was a
22 bullet ricochet.

23 Q And did you investigate further looking for a
24 projectile?

25 A Yes.

1 Q Did you locate one?

2 A Yes, we did. Under the passenger's front side, we
3 found the projectile.

4 Q And did you put a cone near that?

5 A Yes.

6 Q You photographed it?

7 A Yes.

8 Q What other steps did you take in examining
9 the area looking for evidence?

10 A A search was conducted along -- there was a grassy
11 berm between the parking lot and the fence on the east
12 side of the parking lot. That whole area was swept for
13 evidence. The only thing we found there, we found some
14 bottles, some juice bottles with some juice in them,
15 that we felt may have been drank by the actors.

16 We found a small gun cylinder that we
17 determined to be from a toy gun. We found a two-way
18 radio in the grassy area, as well, that we felt may
19 have been -- may have been used.

20 Q Were those items marked and collected?

21 A Yes.

22 Q Were they processed for fingerprints?

23 A Yes, they were.

24 Q Did you come up with any results that were
25 evidential in this case?

1 A No, no.

2 Q Did you use any other means to look for
3 evidence in the area?

4 A Yes. We brought in a bomb-sniffing dog which also
5 detects gunpowder. It will find a gun. It will find a
6 bullet. It will find a spent bullet -- or spent
7 casing. So we had him sweep the entire complex and
8 parking lot all the way out to Route 9, which would be
9 about a quarter of a mile, and it came out negative.

10 Q The projectile in the parking lot and
11 projectile underneath the green mini-van were located
12 by somebody actually seeing them?

13 A Yes.

14 Q Not by the dog?

15 A No.

16 Q Let me show you a series of photographs
17 and -- before we do that, let's look at the sketch.
18 This has been marked as S-15. And if you can do it
19 from your seat --

20 MR. HEISLER: Can everybody see this here?
21 I'll get on the other side.

22 Q Could you tell us what this is?

23 A That's the sketch of the parking lot and the
24 street where the crime scene occurred.

25 Q And this was prepared by somebody in your

1 department?

2 MR. WELLE: Excuse me. If the officer could
3 step to the side? We can't see.

4 THE WITNESS: I'm sorry.

5 THE COURT: No, the other officer.

6 THE WITNESS: Oh, sorry.

7 Q This was prepared by a member of your unit?

8 A Yes, Detective Thatcher.

9 Q And, by the way, you weren't the only one
10 from CIU who responded to this scene, were you?

11 A No. No, sir. The whole unit was out.

12 Q Okay. Now looking at this, could you tell me
13 where that green mini-van was parked?

14 A Yes. It was parked -- well --

15 THE COURT: Would you like to get down?

16 THE WITNESS: Can I get up, Judge?

17 THE COURT: Certainly, you can. There's a
18 pointer you can use.

19 A This would be the green mini-van here.

20 (The witness indicates.)

21 Q How many spaces is that in from where the
22 parking spaces start?

23 A Okay. One, two, three, four, five -- eight
24 spaces.

25 Q And I see a series of numbers in different

1 locations. Could you tell us what those indicate or
2 what they represent?

3 A Yes. Number 1 is the spent projectile we found in
4 the center of the parking lot. The other items around
5 here would be bottles and cans and a gas container, an
6 empty gas container. We found some other items in
7 here, but they ended up being of nonevidential value.

8 Number 2 was actually the bullet ricocheted
9 off of the vehicle and the vehicle, itself.

10 Number 6 was marked as the projectile which
11 we recovered underneath the vehicle.

12 Q Okay. Was that 6 or 12?

13 A I'm sorry. I'm looking in the wrong spot. Number
14 12 I believe was a projectile underneath the vehicle.

15 Q Okay. Now, up here, Detective Thatcher also
16 indicated something about footwear?

17 A Yes. In the grassy area between the parking area
18 and the fence, this being the fence that ran along
19 here, a chain-link fence, there was an area of soft
20 sand. And we had some boot prints in this soft sand,
21 so we took photos of the footwear in the sand.

22 Q Was that for purposes of the comparison?

23 A Yes.

24 Q Okay. And -- you can resume your seat,
25 detective.

1 A Okay.

2 (The witness resumes the witness stand.)

3 Q Let me show you a series of photographs
4 starting with S-16. Can you tell the jury what that
5 shows?

6 A Yes, that depicts the parking lot from Prospect
7 speed -- excuse me, from Prospect Street south into the
8 parking lot.

9 Q And does it show the green mini-van?

10 A Yes, it does. Let me see if I can point it out.

11 Q Show it to the jury.

12 A Okay.

13 (The witness indicates.)

14 Q And --

15 A You probably can't see it from there, but . . .

16 Q And in that photograph, you have your
17 crime-scene tape?

18 A Yes.

19 Q Is there also a cone?

20 A Yes, in the center of the parking lot, number 1.

21 Q We're going to move in a little closer with
22 the next photograph. S-17, what does that show?

23 A Again, this is just a close-up of the parking lot
24 from north to south, just a little closer than the last
25 photograph.

1 Q Would you hold that up and show the jury?

2 A Sure.

3 Q So that's as you're walking in from Prospect
4 Street further into the lot, you took a few closer
5 pictures?

6 A That's correct.

7 Q Okay. S-18?

8 A S-18, again, is just a little closer of a shot.
9 Now you're starting to see at the cone, number 1, where
10 the projectile was recovered, and the green mini-van
11 off to your left-hand side.

12 Q S-19?

13 A S-19 is the projectile recovered in the center of
14 the parking lot marked number 1.

15 Q And the projectile in that photograph is
16 immediately to the left of that cone in that
17 photograph?

18 A Correct. It would be right here.

19 (The witness indicates.)

20 MR. HEISLER: Judge, I would like to move
21 these, and distribute them and let the jurors get a
22 closer look.

23 MR. WELLE: No objection.

24 MR. ZAGER: No objection.

25 MR. KINARNEY: No objection.

1 (S-16 through S-19, previously marked for
2 identification, are marked into evidence.)

3 (The jury views S-16 through S-19 in
4 evidence.)

5 Q Now, let me show you another series of
6 photographs, detective. This would be S-22. Could you
7 tell us what that shows?

8 A This the back of the mini-van.

9 Q And that has a temporary registration on it?

10 A Yes, that's correct.

11 Q Did that contain a name?

12 A Yes. It contained the name of Gregory Maples.

13 Q And S-20?

14 A This is just a close-up of the tag.

15 Q Can you make out the name on that?

16 A No, I can't. It looks like it was cut off of the
17 photo when it was enlarged. It may not have been
18 included.

19 Q Okay. S-21?

20 A S-21, again, is a shot of the mini-van. Number 2
21 is marking the small dot on the door that would be the
22 ricocheted bullet. And number 6 I believe -- I can't
23 see it, but it looks like a juice bottle.

24 Q Can you see some other cones there?

25 A They are other items, bottles and etcetera, that

1 we picked up for processing.

2 Q S-23?

3 A S-23, again, is the passenger's side of the
4 mini-van again showing the bullet hole or bullet
5 ricochet.

6 Q S-24?

7 A S-24 is, again, the passenger's front door of the
8 mini-van showing the ricochet mark, and number 11 being
9 a juice bottle underneath the car.

10 Q S-27?

11 A S-27 is a close-up photo of the actual ricochet on
12 the door.

13 Q S-25?

14 A S-25 is a juice bottle marked number 6. Number 12
15 is the projectile which you can see to the right of the
16 cone marker and the fuel can.

17 Q And S-26?

18 A The same photo as the last one, just a little
19 closer up of the projectile.

20 Q And is the projectile a little easier to see
21 in that one?

22 A Yeah.

23 MR. HEISLER: Again, your Honor, I would like
24 to move these and ask if I could publish them to the
25 jury?

1 MR. KINARNEY: No objection.

2 MR. WELLE: No objection.

3 MR. ZAGER: No objection.

4 MR. SOMERS: No objection.

5 THE COURT: In evidence.

6 (S-20 through S-27, previously marked for
7 identification, are marked into evidence.)

8 (The jury views S-20 through S-27 in
9 evidence.

10 Q Now, detective, were all those items marked
11 by the cones collected into evidence?

12 A Yes.

13 Q And was there other evidence outside the
14 parking lot?

15 A Yes, sir.

16 Q And what did that consist of?

17 A We had some of the victim's clothing that the EMS
18 workers took off him while they were trying to
19 resuscitate. There was I believe his jacket and two
20 shirts. They were laying in the middle of Prospect
21 Street light along with a Nextel telephone.

22 Q And is it your understanding that's where the
23 victim was removed from the scene?

24 A Yes.

25 Q Let me show you a few more photographs here.

1 Starting with S-30, can you tell the jury what that
2 shows?

3 A Yes. S-30 is the clothing, the victim's clothing,
4 in the center of the road, and the Nextel not far from
5 it.

6 Q By the way, looking at the condition of the
7 roadway that day, what is the condition?

8 A It was raining. It was wet.

9 THE COURT: Do you mean to tell me the EMS
10 people take that stuff off and leave it there, or were
11 they told to?

12 THE WITNESS: Generally, they were told to,
13 but, more than likely, they would have left it there
14 anyway.

15 Q S-28?

16 A S-28 is just a photo, a close-up photo of the
17 clothing in the street.

18 Q And S-29?

19 A S-29 is a close-up of the cell phone, the Nextel.

20 Q Now, detective, would you tell us how your
21 department documents evidence when it's collected?
22 What's the paperwork procedure for documenting all
23 these types of things?

24 A We use a crime-scene log at the scene, and we'll
25 document each piece of evidence. We'll write down

1 where it came from. And then we'll place the item in a
2 bag, and that bag will be transported back to our
3 headquarters.

4 Q Now, is the overall case given a number?

5 A Yes. It's given an evidence number.

6 Q And then each item is given a separate
7 evidence item number?

8 A Yes.

9 Q And did that happen in this case?

10 A Yes.

11 Q And who's responsible for preparing that?

12 A Whoever is assigned to evidence collection.

13 Q And in this case, was that you?

14 A Yes, it was.

15 Q Let me show you S-39. And just, if you
16 could, just generally tell the jury what this is?

17 A Basically, this is our evidence report. At the
18 top you'll have the normal headings. It's the crime,
19 the victim. This is our case number and the department
20 that's handling the actual scene which would be
21 Lakewood Township. This is Lakewood's case number, and
22 I would be the detective assigned to the case, the
23 detective that the evidence is signed in. And then
24 below here are the, "Tasks." Items 1 through whatever
25 it goes to, those are the item numbers. Each evidence

1 is given an item number.

2 Q When you store these or send them out for
3 processing or bring them back to store them at your
4 facility, are they all stored under the case number
5 that's assigned by your department?

6 A Yes.

7 Q So they would all have this 2002-0291 number
8 on it?

9 A That's correct. That's correct, each piece of
10 evidence would also have the evidence number on it.

11 Q Just by way of example, item number 1, can
12 you read that out loud?

13 A Yes. "Projectile from right lane of parking lot,
14 402 Prospect Street, in front of west side parking
15 space number 2."

16 Q And you've got in parentheses here
17 (ballistics comparison)"?

18 A That is what -- where we assign it to. When a
19 piece of evidence comes in -- let's take, for example,
20 number 2, the vehicle -- the vehicle would be brought
21 in for processing of fingerprints under a search
22 warrant. This would be ballistics comparison, because
23 it's a projectile. It belongs to a gun. We need to
24 match it up to the a gun.

25 Q The vehicle in this case was at Mercury

1 Villager? You're talking about the first thing on your
2 list?

3 A Yes, that's correct.

4 Q Number 16?

5 A 16 is projectile under the front of vehicle number
6 1, parking space number 8.

7 Q That would be that vehicle marked with cone
8 number 12?

9 A That's correct.

10 Q And you have some other things here, the
11 victim's clothing, bottles, and that kind of thing.
12 They all make it on this list if you collect it. Is
13 that right?

14 A Yes.

15 Q How long were you at the scene that
16 particular day, detective, approximately?

17 A About four hours.

18 Q And the next day, on Monday, the 29th, did
19 you attend the autopsy of the victim, Rashon Roy?

20 A Yes, I did.

21 Q And while at that autopsy, did you become
22 familiar with the location of the various gunshot
23 wounds on Mr. Roy?

24 A Yes.

25 Q And at the autopsy, were the projectiles that

1 Dr. Parker recovered from his body turned over to
2 somebody in your office?

3 A Yes, they were.

4 Q Now, the following day, on the 30th, were you
5 involved in a search in the woods in Jackson near White
6 Road?

7 A Yes. I assisted Detective Pozalante with the
8 search in the woods for the weapons.

9 Q And who else was involved in that search?

10 A Members of the Lakewood Police Department and
11 members of the Ocean County Prosecutor's Office.

12 Q And was there anybody else involved?

13 A Yes. One of the defendants was involved.

14 Q Was that Ernesto Barber?

15 A I believe so, yes.

16 Q And what was Mr. Barber's role in this?

17 A He was going to show us where the guns were.

18 Q And was Mr. Barber able to do that?

19 A Yes, he was.

20 Q Let me show you another series of
21 photographs. Starting with S-31, could you tell us
22 what that shows?

23 A Yes. S-31 is a roll of duct tape in a wooded
24 area. We were back in the woods pretty far. It was a
25 pretty wooded area.

1 Q What was the significance of the duct tape?

2 A Mr. Barber told us the guns would be around a roll
3 of duct tape. If we found the roll of duct tape, we
4 were close to the guns.

5 Q Having located the duct tape, were you close
6 to the spot where somebody started to dig?

7 A Yes.

8 Q And were guns discovered?

9 A Yes, they were.

10 Q Let me show you S-32.

11 A S-32 is a picture of a white sock that was buried
12 about an inch underground. Inside the sock was the gun
13 -- one of the guns.

14 Q S-33?

15 A Again, a close-up of the sock with the gun in it.

16 Q S-34?

17 A S-34 is a photo of the sock, and we took the gun
18 out of the sock to illustrate that the gun was in it.

19 Q S-35?

20 A A close-up picture of the last one.

21 Q Now, in that particular photograph, is the
22 cylinder open on that weapon?

23 A Yes, it is.

24 Q And does that contain shell casings?

25 A Yes. It contains four casings.

1 Q And what was the condition of those casings?

2 A They were all fired.

3 Q So there were four empty rounds in that gun?

4 A That's correct.

5 THE COURT: How many rounds did the gun hold?

6 THE WITNESS: Six.

7 Q S-36?

8 A S-36 is a picture of the second gun that was
9 recovered directly under the first one.

10 Q S-37?

11 A Is a close-up of the second gun.

12 Q And S-38?

13 A Again, it's a close-up of the second gun with the
14 cylinder open showing the five rounds that are in the
15 gun. All of them are present. They were all fired.

16 Q And that's a five-shotgun?

17 A It's a five-shot, yes.

18 MR. HEISLER: Again, your Honor, if I could
19 move these into evidence and publish them to the jury?

20 MR. ZAGER: Judge, I would just have a minor
21 objection. I think Mr. Heisler has to clarify the
22 date. He asked the detective if he went the next day,
23 which would have been Monday, the 29th. This was the
24 30th.

25 THE COURT: No, he had gone from the 29th to

1 the 30th, I think.

2 MR. HEISLER: I thought so.

3 Q Detective, this was the 30th?

4 A Yes, the day after the autopsy.

5 THE COURT: The 29th was the autopsy.

6 MR. ZAGER: I see. Thank you.

7 (S-31 through S-38, previously marked for
8 identification, are marked into evidence.)

9 (The jury views S-31 through S-38 in
10 evidence.)

11 Q And, Detective Frey, the guns were collected
12 into evidence at that point?

13 A Yes.

14 Q And let me show you what have been marked as
15 S-2 and S-3 for identification. If you would look at
16 the markings on these boxes, could you tell us, are
17 these items related to this case?

18 A Yes, they are.

19 Q And how do you know that?

20 A I have our evidence number at the top, and our
21 case number, and all the information pertaining to the
22 case.

23 Q Now, over here where it's got the item
24 number, I see the number 77.

25 A That's correct.

1 Q What does that reflect?

2 A That corresponds to the item number, item number
3 77, in evidence.

4 Q And it's your -- on your evidence list as
5 item number 77?

6 A Yes.

7 Q And this is S-2. Okay. And can you tell us
8 what that is?

9 A That is item number 77 which is the Smith and
10 Wesson .38 caliber we recovered in the ground.

11 Q And that was the one that was in the sock?

12 A Yes.

13 Q And there's also an envelope in here with
14 markings on it.

15 A Yes.

16 Q Could you tell us what that is?

17 A The envelope contains the four spent casings that
18 were in the cylinder upon recovery.

19 Q And, S-3, does that contain the same type of
20 markings?

21 A Yes. It has our case number, evidence number, and
22 information pertaining to the case.

23 Q And what's your evidence item number for
24 that?

25 A Item number 76.

1 Q And is item number 76 reflected as this
2 weapon on your evidence list?

3 A Yes, it is.

4 Q Could you tell us what's in this box?

5 A This is an International Arms .38 caliber
6 five-shot revolver.

7 Q There's an envelope in the box here, as well,
8 which contains markings.

9 A These, again, were the spent projectiles that were
10 recovered within the weapon at the scene.

11 Q And these are the guns that were reflected in
12 the photographs that we just looked at?

13 A That's correct.

14 Q Detective Frey, did you bring the victim's
15 clothing with you today?

16 A Yes.

17 Q I'd like to start with that light-blue shirt
18 that was shown in the photographs.

19 A That would be the bigger box.

20 Q Which box?

21 A The bigger box.

22 Q Okay.

23 MR. HEISLER: Judge, I think we'll just mark
24 the box, rather than trying to mark individual items,
25 if that would be okay?

1 THE COURT: Yes.

2 (S-40, a box containing a light-blue shirt,
3 is marked for identification.)

4 Q Detective, would you step down to my table
5 here, please?

6 A Sure.

7 (The witnesses steps down and walks over to
8 counsel table.)

9 Q If you could, could you remove a light-blue
10 shirt from the box?

11 A (The witness complies.)

12 MR. HEISLER: Judge, should we mark the bag?

13 THE COURT: S-40(a).

14 (S-40(a), a bag containing the light-blue
15 shirt, is marked for identification.)

16 A Open it?

17 Q Yes.

18 A (The witness complies.)

19 Q Detective, on that shirt, are there bullet
20 holes that match the bullet wounds sustained by the
21 victim?

22 A Yes.

23 Q And can you show the jury where they are,
24 first off, telling them what you are doing by trying to
25 hold it together?

1 A I'm trying to put it back together. The
2 paramedics cut the shirt off the victim. They cut it
3 right off the center.

4 Q You're going to have to turn around so
5 everybody can see what you're showing them.

6 A We have two bullet holes in the -- it would be the
7 left side of the back of the shirt. It appears, from
8 what these bullet holes look like, anyway, it looks
9 like it was -- maybe the shirt was bunched up and one
10 bullet went through both holes. It doesn't look like
11 there was actually two rounds that went through the
12 shirt. This looks like it was bunched up at the time.

13 MR. WELLE: I'm sorry. If the witness could
14 speak up?

15 THE WITNESS: The bullet holes that
16 correspond here appear very close together, which means
17 the shirt might have been bunched up like that when the
18 bullet went through. We don't believe these are two
19 separate bullet holes. There were no bullets
20 corresponding to the body that would give us that
21 indication.

22 Q But was there one bullet that would give you
23 that indication?

24 A Yes, there was.

25 Q Which bullet is that?

1 A The one in the back.

2 Q In the lower back?

3 A Yes.

4 Q Is there a bullet hole in that shirt which
5 corresponds to the wound in the upper back?

6 A Yes.

7 Q Could you show that to us, please?

8 A This is the wound to the upper back, the hole to
9 the upper back.

10 Q Were there any other bullet holes on that
11 shirt?

12 A Yes, as soon as I can find it.

13 Okay, no, I believe that's it.

14 Q Okay. So the holes in the shirt would
15 correspond to the two wounds in the body?

16 A Yes, the one in the upper and the lower back.

17 Q Okay. If you could put that back and remove
18 the bag containing the victim's jacket, please?

19 THE COURT: While he's doing that, we'll mark
20 it S-41 and S-41(a).

21 (S-41, a box containing a pair of pants and a
22 jacket, and S-41(a), the bag containing a pair of
23 pants, are marked for identification.)

24 A You want the pants?

25 Q No. I want wanted the jacket.

1 A Oh, these are the pants.

2 Q Well, while you have the pants out, let's
3 talk about that.

4 You were aware, from attending the autopsy,
5 that the victim sustained a wound in the left buttock?

6 A Yes.

7 Q And --

8 A You have a bullet hole to the left buttock of the
9 pants.

10 Q Is there another hole on those pants on the
11 front, in the groin area, where the bullet came out of
12 the pants?

13 A No, sir.

14 Q And you're aware that Dr. Park found there
15 was an exit wound with that bullet?

16 A Yes.

17 Q While we're on that subject, detective, you
18 had that bullet marked by cone number 1 just laying in
19 the middle of the parking lot?

20 A Yes.

21 Q Based on the fact there's no exit hole in
22 those pants, but there is an exit wound on the victim,
23 and you have a bullet laying in the middle of the
24 parking lot, could you account for how that bullet got
25 there?

1 A We believe it came out of the groin, ran down the
2 pant leg, and fell in the parking lot while he was
3 running towards the street.

4 Q Okay.

5 (S-41(b), a bag containing a jacket, is
6 marked for identification.)

7 Q S-41(b) is the victim's jacket that was shown
8 in those photographs from the evidence collected in the
9 roadway?

10 A That's correct.

11 Q And have you examined that for bullet holes?

12 A Yes.

13 Q Are there bullet holes that correspond to the
14 wounds on the victim?

15 A Yes.

16 Q Okay. Could you show us, starting with the
17 one in the upper back, could you show the jury that
18 bullet hole?

19 A This is the bullet hole corresponding to the wound
20 in the victim's upper back.

21 Q And he also had a wound to his right flank in
22 his back?

23 A Yes, that would be the wound here.

24 (The witness indicates.)

25 Q There was also a shot through the left

1 forearm?

2 A Yes.

3 Q Is there a corresponding hole in the jacket
4 or holes in the jacket?

5 A We have a through-and-through wound. We have an
6 entrance on one side, and we have the exit on the
7 opposite side. Exit; entrance.

8 Q So those three correspond to wounds that the
9 victim sustained?

10 A Correct.

11 Q Are there any other bullet holes in that
12 jacket?

13 A Yes.

14 Q Could you show us where, please?

15 A Yes. We have a through-and-through bullet hole in
16 the right sleeve, elbow area. We have an entrance, and
17 on the opposite side, an exit. Entrance; exit.

18 Q So, presumably, that would be the shot that
19 went through the clothing but didn't hit the victim?

20 A Yes.

21 Q And are there any other bullet holes on that
22 jacket?

23 A No. Actually, we may have -- no, this is the one
24 we showed in the back. That's it. We have two
25 through-and-throughs in the front, again, not

1 corresponding with anything, the front right side.

2 Q So that's two more holes in the front of the
3 jacket that don't correspond to any bullet wound that
4 was sustained by the victim?

5 A That's correct.

6 Q So that jacket, alone, is showing evidence of
7 five gunshots in the upper torso area and the arms?

8 A Yes.

9 Q And then there's another one in the pants?

10 A Yes.

11 Q The victim was shot four times?

12 A Correct.

13 Q The clothing was hit at least six?

14 A Correct.

15 MR. HEISLER: That's all I have, Judge.

16 THE COURT: Mr. Welle?

17 MR. WELLE: Yes.

18 CROSS-EXAMINATION BY MR. WELLE:

19 Q Officer Frey, did you have anything to do
20 with processing or taking photographs of a green Jeep
21 Cherokee?

22 A No.

23 Q That's someone else in your department?

24 A Yes. It was Detective Pozalante.

25 Q The diagram that you have which has been

1 marked S-15, that's not to scale, is it?

2 A No.

3 Q Is there any reason why it wasn't made to
4 scale?

5 A Not that I know of. I didn't make the sketch.

6 Q Okay. You've shown us a number of
7 photographs, or the prosecutor has chosen to show you a
8 number of photographs. Were many more photographs
9 taken of the scene area than had been shown to you
10 today?

11 A Yes.

12 Q So they are there and available if we want to
13 look at them?

14 A Absolutely.

15 Q Okay. Now, did anybody take any photographs
16 from a home occupied by the Dunns?

17 A Not to my knowledge.

18 Q Do you know who the Dunns are?

19 A No.

20 Q Did anybody take any photographs from
21 apartment number 5 at 402 Prospect Street?

22 A Not to my knowledge.

23 Q Do you know where 402 is?

24 A No.

25 Q Well, here on this diagram, there's a --

- 1 A I'm sorry. I thought you meant apartment 402.
- 2 Q No, apartment number 5, 402.
- 3 402 is what?
- 4 A The apartment complex.
- 5 Q Is that one building in a multi-building
- 6 apartment complex?
- 7 A Yes, it is.
- 8 Q So, we don't see the other buildings on this
- 9 diagram. We just see --
- 10 A No.
- 11 Q Okay. Are you aware that a Hispanic couple
- 12 allegedly saw some aspects of this particular event?
- 13 THE COURT: Testified that they saw
- 14 some . . .
- 15 Q Testified that they saw some aspects of it?
- 16 A No.
- 17 Q So that none of the in-charge investigating
- 18 officers directed you or any other CIU members to go up
- 19 to that apartment and take any photographs showing the
- 20 scene --
- 21 A No.
- 22 Q -- as it could be seen at that time?
- 23 A No, sir.
- 24 Q The clothing that you've shown us, did
- 25 anybody perform any other kind of scientific tests on

1 any of the clothing of the victim that you know about?

2 A Yes.

3 Q And are those other people in your department
4 that we have not heard from yet?

5 A No.

6 Q Not your department, or --

7 A No. The state police performed some tests at our
8 request.

9 Q And this Mr. Barber person knew where to go
10 to find these two guns you talked about?

11 A Yes. He found them.

12 MR. WELLE: I have no further questions,
13 Judge.

14 THE COURT: Mr. Kinarney?

15 MR. KINARNEY: Thank you, Judge.

16 CROSS-EXAMINATION BY MR. KINARNEY:

17 Q Good afternoon, detective.

18 A Good afternoon.

19 Q I just want to refer you to the CIU evidence
20 report where you document all the items that were
21 collected.

22 A Okay.

23 Q In total, ninety-two items were collected;
24 correct?

25 A Hang on a second?

1 Q Sure.

2 A Yes.

3 Q And you've had that document blown up which
4 is now exhibit S-39 for identification; correct?

5 A Right.

6 Q And you testified that in your examination of
7 the area of the parking lot, among other things, of the
8 grassy berm, you found some juice bottles; correct?

9 A That's correct.

10 Q And, as a matter of fact, if you look at your
11 copy of the CIU evidence report, item number 6 is a
12 Frutopia plastic juice bottle; correct?

13 A Yes, sir.

14 Q And that was processed for prints; correct?

15 A Yes, sir.

16 Q And then item number 7 is a Brisk Lemonade
17 plastic bottle; correct?

18 A Yes, sir.

19 Q That was processed for prints; right?

20 A Yes, sir.

21 Q Number 8 is Peach Passion plastic -- strike
22 that -- a Peach Passion plastic juice bottle. That was
23 processed for presents; right?

24 A Yes, sir.

25 Q Item number 15 is a Dole Cranbury Juice

1 plastic juice bottle which was also processed for
2 prints; correct?

3 A Yes, sir.

4 Q Then item number 38 is one 16-ounce bottle of
5 Snapple, correct, Summer Peach?

6 A Yes, sir.

7 Q And that was also processed for prints;
8 right?

9 A Yes, sir.

10 Q 42 is one foam cup from front passenger's
11 floorboard of item 36; correct?

12 A Yes.

13 Q And item 36 is the green Jeep Cherokee;
14 correct?

15 A Yes, sir.

16 Q And item number 38, which was the bottle of
17 Snapple, was processed for prints?

18 A Yes. That was the Summer Peach?

19 Q Right.

20 Number 42, one foam cup from front
21 passenger's floorboard of the green Jeep Cherokee;
22 correct?

23 A Correct, that's what it says.

24 Q That was also processed for prints; right?

25 A I believe so.

1 Q And then, finally, item number 44 is one
2 glass bottle from center console of item number 36,
3 which is the green Jeep Cherokee; correct?

4 A Yes.

5 Q And that was also processed for prints;
6 right?

7 A Yes.

8 Q Now, are you aware of any court order signed
9 by any judge in terms of taking a DNA sample from
10 Mr. Santos, or no?

11 A Not offhand.

12 Q Okay. Do you believe, due to your
13 involvement in a case, if a DNA sample had been taken
14 from Mr. Santos, would you know about it?

15 A I believe so, yes.

16 Q Okay. You've also given testimony concerning
17 the fact that, in your opinion, one of the bullets
18 entered the victim and then, rather than exiting, came
19 down through his pant leg.

20 And that's the spent projectile that ended up
21 in the center of the parking lot; correct?

22 A That's what we believe, yes.

23 Q All right. This is just guesswork though. I
24 mean, you don't have any scientific background where
25 you can say that with certainty, do you?

1 A No.

2 Q As a matter of fact, can you say with
3 scientific certainty that the holes you saw in the
4 victim's clothing are bullet holes?

5 A The ones corresponding to the body, yes.

6 Q Based on your training?

7 A Based on where they are located on the clothing
8 and based on where the bullet holes are in the body.

9 Q Thank you.

10 MR. KINARNEY: Nothing further.

11 THE COURT: Mr. Zager?

12 CROSS-EXAMINATION BY MR. ZAGER:

13 Q Good afternoon, detective.

14 A Good afternoon.

15 Q On your evidence report, item number 4 is a
16 toy plastic revolver; correct?

17 A It's a toy plastic revolver cylinder which would
18 be the round part that the bullets go.

19 Q That's it?

20 A And that's it.

21 Q Okay. It's not a gun?

22 A No.

23 Q Okay. You looked at some photos, and you
24 said that there was a temporary registration on the van
25 in parking spot 8. Is that right?

- 1 A Yes.
- 2 Q And you told us that that van was registered
3 to Gregory Maples?
- 4 A Yes, I believe so.
- 5 Q You told us that from prior knowledge or from
6 looking at the photo with the name on the --
- 7 A Prior knowledge.
- 8 Q Prior knowledge? Okay.
- 9 Did you run a motor vehicle check?
- 10 A You can't. It's a temporary tag.
- 11 Q Okay. So I think what you're trying to tell
12 us is from another photo, the name Gregory Maples is on
13 the temporary tag?
- 14 A I'm not saying it's on a photo. I'm saying this
15 is what I saw when I observed the vehicle.
- 16 Q You saw the name Gregory Maples on the
17 vehicle?
- 18 A On the temporary tag.
- 19 Q On the temporary tag?
- 20 A Yes.
- 21 Q Do we have that temporary tag in evidence?
- 22 A I don't believe we do.
- 23 Q We didn't secure that?
- 24 A I don't believe so.
- 25 Q Okay.

1 A I didn't process the vehicle, so I'm guessing.

2 Q Okay. Let me ask you this. Are you the
3 chief detective for the CIU unit?

4 A Chief detective? No.

5 Q Well, I didn't mean to give you a raise, but
6 for this case?

7 A Yes. I'm the case detective.

8 Q Case detective?

9 A Yes.

10 Q You're in charge of the entire case?

11 A Yes.

12 Q Okay. And what you're telling me now is that
13 you don't know where the temporary registration is?

14 Is that what you're telling me?

15 A I'm telling you that I didn't process the vehicle.
16 I can't be at three different place at one time, so I
17 rely on other detectives to do some work. And whether
18 or not they collected it, I don't know. I can check in
19 evidence for you right now and see if it's entered.

20 Q Okay. You didn't review your file before you
21 came here?

22 A I didn't know I was going to be asked that
23 question, sir.

24 Q Okay. That's okay.

25 Are you aware that on April 28th, 2002, the

1 Sunday of the shooting, that Mr. Maples' sister's
2 boyfriend lived at the High Point apartment building?

3 MR. HEISLER: Objection. Whether he's aware
4 of it or not, Judge, is completely irrelevant to
5 anything. And it's assuming a fact not in evidence
6 anyway.

7 THE COURT: I'll sustain it.

8 MR. ZAGER: Judge, with all due -- would you
9 like to hear my argument before you rule?

10 THE COURT: I'll be glad to hear you at side
11 bar.

12 MR. ZAGER: Thank you.

13 (The following is heard at side bar.)

14 THE COURT: First of all, I sustained the
15 objection, because if he is going to respond, it would
16 necessarily be a hearsay response, unless he lived
17 there, too. If you want to ask him that if he lived
18 there, too, if he knows anybody else that lives there,
19 you can get a foundation that way. But other than
20 that, it's going to be hearsay.

21 MR. ZAGER: Well, I would think, Judge --

22 MR. HEISLER: Judge, I'm pretty sure the
23 detective has no idea. And Mr. Zager putting out this
24 fact of, Are you aware of whether somebody lives in
25 this . . . , he's trying to tell the jury that's a

1 fact.

2 THE COURT: Sure. That's something that will
3 have to come in his case.

4 MR. HEISLER: Yeah.

5 MR. ZAGER: I think I'm entitled to ask the
6 question knowing that there may be somebody on the
7 witness stand who is going to testify he's aware of it.

8 MR. HEISLER: What relevance does it make
9 whether he's aware of it or not?

10 MR. ZAGER: I don't care he's -- he's going
11 to argue to the jury Mr. Maples' van was there, and
12 this whole thing was set up. And I'm certainly allowed
13 to question him --

14 THE COURT: You could produce evidence, "Oh,
15 contraire," as they say; right?

16 MR. ZAGER: I should be allowed to do it
17 through his witnesses, too.

18 THE COURT: Yes, hearsay --

19 MR. ZAGER: Judge --

20 THE COURT: -- unless he talked to Gregory
21 Maples, and Gregory Maples said something.

22 MR. ZAGER: If he's --

23 THE COURT: Even then, it might be
24 self-serving.

25 MR. ZAGER: I'll note my objection.

1 (Side bar is concluded.)

2 Q Did you canvass the neighborhood, as far as
3 the apartments, for witnesses, or you just took care of
4 the evidence?

5 A We do crime-scene investigation. We don't
6 canvass.

7 Q You don't do investigation other than the --

8 A No. The prosecutor's office and the local police
9 handle that.

10 Q Okay. In the course of your crime-scene
11 investigation, was that van secured?

12 A Yes.

13 Q Were the taillights tested?

14 A No.

15 Q Were the brake lights tested?

16 A No.

17 Q Did you determine whether or not the van was
18 operable or inoperable?

19 A I don't believe we did, we did anything with the
20 van.

21 Q You just secured it?

22 A Yes.

23 Q And that van has been sitting for two years
24 where?

25 A Probably out at the prosecutor's impound yard.

1 Q Was it towed there?

2 A Yes.

3 Q So as we sit here today, we don't know if
4 that van engine starts or not?

5 A No.

6 Q We don't know if the taillights work or not?

7 A No.

8 Q And we don't know if the brake lights work?

9 A No.

10 THE COURT: When you say "we," you mean the
11 witness and you?

12 MR. ZAGER: Everyone in this courtroom,
13 Judge. You're right.

14 THE COURT: All right.

15 Q Your Criminal Investigation Unit doesn't know
16 the answer to those questions as we sit here today?

17 A No, no.

18 Q You testified that you found a phone, a
19 Nextel, near the victim's body on Prospect?

20 A That's correct.

21 Q Was that phone processed for fingerprints?

22 A I believe it was.

23 Q Do you know the results?

24 A I can look.

25 No, it was not.

1 Q It was capable of being processed for
2 fingerprints, wasn't it?

3 A Yes, it was.

4 Q During the course of your investigation, do
5 you communicate with the Ocean County Prosecutor's
6 Office investigators?

7 A Yes, sir.

8 Q You guys talk; right?

9 A Absolutely.

10 Q In the course of your investigation, did you
11 learn, in the process of communicating with other law
12 enforcement agencies, that the victim allegedly made a
13 phone call to his girlfriend about an hour before he
14 was shot?

15 Were you aware of that fact?

16 A I don't recall.

17 Q Had you been aware of that fact, would you
18 then have processed the prints on that phone?

19 MR. HEISLER: Objection. It calls for
20 speculation.

21 THE COURT: Sustained.

22 Q Detective Frey, you are the chief
23 investigator, forensic detective, on this case?

24 A I'm the case detective.

25 Q Okay. Case detective from the Sheriff's

1 Department?

2 A That's correct.

3 Q Okay. So, from your department, who does
4 forensic investigation? Are you the chief detective on
5 this case?

6 A Yes, sir.

7 Q Okay. And, as the chief detective, can you
8 tell us if there is any physical evidence or forensic
9 evidence that places Mr. Maples at High Point on April
10 28th, 2002, at 11:00 a.m.?

11 A Only the vehicle.

12 Q Only the vehicle? Okay.

13 And we're talking about the Villager van?

14 A Correct.

15 Q Not the '97 green Jeep Cherokee?

16 A Correct.

17 Q So if I were to ask you that same question
18 and say fingerprints, your answer would be no direct
19 evidence?

20 A I don't know. I don't have the fingerprint report
21 in front of me.

22 Q Okay. How about DNA?

23 A No.

24 Q Do you have anything physical or forensic
25 that places him at the scene on April 28th at 11:00

1 a.m.?

2 A Just his vehicle.

3 Q Just the vehicle.

4 And as you understand the case, that vehicle
5 was parked there and not used with respect to anything
6 that happened on the 28th, 2002?

7 MR. HEISLER: Objection. Speculation.

8 THE COURT: I'll sustain it.

9 You can ask him if he has any evidence, he,
10 himself, personally.

11 MR. ZAGER: I thought that's what I asked,
12 Judge. I'm sorry.

13 THE COURT: No. It was much more broad and
14 all encompassing I think.

15 Q Well, do you have any personal knowledge that
16 that van did anything other than being parked there for
17 an hour a day, a month (sic)?

18 A No, I don't.

19 MR. ZAGER: I have nothing further. Thank
20 you.

21 THE COURT: Mr. Somers, do you have any
22 questions.

23 MR. SOMERS: Yes, your Honor, just a few.

24 CROSS-EXAMINATION BY MR. SOMERS:

25 Q Detective, could you describe the area where

1 the guns were found?

2 A It's a heavily-wooded area. I apologize. I'm not
3 the author of that report, so I can't give you an exact
4 location. Detective Pozalante is actually the author
5 of that report and carried that, but it was a
6 heavily-wooded area.

7 Q Did you actually see Mr. Barber recover the
8 guns?

9 A I was there with him when we found them. He
10 pointed to the area.

11 Q Was it a large area?

12 A It was heavily wooded, yes. It was several acres.

13 Q And Mr. Barber took you to the spot --

14 A Correct.

15 Q -- where the guns were?

16 A Yes.

17 Q Now, you spoke about some duct tape.

18 A Correct.

19 Q Where was the duct tape?

20 A In the area where the guns were located.

21 Q Was that duct tape tested for fingerprints?

22 A I -- again, I didn't author the report. I don't
23 know.

24 Q Thank you.

25 MR. SOMERS: No further questions, your

1 Honor.

2 THE COURT: Anything further, Mr. Heisler?

3 REDIRECT EXAMINATION BY MR. HEISLER:

4 Q Detective, do people leave fingerprints on
5 everything every time they touch something?

6 A No.

7 Q Do they leave DNA behind every time they
8 drink from a bottle and spit on the floor?

9 A Generally, but not always.

10 Q Not always.

11 So if you didn't touch anything out there and
12 didn't leave any fingerprints and didn't sweat all over
13 the witness stand, and there was no forensic evidence
14 that Scott Frey was in courtroom 16 at 3:05 today,
15 would that mean you weren't here?

16 A No.

17 MR. HEISLER: That's all I have, Judge.

18 THE COURT: Any other questions, counsel?

19 MR. WELLE: No, your Honor.

20 MR. ZAGER: Yes, Judge.

21 RECROSS EXAMINATION BY MR. ZAGER:

22 Q Notwithstanding Mr. Heisler's question, the
23 phone that was found of the victim was capable of
24 taking prints; correct?

25 A Yes.

1 MR. ZAGER: Thank you.

2 REDIRECT EXAMINATION BY MR. HEISLER:

3 Q Whose fingerprints would you expect to find
4 on the victim's telephone?

5 A The victim's.

6 MR. HEISLER: Thank you.

7 THE COURT: Anything further?

8 MR. ZAGER: I can go back and forth, Judge
9 but . . .

10 THE COURT: Okay. Thank you. You're
11 excused.

12 (The witness is excused.)

13 THE COURT: Mr. Heisler, are there any
14 further witnesses today?

15 MR. HEISLER: Not today, your Honor.

16 THE COURT: Okay.

17 Well, ladies and gentlemen, it looks like
18 you're going to get an early out on a nice day anyway.
19 Thank you very much for your continued attention.
20 Don't forget, you don't have to come here tomorrow.
21 You just have to be here at 1:30 Monday morning at
22 central jury.

23 I hope you have a pleasant interlude, all of
24 you, and I look forward to seeing you at 1:30 on
25 Monday. Thank you.

1 Everyone remain seated until the jury leaves.

2 (The jury is excused for the day.)

3 THE COURT: All right. With regard to this
4 matter, we're in recess until Monday at 1:30.

5 MR. ZAGER: Thank you, Judge.

6 MR. KINARNEY: Thank you, Judge.

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8 (The hearing was concluded.)

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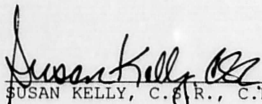
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I, Susan Schaub-Kelly, C.S.R., License Number XIO1154, C.R.R., License Number 30XR00013600, an Official Court Reporter in and for the State of New Jersey, do hereby certify that the foregoing to be prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript to the best of my knowledge and ability.



SUSAN KELLY, C.S.R., C.R.R.
Official Court Reporter
Ocean County Courthouse

Dated: 9-8-04

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY
INDICTMENT NO. 02-9-1247
APPELLATE NO. A-006934-037-1

STATE OF NEW JERSEY, :

Complainant, :

vs. :

RENATO SANTOS, GREGORY MAPLES, :

MARVIN WORTHY and JAMES IRWIN, :

Defendants. :

FILED
APPELLATE DIVISION

OCT 2004

Place: Ocean County Courthouse
120 Hooper Avenue
Toms River, New Jersey

Date: May 10, 2004

Jan F. Lyons
CLERK

B E F O R E:

THE HON. EDWARD J. TURNBACH, J.S.C.

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I N D E X

| | <u>WITNESS</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RE CROSS</u> |
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| 5 | | | | | |
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25

1 (The following is heard in the presence of
2 the jury.)

3 THE COURT: Good afternoon to each of you.
4 It's good to see all of you back again.

5 Mr. Heisler?

6 MR. HEISLER: Thank you, your Honor.

7 Ernesto Barber?

8 ERNESTO BARBER, sworn.

9 THE COURT CLERK: State your name, please?

10 THE WITNESS: Ernesto Barber.

11 THE COURT: Mr. Heisler?

12 MR. HEISLER: Thank you, your Honor.

13 DIRECT EXAMINATION BY MR. HEISLER:

14 Q Mr. Barber, I'm going to ask you to keep your
15 voice up so everybody can hear you.

16 Do you know James Irwin?

17 A Yes.

18 Q And do you know him by another name?

19 A Yes.

20 Q What was that?

21 A Wee-Wee.

22 Q And how long have you known James Irwin?

23 A Five months, six months.

24 Q Okay. Is that prior to April of 2002, you
25 knew him for five or six months?

1 A 2001.

2 Q Okay. Did you know him prior to April 28,
3 2002?

4 A Yeah.

5 Q I'm going to also ask you to wait until I
6 finish my question before you answer. All right?

7 A Yes.

8 Q Through Mr. Irwin, did there come a time when
9 you met Gregory Maples?

10 A Yes.

11 Q Do you recall approximately when that was
12 before or April of 2002?

13 A Off and on, in 2001, going into 2002.

14 Q And did you also meet Marvin Worthy?

15 A Yes.

16 Q When was that?

17 A Around the same time. They was together.

18 Q When you say they were together, who do you
19 mean?

20 A Marvin and Maples.

21 Q Did you know a Gregory Maples by any other
22 name?

23 A Khaleef.

24 Q And around the same time, did you come to
25 know somebody known as Renato Santos?

- 1 A I didn't meet him. I just heard of his name.
- 2 Q Had you ever seen him around?
- 3 A Yeah, a couple of times.
- 4 Q Did you know who he was?
- 5 A Yeah.
- 6 Q Was he ever referred to by any other name?
- 7 A Yes.
- 8 Q What was that?
- 9 A Red.
- 10 Q And in that time frame, leading up to April
- 11 28, 2002, were you engaged in a work-type or
- 12 business-type relationship with James Irwin?
- 13 A Yes.
- 14 Q And did that also include Gregory Maples and
- 15 Marvin Worthy?
- 16 A Yes.
- 17 Q Did it include Renato Santos?
- 18 A Yes.
- 19 Q Who were you most closely associated with?
- 20 A James Irwin.
- 21 Q And who would interact with Marvin Worthy and
- 22 Gregory Maples?
- 23 A James Irwin.
- 24 Q So you would do whatever you did with Irwin,
- 25 and Irwin would deal with them?

1 A Yes.

2 Q Now, let me direct your attention to
3 Saturday, April 27, 2002. Where did you stay that
4 night?

5 A I stayed at James Irwin's house in Coventry.

6 Q In Coventry?

7 A Yes.

8 Q And Coventry is apartments in Lakewood?

9 A Yes.

10 Q And on Sunday morning, what was the first
11 thing that occurred after you got up?

12 A Gregory Maples and Marvin pulled up in a Jeep
13 Cherokee.

14 Q Okay. Did there come a point in time where
15 somebody else, besides Gregory Maples and Marvin,
16 pulled up in a Jeep Cherokee, somebody else was at the
17 property?

18 A Yeah, Debo.

19 Q Okay. And who's is Debo or Debone?

20 A Bennett.

21 Q Steven Bennett?

22 A Yes.

23 Q Was he also associated with you?

24 A Yes.

25 Q Did he get there before or after Gregory

1 Maples and Marvin Worthy came in the green Jeep
2 Cherokee?

3 A He came before.

4 Q So when Maples and Worthy showed up, Bennett
5 was already there?

6 A Yes.

7 Q And was James Irwin still there?

8 A Yes.

9 Q And what occurred when Maples and Worthy got
10 there in the green Jeep?

11 A We went out to the Jeep and got into the Jeep to
12 smoke some weed with them.

13 Q When you say "we," who do you mean?

14 A Me, James Irwin and Bennett.

15 Q By the way, do you see James Irwin in court
16 here today?

17 A No.

18 THE COURT: Stand up so you can look around.

19 A Yeah.

20 Q Would you point him out?

21 A Right there.

22 (The witness points.)

23 THE COURT: The record may indicate he has
24 identified Mr. Irwin.

25 Q And do you see Gregory Maples?

1 A Yeah.

2 Q Could you point him out?

3 A Right there.

4 (The witness points.)

5 THE COURT: The record may so indicate
6 identification.

7 Q And that's the man you know as Khaleef?

8 A Yes.

9 Q Do you see Marvin Worthy?

10 A Yes.

11 Q And where is he?

12 A Right there.

13 (The witness points.)

14 THE COURT: The record will indicate
15 identification.

16 Q And do you see Renato Santos?

17 A Yes.

18 Q Where do you see him?

19 A Right there.

20 THE COURT: The record may indicate
21 identification.

22 Q Okay. So, now you and Bennett and James
23 Irwin get in the Jeep. Who's driving the Jeep?

24 A Maples.

25 Q Where was Marvin Worthy?

- 1 A The passenger's side.
- 2 Q Where did you get in the Jeep?
- 3 A Behind Khaleef, Maples.
- 4 Q So you were somewhere on the left side in the
5 back?
- 6 A Yes.
- 7 Q Did the three of you sit in the back seat?
- 8 A Yes.
- 9 Q And was there any conversation in that Jeep
10 while the five of you were in there?
- 11 A Yes.
- 12 Q And who was holding this conversation?
- 13 A Maples.
- 14 Q Who was he talking to?
- 15 A He was walking to James Irwin.
- 16 Q And what did Maples say to James Irwin while
17 you were there?
- 18 A About an incident that happened in Yonkers.
- 19 Q What did he say about that incident?
- 20 A He said --
- 21 MR. ZAGER: Objection.
- 22 THE COURT: You wish to be heard?
- 23 MR. ZAGER: Judge, hearsay.
- 24 THE COURT: Overruled.
- 25 Q What did Maples say about the incident in

1 Yonkers?

2 A How they went down to Yonkers to pick up
3 something, and they pointed guns to this guy's head,
4 the victim's head.

5 Q At the time, did he use the word "victim"?

6 A No, Jamal.

7 Q He referred to him as Jamal?

8 A Yes.

9 Q And now you know that Jamal is the victim?

10 A Yes.

11 Q You know that now. You didn't know it then?

12 A No.

13 Q And when he said "they," did he say who he
14 was speaking about pointing the guns at this man's
15 head?

16 A Yes.

17 Q Who?

18 A Marvin and Red.

19 Q And did he say anything else?

20 A Yeah. Something about, like, an incident that
21 happened in Philly, that's the reason why they was
22 fighting.

23 Q Did he say what that incident was?

24 A He said that -- he claimed that the victim was
25 trying to run him over in Philly at a club.

1 Q Did he say anything about his relationship
2 with the victim?

3 A Yes.

4 Q What did he say?

5 A He said he couldn't believe that the victim was
6 trying to do that, 'cause he put him on his feet, and
7 now the victim was trying to take over what he's doing.

8 Q Okay. When you say, "He put him on his
9 feet," you mean --

10 A Well, helped him get to where he was at.

11 Q Okay. That's Maples helping the victim get
12 to where he was?

13 A Yes.

14 Q And now the victim was trying to take over?

15 A Yes.

16 Q So he was expressing some disbelief that this
17 Jamal would try to have him run over in Philly?

18 A Yes.

19 Q And during this conversation, did Marvin
20 Worthy say anything?

21 A Yes.

22 Q What did he say?

23 A Speaking how they pointed guns to the victim's
24 head, and the gun jammed.

25 Q Did Marvin Worthy say he or Red actually

1 pulled the trigger?

2 A They both did.

3 Q Now, who said their gun jammed?

4 A Marvin.

5 Q What else did Marvin say?

6 A He said that the gun jammed. And the guy was
7 praying for his life, so they didn't do nothing.

8 Q Okay. Now, he didn't say Red's gun jammed,
9 as well, did he?

10 A No.

11 Q So did he say anything about Red pulling the
12 trigger?

13 A No.

14 Q Now, you're in the car for how long while
15 this conversation is taking place?

16 A I'd say about 20 minutes.

17 Q And what happened from there?

18 A Khaleef looked at his watch and said that he had
19 to go.

20 Q So what happened?

21 A After that, me and Bennett got out of the car and
22 was walking towards -- back to the house.

23 Q Back to James Irwin's house?

24 A Yes.

25 Q Where was James Irwin?

- 1 A He was getting out, but he was still talking.
- 2 Q What happened at that point?
- 3 A When we got in the house, James Irwin was right
4 behind us.
- 5 Q And did Khaleef and Marvin leave?
- 6 A Yes.
- 7 Q And what took place after they left?
- 8 A We spoke a little bit. Bennett was rolling up
9 some more weed. I went upstairs to lay down. And in,
10 like, about 15 minutes, Marvin came by.
- 11 Q And how do you know Marvin came by?
- 12 A Wee-Wee came upstairs and told us we had to go.
- 13 Q And did you go somewhere?
- 14 A Yes.
- 15 Q Where did you go?
- 16 A We went to Winteringham.
- 17 Q Now, you say, "Marvin came by." How did he
18 come by?
- 19 A He came in a beige Accura.
- 20 Q Had you seen that car before?
- 21 A No.
- 22 Q But at this point, he's not in the green
23 Jeep?
- 24 A No.
- 25 Q Is Khaleef anywhere near him?

1 A No.

2 Q So it's Marvin Worthy alone in the beige
3 Accura?

4 A Yes.

5 Q You said you went to Winteringham?

6 A Yes.

7 Q Is that the Winteringham Village Apartments,
8 in Toms River?

9 A Yes.

10 Q Did you know why you were going there?

11 A No.

12 Q And was there any conversation in the car
13 that you recall on the way from Coventry down to
14 Winteringham?

15 A Yeah, speaking about the victim, how he tried --
16 what he tried to do in Philly.

17 Q Okay. And who was saying that?

18 A Marvin.

19 Q Was he saying it to everybody in the car or
20 to one person, in particular?

21 A He was just speaking out loud for everybody to
22 hear.

23 Q And, specifically, what did he say?

24 A He said something about he's not afraid to shoot
25 at anybody that tries him.

1 Q And, now, this is on the way down, I'm
2 talking about, to Winteringham.

3 A Well, basically, we were just talking about
4 Philly, how the guy tried to run him over, run Maples
5 over, in Philly. Then he was speaking a little bit
6 about the Yonkers incident.

7 Q Okay. When you got to Winteringham, what
8 happened?

9 A He got out of the car and went to an apartment
10 building.

11 Q Who did?

12 A Marvin.

13 Q And what did the other three of you do?

14 A We sat in the car.

15 Q And did there come a point in time when
16 Marvin came back?

17 A Yes.

18 Q Did he have anything with him?

19 A Yeah.

20 Q What was it?

21 A It was a gun in socks.

22 Q Okay. What color sock?

23 A White.

24 Q And how do you know it was a gun?

25 A Because he pulled it out and showed it to us.

1 Q Where did that take place?

2 A Inside the Accura.

3 Q And the Accura was still parked at
4 Winteringham when that happened?

5 A Yes.

6 Q And was there any conversation at that point?

7 A Yes. He was showing us about how the gun jammed
8 and how he fixed it.

9 Q And did there come a point in time when you
10 left Winteringham and drove somewhere else?

11 A Yes.

12 Q And while you were driving, was there more
13 conversation?

14 A Debo was talking about dropping him off to
15 Jackson.

16 Q And did Mr. Worthy say anything else?

17 A Yeah. He was talking about he's a person with a
18 gun, and he's not afraid to shoot. And if anybody
19 tries him, he'll try them back.

20 Q "If anybody tries him, he'll try them back"?

21 A Yes.

22 Q Did he say whether the gun was loaded?

23 A Yes.

24 Q What did he say?

25 A He said he had three to four shots in there.

- 1 Q So did you go to Jackson to drop Debo off?
- 2 A Yes.
- 3 Q And, from there, where did you go?
- 4 A After we dropped Debo off, we went to High Point.
- 5 Q And High Point is apartments in Lakewood?
- 6 A Yes.
- 7 Q Do you know what street they're on?
- 8 A Off Prospect.
- 9 Q When you got to High Point, did Marvin Worthy
10 park the car?
- 11 A Yes.
- 12 Q Where does he park the car?
- 13 A The opposite side of Prospect -- the other side of
14 Prospect.
- 15 Q Did he park in a regular parking space?
- 16 A No.
- 17 Q How did he park?
- 18 A He parked in the way that he was, like, going out
19 the entrance.
- 20 Q Let me show you a couple of pictures. Let me
21 show you a picture that was marked S-1 for
22 identification.
- 23 Q Do you recognize the vehicle?
- 24 A Yes.
- 25 Q And what vehicle is that?

1 A That's the Jeep Cherokee.

2 Q Okay. And is that the one you were in
3 earlier in the morning, when Khaleef and Marvin showed
4 up at Coventry?

5 A Yes.

6 Q And let me show you what's been marked as
7 S-17 in evidence. Can you show us on this picture
8 where Marvin parked his car, and how?

9 A Right here on the side.

10 (The witness points.)

11 Q Okay. Could you just hold that up for the
12 jury and show them where he parked the car?

13 A Right here.

14 (The witness points).

15 Q Along the curb?

16 A Yes.

17 Q And he was facing which way?

18 A This way.

19 (The witness points).

20 Q When Marvin parked the car, what did you do?

21 A We got out of the car and went around this
22 building.

23 Q And just so everybody knows the setup in High
24 Point, there are buildings that face the parking lot;
25 right?

1 A Right.

2 Q Are there also apartments that face away from
3 the parking lot, on the other side of the buildings?

4 A Well, there's fences.

5 Q So you went to an apartment?

6 A Yeah.

7 Q Was it one of the ones that faced the parking
8 lot or faced away from the parking lot?

9 A It faced away from the parking lot.

10 Q And what went upon while you were there? Did
11 you go in?

12 A No.

13 Q What did you do?

14 A We stood outside on the porch.

15 Q What was the weather like that morning?

16 A It was drizzling.

17 Q When you say, "We stood outside on the
18 porch," who's there now?

19 A It's me, James, James Irwin, and Marvin, Marvin
20 Worthy.

21 Q Okay. And what were you doing?

22 A We was just standing there. Marvin Worthy was
23 using the phone.

24 Q Okay. Did you overhear any of this
25 conversation?

- 1 A No.
- 2 Q And how long was Marvin Worthy on the phone?
- 3 A He was on the phone for awhile.
- 4 Q And did he stay with you on that porch?
- 5 A No. He was pacing back and forth going to the
6 front parking lot and back.
- 7 Q Okay. So he would walk around the building
8 out to the front parking lot and then come back?
- 9 A Yes.
- 10 Q And the whole time, was he still on the
11 phone?
- 12 A Yes.
- 13 Q Was it a cell phone?
- 14 A Yeah.
- 15 Q And how long did that go on before something
16 else happened?
- 17 A I'm not sure how long it went on. It went on for
18 a little while, and we went to go find where he was at.
19 And when we went out to the front parking lot, that's
20 when we seen Debo coming.
- 21 Q Okay. So you and James Irwin went out front
22 looking for Marvin?
- 23 A Yeah.
- 24 Q And you say you saw Debo coming?
- 25 A Yes.

- 1 Q How did he get back there?
- 2 A He came in a red Pontiac.
- 3 Q Do you know who that belonged to?
- 4 A His girlfriend.
- 5 Q And what happened when he got there?
- 6 A He came and he said he had some weed, and he
7 wanted to smoke it. He was rolling up some weed.
- 8 Q Where did he park?
- 9 A He parked on the other side of the parking lot.
- 10 Q When you say "the other side," was he towards
11 the apartments or towards at the chain-link fence?
- 12 A Towards the apartments.
- 13 Q And after he made this comment about having
14 some weed, what did you do?
- 15 A We went back behind the apartments where we was at
16 before.
- 17 Q And what happened at that point?
- 18 A He sat there and he was finishing rolling up the
19 weed and we was getting ready to smoke. Marvin
20 disappeared again and went into the parking lot.
- 21 Q Was Marvin still on the phone or on the
22 phone, again?
- 23 A Yes, he's still on the phone.
- 24 Q He went to the parking lot?
- 25 A Yeah.

- 1 Q So you're in back now with whom?
- 2 A Me, James Irwin and Bennett.
- 3 Q What happens next?
- 4 A He comes back around and says, "Khaleef is here."
- 5 Q Who does?
- 6 A Marvin.
- 7 Q And says, "Khaleef is here"?
- 8 A Yes.
- 9 Q So what did you do?
- 10 A We went towards the Jeep.
- 11 Q Was this the same Jeep that you had been in
12 earlier that morning?
- 13 A Yes.
- 14 Q Where was it?
- 15 A It was parked by the fence.
- 16 Q And at some point, did you notice a green
17 van?
- 18 A Yes.
- 19 Q Where was the Jeep in relation to that green
20 van?
- 21 A Right next to it.
- 22 Q And when you observed the Jeep -- well, what
23 did you do?
- 24 A We walked -- me and Wee-Wee, James Irwin, walked
25 to the Jeep. As we was walking to the Jeep, Debo was

1 right behind us. As we walked to the Jeep, I seen who
2 was in the Jeep.

3 Q And who was in the Jeep?

4 A Maples, Jama', Marvin jumped into the back seat,
5 and Red.

6 Q Okay. Before Marvin jumped into the back
7 seat, the Jeep was there?

8 A Yes.

9 Q Was it running or not running?

10 A I'm not sure if it was running or not.

11 Q Were the lights or windshield pipers on?

12 A Nah, I don't remember that.

13 Q You don't remember?

14 A No.

15 Q Okay. Where was Gregory Maples in that Jeep?

16 A Driver's side.

17 Q Behind the wheel?

18 A Yeah.

19 Q So he's in the front seat?

20 A Yeah.

21 Q Where was Renato Santos?

22 A Behind him.

23 Q So he's in the back seat on the driver's
24 side?

25 A Yes.

1 Q Now, did you know Jamal before this day?

2 A No.

3 Q Had you ever seen him before?

4 A I've seen him once.

5 Q Okay. So you had seen him around, you
6 recognized him?

7 A Not really. I really seen him from far.

8 Q But you know now that's who it was?

9 A Yes.

10 Q And where was he seated?

11 A In the front, the passenger's side.

12 Q And you said Marvin Worthy got in the Jeep?

13 A Yes.

14 Q And where did he get in the Jeep?

15 A Right behind him.

16 Q And you and Irwin and Bennett are somewhere
17 near the Jeep at this point?

18 A Yeah.

19 Q And what happened?

20 A After I looked in and seen who was in there, I
21 went back with Bennett, 'cause we went back to his car
22 and finished smoking the weed. James Irwin stayed
23 there for awhile. I guess he was talking to him.

24 Q Okay. I'm going to ask you to step over just
25 to this diagram up here, and we'll try to stay out of

1 everybody's way. This is marked S-15.

2 (The witness steps down and walks over to the
3 diagram board.)

4 Could you look this over and get familiar
5 with it?

6 A Yeah.

7 Q Okay. Do you recognize this as the parking
8 lot at High Point?

9 A Yes.

10 Q Okay. Now, if I tell you this is the green
11 van, show us where the Jeep was?

12 A Right there.

13 (The witness points.)

14 Q Okay. Would you mark that with a red "J,"
15 please?

16 A (The witness designates).

17 Q Now, where was Marvin's car parked?

18 A Right here.

19 Q Draw in a little rectangle.

20 A (The witness designates.)

21 Q Where was Bennett's car parked?

22 A Bennett's car? I think it would be right around
23 here.

24 (The witness points).

25 Q Was it not as far into the parking lot as the

1 Jeep?

2 A No.

3 Q Okay. So it's over here somewhere in one of
4 these spaces?

5 A Yeah.

6 Q Just but a "B" right there.

7 A (The witness indicates.)

8 Q Okay. You can resume your seat there.

9 (The witness resumes the witness stand.)

10 So you and Bennett start back towards his
11 car?

12 A Yes.

13 Q And where was James Irwin the at this point
14 in time?

15 A He was still at the Jeep.

16 Q And then what happened from there?

17 A We was there for a couple of seconds, and then
18 James Irwin was coming towards us.

19 Q And did he get to you?

20 A Yeah.

21 Q So you, Bennett and Irwin are standing by
22 Bennett's car, and what happens?

23 A I seen the driver's side of the Jeep door open,
24 and Khaleef ran out.

25 Q Okay. When you say "he ran out," how fast

1 was he moving?

2 A He was moving fast. He wasn't running, like,
3 running, but you could see, like, he was in a rush to
4 get somewhere.

5 Q Okay. Did you see where he went?

6 A Yes.

7 Q Where?

8 A To the beige Accura.

9 Q Did he get into the Accura?

10 A Yes.

11 Q Did you see which side?

12 A The passenger's.

13 Q What's the next thing you saw?

14 A After that, I seen the door behind him open up.

15 Q And who was sitting there?

16 A Red.

17 Q And what did you see next?

18 A He came around, he ran around the car -- around
19 the Jeep.

20 Q Okay. So Red got out of the Jeep?

21 A Yes.

22 Q Ran around where? Around front or around
23 back?

24 A Back.

25 Q Did you see anything?

- 1 A Yeah. He had a gun in his hand with some -- a
2 pair of gloves on.
- 3 Q Which hand did he have the gun in?
- 4 A The right.
- 5 Q What can you tell us about what you saw of
6 the gun?
- 7 A It was silver.
- 8 Q And where did he go when he went around the
9 back of the Jeep?
- 10 A On the other side of the Jeep.
- 11 Q Where to?
- 12 A To the passenger's side.
- 13 Q To which door?
- 14 A Where the victim was at.
- 15 Q And what did you see and what did you hear at
16 that point the?
- 17 A The victim looked like he was trying to come out,
18 but Red stopped him from coming out.
- 19 Q When you say the victim looked like he was
20 trying to come out, what exactly did you see?
- 21 A The door opening.
- 22 Q And what did Red do?
- 23 A He stopped it from opening.
- 24 Q How did he do that?
- 25 A Put his body on it.

1 Q And when Red puts his body on the door, what
2 happens next?

3 A As he did that, he opens the door.

4 Q Who opens the door?

5 A Red.

6 Q So Red pushed the door shut, and then Red
7 opened the door himself?

8 A Yes.

9 Q Where was the victim at that point, could you
10 tell?

11 A No.

12 Q What did you see next?

13 A I seen Red go, like, almost halfway in with the
14 gun first.

15 Q Now, who else was in the car at that point,
16 when Red went in halfway and the victim was still in
17 the car? Was anybody else still in that car?

18 A Yes.

19 Q Who?

20 A Marvin.

21 Q So at this point, Maples is out, Red is out
22 and getting back in, and Marvin is still in the car?

23 A Yes.

24 Q Hadn't gotten out?

25 A No.

1 Q So Red is halfway in the car, and Marvin is
2 still in the car, and what happens?

3 A I heard shots.

4 Q How many shots?

5 A One. And then right after that, I heard another
6 one.

7 Q And what's the next thing that you saw?

8 A I seen Red almost coming back out.

9 Q So he's backing out now the same door he went
10 in?

11 A Yes.

12 Q At some point, do you see the victim again?

13 A Yes. He was on his way out through the driver's
14 side.

15 Q And did he get out of the driver's side?

16 A I heard another shot. And then he fell into the
17 Caravan, he hit his head against the Caravan, and fell.

18 Q So you heard a third shot?

19 A Yes.

20 Q The victim came out the door and hit that,
21 what was it, a mini-van next to it?

22 A Yes.

23 Q He hit his head on it and he fell to the
24 ground?

25 A Right.

1 Q What happened next?

2 A Red was backing out. The victim got up and he
3 started to run, and Red ran right behind him.

4 Q Did there come a point in time, while Red was
5 running behind the victim, that you saw Marvin Worthy
6 again?

7 A Around that same time, Marvin was coming out the
8 side Red came out of, which is behind the driver's
9 side.

10 Q So, earlier Marvin had gotten in the
11 passenger's side, back?

12 A Right.

13 Q And now you're say he's getting out the
14 driver's side, back?

15 A Right.

16 Q This is after Red is already chasing the
17 victim?

18 A Yes.

19 Q Where did Marvin go?

20 A He goes straight to the beige Accura.

21 Q Did you see him get in it?

22 A No.

23 Q What was Red doing while he was chasing the
24 victim?

25 A Shooting.

- 1 Q How many shots did he fire?
- 2 A A lot of shots.
- 3 Q Could you tell us how many?
- 4 A I didn't really count.
- 5 Q Was Red able to catch up to the victim?
- 6 A He was right on him.
- 7 Q How was the victim running?
- 8 A He was kind of staggering.
- 9 Q And did there come a point in time when you
10 saw him fall?
- 11 A Yes.
- 12 Q And while he was running, before he fell, Red
13 was shooting at him?
- 14 A Yes.
- 15 Q And when he fell, what happened?
- 16 A He stood over him and shot him one time.
- 17 Q Who did?
- 18 A Red.
- 19 Q Could you tell where he shot him?
- 20 A Upper back.
- 21 Q What happened at that point?
- 22 A Me and Wee-Wee ran to the Jeep. As that was going
23 on, me and Wee-Wee ran to the Jeep.
- 24 Q What happened to Steven Bennett?
- 25 A He jumped into the Jeep. Oh, you mean Steven

1 Bennett? Steven Bennett ran into the woods.

2 Q Where did the victim fall?

3 A Right near Prospect Road.

4 Q So Bennett ran into the woods, and you and
5 Wee-Wee did what?

6 A With ran into the Jeep.

7 Q And what did you do in the Jeep?

8 A We was about to take off.

9 Q Okay. Why did you go in the Jeep?

10 A Well, I was following -- I was following Irwin. I
11 didn't know where to go while these shots was going
12 off. I didn't want to run where the shots was going
13 off at.

14 Q Okay. So, the shots were now away from you
15 and over with when you ran to the Jeep?

16 A Yeah, yeah.

17 Q Okay. Did you get into the Jeep?

18 A Yes.

19 Q Where did you get into the Jeep?

20 A The passenger's side.

21 Q And where did James Irwin get into the Jeep?

22 A The driver's.

23 Q And what happened at that point?

24 A As we was backing up, we seen Red running into the
25 Accura, and he was trying to get into the Accura, but

1 the Accura took off on him.

2 Q Which way did it take off?

3 A The opposite side.

4 Q Did it go out to Prospect Street?

5 A I'm not sure if it went out to Prospect Street. I
6 know it was on the opposite side of where we was going.

7 Q Okay. So, the Accura left and left Red there
8 in the parking lot?

9 A Yes.

10 Q What happened next?

11 A As that was going, he was trying to come to the
12 Jeep Cherokee. He was trying to get into the Jeep.

13 Q And at this point, is the Jeep moving?

14 A Yeah. We was backing out getting ready to take
15 off.

16 Q And what, if anything, did Red do at that
17 point?

18 A While he was trying to get in, he couldn't get in,
19 so he threw something in the back of the Jeep.

20 Q Do you know what it was that he threw?

21 A Yes.

22 Q What was it?

23 A The gun and the gloves.

24 Q What happened then?

25 A Me and Wee-Wee we took off, and we went to -- we

1 took off by Prospect, where the body was at, we made a
2 left.

3 Q So you made a left out of the apartments onto
4 Prospect and drove right by the victim?

5 A Yes.

6 Q Where did you go?

7 A We ended up in Jackson.

8 Q Were you going any particular place that you
9 know of?

10 A No.

11 Q Okay. So, you end up in Jackson. What
12 happens?

13 A We ended up in the woods and we crashed into a
14 tree.

15 Q Okay. Was the Jeep damaged?

16 A Yeah.

17 Q So what did you do out in the woods after you
18 crashed?

19 A Wee-Wee was wiping down the car a little bit. He
20 got out the Jeep. We got out the Jeep.

21 Q Okay. When you say "wiping down the car,"
22 what was he wiping down?

23 A The steering wheel.

24 Q What was he using to do that?

25 A His handkerchief.

1 Q After he did that, you got out of the car,
2 and what did you do?

3 A I'm trying to find a roll. Wee-Wee goes into the
4 back, the back seat, and grabs the guns and the gloves
5 and some duct tape.

6 Q And what happened after he grabbed those
7 things?

8 A He put the duct tape in his pocket. He put one of
9 the guns in the socks. And then he's trying to stick
10 the handkerchief in the gas tank.

11 Q Did he say anything at that point?

12 A No. I was asking him what he was doing, and he
13 said he was going to torch the car.

14 Q After he said he was going to torch the car,
15 what did he do?

16 A He lit the car up -- lit the handkerchief up. And
17 then we ran in the woods, and then he threw the duct
18 tape and gloves. Then he started digging a hole with
19 the back of his boots.

20 Q Now, did you have any conversation at the
21 car, after he said he was going to torch it?

22 A I told him, I said, "What you doing?"

23 He said, "I'm going to torch the car."

24 I said, "It's not going to torch, 'cause it's
25 drizzling out here."

- 1 Q Did he actually light the handkerchief?
- 2 A Yeah.
- 3 Q What did he use to light the handkerchief?
- 4 A His lighter.
- 5 Q Did it light?
- 6 A I didn't see. I'm not sure if it lit.
- 7 Q So then you're out in the woods. The duct
8 tape and glove gets tossed or gloves get tossed?
- 9 A Yes.
- 10 Q And he starts digging a hole with the back of
11 his boot?
- 12 A Right.
- 13 Q And what happened next?
- 14 A He buries the guns.
- 15 Q Did he do anything with any of the guns
16 before he buried them?
- 17 A Wiped it down.
- 18 Q When the guns were retrieved from the car
19 while you were out in the woods, were any guns in socks
20 at that point?
- 21 A No.
- 22 Q Okay. How did the one gun get back in the
23 sock?
- 24 A Wee-Wee put it back in there.
- 25 Q Was that the same gun that had been in the

1 sock earlier?

2 A Yes.

3 Q Let me show you what's been marked as S-2 for
4 identification. Do you recognize that?

5 A Yes.

6 Q Can you tell the jury where you've seen that
7 before?

8 A That was the gun Marvin had in the socks.

9 Q I'm going to show you S-3. And you're sure
10 this isn't the gun that was in the sock in the first
11 place?

12 A I'm sure.

13 Q So the gun that wound up back in the sock was
14 the gun that was in the sock in the first place?

15 A Yes.

16 Q Let me show you S-35 in evidence. Can you the
17 tell us what that shows?

18 A That's the gun in the socks.

19 Q That's the sock?

20 A Yes.

21 Q After Wee-Wee buried the guns, what did you
22 do, and what did he do?

23 A We was trying to look for a road, 'cause we was in
24 the woods, so we was trying to find the nearest road.

25 Q Ultimately, did you find a road?

1 A Yes.

2 Q And what did you do?

3 A We walked down the road 'till we got to this guy's
4 house. His garage door was open.

5 Q Okay. So, you found a garage door open to a
6 house. And did you see somebody?

7 A Yeah.

8 Q What did you do?

9 A We went to ask him if we could use the phone.

10 Q And did you go ask him?

11 A Yes.

12 Q And what did you tell him?

13 A We asked him -- we told him we had car trouble and
14 we needed to call a cab.

15 Q And did either you or Mr. Irwin actually
16 borrow his phone and call a cab?

17 A Yes.

18 Q And then what happened?

19 A James Irwin called the cab. And then, like, in
20 about two minutes, he decided to call his house.

21 Q And what was the purpose in calling his
22 house?

23 A To ask his girlfriend's sister could she come pick
24 him -- pick us up.

25 Q And did she agree?

1 A Yes.

2 Q And did you wait there at that man's house
3 until she got there?

4 A Yes.

5 Q Did she get there?

6 A Yes.

7 Q And from there, where did you go?

8 A We went to the liquor store.

9 Q And did you make a purchase at the liquor
10 store?

11 A Right.

12 Q Then where did you go?

13 A Back to the house, James Irwin's house.

14 Q And did there come a point in time when you
15 encountered Steven Bennett again?

16 A Yes.

17 Q And where was that, and when was that?

18 A Before we got into the house, we was in the
19 parking lot, and we seen him walking up towards us.

20 Q Was he wearing the same clothes he had been
21 wearing at High Point earlier?

22 A No.

23 Q By the way, from the time you left High Point
24 in the Jeep, went through the woods, had all these
25 other things occur, and walked out, found the man's

1 house and got back to Coventry, about what time was
2 that, do you remember?

3 A No.

4 Q Could you give us an idea how long it took
5 from the shooting until you got back there?

6 A From the shooting 'till back to the woods?

7 Q No, until you got back to James Irwin's
8 house.

9 A I'd say, like, an hour, an hour-and-a-half, a
10 couple hours.

11 Q A couple hours?

12 A Yeah.

13 Q By the way, what does Steven Bennett look
14 like?

15 A Dark skinned, low cut, a little tall, 6 feet,
16 heavy build.

17 Q Does he look anything like Red?

18 A No.

19 Q So now you're back at Irwin's place. Is
20 there any conversation between you and Irwin and
21 Bennett about what went on?

22 A No.

23 Q And did there come a point in time when you
24 left Irwin's?

25 A Yes.

1 Q And how did you leave?

2 A A friend of mines picked me up.

3 Q And what's his name?

4 A Matthew.

5 Q Now, you were -- you were picked up the very
6 next day by the police and questioned; correct?

7 A Right.

8 Q And on that day, did you wind up giving the
9 police a taped statement?

10 A Yes.

11 Q In that statement, did you tell him anything
12 about the trip to Winteringham?

13 A Nah, I don't think so, no.

14 Q Okay. Do you know why not?

15 A Yeah. I was kind of shaken up.

16 Q And was there a particular focus to the
17 questions you were being asked?

18 A Yes.

19 Q And what was that?

20 A High Point.

21 MR. ZAGER: Objection. He doesn't know what
22 the detectives were thinking on their focus on the
23 questioning.

24 MR. HEISLER: Well, I can rephrase it, Judge.

25 THE COURT: Rephrase it.

1 Q What were they questioning you about that
2 day?

3 A The incident that happened at High Point.

4 Q Okay. Did they ask for any background about
5 what you were doing earlier?

6 A No.

7 Q Did you tell them in that statement that
8 Worthy was out of the car when the first shots were
9 fired?

10 A I'm not sure.

11 Q Was he in the car or out of the car when the
12 first shots were fired?

13 A He was in the car when the first shot was fired.

14 Q Did you tell them Red didn't throw anything
15 in the Jeep?

16 A Yes.

17 Q And is that correct?

18 A No.

19 Q Did Red throw something in the Jeep or not?

20 A Yes.

21 Q And what was it?

22 A It was a gun and gloves.

23 Q Now, after you gave that statement that first
24 day, did you offer to do anything?

25 A Yes.

1 Q What was that?

2 A Show them where the guns was at.

3 Q And what did you tell the police about how
4 you would know where the guns were?

5 A Because if we find the duct tape and the gloves.

6 Q And did you go out with the police that
7 night, on April 29th, to look?

8 A Yes.

9 Q Did you find anything that night?

10 A No.

11 Q And what happened that night?

12 A 'Cause it was dark.

13 Q Did you go back --

14 A Yes.

15 Q -- the next day?

16 A Yes.

17 Q So now we're up to April 30th; correct?

18 A Yes.

19 Q And what happened out in the woods on April
20 30th?

21 A We searched, and we was looking for -- that's when
22 I stated about the gloves and the duct tape. One of
23 the officers found that, and I told him it was around
24 that area that it was buried.

25 Q And were you there when the guns were

1 recovered?

2 A Yes.

3 Q By the way, on the 29th, you were arrested
4 for stealing the Jeep; correct?

5 A Yes.

6 Q So when you went back out on the 30th, you
7 were removed from the jail to go out and look?

8 A Yes.

9 Q And then you gave an additional statement a
10 few days later, on May 8th?

11 A Right.

12 Q In that statement, did you describe all these
13 activities at Winteringham village?

14 A Yes.

15 Q Prior to April 28, 2002, had you ever been in
16 that green Jeep Cherokee before?

17 A Nah. I've been in there twice. The first time
18 was when he came -- when Khaleef and Marvin came to
19 Wee-Wee's house, and the second time is when me and
20 Wee-Wee got in it at High Point.

21 Q Okay. But the only time you were in that
22 Jeep is the two times on that day?

23 A Yes.

24 Q So could you estimate for us, Mr. Barber, how
25 many shots you heard at High Point that day?

1 A Probably, like, six shots. I mean, I wasn't
2 really counting the shots. It was a lot of shots.

3 Q Okay. Well, you told us there were three
4 from the time it started until the victim fell out of
5 the Jeep; right?

6 A Right.

7 Q And how many more after that?

8 A Like, three or four.

9 Q And those shots were all fired by Red?

10 A Yes.

11 Q The three or four outside the Jeep?

12 A Yes.

13 Q You don't know who fired in the Jeep?

14 A No.

15 Q Now, you have a criminal record, don't you,
16 sir?

17 A Yes.

18 Q What have you been convicted of?

19 A Burglary and robbery.

20 Q And you've served a 15-year sentence in state
21 prison?

22 A Yes.

23 Q You got paroled?

24 A Yes.

25 Q Were you on parole at the time this happened?

- 1 A No.
- 2 Q How did you come not to be on parole?
- 3 A I completed my parole.
- 4 Q Before this?
- 5 A Yes.
- 6 Q When did you complete your parole?
- 7 A October 16th of 2001.
- 8 Q 2001?
- 9 A Yes.
- 10 Q And in connection with this case, you were
- 11 charged with theft of the Jeep?
- 12 A Yes.
- 13 Q What happened to that charge?
- 14 A Nothing. I pleaded out.
- 15 Q When you say you "pleaded out," what did you
- 16 plead to?
- 17 A I plead guilty to the theft.
- 18 Q And do we have a plea deal or a plea bargain
- 19 in connection with that case?
- 20 A Nah. Sentencing would be up to the Judge.
- 21 Q And what's my part in that plea bargain?
- 22 A Nothing.
- 23 Q Well, is there something I'm supposed to do?
- 24 A No.
- 25 Q Well, at sentencing time, is your cooperation

1 supposed to be made known to the Court?

2 A Yeah. You was going to tell him that I
3 cooperated.

4 Q Okay. So, that's my part of the plea
5 bargain. I tell the Judge that you cooperated?

6 A Yes.

7 Q Is there any maximum number on your sentence?

8 A No.

9 Q So you could be sentenced to the whole five
10 years?

11 A Right.

12 Q And that's your exposure, five years in
13 prison for that charge; right?

14 A Right.

15 Q Now, after this happened, you were arrested
16 in connection with this theft. Did you bail out?

17 A Yes.

18 Q And you picked up some more charges since
19 then, haven't you?

20 A Yes.

21 Q Okay. What are you charged with now?

22 A Possession of a pellet gun, aggravated assault,
23 and terroristic threat.

24 Q And when did that happen?

25 A January 29, 2003.

1 Q And are those charges still pending against
2 you?

3 A Yes.

4 Q Is that why you're in jail right now?

5 A Yes.

6 Q You can't make bail?

7 A No.

8 Q Do we have any agreement, with respect to
9 those charges, in return for your testimony here today?

10 A No.

11 MR. HEISLER: That's all I have, Judge.

12 THE COURT: Mr. Welle?

13 CROSS-EXAMINATION BY MR. WELLE:

14 Q These new charges that you have, when was
15 that offense that you committed, the new charges?

16 A When was it?

17 Q When?

18 A January 29, 2003.

19 Q So it's a year and three months, and those
20 charges have not been disposed of yet?

21 A No.

22 Q And who's responsible for moving those
23 charges, do you know?

24 MR. HEISLER: Objection.

25 Q Do you know who's responsible for getting

1 that case moving?

2 A Never spoke about it.

3 THE COURT: What office, or any individual?

4 Q What office is responsible for moving those
5 charges?

6 A Nah.

7 Q You don't know?

8 A No.

9 Q Do you think it might be the prosecutor who's
10 responsible for moving the calendar and getting your
11 case disposed of?

12 A Yeah.

13 Q But that hasn't happened yet, has it?

14 A No.

15 Q How many adult convictions do you have?

16 A Two.

17 Q Do you know what happens with your third
18 adult conviction?

19 A Yeah.

20 Q And what's that?

21 A Three strikes, felony.

22 Q The possibility you could do something called
23 extended term eligible?

24 A Yes.

25 Q Like, a doubling of your sentence?

1 A Yeah.

2 Q And we're still waiting for your January,
3 2003, charge to be disposed of; correct?

4 A Yes.

5 MR. WELLE: Judge, could I have this piece
6 of paper marked for identification, please?

7 THE COURT: Yes. DW-1.

8 (DW-1, a small diagram, is marked for
9 identification.)

10 Q The prosecutor showed you this particular
11 diagram, and it identifies one building; correct?

12 A Yes.

13 Q All right. Is that the way you remember this
14 High Point area? Is that the way High Point looks?

15 A I'm not sure. I didn't look at it like that
16 dealing with the buildings. I'm not sure.

17 Q Let me show you what I've marked as our
18 Exhibit Number 1. And I have drawn on it two adjoining
19 buildings.

20 And I want to ask you whether what is in red
21 is a better depiction of the buildings that look out
22 onto that lot than what the prosecutor has produced in
23 this particular diagram?

24 A What do you mean? These buildings right here?

25 Q Yeah.

1 A What is the question you asked me again?

2 Q Whether the two rectangles that are adjoined
3 and are in red are a better representation of the two
4 buildings that overlooked the parking lot where this
5 incident occurred, rather than this diagram that the
6 prosecutor has been using.

7 A Well, what I remember, there was buildings going
8 this way, and there was a building like this. There's
9 an entrance where you come out to the parking lot, and
10 we was at this building right here.

11 (The witness points.)

12 Q Does this help you at all --

13 A No.

14 Q -- refresh your recollection --

15 A No.

16 Q -- as to what the buildings are like as they
17 face that particular area?

18 A No.

19 Q Is this the only building, is this the only
20 apartment building at this location?

21 A There's more buildings.

22 Q Oh, there are more buildings, but we don't
23 see them here?

24 A No.

25 Q All right. So you're telling us that at

1 least at some point in time, and we get to this area
2 here, you're putting an Accura where you have that red
3 mark?

4 A Yes.

5 Q An Accura that if people lived here, in this
6 particular building, and were looking out the window,
7 should be able to see; correct?

8 A I don't know. I don't know how the building was.

9 Q Is there or is there not an apartment
10 building somewhat in that position in this area?

11 A There's apartment buildings in that area, yeah.

12 Q All right. And there are windows, are there
13 not?

14 A Yes.

15 Q And there are doors?

16 A Yes.

17 Q And they face the lot?

18 A Yes.

19 Q Okay. And they face the lot so that someone
20 might have been able to see the van?

21 A Yes.

22 Q All right. And someone might have been able
23 to see the Jeep?

24 A Yes.

25 Q And someone might have been able to see this

1 whole area from that particular location?

2 A Yes.

3 Q All right. So there's a possibility, had
4 they seen some of it, they should have seen the Accura;
5 correct?

6 MR. HEISLER: Objection.

7 THE COURT: Sustained. Sustained.

8 Q Mr. Worthy, I take it, as a result of your --
9 excuse me.

10 Mr. Barber, as a result of your involvement
11 if this particular situation, you pled guilty to a
12 theft of a vehicle?

13 A Yes.

14 Q That's it?

15 A Yes.

16 Q So you were never charged with a conspiracy
17 to kill anybody?

18 A No.

19 Q You were never charged with murder?

20 A No.

21 Q Just this one charge of theft?

22 A Yes.

23 Q And in connection with the taking of a jeep,
24 it's Mr. Irwin who did everything; right?

25 A Yes.

1 Q I mean, Mr. Irwin got in the Jeep, and
2 Mr. Irwin drove the Jeep away?

3 A Yes.

4 Q It was Mr. Irwin's decision to go in the
5 direction you went?

6 A Yes.

7 Q It was Mr. Irwin's decision to bury the gun?

8 A Yes.

9 Q I mean, you really didn't do -- have anything
10 to do with it. You were really just along for the
11 ride?

12 A Yes.

13 Q Okay. And you're also telling us that you
14 were in this Jeep on only two occasions; correct?

15 A Correct.

16 Q And those two occasions were on this day?

17 A Yes.

18 Q Okay. And the first time was at some
19 location, and you get into the back of that Jeep seated
20 behind the driver.

21 A Right.

22 Q That's what you told us.

23 A Yes.

24 Q And the second time you get in the Jeep, you
25 get in the passenger front of that Jeep?

1 A Right.

2 Q And those are the only two times you've been
3 close to that Jeep?

4 A Yes.

5 Q Now, you ended up, if I can find this here --
6 you entered a plea to your theft charge on September
7 25th of 2003.

8 Do you remember that?

9 A Yes.

10 Q Do you remember, during the course of your
11 responding to some questions during that day, you were
12 asked, "And during the investigation, you gave three
13 taped statements to members of the prosecutor's office
14 and the Lakewood Police Department?"

15 And you answered, "Yes."

16 Do you remember that?

17 A Yes.

18 Q Okay. And then you -- I think you were
19 either shown them, or you were asked, "Are the
20 transcripts of those statements accurate transcriptions
21 of your taped statements?"

22 And you said, "Yes."

23 Do you remember that?

24 A Yes.

25 Q And then you were asked, "Are these

1 statements truthful?"

2 And you said, "Yes."

3 A Yes.

4 Q Okay. Now, on the 29th of April, 2002, you
5 were picked up by the police, were you not?

6 A Yes.

7 Q And where were you taken?

8 A To Lakewood.

9 Q The Lakewood Police Department.

10 And some police officers talked to you for
11 awhile, didn't they?

12 A Yes.

13 Q Okay. About how -- do you remember what time
14 it was that you got to Lakewood police headquarters?

15 A No.

16 Q You have no idea what time you got there, to
17 Lakewood?

18 A No.

19 Q Today, as you sit here, you have no
20 recollection of whether it was in the morning or the
21 afternoon that you got there?

22 A To Lakewood? To the police department? I'd say,
23 like, a little bit in the afternoon.

24 Q How long did the police speak to you, and who
25 was it who spoke to you at police headquarters?

1 A It was the prosecutor's investigator and the
2 homicide detectives.

3 Q Do you know the names of these individuals?

4 A Fertillio (phonetic) and Finnegan,
5 Detective Finnegan.

6 Q Does the name Frulio mean anything to you?

7 A Prosecutor.

8 Q And a guy named Finnegan spoke to you?

9 A Yes.

10 Q How long was it that they spoke to you?

11 A For awhile.

12 Q Well, like, what's "awhile"? Why don't you
13 tell the jury what a while is that they ended up
14 speaking to you.

15 A I can't pinpoint how many hours we spoke, but it
16 was for awhile.

17 Q Well, was it a number of hours they spoke to
18 you?

19 A Yes.

20 Q And did they tell you things about the
21 investigation that they had been conducting?

22 A Nah. They just asked me questions about the
23 incident.

24 Q They just asked you questions?

25 A Yes.

1 Q And at some point in time, you decided to
2 tell them the truth about things?

3 A Yes.

4 Q Okay. And, in fact, you gave them a twelve
5 or a thirteen or a fourteen-page statement on that day.
6 Do you remember that?

7 A Yes.

8 Q And, of course, you were trying the hardest
9 that you could to be accurate with what you were
10 telling them; correct?

11 A Well -- I was nervous, yes.

12 Q Well, I can understand you being nervous.
13 But you wanted to be as accurate as you could?

14 A Yes.

15 Q Do you remember that?

16 A Yeah.

17 Q Okay. And during the course of your being
18 questioned, do you recall describing for them the
19 activities of what you say were Red and Mr. Worthy in
20 that car -- in that Jeep?

21 Do you remember that?

22 A Yes.

23 Q And do you remember telling them that at one
24 point in time, Red had gotten out of the vehicle?

25 A Yes.

1 Q And did you then remember telling them that
2 Worthy was getting out of the car?

3 A Yes.

4 Q All right. And do you remember telling them
5 that Red went around to the side and was trying to stop
6 this Rashon person from getting out of the car?

7 A Yes.

8 Q Okay. And that Rashon was trying to get out,
9 and you heard a shot; do you remember that?

10 A Yes.

11 Q Okay. And you were trying to tell them the
12 truth at that point in time. And it was clear in your
13 mind what had happened, wasn't it?

14 A Yes.

15 Q Now, today, among other things, you've told
16 us that Mr. Worthy is sitting in the car and he is
17 doing some shooting. That's what you're telling us
18 today.

19 A I never said that.

20 Q You never said that?

21 So Mr. Worthy was not in the car doing any
22 shooting, because, as you said on the 29th, he had
23 gotten out of the car immediately after Red --

24 MR. HEISLER: Objection, Judge.

25 THE COURT: I'll sustain the objection.

1 MR. HEISLER: It's compound.

2 THE COURT: Yes, it's compound.

3 Q On the 29th, you told the police that Red got
4 out, and then Worthy got out; and then Red went around
5 the car, and then there was some struggling and a shot.

6 Do you remember that?

7 A Yes.

8 Q Okay. And that was the truth?

9 A Yes.

10 Q Didn't you also tell the police that you had
11 seen this weapon in Steven Bennett's hand?

12 A Yes.

13 Q And you did, didn't you?

14 A Yes.

15 Q And you were, of course, trying to tell the
16 police the truth when you told them that?

17 A Yes.

18 Q You also said something about Steven Bennett
19 being brought to this location. Was he brought to this
20 location, did you say, or did he drive to this
21 location?

22 A He pulled up in the red Pontiac.

23 Q He pulled up. He was driving the car?

24 A I guess, yeah.

25 Q Well, did you see him do that? I mean --

1 A Well, when we walked around, he was coming out.

2 Q Did you see the red car?

3 A Yes.

4 Q And where was the red car?

5 A It was parked -- I don't know where, I don't know
6 which parking lot -- parking space he was parked in.

7 Q Well, could you like try to -- I mean, in
8 relationship between this area here, where you say
9 there was some van and a Jeep, and this thing you say
10 was the Accura, what was this mark?

11 A I'd say, like, around that area. It was far from
12 the Jeep. It was on the side.

13 Q All right. So someplace between this Jeep
14 and this Accura you say was there?

15 A Yeah.

16 Q And, of course, there's buildings right here.

17 A Right.

18 Q Okay. So what you're telling us is that Debo
19 who you saw who had a gun, or at least you saw that gun
20 in his hands at some time, didn't drive away in the red
21 Pontiac.

22 A I didn't see that.

23 Q He decided that he would, like, run away from
24 this scene? Is that what he did?

25 A That's what he did.

- 1 Q I'm sorry?
- 2 A That's what he did.
- 3 Q And where did he run?
- 4 A In the bushes.
- 5 Q And can you point to how he ran away?
- 6 A Nah.
- 7 Q Well, like, generally, could you tell us?
- 8 Did he run -- did he run to the top of this diagram and
- 9 away?
- 10 A Nah, towards Prospect.
- 11 Q Down --
- 12 A Yeah.
- 13 Q Okay. And did he -- did he cross Prospect?
- 14 A I didn't see all that.
- 15 Q But you saw him running in that direction?
- 16 A In that direction, yeah.
- 17 Q Well, where are you when you're -- you're
- 18 seeing -- go up to this diagram, if you wouldn't mind,
- 19 and tell us, where is it when you're seeing Red, like,
- 20 holding the door or doing something on the passenger's
- 21 side of the Jeep?
- 22 Where are you?
- 23 A Around this area here.
- 24 (The witness indicates.)
- 25 Q Okay. So you would have been near the red --

1 the red car?

2 A We were, like, over here on the sidewalk part.

3 Q But you would have been real close to this
4 Pontiac that you say was there?

5 A Somewhat, yeah. Somewhat close to it, yeah.

6 Q And, of course, Mr. Bennett left the Pontiac
7 there?

8 A Yeah.

9 Q Because he ran away?

10 A Yes.

11 Q Okay. So when the police came there, they
12 should have seen the red Pontiac?

13 A I don't know about that.

14 Q You don't know about that? Okay.

15 Okay. So you're standing over there and this
16 is all going on in front of you; right?

17 A Yeah.

18 Q Did -- did, at any time, Mr. Irwin go over to
19 that car?

20 A Over to what car?

21 Q Over to the Jeep. I'm sorry.

22 Did Mr. Irwin, like, leave you and go over to
23 the Jeep at some point in time?

24 A We went together. But he was, like, in front
25 though, he was in front of me.

1 Q I mean, like, before this shooting starts.

2 A Before the shooting start? Yeah, he went.

3 Q Oh, he did? All right.

4 So he goes over, and you're just standing
5 there watching this whole thing?

6 A No, I went with him.

7 Q Oh, you went with him?

8 A Yeah.

9 Q Well, then, I mean, is there any conversation
10 being on?

11 A Between who? Me and --

12 Q Well, between anybody and anybody.

13 A No.

14 Q Okay. I'm sorry.

15 So, there's no -- there's no conversation at
16 all. You go over there and there's, like, silence? Is
17 that it?

18 A Well, I wasn't conversating.

19 Q You weren't conversating. But could you hear
20 anybody else conversating?

21 A No.

22 Q And what made you decide to leave and go
23 someplace else?

24 A I was following James Irwin.

25 Q All right. So James decided to walk away

1 from the Jeep?

2 A Yeah.

3 Q And you decided to walk away with him?

4 A I walked away already. I just went to the Jeep to
5 see who was in there.

6 Q Okay. And then at some point in time,
7 there's a shot fired. Red is over by the door. And
8 then people start running and --

9 A Well, around what time are you talking about? Are
10 you talking about when we was at the Jeep or --

11 Q Well, was Wee-Wee at the Jeep when the gun
12 started firing?

13 A No.

14 Q Wee-Wee had left?

15 A Yeah.

16 Q And was what, over by you?

17 A Yes.

18 Q Okay. So there's a shot being fired; the guy
19 tries to get out; Red chases him; and you two guys run
20 to the Jeep?

21 A Right.

22 Q As your statements progress -- that is, you
23 gave three statements; correct?

24 A Yes.

25 Q And as we progress from your statement of the

1 29th, and then a short addendum to that of the 30th,
2 and then we finally get to some other interview a few
3 days later, in May, and then we get to a taped
4 statement on the 8th, was it clear to you that the
5 police were hoping that you would tell them in as many
6 ways as possible that Marvin Worthy is the person who
7 had the gun or one of the guns?

8 MR. HEISLER: Objection.

9 A No.

10 THE COURT: I'll sustain the objection.

11 Did the police suggest to you? You can ask
12 that question.

13 Q Did the police suggest to you or tell you or
14 relate to you the fact that Marvin Worthy is the one
15 who was supposed to have the gun and the sock?

16 A No.

17 Q Okay. You said to this jury that in the car,
18 the gun was not in the sock?

19 A Correct.

20 Q Okay. But that's not what you told them on
21 the 8th.

22 MR. HEISLER: Is there a question in there
23 somewhere?

24 THE COURT: Yes.

25 Q Did you tell them that on the 8th, that the

1 gun was out of the sock?

2 A I'm not sure. The 8th?

3 Q Yeah, your last -- your last typed, truthful
4 statement.

5 A Did I tell them? Nah.

6 Q Well, Mr. Frulio asked you, "So the gun that
7 Worthy had, that was in that sock, was not inside the
8 sock when you guys pulled out with the Jeep?"

9 And you said, "You could see the handle
10 sticking out."

11 So the fact is that it was in the sock,
12 wasn't it?

13 A When it was in the Jeep?

14 Q Yeah.

15 A No.

16 Q But that's not what you told him on the 8th.

17 A I don't remember telling him that the handle was
18 sticking out of the socks.

19 MR. WELLE: Your Honor, I don't have any
20 other questions.

21 THE COURT: Mr. Kinarney?

22 MR. KINARNEY: Thank you, Judge.

23 Judge, could I have a few things marked?

24 THE COURT: Certainly.

25 THE COURT: Start off with DS-4.

1 MR. KINARNEY: That's correct, Judge. I have
2 -4, -5, -6 and -7.

3 (The following items are marked for
4 identification:

5 DS-4, Barber's Complaint.

6 DS-5, Barber's first statement.

7 DS-6, Barber's second statement.

8 DS-7, Barber's third statement.)

9 CROSS-EXAMINATION BY MR. KINARNEY:

10 Q Mr. Barber, you were not involved in this
11 shooting in any way you're saying. Is that correct?

12 A Yes.

13 Q However, you did plead guilty to a theft;
14 right?

15 A Yes.

16 Q And that plea was entered in front of his
17 Honor, Judge Turnbach; right?

18 A Yes.

19 Q And you pled guilty I believe on September
20 25, 2003?

21 A Yes.

22 Q So that would have been almost eight months
23 ago; correct?

24 A Yes.

25 Q You have not been sentenced on that matter as

1 of today. Am I correct?

2 A Yes.

3 Q So, essentially, you have to follow your part
4 of the agreement before you get sentenced; correct?

5 A Yes.

6 Q And your part of the agreement is you have to
7 testify in this matter; correct?

8 A Yes.

9 Q And subsequent to that, your cooperation will
10 be brought to the attention of Judge Turnbach; correct?

11 A Yes.

12 Q As a matter of fact, Judge Turnbach is
13 sitting here hearing you testify; correct?

14 A Yes.

15 Q So he knows that you're cooperating with the
16 state, meeting your part of the agreement; correct?

17 A Yes.

18 Q Would it be fair in assuming that you hope
19 that, as a result of your cooperation, you come out
20 ahead in the game? You get as best as you can get;
21 correct?

22 A Yes.

23 Q And, also, you indicated that you have
24 pending charges. And I think you indicated that the
25 pending charges are possession of a pellet gun, a

1 threat, and an aggravated assault; correct?

2 A Yes.

3 Q And that matter -- you haven't even been
4 indicted on that matter as of yet. Am I correct?

5 A Yes.

6 Q You have or you haven't?

7 A Haven't.

8 Q And do you have an attorney for that matter?

9 A Yes.

10 Q And you've spoken to the attorney?

11 A Yes.

12 Q And, as a matter of fact, there is a
13 complaint. Am I right?

14 A Yes.

15 Q And I'm going to show you what's been marked
16 for identification as DS-4. I show you what's been
17 marked for identification as DS-4. And this is the
18 complaint which charges you with the pending charge.

19 Is that correct?

20 A Yes.

21 Q And, as a matter of fact, what you're charged
22 with is possession of a firearm for an unlawful
23 purpose; correct?

24 A Correct.

25 Q And you understand that that is a

1 second-degree crime. Am I correct?

2 A Correct.

3 Q And you understand that, under normal
4 circumstances, a second-degree crime carries a
5 presumption of imprisonment; correct?

6 A Right.

7 Q And it's your understanding that a
8 second-degree crime, the maximum punishment could be
9 ten years; correct?

10 A Correct.

11 Q And you know that because you're eligible for
12 extended term, the theoretical maximum on that charge
13 alone is twenty years, if you got the extended term;
14 correct?

15 A Correct.

16 Q And you are also charged with a third-degree
17 terroristic threat. Am I correct?

18 A Correct.

19 Q And you understand that the maximum
20 punishment for a third-degree crime would be up to five
21 years. Am I correct?

22 A Correct.

23 Q And that if you got the extended term, that
24 could be couple doubled to ten years; correct?

25 A Correct.

1 Q And you're also charged with an aggravated
2 assault by pointing a firearm; correct?

3 A Correct.

4 Q And you understand that that's a
5 fourth-degree crime that carries a maximum of eighteen
6 months?

7 A Correct.

8 Q And you understand that there's a stipulation
9 or a minimum parole ineligibility of nine months for
10 that matter. Am I correct?

11 A Correct.

12 Q And you understand that in all three charges,
13 you could get a stip, in other words, a parole
14 disqualifier of half of the sentence; correct?

15 A Correct.

16 Q So, theoretically, on your pending charges,
17 with the extended term, you're facing a twenty-year
18 sentence on the second-degree charge; correct?

19 A Correct.

20 Q You're facing a ten-year sentence on the
21 third-degree charge; correct?

22 A Correct.

23 Q You understand on the fourth-degree charge,
24 you can't get an extended term; correct?

25 A Correct.

1 Q But you can get eighteen months with nine
2 months without parole; correct?

3 A Correct.

4 Q So you're facing a lot of time on the pending
5 charges. Am I correct?

6 A Correct.

7 Q And obviously -- and you can correct me if
8 I'm wrong -- it would be a fair statement to say that
9 you hope that you come out as best as you can on those
10 pending charges.

11 Am I right?

12 A Correct.

13 Q And you're hoping that your cooperation by
14 testifying will help you in that matter. Am I correct?

15 A Correct.

16 Q Now, one of the things you testified to was
17 that when Red, Mr. Santos, shot the victim in this
18 case, Mr. Roy, he stood over him and shot him. And I
19 believe you said he shot him in the upper back;
20 correct?

21 A Correct.

22 Q He was laying on the ground; correct?

23 A Correct.

24 Q That's pretty -- that's a pretty important
25 thing; right?

- 1 A Yeah.
- 2 Q That would stick in your memory, wouldn't it?
- 3 A Yeah.
- 4 Q It's a pretty cold act --
- 5 A Yeah.
- 6 Q -- isn't it?
- 7 A Yeah.
- 8 Q Anywhere in your three statements, did you
9 ever tell any police officer that Mr. Santos stood over
10 this man and shot him in the back?
- 11 A No.
- 12 Q As a matter of fact, you gave different
13 versions with each statement. Am I correct?
- 14 A Yes.
- 15 Q You said different things; correct?
- 16 A Yes.
- 17 Q And you said things that were inconsistent
18 with what you had said earlier. Am I correct?
- 19 A Yes.
- 20 Q You indicated you were nervous?
- 21 A Yes.
- 22 Q Okay. Did the nervousness leave you between
23 the statements?
- 24 A Yeah.
- 25 Q So you were nervous when you gave your first

1 statement which was on the 29th; correct?

2 A Correct.

3 Q And what you're saying is by the time you
4 gave your last statement, which was on the 8th of May,
5 you were not nervous anymore?

6 A I was still nervous, but not like the 29th.

7 Q I believe you indicated on the first
8 statement, the 29th, that you had gotten to the police
9 station around noontime?

10 A Yes.

11 Q You spoke to the police for several hours;
12 correct?

13 A Correct.

14 Q I want to show you what's been marked DS-5
15 for identification. I'd like you to look at this, sir,
16 and tell me if you can identify it?

17 Would this be the first statement that was
18 taken?

19 A Yes.

20 Q Okay. And, as a matter of fact, it indicates
21 that the statement commenced, began, on -- at 6:14
22 p.m.; correct?

23 A Right.

24 Q And the statement ended at 6:34 p.m.;
25 correct?

1 A Correct.

2 Q And it's a thirteen-page statement. Am I
3 right?

4 A Right.

5 Q So using your recollection, you were in the
6 police station a little bit over six hours by the time
7 you finally started making your statement; correct?

8 A Correct.

9 Q During this six-some-hour period, how much of
10 that period were you speaking to the police?

11 A Could you repeat that question?

12 Q During this about six-hour period, before
13 this statement was taken, how much of that time were
14 you speaking to the police?

15 A I'm not sure about the time.

16 Q Would it be half the time?

17 A Yeah.

18 Q Were you moved from room to room, or did you
19 stay in the same room?

20 A Stayed in the same room.

21 Q If you had to go to the bathroom, did they
22 let you go to the bathroom?

23 A Yes.

24 Q You were a suspect for some crime at that
25 point in time; correct?

- 1 A For something, yes.
- 2 Q For something in relation to this. Okay.
- 3 A Yes.
- 4 Q They let you go to the bathroom?
- 5 A Yes.
- 6 Q Did you get anything to eat?
- 7 A Yes.
- 8 Q Did you have anything to drink?
- 9 A Yes.
- 10 Q Were they cooperative with you?
- 11 A Yes.
- 12 Q Did they treat you all right?
- 13 A Yes.
- 14 Q Did this help with your nervousness?
- 15 A Not really. It just made me feel a little
- 16 comfortable.
- 17 Q Okay. Now, in your first statement, you
- 18 indicated that Khaleef and Worthy came to Coventry;
- 19 correct?
- 20 A Correct.
- 21 Q You're there with Wee-Wee; right?
- 22 A Right.
- 23 Q And they come to Coventry in a green
- 24 Cherokee, correct?
- 25 A Correct.

1 Q Green Jeep Cherokee.

2 Yet, in your third statement, when you're not
3 nervous at all anymore, didn't you indicate that they
4 came in a beige Accura?

5 A No.

6 Q I show you what has been marked for
7 identification as DS-7, and I ask you if this is the
8 statement that was given?

9 A Yeah.

10 Q It is; correct?

11 A Yes.

12 Q And it was on May 8th; right?

13 A Yes.

14 Q So this was the third statement you gave, the
15 last one you gave; correct?

16 A (No response.)

17 Q Do you recall being asked this question?

18 They first asked you:

19 "Last Sunday morning, April 28th, you were in
20 the Coventry Square area. Is that correct?

21 "ANSWER: Yes."

22 You tell who you were with, including
23 Mr. Worthy. And then you go on.

24 "And can you tell me what vehicle Marvin
25 Worthy was in?

1 And you say, "A beige Accura."

2 Correct?

3 A Right.

4 Q You don't mention anything about a jeep. And
5 we're talking about when Worthy first pulled up;
6 correct?

7 A Right.

8 Q You also indicate you were with Wee-Wee, who
9 is James Irwin, Debo, who is Steven Bennett, and Marvin
10 Worthy. Is that correct?

11 A Yes.

12 Q You don't mention anything about Mr. Maples
13 there; correct?

14 A Correct.

15 Q Okay. And then you went on, and you said you
16 went to Winteringham Village in Toms River; correct?

17 A Correct.

18 Q Yet, in your first statement, you never
19 mentioned anything about going to Winteringham. Am I
20 correct?

21 A Correct.

22 Q And in your first statement, you indicate
23 that when you got to High Point --

24 MR. KINARNEY: I'm referring to page 3, by
25 the way.

1 Q -- when you got to High Point, that Khaleef,
2 Worthy and James Irwin got inside the Jeep.

3 A No.

4 Q Correct?

5 A No.

6 Q Well, let me show you your statement again.
7 And, again, I'm referring to DS-5, which was the first
8 of the three statements that was given by you; correct?

9 A Yes.

10 Q You were asked this question on page 3:

11 "And who was inside the Jeep at that time?

12 "Khaleef, Worthy and James Irwin."

13 A Okay.

14 Q My question to you is, how did he get in the
15 Jeep?

16 A You talking about Coventry.

17 Q No.

18 A We all was in the Jeep.

19 Q No, no.

20 Yes, you're right, I am talking about
21 Coventry.

22 A Yeah.

23 Q So my question to you is if you're with
24 Irwin --

25 A Inside the Jeep?

1 Q -- at Coventry --

2 A Yes?

3 Q -- and Khaleef and Marvin pull up, how come
4 you said that Irwin was inside the Jeep?

5 A He was in the Jeep.

6 Q He was in the Jeep?

7 A (The witness nods.)

8 Q How did he get in the Jeep?

9 A He came with me.

10 Q I thought Mr. Irwin was -- Mr. Irwin was
11 with you at Coventry, and Khaleef and Worthy showed up?

12 A No. Maples and Marvin showed up.

13 Q Right.

14 A That's the first time in the Jeep.

15 Q Right.

16 A After, when they left, Marvin showed up by
17 his-self in a beige Accura.

18 Q That's not what I'm talking about. We're
19 talking about the time that there was the conversation
20 about Yonkers.

21 A Okay.

22 Q That was when you were with Mr. Irwin,
23 Wee-Wee --

24 A Right.

25 Q -- at Coventry.

1 A Right.

2 Q You had stayed there the night before,
3 correct?

4 A Right.

5 Q And that Khaleef, Mr. Maples and Marvin
6 Worthy pulled up. That's when you had the conversation
7 about Yonkers; correct?

8 A Right.

9 Q And my question to you is, simply, why did
10 you say that in addition to Khaleef and Worthy, James
11 Irwin was in the Jeep, if he was with you?

12 A We was all in the Jeep.

13 Q You guys eventually made it to High Point
14 obviously; correct?

15 A Right.

16 Q Do you recall being asked this question?

17 "When you arrived at High Point, what happens
18 next?"

19 And your answer being, and read along with
20 me, "We see the Jeep, the same Jeep that was pulled up
21 in front of the house. There was four people in there.
22 There was Khaleef, Worthy, the victim, and a guy named
23 Red."

24 So in this statement, which is your very
25 first statement, you're saying Worthy was in the Jeep

1 when the Jeep pulled up. Today you said he wasn't.

2 A 'Cause the question that was asked was who was in
3 the Jeep at the time when this thing went down.

4 Q Well, let me -- let's go through the question
5 and answer again. And this is truthful; right?

6 A Right.

7 Q You said it was truthful.

8 "When you arrived at High Point, what happens
9 next?

10 "We see the Jeep, the same Jeep that was
11 pulled up in front of the house. There was four people
12 in there. There was Khaleef, Worthy, the victim, and
13 Red."

14 How did Worthy get in the Jeep?

15 A He got into the Jeep when we was over -- when they
16 was there, he got into the Jeep.

17 Q Your statement says when they pulled up, he
18 was in the Jeep. Am I correct?

19 A That was the question that was asked of me.

20 Q Okay. Do you recall being asked how many
21 shots Red fired at the victim when Mr. Roy was running
22 through the parking lot?

23 Do you recall that?

24 A Yes.

25 Q Do you recall saying, "I don't know"?

1 A Yes.

2 Q And do you recall being asked, "Did Red throw
3 the gun into the Jeep at all?"

4 And you said, "No, I didn't see that."

5 Do you recall being asked that?

6 A Yes.

7 Q Okay. So that also wasn't true; correct?

8 A Right.

9 Q Because now you're saying you know Red threw
10 the gun in the vehicle you were in; correct?

11 A Yes.

12 Q Let me ask you this. Do you hope that when
13 all is said and done here, you don't get any additional
14 time in jail?

15 A Yes.

16 Q You do; right?

17 A (The witness nods.)

18 Q You indicated in your testimony today that
19 Mr. Santos came around the back of the Jeep; right?

20 He has a gun in his hand; right?

21 A Right.

22 Q He goes to Mr. Roy's door; correct? Mr. Roy
23 is trying to get out; right?

24 A Right.

25 Q Mr. Santos stops him from getting out;

1 correct?

2 A Correct.

3 Q And then he -- by "he," I mean Mr. Santos --
4 he got halfway in the car, correct, when the witness
5 (sic) is still in the car; correct?

6 A (No response.)

7 Q You never said that in any of your three
8 statements, did you?

9 A I'm not sure.

10 Q Well, let me give you all three statements.
11 I'm going to put them in order. I want you to look
12 them over. And I want you to tell me if anywhere in
13 these three statements, where you say you're telling
14 the truth, you say that Red blocked Mr. Roy from
15 getting out and then went halfway in the car. Take as
16 much time as you need.

17 It's not in there, is it? Am I correct,
18 Mr. Barber?

19 A What's the question again?

20 Q Nowhere in these three statements do you
21 mention that Red actually got half halfway inside the
22 car?

23 A No.

24 Q Okay. You also mentioned today that Red had
25 gloves on, and that in addition to him throwing the gun

1 into the vehicle, he also threw the gloves in the
2 vehicle; correct?

3 A Correct.

4 Q And you don't mention that in the statements;
5 right?

6 A No.

7 Q You indicated that you don't know who fired
8 guns inside the Jeep. You said my client fired them
9 outside the Jeep. Am I correct?

10 A Correct.

11 Q You don't know who fired them inside the
12 Jeep?

13 A No.

14 MR. KINARNEY: I have nothing further.

15 THE COURT: Mr. Zager?

16 MR. ZAGER: Thank you, Judge.

17 CROSS-EXAMINATION BY MR. ZAGER:

18 Q Mr. Barber, I'm Paul Zager. I represent
19 Mr. Maples. I don't want to belabor the point, but
20 you're two strikes towards the three strikes; correct?

21 MR. HEISLER: Objection, Judge. The three
22 strikes is a very specific law, and it doesn't apply
23 here.

24 THE COURT: I can appreciate that, but it's
25 his -- the witness's impression, that is what's -- what

1 is important.

2 MR. ZAGER: That's -- that's what I was
3 talking about, Judge.

4 Q And you're extended-term eligible; right?

5 A Right.

6 Q And you were extended-term eligible on April
7 29th, when you gave these statements; correct?

8 A Yeah.

9 Q Well, no, that's inaccurate. You had two
10 convictions on April 29th, 2002; correct?

11 A Correct.

12 Q Okay. So at that point, you knew if you went
13 down for a third, then you would be extended-term
14 eligible; right?

15 A Yeah.

16 Q And you certainly didn't want to go down for
17 a murder; right?

18 A Right.

19 Q So you cooperated with the police?

20 A Right.

21 Q You were what seems to be an eye witness;
22 right?

23 A Right.

24 Q And in the course of cooperating with the
25 police, you lied to them?

1 A Yeah.

2 Q And you just told the jury right now you did;
3 right?

4 A Yeah.

5 Q The first thing you tell them is you weren't
6 there; right?

7 A Yes.

8 Q The next thing you tell them is you were with
9 Matt La Bark (phonetic) or somebody; right?

10 A Yes.

11 Q And then you tell them you hadn't seen Steve
12 Bennett in two weeks; right?

13 A Right.

14 Q Those were all lies?

15 A Yes.

16 Q Then you had an awakening, and you decided
17 that you would talk to the police again; right?

18 A Right.

19 Q 'Cause they caught you in your lies?

20 A Yes.

21 Q So then you told them that, yes, in fact, you
22 were at High Point?

23 A Yes.

24 Q Okay. Because I've had this case for awhile
25 now, and I was really confused. It's a little

1 confusing. Wouldn't you agree with me?

2 MR. HEISLER: Objection.

3 THE COURT: Sustained, sustained.

4 Q It's a little confusing, wouldn't you agree?

5 A Yes.

6 Q Everybody is at Coventry. That's an
7 apartment complex; right?

8 A Yes.

9 Q And then people go to Winteringham. That's
10 an apartment complex?

11 A Yes.

12 Q And then before everybody goes there, certain
13 people that smoke pot; right?

14 A Yes.

15 Q Then he they go to High Point; right?

16 A Right.

17 Q So whoever people who were at Coventry and
18 Winteringham, they end up at High Point; right?

19 A Yes.

20 Q And, lo and behold, you're there. And you're
21 an eye witness; right?

22 A Yes.

23 Q Okay. Let's figure out how you got there.

24 You have these statements in front of you;
25 right?

1 A Yes.

2 Q Let's put these in chronological order. You
3 gave a statement April 29th; right?

4 A (No response.)

5 Q Okay. That's DS-5. Then you gave a statement
6 April 30th; right?

7 A Yeah.

8 Q April 30th; right?

9 A Yes.

10 Q That would be DS-6; right?

11 A Um-hum.

12 (The witness nods.)

13 Q And then you gave a statement on May 8th;
14 right?

15 A Yes.

16 Q And that would be DS-7?

17 A Yeah.

18 Q Okay. And as everybody has brought out
19 today, you told the jury that those statements are true
20 and accurate; right?

21 A Yes.

22 Q We know that's false; right?

23 A Yes.

24 Q You gave a plea, when you entered into a plea
25 before Judge Turnbach, on September 25th, 2003; right?

1 A Correct.

2 Q And when Mr. Heisler asked you regarding
3 those three statements, "Are these statements
4 truthful," you answered, "Yes."

5 Is that right?

6 A Correct.

7 Q That was a lie?

8 A The one on the 8th was true.

9 Q The one on the 8th was true?

10 A Yes.

11 Q Do we just ignore the one on the 29th?

12 A No, we don't.

13 Q Do we just pick and choose?

14 A I mean, you're doing it.

15 Q Pardon?

16 A You're doing it.

17 Q Okay. All right. Let's -- let's take it
18 maybe, if we can, chronologically; okay?

19 You wake up and it's drizzling out; right?

20 A Yeah.

21 Q On the 28th, you're with Mr. Irwin?

22 A Yes.

23 Q The first people to show up are?

24 A Bennett.

25 Q Bennett?

- 1 A Steven Bennett, yeah.
- 2 Q And then Khaleef?
- 3 A Yeah.
- 4 Q And Worthy?
- 5 A Together, they both was together.
- 6 Q Together?
- 7 A Yes.
- 8 Q In the Jeep?
- 9 A Yes.
- 10 Q Okay. Now, at that point, if I understood
- 11 what you said earlier, before this guy and this guy
- 12 started asking you questions, was that all five of you
- 13 got in the Jeep and smoked pot?
- 14 A Yes.
- 15 Q You sat down in the Jeep --
- 16 A Yes.
- 17 Q -- I guess 'cause it was drizzling.
- 18 A Yes.
- 19 Q Right?
- 20 A Yes.
- 21 Q You smoked pot?
- 22 A Yes.
- 23 Q And at that point, he's talking about
- 24 Yonkers?
- 25 A Yes.

1 Q But there's no question, as I understand it,
2 that you got in the Jeep; right?

3 That's how you heard this wonderful
4 conversation about Yonkers --

5 A Yes.

6 Q -- because you were there inside; right?

7 A Yes.

8 Q Take a look at that first statement on your
9 left, the one from April 29th. Take a look at page 3.
10 It's numbered at the bottom. Let me direct your
11 attention to right here.

12 The question by Investigator --
13 Detective Finnegan is, "While this conversation is
14 taking place, where exactly are you standing or sitting
15 at that point?"

16 Tell the jury what you told him in your
17 truthful statement on April 29th.

18 A " . . . outside, in front of the passenger."

19 Q Your answer is, "I'm standing outside, in
20 front of the passenger."

21 A Right.

22 Q So you're on the other side of the van?

23 A Right.

24 THE COURT: The van?

25 Q You're not in the van?

1 THE COURT: The van?

2 MR. ZAGER: Jeep., I'm sorry. Thank you,
3 Judge.

4 Q The Jeep; right?

5 A Right.

6 Q Okay. To confirm that you weren't in the
7 Jeep, the next question says, "And who was inside the
8 Jeep at that time?"

9 What was your answer?

10 A "Khaleef, Worthy and James Irwin."

11 Q And that was the day after Mr. Roy got shot;
12 right?

13 A Yes.

14 THE COURT: The question -- the statements he
15 made?

16 MR. ZAGER: Correct.

17 Q Right?

18 A Yes.

19 Q Okay. So this morning you lied -- or this
20 afternoon, a little while ago, you lied to the jury
21 about being inside the van?

22 A Did I lie to the jury about being inside --

23 THE COURT: The van?

24 MR. ZAGER: I'm sorry, Judge.

25 THE COURT: I'm only saying that because --

1 MR. ZAGER: There's another van.

2 THE COURT: Yeah, right.

3 MR. ZAGER: I'm sorry.

4 Q Did you lie to this jury earlier about being
5 inside the green Jeep?

6 A No.

7 Q Did you lie to Detective Finnegan when you
8 told him you were standing outside the green Jeep?

9 A Yes.

10 Q Why would you lie to Detective Finnegan about
11 something so stupid?

12 A That day I was nervous, that day they picked me
13 up.

14 Q You were nervous?

15 A Right.

16 Q But you told us earlier that after you got
17 back from Jackson with whatever happened with the green
18 Jeep, that you went to the liquor store and you were
19 chilling. You weren't nervous.

20 A I didn't say that.

21 Q Why would you say you were nervous --

22 A I didn't say I was chilling and I wasn't nervous.

23 Q You said you weren't nervous.

24 A I didn't say I wasn't nervous.

25 Q You said you didn't talk about it.

1 A Nah, we didn't talk at all about it.

2 Q Okay. You witnessed a shooting.

3 A Right.

4 Q You don't talk about it; right?

5 A Right.

6 Q And you're not nervous?

7 A Yeah, I'm nervous. I don't want to talk about it.

8 Q Oh, your nervous?

9 A Yeah.

10 Q Oh, okay. All right.

11 I guess that would explain that lie, you're
12 nervous; correct?

13 A Yeah.

14 Q You got me nervous. I'm shaking.

15 All right. Now, let's talk about now you
16 leave -- after this happens, you go upstairs and go to
17 sleep; right?

18 MR. HEISLER: After what happens?

19 MR. ZAGER: I'm still at Coventry.

20 MR. HEISLER: When?

21 Q Aren't we at Coventry early in the morning
22 smoking pot in Mr. Maples' Jeep on April 28th?

23 A Yeah.

24 Q Is that what you -- where you think we're
25 talking about?

1 A Yeah.

2 Q Okay. After that happens, Maples drives
3 away, and you go upstairs and go to sleep; right?

4 A I lay down.

5 Q You lay down?

6 A Yeah.

7 Q At some point -- Bennett was already there;
8 right?

9 A Yes.

10 Q Okay. And Worthy then shows up, but he's got
11 a different vehicle?

12 A Right.

13 Q And he shows up at Coventry?

14 A Right.

15 Q And he eventually -- eventually, you,
16 Bennett, Worthy and Irwin leave Coventry; right?

17 A Correct.

18 Q Now, you go to Winteringham; okay?

19 A Yes.

20 Q Okay. How do you get there?

21 A In a beige car, in a beige Accura.

22 Q Okay. At some point, you leave Winteringham
23 and you go to High Point?

24 A Jackson.

25 Q Jackson?

- 1 A Correct.
- 2 Q Well, that's what you said earlier today.
- 3 A Right.
- 4 Q Would you agree with me that you never told
5 Detective Finnegan in any of your three truthful
6 statements that you went to Jackson that day?
- 7 A Yes.
- 8 Q You would agree with that?
- 9 A Yes.
- 10 Q Okay. So wherever you went after
11 Winteringham, you end up at High Point; right?
- 12 A Yes.
- 13 Q Okay. Let's talk about how you get to High
14 Point. All right?
- 15 A Okay.
- 16 Q What did you tell us this morning -- this
17 after -- a little while ago?
- 18 A We drove to High Point.
- 19 Q Okay. How did you tell us you got there?
- 20 A In the beige Accura.
- 21 Q Worthy's Accura?
- 22 A Excuse me?
- 23 Q Worthy's Accura?
- 24 A Yes.
- 25 Q That's how you told us today.

1 A Yes.

2 Q Didn't you tell the detective in -- didn't
3 you tell the detective in your statement on April 29th
4 that you went with Mr. Bennett, and Mr. Bennett alone,
5 to High Point?

6 A Yes.

7 Q You did?

8 A Yes.

9 Q And I assume, if I asked you the reason for
10 the lie either today or two years ago, you would say
11 you were nervous two years ago.

12 A Yes.

13 Q Right?

14 According to your statement, April 29th, two
15 years ago, you and Bennett go to High Point; right?

16 A Yes.

17 Q Okay. Today it's a little different; right?

18 A Yes.

19 Q But, eventually, Bennett shows up at High
20 Point?

21 A Yes.

22 Q Okay. Now, all you guys go, and you go into
23 somebody's apartment or around the buildings, and --

24 A Around the building; around the buildings.

25 Q Around the buildings.

- 1 Do you go into an apartment?
- 2 A No.
- 3 Q Do you stand by someone's window?
- 4 A No.
- 5 Q Do you stand in the hallway?
- 6 A No.
- 7 Q Where might it be that you're all standing
8 smoking pot at the High Point buildings around 10:30 in
9 the morning?
- 10 A In the stairs.
- 11 Q In the stairway?
- 12 A (The witness nods).
- 13 Q Covered?
- 14 A Yes.
- 15 Q From the drizzle?
- 16 A Yes.
- 17 Q Whose apartment or stairs were you standing
18 in?
- 19 A I don't know.
- 20 Q You don't know?
- 21 A No.
- 22 Q Had you been to High Point before?
- 23 A No.
- 24 Q Did you know who was living there, the
25 stairways?

1 A No.

2 Q At some point -- now, this is the second time
3 you've smoked some marijuana this morning; right?

4 A Right.

5 Q At some point, you leave the stairs, and I
6 don't know which word -- version to go with. Is
7 Bennett with you, or is he showing up later?

8 A He's showing up.

9 Q He's showing up later?

10 A Yes.

11 Q Okay. And, now, Bennett parks his car where
12 you have this red mark; right?

13 A Yes.

14 Q This is a "B." So Bennett parks his car
15 here; right?

16 A Yes.

17 Q Okay. And as you pull in off of Prospect,
18 there's a fence over here?

19 A Yes.

20 Q And there's private houses?

21 A I'm not sure what's on the other side of the
22 fence.

23 Q Okay. And then, as you pull in on the right,
24 there's some parking spots here?

25 A Yes.

1 Q A little further in, there's some garages;
2 right?

3 A Yes.

4 Q And then there's two-story apartment
5 buildings?

6 A Right.

7 Q Okay. So, you come out from behind the
8 apartment buildings. And if I understand you
9 correctly, you go say hello to Bennett?

10 A No. Bennett was -- when we came out, he was
11 walking, and he seen us, so he was walking towards us.

12 Q Okay. All right.

13 Now, shortly thereafter, the Jeep pulls in;
14 right?

15 A No. The Jeep is already there.

16 Q The Jeep is there. The Jeep is there first?

17 A No. Bennett -- when Bennett pulled -- when he
18 came by, we was looking for Marvin. And when we was
19 looking for Marvin, Bennett was coming towards us. So
20 we went back, because he was rolling up some weed, he
21 was about to smoke some more weed.

22 Q That Jeep had tinted windows, didn't it?

23 A Yes.

24 Q In the back?

25 A Yeah.

- 1 Q And then on the sides in the back?
- 2 A Yeah.
- 3 Q And would it help you to look at the Jeep?
- 4 A Nah, I'm good.
- 5 Q You remember?
- 6 A Yeah.
- 7 Q The driver's window and the passenger's
8 window in the front, they weren't tinted?
- 9 A No.
- 10 Q But all the other windows from the driver's
11 door or passenger's door from the front to the back
12 were tinted?
- 13 A Yeah.
- 14 Q That leads me to this, Mr. Barber. If you're
15 standing here, where the "B" is, isn't there a van
16 here?
- 17 A Yes.
- 18 Q And the Jeep pulls in on the other side of
19 the van?
- 20 A Yes.
- 21 Q And the Jeep's windows are tinted?
- 22 A Yes.
- 23 Q I guess the next logical question, which I
24 probably shouldn't ask, is, how do you see what you say
25 you saw?

1 A We wasn't exactly by where Bennett's parked car
2 was.

3 Q Oh, okay. You had walked away?

4 A No. We wasn't exactly right by the car. He had
5 his car parked. We was, like, on the sidewalk a little
6 bit further, more up.

7 Q Okay. So you were maybe over here?

8 A Yeah.

9 Q So the van wouldn't be in your way?

10 A No.

11 Q How do you see through the tinted windows?
12 I'm confused there.

13 A I never said I seen through the tinted windows.

14 Q Okay. You didn't see through them?

15 A No.

16 Q Okay. I guess you were standing over here?

17 A I don't know.

18 Q Maybe down here a little further?

19 A No.

20 Q Well, why don't you come show me where you
21 were standing?

22 Well, before you do that, the van shows up.
23 You go over and say hello to the people in the van,
24 don't you?

25 THE COURT: The van?

- 1 MR. ZAGER: Sorry, Judge.
- 2 Q The Jeep?
- 3 A James Irwin does. I'm walking right behind him.
- 4 Q Okay. But you and Irwin and Bennett walk
5 over to the Jeep?
- 6 A Bennett is right behind us. It's me, James Irwin
7 and Marvin walking towards the Jeep.
- 8 Q Okay. And are you walking in single file, or
9 are you just kind of walking together?
- 10 A Nah, I mean, we just walking.
- 11 Q So you walk over to the Jeep?
- 12 A Right.
- 13 Q If I understand your testimony, you nod and
14 say hello to everybody; right?
- 15 A I looked in the Jeep for a minute.
- 16 Q You looked in the Jeep? Okay.
17 Now, when you did that, did you -- was Maples
18 in the Jeep?
- 19 A Yes.
- 20 Q He didn't have a gun?
- 21 A No.
- 22 Q He wasn't screaming at anyone?
- 23 A No.
- 24 Q Nobody was screaming at anybody; right?
- 25 A No.

1 Q You exchange your pleasantries -- or, no, you
2 don't.

3 A No, I just looked inside.

4 Q But Irwin does?

5 A Yes.

6 Q You just looked in?

7 A Yes.

8 Q Did you say hello to anybody?

9 A No.

10 Q Acknowledge anyone?

11 A No.

12 Q Anybody acknowledge you?

13 A Yeah, they seen me. I seen them.

14 Q Okay. A couple of heads nodding and all
15 that?

16 A Yeah.

17 Q Okay. Then you walk away?

18 A Right.

19 Q Irwin walks away?

20 A Well, not exactly the time when I walked away.

21 Q Okay. Shortly thereafter?

22 A Yeah.

23 Q Bennett walks away with you?

24 A Bennett already walked away, 'cause he was getting
25 ready to smoke some weed.

- 1 Q He was going to smoke again?
- 2 A No. It's the same weed he had, he was rolling up,
3 when we seen him coming in.
- 4 Q Okay. How far away from the van -- from the
5 Jeep are you when Khaleef gets out?
- 6 A How far away from the Jeep?
- 7 Q Well, I mean --
- 8 A The other side.
- 9 Q You're over here?
- 10 A Yeah.
- 11 Q Are you --
- 12 A Like around that area, yeah.
- 13 Q You didn't make it to the sidewalk?
- 14 A Yeah, I'm on the sidewalk.
- 15 Q You're on the sidewalk?
- 16 A Yeah.
- 17 Q Now, Khaleef gets out?
- 18 A Yeah.
- 19 Q Okay. How long does it take you to walk from
20 there to here?
- 21 A I'm not sure. I don't know. I don't know what it
22 takes.
- 23 Q Okay. Well, you would agree with me it's
24 about 40, 50 feet?
- 25 A A little over 50 feet.

1 Q Okay. And you walked there at a regular
2 pace, from the Jeep to here?

3 A (Witness nods).

4 Q Then Khaleef gets out; right?

5 A Right.

6 Q Now, earlier today, you said you could tell
7 he was motoring; right?

8 A Yeah. He was in a fast mode, yeah.

9 Q Okay. But in one of your statements, you
10 just say he was walking; right?

11 A Right.

12 Q Okay. Now, he gets out, and he walks maybe
13 briskly away; right?

14 A Right.

15 Q The shooting starts?

16 A I don't understand. What you mean, the shooting
17 starts?

18 Q When did the shooting start?

19 A Khaleef is already to the beige Accura.

20 Q He's gone. He's from the Jeep, and he's
21 walking away.

22 A Um-hum.

23 Q You're standing here watching. Something is
24 going on in the Jeep; right?

25 A Well, after that, Red -- Red came out of the back

1 side, the back side of the driver's.

2 Q Well, like I said, something is going on
3 there?

4 A Yeah.

5 Q But Khaleef is not there?

6 A No.

7 Q At Covington -- Coventry, I'm sorry -- did
8 you discuss with Khaleef what was going to happen at
9 High Point?

10 A No, no.

11 Q You weren't working with him, were you --

12 A No.

13 Q -- to kill somebody?

14 A No.

15 Q You didn't hear him discuss or agree with
16 someone to kill somebody?

17 A No.

18 Q Right?

19 A No.

20 Q You didn't hear him plan to aid somebody?

21 A No.

22 Q You didn't hear any type of agreement,
23 whatsoever, about shooting Mr. Roy at High Point. Am I
24 right?

25 A Correct.

1 Q When you were at Winteringham, Khaleef wasn't
2 there, was he?

3 A No.

4 Q Bennett was there; right?

5 A Yes.

6 Q Worthy was there?

7 A Yes.

8 Q You were there?

9 A Yes.

10 Q Am I missing someone?

11 A James Irwin.

12 Q Irwin was there?

13 A Yes.

14 Q There was -- allegedly, I think you're
15 telling us, someone got a gun from behind an apartment?

16 A Excuse me?

17 Q When you went to Winteringham --

18 A Right?

19 Q -- as I understand you, Worthy went to get a
20 gun?

21 A Yeah.

22 Q Okay. Did he go into an apartment?

23 A I didn't see where he went into, but he went
24 towards an apartment.

25 Q He went towards an apartment?

1 A Yeah.

2 Q Did he go into an apartment?

3 A I'm not sure. I didn't see him go inside of an
4 apartment.

5 Q Did he go behind a bush?

6 A I didn't see none of that.

7 Q There's no question in your mind, it was an
8 apartment; right?

9 A Right.

10 Q It wasn't a storage facility that, you know,
11 where you would store beds and your personal stuff and

12 --

13 A No.

14 Q No.

15 I guess what I'm asking you is when you heard
16 the gunshots, you were surprised?

17 A Yeah.

18 Q Right?

19 A Right.

20 Q Which would basically mean you didn't know
21 what was going to go down at High Point; right?

22 A Right.

23 Q Because you weren't part of it?

24 A Right.

25 Q And you didn't hear anything at Coventry. We

1 just went over that; right?

2 A Right.

3 Q And on the ride from Coventry to
4 Winteringham, you didn't hear any discussions about an
5 agreement to kill Mr. Roy; correct?

6 A Correct.

7 Q And then when you took the ride from
8 Winteringham to High Point, no matter who you went
9 with, but for purposes of this conversation, you were
10 with Worthy --

11 A Right.

12 Q -- Bennett and Irwin; right?

13 A No. Bennett, we dropped him off in Jackson.

14 Q I'm sorry. You were with Worthy, Irwin, you
15 -- who's the fourth?

16 A That's it.

17 Q Someone else?

18 A No.

19 Q Just the three of you?

20 A (The witness nods).

21 Q So, now, from Winteringham to High Point,
22 there was no discussion about an agreement to kill the
23 victim?

24 A No.

25 Q You knew Mr. Maples for only approximately

1 five months before Mr. Roy was shot?

2 A I didn't know him. I heard of him. I seen him
3 around. I heard of him.

4 Q Okay.

5 A I didn't know him personally.

6 Q You didn't know him personally?

7 A No.

8 Q Well, then I kind of wonder, why would he
9 tell you about something that happened in Yonkers?

10 A He wasn't, like, specifically telling me. He was
11 just speaking -- he was speaking to James Irwin. We
12 just happened to be there.

13 Q He never asked you to have any part in the
14 killing of Mr. Roy, did he?

15 A No.

16 Q And you never heard him -- I know I may have
17 asked you this before, but you didn't attempt to aid
18 him; right?

19 A No.

20 Q He didn't ask you to aid him?

21 A No.

22 Q He didn't ask you to facilitate the death of
23 Mr. Roy?

24 A No.

25 Q As you sit there today, you're aware of no

1 plan between Worthy and Santos to kill Mr. Roy?

2 A No.

3 Q And as you sit here today, you're not aware
4 of any plan between Worthy and Maples and Santos to
5 kill Mr. Roy?

6 A Now, are you speaking about High Point? No.

7 Q That's where Mr. Roy was going.

8 A No.

9 Q Right?

10 A Right.

11 MR. ZAGER: Nothing further, Judge.

12 THE COURT: Mr. Somers?

13 MR. SOMERS: Thank you, your Honor.

14 CROSS-EXAMINATION BY MR. SOMERS:

15 Q Mr. Barber, I don't know if you can see me
16 over there?

17 A Yes.

18 Q Now, Mr. Barber, you just testified that
19 after the shooting, Red came over to the Jeep that you
20 were in and threw a gun and a sock into that Jeep?

21 A No, a glove.

22 Q A glove?

23 A Right.

24 Q Okay. He threw a gun a glove into the Jeep?

25 A Correct.

1 Q Now, when you were first questioned, when you
2 gave your first statement -- I believe it's marked
3 DS-5 -- you indicated you were asked if you -- "Did Red
4 throw the gun into the Jeep at all?"

5 And you responded, "No."

6 A Correct.

7 Q "I didn't see that."

8 A Correct.

9 Q Okay. That was a lie; right?

10 A Right.

11 Q A day later, you gave another statement;
12 right?

13 A Correct.

14 Q At that time, you said -- you had a little
15 different story with regard to where the gun was,
16 didn't you?

17 A Correct.

18 Q You said the gun was under the seat of the
19 Jeep.

20 A Right.

21 Q That it was in the sock underneath the seat
22 of the Jeep.

23 A Right.

24 Q Is that correct?

25 A Right.

1 Q And then, on May 8th, you said that the gun
2 with the sock -- that was in the sock was in-between
3 the driver's seat and the passenger's seat; correct?

4 A Correct.

5 Q You just testified a few minutes ago that
6 only the May the 8th statement was correct?

7 A Correct.

8 Q And then the other two weren't?

9 A No.

10 Q When you entered into your plea and you came
11 into this court, you were given -- you were asked to
12 swear an oath, weren't you?

13 A Correct.

14 Q And you swore to tell the truth, didn't you?

15 A Correct.

16 Q And you were asked this question. "Are these
17 accurate transcriptions of your taped statements?

18 And you said, "Yes."

19 And then you were asked, "Are these
20 statements truthful?"

21 And you answered, "Yes."

22 Was that a lie?

23 A Excuse me?

24 Q Was that a lie?

25 A Some of the statements, I was kind of bending the

1 truth on my first two statements.

2 Q Well, you just testified that two of those
3 statements were the truth; correct?

4 A Correct.

5 Q So when you were asked this question, "Are
6 all three of these statements correct," you answered,
7 "Yes." Right?

8 A Right.

9 Q So you were lying; correct?

10 A Correct.

11 Q You had just taken an oath to tell the truth;
12 correct?

13 A Correct.

14 Q So you lied under oath, didn't you?

15 A Correct.

16 Q Now, after the shooting, when you jumped into
17 that Jeep, you were pretty frightened, weren't you?

18 A Yes.

19 Q You were trying to get away from the scene,
20 weren't you?

21 A From the shooting, yes.

22 Q You mentioned something about the three
23 strikes. Could you explain that?

24 MR. HEISLER: Objection.

25 THE COURT: I'll sustain the objection.

1 Q You certainly had a lot to lose here, didn't
2 you?

3 A Yes.

4 Q You're getting another conviction. You're
5 doing a considerable amount of time; right?

6 A Right.

7 Q Why did you come here today to testify?

8 A Why did I --

9 MR. HEISLER: Judge, I'm going to object to
10 that, as well.

11 THE COURT: Yes. I'll sustain the objection.
12 He's appeared as a witness to testify.

13 Q Now, you were asked by the prosecutor if it
14 was you or Mr. Irving (sic) who tried to burn the Jeep;
15 right?

16 A Right.

17 Q And you answered Mr. Irving (sic); right?

18 A Right.

19 Q You were also asked did you or Mr. Irving
20 (sic) try to hide the gun or hide the guns; right?

21 A Right.

22 Q And you answered it was Mr. Irving (sic),
23 right?

24 A Right.

25 Q You answered that -- you indicated that

1 Mr. Irving (sic) lit up a handkerchief, was it?

2 A Yes.

3 Q That he put it into the gas tank?

4 A He put it in the gas tank first, and then he lit
5 it.

6 Q And then he lit it up?

7 A Yes.

8 Q What were you doing when he was doing this?

9 A I was looking at him and also trying to find a
10 road.

11 Q Trying to find a what?

12 A A road, a street.

13 Q A road.

14 You indicated that the handkerchief didn't
15 light up. It didn't burn, did it?

16 A No.

17 Q Because it was drizzling; right?

18 A Yes.

19 Q The following day, on the 29th was it -- on
20 the 30th, you took the police out to that exact
21 location where the guns were buried, didn't you?

22 A Yes.

23 Q And you showed them where the guns were
24 buried?

25 A I told them where the -- I told them it was by

1 duct tape and some gloves.

2 Q Did you see the duct -- where the duct tape
3 was?

4 A One of the officers found it.

5 Q You said that it was near the duct tape and
6 gloves?

7 A In that area, yes.

8 Q When the Jeep crashed into the tree in
9 Jackson, was the car left running -- was the Jeep left
10 running?

11 A I'm not sure. I don't know if it was left
12 running.

13 Q Didn't Mr. Bennett drive up to the scene of
14 the shooting?

15 A Yes.

16 Q In his car?

17 A Yes.

18 Q Yet, you indicate that after the shooting,
19 Mr. Bennett ran into the woods?

20 A Yes.

21 Q Now, Mr. Irving (sic) wasn't involved in this
22 shooting, was he?

23 A No.

24 Q By the way, were you smoking in Mr. Bennett's
25 car, as well?

- 1 A Was I smoking in his car?
- 2 Q Yes.
- 3 A No.
- 4 Q Were you smoking at all that day?
- 5 A Yes.
- 6 Q Now, you were in that Jeep two times that
7 day, weren't you?
- 8 A Correct.
- 9 Q Were you concerned that your prints were in
10 that Jeep?
- 11 A No.
- 12 Q No?
- 13 A No.
- 14 Q Why not?
- 15 A I really wasn't thinking about that.
- 16 Q You didn't touch inside?
- 17 A Yeah, I touched inside, but I wasn't thinking
18 about prints at that time.
- 19 Q In Jackson, were you thinking about the
20 prints inside the Jeep?
- 21 A No.
- 22 Q You didn't?
- 23 A Excuse me?
- 24 Q You didn't think about that?
- 25 A No, no.

1 MR. SOMERS: No further questions. Thank
2 you.

3 THE COURT: Anything further, Mr. Heisler?

4 MR. HEISLER: Yes, Judge.

5 REDIRECT EXAMINATION BY MR. HEISLER:

6 Q Mr. Barber, why were you so nervous the first
7 day you gave the statement?

8 A That day, that's when they came and arrested me,
9 they picked me up. And the way they came -- I knew
10 what they was coming for, and the way they came, it
11 just kind of had me shooked up.

12 Q Okay. And was there any other reason you
13 were nervous?

14 A When they said they was charging me with a theft,
15 I was getting even more nervous about that.

16 Q Did the police ever tell you what to say?

17 A No.

18 Q Now, the first statement that you gave, on
19 the 29th, you told us everything in it wasn't true.

20 A Correct.

21 Q That doesn't mean everything in it wasn't
22 true, does it?

23 A No.

24 Q And there were a couple of things I think
25 Mr. Kinarney asked you about -- talking about Red

1 backing out of the Jeep, and things along those lines.

2 Let's look at the last statement, the May 8th
3 statement. Let's look at page 3. You start talking
4 about Jamal opening his door.

5 A Right.

6 Q Did you say it "looked like a little
7 scuffle"?

8 A No -- yeah.

9 Q Okay. What were you referring to there?

10 A When he was trying to come out the door, Red was,
11 like, backing him back in.

12 Q Okay. And going over to page 4, did you tell
13 the police that, "Red started to back out of the Jeep"?

14 A Yes.

15 Q Okay. So by the time we get to the third
16 statement, had you told the police the truth?

17 A Yes.

18 Q Had you given them all the details that you
19 had left out the first time about going to
20 Winteringham, and things along those lines?

21 A Yes.

22 Q Was your testimony here this afternoon
23 truthful?

24 A Yes.

25 THE COURT: That's all I have, Judge.

1 THE COURT: Mr. Welle?

2 RECCROSS EXAMINATION BY MR. WELLE:

3 Q How many total hours do you think you've
4 spent with the police prior to each of those
5 statements, in toto, before they decided to put you on
6 tape?

7 A I'm not sure. I really can't answer that. I
8 don't know. I mean, it was long hours we was in there.

9 Q Maybe about three hours for the first
10 statement? Three or four hours?

11 A Yeah.

12 Q A couple of hours for the second statement?

13 A Yes.

14 Q Three or four hours for the third statement?

15 A Yeah.

16 Q To get it right?

17 MR. HEISLER: Objection.

18 THE COURT: Sustained.

19 MR. WELLE: I have no further questions.

20 THE COURT: Mr. Kinarney?

21 MR. KINARNEY: Thank you, Judge.

22 RECCROSS EXAMINATION BY MR. KINARNEY:

23 Q Mr. Heisler just asked you questions about
24 you saying that Red attempted to get back -- backed out
25 of the Jeep. I going to show you your last statement

1 which has been marked DS-7, a series of question and
2 answers.

3 "Okay. So Khaleef gets out. He runs her --
4 he walks towards his beige Accura or to Marvin Worthy's
5 beige Accura. Jamal Roy attempts to get out of the
6 passenger's side door of the Jeep. And Red, Renato
7 Santos, comes around and tries to force Jamal Roy back
8 into the Jeep.

9 "Is that correct?

10 "Correct.

11 "And at that time, you heard a gunshot?

12 "ANSWER: Yes, correct.

13 "QUESTION: How many gunshots did you hear
14 altogether then?

15 "ANSWER: Although -- altogether in the Jeep,
16 I heard, like, two gunshots.

17 "QUESTION: Okay. And Red appeared to go
18 into the Jeep as -- as Jamal Roy, the victim, was
19 climbing over the seat.

20 "Is that correct?

21 "ANSWER: Yes."

22 So, here the police officer said to you, "Red
23 appeared to go into the Jeep." You didn't say that;
24 right?

25 That was a question that you just said yes

1 to; correct?

2 A Yeah.

3 Q And then we go on.

4 "And you stated earlier that Red then started
5 to back out of the Jeep, and you heard more gunshots as
6 Red was backing out of the Jeep.

7 "Is that correct?

8 "ANSWER: Correct."

9 So, again, in this question and answer, you
10 never said that Red started to back out of the Jeep.
11 That was supplied to you in the question by the police
12 officer; correct?

13 A Correct.

14 Q And you just said yes to it; correct?

15 A Right.

16 Q "And you also indicated that Marvin Worthy
17 was the only other person that was inside the Jeep?

18 "ANSWER: Yes, he was on his way out."

19 And then we go down to a few more questions.

20 "Now, you said earlier that Red was backing
21 out of the Jeep and that somebody else inside the Jeep
22 had fired at least one round.

23 "Is that correct?

24 "ANSWER: Yes."

25 So, again, you never said that Red was

1 backing out of the Jeep. That was supplied to you in a
2 question from the police; correct?

3 A Correct.

4 Q And when he said you said earlier that Red
5 was backing out of the Jeep, you never said that;
6 right?

7 It was always said by the police officer, and
8 you said yes to all that stuff; correct?

9 A Correct.

10 MR. KINARNEY: Nothing further.

11 THE COURT: Mr. Zager?

12 RE CROSS EXAMINATION BY MR. ZAGER:

13 Q And the reason why the police could ask you
14 leading questions on May 8th is because they spent a
15 couple of hours with you in your hotel room on May 3rd;
16 right?

17 A That's correct.

18 Q And on May 3rd, you guys went over what may
19 or may not have happened at High Point, correct?

20 A Right.

21 Q They took some notes?

22 A Nah.

23 Q No?

24 A No.

25 Q They go back to the Lakewood Police

1 Department; right?

2 A Right.

3 Q And then five days later, you show up for the
4 statement, the taped statement; correct?

5 A Correct.

6 Q And it's this last statement that I guess
7 your response to Mr. Heisler is, That's the truth?

8 A Correct.

9 Q Plus everything you said today?

10 A Correct.

11 MR. ZAGER: Nothing further.

12 THE COURT: Mr. Somers?

13 MR. SOMERS: Nothing. No further questions,
14 your Honor.

15 THE COURT: Anything, Mr. Heisler?

16 REDIRECT EXAMINATION BY MR. HEISLER:

17 Q So the information the police got to ask you
18 those questions on the tape is information that came
19 from where?

20 A I don't know.

21 Q Did you talk to them before you went on tape?

22 A I spoke, yes.

23 Q Did you give them that information?

24 A Nah.

25 Q Did you tell them what happened?

1 A Yeah.

2 Q And that's what went into the questions?

3 A Yes.

4 MR. HEISLER: That's all I have, Judge.

5 THE COURT: Mr. Welle?

6 MR. WELLE: Nothing, Judge.

7 MR. ZAGER: Nothing, your Honor.

8 MR. KINARNEY: Nothing, your Honor.

9 MR. SOMERS: No, sir.

10 THE COURT: You're excused. You may step
11 down.

12 (The witness is excused.)

13 THE COURT: Ladies and gentlemen, I thank you
14 for your continued attention to our matter. I'm going
15 to excuse you at this time. Don't forget we start at
16 nine tomorrow. So please be at the jury assembly
17 tomorrow at nine tomorrow morning, and we'll have you
18 over here as soon as the witnesses are here.

19 Everybody remain in place until the jury
20 leaves.

21 (The jury is excused for the day.)

22 THE COURT: We'll recess until nine.

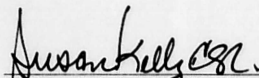
23 (The hearing was concluded for the day.)

24

25

C E R T I F I C A T E

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3
4 I, Susan Schaub-Kelly, C.S.R., License
5 Number XI01154, C.R.R., License Number 30XR00013600, an
6 Official Court Reporter in and for the State of New
7 Jersey, do hereby certify that the foregoing to be
8 prepared in full compliance with the current Transcript
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10 accurate non-compressed transcript to the best of my
11 knowledge and ability.

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14 

15 SUSAN KELLY, C.S.R., C.R.R.
16 Official Court Reporter
17 Ocean County Courthouse

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25 Dated: 9-8-04

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY
INDICTMENT NO. 02-9-1247
APPELLATE NO. A-006934-03T-1

STATE OF NEW JERSEY, :
:
Complainant, :
: STENOGRAPHIC
: TRANSCRIPT
vs. : OF
: JURY TRIAL
RENATO SANTOS, GREGORY MAPLES,
MARVIN WORTHY and JAMES IRWIN,
:
Defendants. :
:

FILED
APPELLATE DIVISION
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Toms River, New Jersey
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| 5 | BY Mr. Kinarney: | | 18 | | |
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1 (S-42 through S-55, separate photographs, are
2 marked for identification.)

3 (The following is heard without the presence
4 of the jury.)

5 THE COURT: Good morning. Are you ready to
6 proceed, Mr. Heisler?

7 MR. HEISLER: Yes, your Honor.

8 THE COURT: Who's your first witness going to
9 be?

10 MR. HEISLER: It's Detective Frey again.

11 THE COURT: All right. Jury out.

12 (The following is heard in the presence of
13 the jury.)

14 THE COURT: Good morning to each of you.
15 It's good to see all of you back again.

16 Mr. Heisler?

17 MR. HEISLER: Judge, at this time, I would
18 recall Detective Frey.

19 THE COURT: Detective Frey.

20 All right. It's been three days. We'll
21 swear the witness again.

22 SCOTT FREY, sworn.

23 THE COURT CLERK: State your name, please?

24 THE WITNESS: Scott Frey, F-r-e-y.

25 THE COURT: Mr. Heisler?

1 MR. HEISLER: Thank you, Judge.

2 DIRECT EXAMINATION BY MR. HEISLER:

3 Q Detective Frey, after you testified last
4 Thursday, on Friday, did you go out and take some
5 additional photographs?

6 A Yes.

7 Q And, generally, what did you photograph?

8 A I photographed a view from two locations, 400
9 Prospect Street, which is a ranch of one of the
10 witnesses parked -- I'm sorry, situated at the base of
11 the apartment complex and Prospect Street.

12 Q That would be the Dunn residence?

13 A Yes.

14 Q And did you photograph any other premisses in
15 that area?

16 A Yes, 402 Prospect Street, Apartment 5.

17 Q That would be the residence of Mr. Molina and
18 Ms. Arenas?

19 A That's correct.

20 Q Okay. Let's start with their apartment. Let
21 me show you what's just been marked S-42 for
22 identification. And can you tell the jury what that
23 shows?

24 A This is a photograph of the apartment. This would
25 be the apartment, that Apartment 5, 402 Prospect

1 Street.

2 Q And where is that shot taken from?

3 A This shot is taken from parking spot number 8.

4 Q And parking spot number 8 is where you
5 originally located the green mini-van?

6 A That's correct.

7 Q And could you show us on there, where is the
8 dining room in that apartment?

9 A It would be the window with the shade half drawn.

10 Q And let me show you S-43 for identification.
11 Can you tell us what that view shows?

12 A Yes. This is a picture that depicts a view from
13 inside the dining room of 402 Prospect Street,
14 Apartment 5.

15 Q And where were you when you took that
16 picture?

17 A I was -- there's actually a table in front of the
18 window, and I was on the opposite side of the table.

19 Q Is that view taken with any sort of zoom, or
20 is that a normal view you would see looking out the
21 window?

22 A No, that's a normal view.

23 Q And, again, that van is parked where?

24 A This van is parked in parking spot number 9.

25 Q And is that the same van that shows on the

1 other photo you just showed?

2 A That's correct.

3 Q Now, did you do anything to mark the parking
4 spaces out there?

5 A Yes. I set up yellow placards, yellow cones. I
6 numbered the parking spots 1 through 10 which
7 corresponded with our scene.

8 Q Let me show you what's been marked as S-44.
9 Can you tell us what that shows?

10 A This is, again, a view out the dining room window
11 of Apartment 5. I zoomed in on parking spot number 9
12 here just to show the cones that I had put on the fence
13 to mark the parking spots.

14 Q So you did zoom in a little bit on that?

15 A Yes, just to catch the markers, the placards.

16 Q Now, is that view looking straight out the
17 window?

18 A Yes.

19 Q Let me show you S-45. Can you tell the jury
20 what that shows?

21 A Again, another photo looking out the dining room
22 window of Apartment 5 5 panning towards Prospect
23 Street.

24 Q And is that view a normal-eye view or is that
25 zoomed?

1 A That's a normal view.

2 Q And S-46?

3 A Again, the same as the last photo, it's just
4 panned a little bit further.

5 MR. HEISLER: Judge, at this time I would
6 like to move these and show them to the jury, please?

7 THE COURT: S-42 through S-46, in evidence.

8 (S-42 through S-46, previously marked for
9 identification, are marked into evidence.)

10 (The jury views S-42 through S-46 in
11 evidence.)

12 Q Now, detective, let's go to S-48. Can you
13 tell us what that photograph shows?

14 A Yes. It's a photograph taken from the back patio
15 door of 400 Prospect Street. It's at the Dunn
16 residence.

17 Q And can you see the van that we just looked
18 at in those other pictures in that photo?

19 A Yes, parking space number 9.

20 Q And let me show you S-47. Can you tell us
21 what that is?

22 A This is a photo depicting a view from the parking
23 lot showing the van in parking space number 9 looking
24 towards the rear patio door of the Dunn residence.

25 Q And can you see the rear patio door in that

1 photo?

2 A Yes, sir.

3 Q Now, let me show you S-21. Do you recognize
4 that?

5 A Yes. This is, again, a photograph from the
6 parking lot of the High Point Apartments looking
7 towards the Dunn residence, the patio door in the back
8 of the house. However, the fence is missing.

9 Q Okay.

10 A This photo was taken the day of the scene.

11 Q That was taken the day of the crime?

12 A Correct.

13 Q And these photos were taken last Friday?

14 A Correct.

15 Q So looking specifically at S-48, there's a
16 stockade fence by that chain-link fence.

17 A That's correct.

18 Q Was that there on the day of the crime?

19 A No, it wasn't.

20 Q Now, let me show you S-20 in evidence. Do
21 you recognize that photo?

22 A Yes. This is a photo depicting the temporary
23 registration tag in the back of the green van the day
24 of the crime.

25 Q And did you take some additional pictures of

1 the green van?

2 A Yes.

3 Q Where is that green van?

4 A It's located at the prosecutor's impound yard out
5 at Robert Miller Airpark.

6 Q And has that van been in police custody since
7 the day of the crime?

8 A Yes.

9 Q Is the temporary sticker still on it?

10 A Yes.

11 Q Let me show you S-49. Can you tell us what
12 that is?

13 A It's a close-up of the temporary registration tag
14 in the back window of the van.

15 Q And that was taken when?

16 A This was taken on Friday.

17 Q And let me show you S-50.

18 A S-50 is a close-up of the name of the person who
19 bought the vehicle, Gregory Maples.

20 Q And does that show in the photograph?

21 A Yes.

22 Q And you recall seeing that name on the date
23 that you took the original pictures?

24 A Yes.

25 MR. HEISLER: Again, your Honor, I'd like to

1 move these exhibits and publish them, please?

2 THE COURT: S-47, -48, -49, and -50?

3 MR. HEISLER: Yes, sir.

4 THE COURT: And the others are already in
5 evidence.

6 MR. HEISLER: -20 is already in --

7 THE COURT: S-20 and -21.

8 MR. HEISLER: -- but I'd like to publish it
9 with the others.

10 THE COURT: Okay.

11 (S-47 through S-50, previously marked for
12 identification, are marked into evidence.)

13 (The jury views S-20, S-21, and S-47 through
14 S-50 in evidence.)

15 Q Now, Detective Frey, when you testified last
16 week, you told us about processing the parking lot
17 scene and about a number of bottles and gas cans and
18 that type of thing that were collected.

19 A Yes.

20 Q Were they ever processed for fingerprints?

21 A Yes, they were.

22 Q Were any fingerprints of any comparative
23 value developed off any of those items?

24 A No.

25 Q You also mentioned footwear impressions.

1 A Yes.

2 Q Photographs were taken of those?

3 A Yes.

4 Q And were they ever compared to anybody's
5 shoes?

6 A Yes.

7 Q Whose?

8 A The victim's shoes. I'd have to refer to my
9 report. I'm not sure. I didn't do the comparison.
10 Detective Klements from our office did actual
11 comparison.

12 Q Take a look at your report and refresh your
13 recollection, if you would?

14 A Yes. The shoes were compared to the victim,
15 Mr. Roy's, Mr. Santos' and Mr. Barber's.

16 Q And, if you can tell us, why weren't any
17 other comparisons done?

18 A Those were the only shoes we had to compare to.

19 MR. HEISLER: That's all I have, Judge.

20 THE COURT: Mr. Welle?

21 CROSS-EXAMINATION BY MR. WELLE:

22 Q Isn't it unusual, in the middle of a case, to
23 be running around a crime scene taking photographs --

24 MR. HEISLER: Objection.

25 Q -- and to come back into a courtroom?

1 THE COURT: Sustained, sustained, sustained.

2 Q I want to show you what we marked DW-1. You
3 want to take a look at that?

4 A (The witness complies.)

5 Q Do you recognize that as being a smaller copy
6 of that diagram?

7 A Yes.

8 Q With --

9 A With the exception of the changes.

10 Q With the exception of the changes?

11 A Correct.

12 Q Don't those changes reflecting buildings 402
13 404 more accurately represent the position of those two
14 buildings, vis-a-vis the parking lot, as you saw them
15 when you went to take these pictures in a general
16 sense, sir?

17 A Generally, yeah.

18 Q This diagram showed one building. And, in
19 fact, there are two buildings connected together?

20 A I'm not sure if they are connected, but they are
21 pretty close together.

22 Q Why don't you -- why don't you take a look at
23 this? Why don't you take a look at S-42?

24 Q Do you see one roof and then a slightly lower
25 set-back roof?

1 A Yes.

2 Q And do you recognize the building that takes
3 up the center of the picture --

4 A Yes.

5 Q -- in which 402 is?

6 A 403 (sic).

7 Q In which the Santos -- those two people
8 lived?

9 A Yes.

10 Q In which Mr. Heisler told you to go take a
11 picture so we can see exactly what they could see?

12 A That's correct.

13 Q So there is -- 404 is connected to 402?

14 A Correct.

15 Q All right. And this sort of accurately
16 reflect that, does it not?

17 A Yeah.

18 Q Okay. And the point is, is that those people
19 here can see an expanse that takes them from Prospect
20 Street all the way up to these positions up here where
21 cars park.

22 Isn't that true?

23 A Correct.

24 Q Okay. So, they cover parking space 9 and 10;
25 they cover where this "B" is; they cover where this

1 little rectangular thing is; and they cover out here
2 into the street.

3 There's no question about that?

4 A Correct.

5 Q Okay. Are you doing any more investigation
6 now, sir, as you sit here? Any of your people doing
7 anything?

8 MR. HEISLER: Objection.

9 A Not that I'm aware of.

10 THE COURT: Sustained.

11 MR. WELLE: I don't have any other
12 questions, Judge.

13 THE COURT: Mr. Kinarney?

14 MR. KINARNEY: Thank you, Judge.

15 CROSS-EXAMINATION BY MR. KINARNEY:

16 Q Good morning, detective.

17 A Good morning.

18 Q I might have missed what you said in talking
19 to my client. If I did, I apologize, I just want to
20 direct myself to the end of your direct examination by
21 Mr. Heisler concerning the footprints.

22 A Okay.

23 Q When you went to the scene, among other
24 things, you took a bunch of photographs of four
25 separate footprint impressions that you saw in the

1 soil; correct?

2 A I took photos of footprints, yes. I'm not sure of
3 how many.

4 Q Okay. Well, I don't even have it marked, but
5 just -- let me know if this refreshes your
6 recollection. I show you a copy of one of your reports.

7 Was it eighteen photographs that you took?

8 A Okay. This is not my report --

9 Q Okay.

10 A -- but it does reflect eighteen photographs.

11 Q Okay. So there were a number of photos taken
12 of footprint impressions in the soil at the scene;
13 correct?

14 A Correct.

15 Q And then, subsequent to this, Mr. Santos'
16 boots are taken as evidence -- potential evidence;
17 correct?

18 A Correct.

19 Q Timberland boots, size 10-and-a-half;
20 correct?

21 A Correct.

22 Q And there is a comparison made -- not by you,
23 but you've been privy to the reports -- a comparison
24 made by an expert. And his opinion was that the
25 impressions from the boots of Mr. Santos did not match

1 the impressions in the photographs.

2 Am I correct?

3 A That's correct.

4 MR. KINARNEY: Nothing further, Judge.

5 THE COURT: Mr. Zager?

6 MR. ZAGER: Thank you, Judge.

7 CROSS-EXAMINATION BY MR. ZAGER:

8 Q Detective Frey, do you always get a second
9 bite out of the apple?

10 MR. HEISLER: Objection.

11 THE COURT: Sustained, sustained.

12 Mr. Zager, please?

13 Q You appeared at the scene shortly after the
14 shooting?

15 A Yes.

16 Q There's been testimony that where this "B" is
17 on this exhibit, S-15, there's been testimony that
18 there was a red Grand Am there.

19 Did you see that Red Grand Am when you got
20 there?

21 A I don't recall.

22 Q Do you need to review your reports?

23 A I can look through the photos.

24 Q 'Cause really I'm looking for a yes or a no,
25 not a, "I don't recall?"

1 A I don't recall is my answer.

2 Q Okay. Would you like to look through your
3 photos?

4 A Absolutely.

5 THE COURT: Are you ready to answer yes.

6 THE WITNESS: Yes.

7 A I don't see any red Grand Am in the photos.

8 Q So would your answer to my question be, no,
9 there was no red Grand Am there when you arrived at the
10 scene?

11 A That's correct.

12 Q The scene was secured before you arrived?

13 A That's correct.

14 Q And you arrived at what time?

15 A I would have to refer to my report. 1301, which is
16 1:01 p.m.

17 Q 1:01 p.m.

18 When you pull into this complex, there's a
19 sign -- when you pull in off of Prospect heading, on
20 S-15, up the exhibit, there's a sign that says, "High
21 Point, a Condominium Complex."

22 Is that correct?

23 A Correct.

24 Q So it's not an apartment complex; it's a
25 condominium complex.

1 A Okay.

2 Q Correct?

3 A Correct.

4 Q Based on what occurred Thursday with your
5 questioning, you went out and took more photos;
6 correct?

7 A Correct.

8 Q Okay. Did you do any investigation to see
9 whether Mr. Maples' brother lived at High Point?

10 MR. HEISLER: Objection.

11 THE COURT: I'll allow the question.

12 A No.

13 Q Do you recall me asking you questions
14 regarding the condition of the van?

15 A Yes.

16 Q Do you recall me asking you whether or not
17 any tests were made as to whether or not Mr. Maples'
18 van that was parked in maybe space number 8 or 9,
19 whether it was operational?

20 A Yes.

21 Q Do you recall that?

22 A Yes, yes.

23 Q And your answer was that no tests were done?

24 A Correct.

25 Q Have you done any tests since last Thursday

1 to now?

2 A No.

3 Q Do you recall me asking if the taillights
4 worked?

5 A Yes.

6 Q And your answer was no testing?

7 A Correct.

8 Q Have you done any testing from Thursday to
9 now on the taillights?

10 A We've done nothing with the van at all, other than
11 photo it. We have never done a search warrant on it.

12 Q You never did a what?

13 A We've never done a search warrant on it.

14 Q You don't really need a search warrant to do
15 these tests on it; right? You've impounded it;
16 correct?

17 A That's a legal question.

18 Q I think if it were a legal question, somebody
19 over here on my right would be objecting, so I think
20 you can answer.

21 You've impounded it?

22 MR. HEISLER: Judge, he has answered it.

23 It's a legal question.

24 THE COURT: Right.

25 Q You were free to do any tests on the van that

1 you wanted to since April 28th, when it was impounded;
2 correct?

3 MR. HEISLER: Objection.

4 THE COURT: Sustained.

5 If you want to rephrase that question, you
6 can.

7 Q You made no effort to get a warrant; right?

8 A I don't -- I don't do warrants. Warrants are done
9 by the prosecutor's office, and they give it to us.

10 Q And if you needed to have information to
11 complete your investigation, you would pick up the
12 phone, call the prosecutor's office, and ask that they
13 get a warrant for Mr. Maples' green Villager van;
14 correct?

15 A Initially, we assumed we were getting a warrant
16 for the van, and we never did.

17 Q Never did?

18 A Right.

19 Q You never asked for it?

20 A I believe we did, but I don't know who we spoke
21 to.

22 Q Footprint comparisons, is there any reason
23 why on direct examination, when Mr. Heisler asked you
24 questions, why you didn't tell us the results?

25 MR. HEISLER: Can we have a time frame here?

1 Thursday? Today?

2 MR. ZAGER: Five minutes ago.

3 A I don't believe I was asked.

4 Q Mr. Heisler asked if you had photographs of
5 footprints; right?

6 A Correct.

7 Q He asked you if you do comparisons; correct?

8 A Correct.

9 Q He asked you if you did comparisons to
10 Mr. Santos; correct?

11 A Correct.

12 Q And he asked you if you did comparisons to
13 Barber?

14 A And the victim.

15 Q Pardon me?

16 A And the victim.

17 Q And the victim?

18 A Correct.

19 Q But the results of those tests weren't given
20 to the jury; correct?

21 A Correct.

22 Q Until Mr. Kinarney asked you?

23 A Correct.

24 Q Mr. Maples turned himself in shortly after
25 this matter.

1 MR. HEISLER: Judge, I'm going to object to
2 this.

3 THE COURT: Sustained.

4 MR. ZAGER: Judge, the proffer is
5 Investigator Hayes is going to testify, so I think I'm
6 allowed to ask that question.

7 THE COURT: Well, where are you going with
8 the question? That's my --

9 MR. ZAGER: Footprints. I can go to side bar
10 for a proffer.

11 THE COURT: You want to ask him if his
12 footprints -- if his shoes were taken and compared? Is
13 that what you want to ask him?

14 MR. ZAGER: That's where I was going.

15 THE COURT: If he knows.

16 MR. ZAGER: Thank you.

17 Q Did you make any request to have Mr. Maples'
18 shoes provided to you so that you could compare them to
19 the footprint pictures?

20 A No.

21 Q Therefore, no footprint comparisons were done
22 for Mr. Maples?

23 A Correct.

24 Q Was the van, the green Villager van, was that
25 van locked --

1 A Yes.

2 Q Okay. I have to finish the question.

3 A Go ahead.

4 Q When it was impounded, was it locked?

5 A Yes.

6 Q Do you recall a series of questions I asked
7 you on Thursday regarding physical or forensic evidence
8 regarding Mr. Maples being at the scene?

9 A Yes.

10 Q Your response to that question was, "No," to
11 each question I asked; correct?

12 A Correct.

13 Q Your opinion hasn't changed from Thursday
14 until today regarding that series of questions;
15 correct?

16 A Correct.

17 MR. ZAGER: I have nothing further, Judge.

18 THE COURT: Mr. Somers?

19 MR. SOMERS: Thank you, your Honor.

20 CROSS-EXAMINATION BY MR. SOMERS:

21 Q Now, were any footprint comparisons done at
22 the scene of the Jeep?

23 A I don't know. I didn't respond to the Jeep's
24 location.

25 Q Do you know who did?

1 A Detective Pozalante.

2 Q You're the chief of this investigation, are
3 you not?

4 A Yes.

5 Q Would you know if any comparisons were done
6 at the scene of the Jeep?

7 A I just answered that. I don't know.

8 Q You don't know.

9 Do you know who might know?

10 A Detective Pozalante.

11 Q Did you ever do any comparisons of
12 Mr. Irwin's shoes?

13 A No. The only shoes we have in evidence are
14 Mr. Roy's, Mr. Barber's and Mr. Santos'.

15 Q Did you ever attempt to secure Mr. Irwin's
16 shoes?

17 A No.

18 Q Why not?

19 A I don't know.

20 MR. SOMERS: No further questions.

21 THE COURT: Mr. Heisler?

22 REDIRECT EXAMINATION BY MR. HEISLER:

23 Q Detective Frey, with respect to this footwear
24 impressions, you compared or Detective Klements
25 compared footwear belonging to the victim; correct?

1 A Yes.

2 Q Did you have the victim's shoes the day this
3 happened?

4 A Yes.

5 Q Did you have Mr. Santos' shoes the day this
6 happened?

7 A Yes.

8 Q They were collected into evidence because he
9 was apprehended that day?

10 A Correct.

11 Q And did Mr. Barber come into police contact
12 the next day?

13 A Yes.

14 Q Now, when did Mr. Maples turn himself in?

15 A It was -- I'm mat exactly sure of the date.

16 May 13th, '02.

17 Q That's over two weeks after the date of this
18 crime, isn't it?

19 A Correct.

20 Q And two weeks later, do you know if he's
21 wearing the same shoes?

22 A No.

23 Q So are the shoes he's wearing that day of any
24 particular value to you?

25 MR. ZAGER: Objection. He knows that they

1 could have asked for his shoes and got a subpoena for
2 his shoes. And he's asking for speculation now, Judge.

3 MR. HEISLER: On May 13th.

4 Q On May 13th, are those shoes of any value to
5 you?

6 A No.

7 Q And would the same be true of Mr. Irwin, if
8 he wasn't apprehended around the same time of the
9 crime?

10 A Correct.

11 Q And would that also be true of Mr. Worthy?

12 A Yes.

13 MR. HEISLER: That's all I have, Judge.

14 THE COURT: Mr. Welle?

15 RECROSS EXAMINATION BY MR. WELLE:

16 Q Mr. Worthy turned himself in days after this
17 particular event, did he not?

18 A I believe so.

19 Q And you're -- you're suggesting that footwear
20 that someone might have on them a few days or a week
21 after might not be relevant to your investigation?

22 A It may or may not be. A positive identification
23 is done through certain points in the sole pattern of a
24 shoe. That could change drastically with me walking to
25 the door depending what's on the ground.

1 Q In a couple of days?

2 A Absolutely; within minutes.

3 Q So if I had one pair of sneakers, and I wore
4 them on the 28th, and four days later, my only pair of
5 sneakers is still on my feet, you're telling me that
6 obtaining that particular footwear might not be a
7 reasonable and professional thing for you to do, as an
8 investigating officer, to determine whether those
9 sneakers match something at a crime scene?

10 A Again, you're talking about a match. I mean, we
11 could do a sole -- it made match sole pattern, but it's
12 not going to be an identical match.

13 Q Did you find any physical forensic evidence
14 of any kind at that scene that in any way links
15 Mr. Worthy to that crime scene?

16 A No.

17 MR. WELLE: I have nothing further.

18 THE COURT: Mr. Kinarney?

19 MR. KINARNEY: Nothing.

20 THE COURT: Mr. Zager?

21 MR. ZAGER: No, your Honor.

22 THE COURT: Mr. Somers?

23 MR. SOMERS: No questions.

24 THE COURT: Mr. Heisler?

25 MR. HEISLER: No questions.

1 THE COURT: Thank you. You're excused.

2 (The witness is excused.)

3 THE COURT: Your next witness?

4 MR. HEISLER: Detective Pozalante.

5 THE COURT: Detective Pozalante, please?

6 WILLIAM POZALANTE, sworn.

7 THE COURT CLERK: Would you state your name
8 and spell your last name, please?

9 THE WITNESS: William Pozalante.

10 THE COURT CLERK: Thank you.

11 THE COURT: Mr. Heisler?

12 MR. HEISLER: Thank you, your Honor.

13 DIRECT EXAMINATION BY MR. HEISLER:

14 Q Detective Pozalante, by whom are you
15 employed?

16 A The Ocean County Sheriff's Department.

17 Q And how long have you been a Sheriff's
18 Officer in Ocean County?

19 A Approximately twenty years.

20 Q What's your current assignment?

21 A I work in the Criminal Investigations Unit.

22 Q Is that the same unit Detective Frey works
23 in?

24 A Yes, sir.

25 Q And how long have you been assigned there?

1 A Ten years.

2 Q And what are your duties there?

3 A Processing documents at crime scenes, evidence
4 collection, and preservation.

5 Q Have you had specific training in those
6 areas?

7 A Yes.

8 Q Now, with reference to this case, were you
9 part of the team from the Criminalistics Investigation
10 Unit that processed evidence?

11 A Yes.

12 Q And directing your attention to April 30th,
13 were you part of the team that went out into a wooded
14 area in Jackson Township looking for certain evidence?

15 A Yes, I was.

16 Q And, generally, who else was present during
17 that search?

18 A Members of the prosecutor's office,
19 Detective Frey, and Detective Finnegan from the
20 Lakewood Police Department.

21 Q And was there a man named Ernesto Barber
22 there?

23 A Yes, he was.

24 Q What was his purpose in being there?

25 A He was going to direct us to the area where the

1 weapons were buried.

2 Q Now, were you involved with recovery of the
3 Jeep?

4 A Yes, I was.

5 Q And when did that take place?

6 A Recovery of the Jeep took place on the 28th.

7 Q On Sunday?

8 A Yes.

9 Q And, generally speaking, what was the
10 condition of the Jeep?

11 A I believe the right front tire was flat. The gas
12 tank was left open with a rag hanging out of it. It
13 was charred around the gas port.

14 Q And was the Jeep taken into a particular
15 location for further examination?

16 A Yes. It was towed back to our office.

17 Q And was it processed there?

18 A Yes, sir.

19 Q Before we leave the scene of the Jeep being
20 recovered or the Jeep being back at your place, when
21 you were out there on the 30th with Ernesto Barber, do
22 you recall photographing certain items?

23 A Yes.

24 Q What items were you looking for?

25 A There's items that he mentioned. There was the

1 glove, tape, weapons.

2 Q And did you find the glove?

3 A Yes, I did.

4 Q What was your point of reference to start
5 your search?

6 A We left from the Jeep approximately midway into
7 the woods.

8 Q You went back to the spot where the Jeep was
9 located?

10 A Yes.

11 Q And started your search from there?

12 A Yes.

13 Q And did you locate a glove?

14 A Yes, we did.

15 Q Let me show you two photographs that I need
16 to have marked.

17 THE COURT: Sorry, Judge. I think there are
18 four here that need to be marked.

19 THE COURT: Mark them all.

20 MR. HEISLER: Actually, it's three. One is
21 already in.

22 (S-56 through S-58, separate photographs, are
23 marked for identification.)

24 Q Let me show you S-56, for starters. Do you
25 recognize what's shown in that photograph?

1 A Yes. It's part of a motor vehicle. What part it
2 is, I really can't tell, but I believe it's some
3 portion of the undercarriage area.

4 Q Okay. And this Jeep was damaged the when
5 you found it?

6 A Yes.

7 Q Let me show you what was previously marked
8 S-31 in evidence. Could you tell us what that shows?

9 A A roll of tape.

10 Q And that was brought to your attention by
11 Mr. Barber?

12 A I can't say Mr. Barber brought it to my attention
13 exactly, but it was -- he was there pointing in
14 different directions. In other words, as we walked the
15 area, we would find them.

16 Q Okay. You were looking for duct tape because
17 of what Barber said?

18 A Yes.

19 Q Somebody -- one of the investigators found
20 it?

21 A Yes.

22 Q Where was that in relationship to where the
23 Jeep had been located on that fire trail?

24 A Probably 200 feet into the woods. It would be
25 probably north of the Jeep.

1 Q Okay. And did somebody locate black gloves?

2 A Yes.

3 Q Could you tell us what S-57 shows?

4 I should say a black glove.

5 A That's a black glove.

6 Q And where was that located, if you recall?

7 A In the same general area. It was within the area,
8 same area, as all the other evidence that was collected
9 there. Nothing was very far apart.

10 Q Can you approximate how many feet from the
11 duct tape the glove was found?

12 A 25, 30 feet, maybe.

13 Q And let me show you S-58.

14 A And that's the glove.

15 Q That's a close-up of the same glove?

16 A Same glove, yes.

17 Q And were those items collected?

18 A Yes, they were.

19 Q Now, you processed the Jeep back at your
20 facility?

21 A Yes.

22 Q And when you process it, what are you looking
23 for?

24 A Anything of evidentiary value that may be related
25 to the scene. We process for fingerprints, for fibers,

1 trace evidence.

2 Q Do you also process for shell casings,
3 bullets, blood, that type of thing?

4 A Oh, sure.

5 Q And in this particular case, did you look for
6 guns, bullets, shell casings, those types of things?

7 A Yes, we did.

8 Q Did you find any in that Jeep?

9 A No.

10 Q Did you find any blood in that Jeep?

11 A No, sir.

12 Q What was the general condition of the
13 interior of the Jeep? Generally, if you can, describe
14 the contents.

15 A Oh, there was CDs scattered about, various
16 paperwork. I believe there was what they call a boom
17 box, a cassette player, whatever.

18 Q And did you photograph the interior of the
19 Jeep?

20 A Yes.

21 Q Let me show you another series of
22 photographs. We'll start with S-52.

23 Could you tell us what that shows?

24 A It shows CDs and CD cases lying on the floor.

25 Q In what area?

1 A Front side, front driver's floor.

2 Q And let's look at S-53. If you could tell us
3 what that shows?

4 A It's the CD cassette player, along with coffee
5 containers and a CD, in the back.

6 Q Okay. That's in the back of the Jeep?

7 A Yes.

8 Q And we'll get the small photo, S-51.
9 Could you tell us what that is?

10 A It looks like a juice bottle laying on the floor
11 behind the driver's seat.

12 Q So that's a photograph in the back-seat area?

13 A Yeah.

14 MR. HEISLER: Judge, I'd like to move these
15 three photographs and publish them, if I could, please?

16 THE COURT: Which are you talking about now?

17 MR. HEISLER: We're talking about S-51 --

18 THE COURT: -52?

19 MR. HEISLER: -- S-52 and S-53, your Honor.

20 THE COURT: In evidence.

21 You haven't moved -56 through -58 yet, have
22 you?

23 MR. HEISLER: Judge, as long as we're
24 publishing, I just as soon move those and show them, as
25 well, at this time.

1 THE COURT: In evidence.

2 (S-51 through S-53, and S-56 through S-58,
3 previously marked for identification, are marked into
4 evidence.)

5 (The jury views S-51 through S-53 and S-56
6 through S-58 in evidence.)

7 Q Now, Detective Pozalante, when you processed
8 the Jeep, you told us you didn't find any blood. Did
9 you find any trace evidence that was of any evidential
10 value?

11 A No.

12 Q You processed for fingerprints?

13 A Yes.

14 Q Okay. How did you do that? What did you
15 process, and how?

16 A Well, it was a black-powder process. You simply
17 have a brush and place it into the powder, and you go
18 over surfaces lightly, and the fingerprint will
19 develop. We also use a ninhydrin process on paper
20 products.

21 Q Ninhydrin is a chemical?

22 A Yes.

23 Q And you used that on what type of things?

24 A Paper products we used it on. And we also used --
25 we fumed the vehicle.

1 Q Okay. Explain "fuming the vehicle."

2 A Cyanoacrylate ester fuming it's called. It's a --
3 what you do is you place the Crazy -- it's Crazy Glue.
4 You place it into the vehicle and seal the vehicle.
5 You introduce a moisture, and what happens is the
6 vapors will adhere to the fingerprints making them
7 visible.

8 Q Okay. So you have a number of various ways
9 of raising -- these are latent fingerprints; correct?

10 A Yes, yes.

11 Q And are you the guy who is responsible for
12 comparing these to anything?

13 A No, sir.

14 Q Okay. So when you process, what are you
15 looking for?

16 A I'm looking for any ridge detail that may be of a
17 comparative value. If so, I will collect it. Whether
18 it be lifting it or photographing or whatever, I
19 collect it, and I give to it a latent fingerprint
20 examiner.

21 Q Okay. When you say "ridge detail of a
22 comparative value," what do you mean?

23 A It could be unique points in a latent fingerprint,
24 a latent print. What you do is when you develop, you
25 look at it, and you'll see, Are there going to be

1 enough points of comparative value in there?

2 This way, if there's something in there that
3 I would have a doubt on, whether or not, I would still
4 take that print.

5 Q Okay.

6 A And allow the latent print fingerprint examiner
7 to say, no, this is -- that it's not comparative.

8 Q Okay. So it's not your call in the end?

9 A No.

10 Q Are there things that come up that are
11 obviously not of comparative value to you?

12 A Oh, sure. You would have smudgings and smears.

13 Q Okay. And are those things you wouldn't
14 collect?

15 A Yes, because they would have no ridge detail at
16 all.

17 Q Okay. But you would see that when you
18 process?

19 A Yes.

20 Q Okay. Now, in this case, did you process the
21 items from within the vehicle?

22 A Yes, I did.

23 Q And did you also process the vehicle, itself?

24 A Yes.

25 Q And did you find fingerprints that you

1 believed were of comparative value and should go to a
2 fingerprint examiner?

3 A Yes. There were numerous fingerprints.

4 Q As a result of that, did you generate a log
5 or a list of the fingerprints that were to be
6 submitted?

7 A Yes, I did.

8 MR. HEISLER: If I could have this marked,
9 your Honor?

10 (S-59, a fingerprint log, is marked for
11 identification.)

12 Q Detective Pozalante, let me show you what's
13 just been marked as S-59 for identification. Could you
14 tell the jury what that is?

15 A It's latent fingerprint log sheet.

16 Q And is that a document that you generated?

17 A Yes, and it assigns numerically to all the
18 fingerprints that are lifted.

19 Q And when you say, "It assigns numerically,"
20 just tell us, generally, when you have the number in
21 this far column over here to the left, the -- I see
22 numbers starting with "MV." What does that mean?

23 A It means motor vehicle 2.

24 Q Okay. "2," being the Jeep?

25 A Yes.

1 Q Motor vehicle 1 was that green van that was
2 impounded?

3 A Yes.

4 Q And then each item is assigned a number?

5 A Yes. Each item is assigned a number, yes. Then
6 you would have "E" listed. For example, "E-40," that
7 would be in evidence. That's something we seized into
8 evidence and then processed.

9 Q The MV numbers being actual locations on the
10 Jeep that you processed?

11 A Yeah.

12 Q And the evidence numbers are items that were
13 taken and logged in?

14 A Yes.

15 Q Okay. And did you submit this report to the
16 fingerprint examiner with the actual evidence?

17 A Yes, I did.

18 Q Now, you can't submit the Jeep. How do you
19 handle that? You can't send them a jeep and say, The
20 fingerprints are up here on the door frame.

21 A Yes. You would lift them or photograph them.

22 Q Okay. So if you don't lift them, you
23 photograph them?

24 A Yes.

25 Q And the examiner uses photographs to compare?

1 A Yes. You would use one-to-one.

2 Q Okay. And, again, you're not the guy that
3 does the comparisons?

4 A No.

5 THE COURT: That's all I have, Judge.

6 THE COURT: Mr. Welle?

7 CROSS-EXAMINATION BY MR. WELLE:

8 Q Who did the comparisons in this case? Do you
9 know?

10 A Sergeant Armstrong, I believe.

11 Q You said you found no trace evidence of
12 evidential value in this Jeep. Is that correct?

13 A Yes.

14 Q There were no bullet holes in this Jeep?

15 A No, sir.

16 Q No blood?

17 A No.

18 Q Did you do any testing for any gunshot
19 residue in this Jeep?

20 A No, sir.

21 Q There's -- there are mechanisms and processes
22 by which one can determine on a garment or on the back
23 of a seat whether there's any gunpowder residue.

24 Isn't that correct?

25 A Yes. It's muscle-to-garment. You would have to

1 be relatively close in order to perform that.

2 Q But I ask you, is it possible that there
3 exists mechanisms and tests to determine whether a
4 gunshot was fired or a gun was fired in a particular
5 location, if it's close to another object?

6 A That's yes and no.

7 It's -- normally, if you fired it and it's
8 inside, but a -- if you're in a vehicle and it's moving
9 and your arm is out that window, I would say no. If
10 you --

11 Q I could agree with you, and that has nothing
12 to do with this case. What about in a car that's
13 stationary?

14 A Yes.

15 Q If a gun is fired in a car that is
16 stationary --

17 A Yes.

18 Q -- is there any reason why some part of that
19 vehicle would not contain evidence, remnants, trace
20 elements, that there was bullet fired out of that gun?

21 A Yes, it is possible.

22 Q Did you do that test?

23 A No, sir.

24 Q Did anybody do that test in that car?

25 A Not that I'm aware of, no.

1 Q Do you know whether anybody did any test on
2 anything in this case to determine whether there was
3 any gunshot residue?

4 A If you give me a minute? I'd have to look at the
5 evidence report.

6 MR. HEISLER: Judge, I'm going to object to
7 that in any event at this point.

8 THE COURT: Yes.

9 If he did any?

10 MR. HEISLER: Yeah.

11 Q You didn't do any?

12 A No, sir.

13 Q And --

14 MR. WELLE: We won't make him look, Judge.

15 I have no further questions.

16 THE COURT: Mr. Kinarney?

17 MR. KINARNEY: Thank you, Judge.

18 CROSS-EXAMINATION BY MR. KINARNEY:

19 Q Good morning, detective.

20 A Good morning.

21 Q Detective, one of the things you testified to
22 is that you -- that you found a glove; correct?

23 A Yes.

24 Q You didn't find two gloves. You found one
25 glove; correct?

1 A Yes, sir.

2 Q And you said everything was kind of within
3 the same area of the woods, pretty much everything you
4 recovered, the guns, the glove, the motor vehicle
5 parts.

6 Is that correct?

7 A Yes.

8 Q Okay. And as a matter of fact, in one of
9 your reports, you indicated that, "The weapons, one
10 roll of duct tape, a plastic bag, a right-handed
11 Franklin baseball glove and motor vehicle parts were
12 scattered across the woods for approximately 200 yards.

13 Is that correct?

14 A Yes.

15 Q All right. So, basically, if you look at
16 everything that was recovered, putting the Jeep
17 aside -- everything that was recovered on the ground,
18 let's say -- it's within an area of 200 yards; correct?

19 A Yes.

20 Q Now, would it be fair to say that -- and if
21 you need something to refresh your recollection, I'd be
22 happy to give it to you.

23 Would it be fair to say that the glove was
24 recovered approximately 175 feet south of the north
25 trail of east side of 199 White Road, in Jackson?

1 A Yes, that would be on -- from the north side fire
2 trail, yes.

3 Q Okay. And, as a matter of fact, you don't
4 know whose glove this was; correct?

5 A No, sir, I don't.

6 Q And, as a matter of fact, you don't know if
7 that glove was related to this case or not; correct?

8 It could have been a glove out in the woods;
9 correct?

10 A It could have been, sure.

11 Q Okay. And, as a matter of fact, no attempt
12 was made to forensically tie that glove to Mr. Santos;
13 correct?

14 A Not that I'm aware of, no.

15 Q There was no court order for DNA, for
16 example, and then an attempt to get any DNA off the
17 glove, like sweat, and compare to it Mr. Santos' DNA,
18 as far as you know; right?

19 A No, sir.

20 Q No fingerprints were taken from that glove;
21 correct?

22 A No.

23 Q And do you know where in glove is, as a
24 matter of fact?

25 A Now?

1 Q Yes.

2 A It's in evidence.

3 Q Okay. Do you know if the glove was processed
4 at all?

5 A Not that I'm aware of.

6 Q Okay. So the bottom line is it could have
7 been anybody's glove, and there's nothing to tie Santos
8 to that glove, whatsoever?

9 A Solely based on what Mr. Barber said, yes, sir.

10 Q Only -- putting aside what Mr. Barber said.
11 And, by the way, Mr. Barber said that Mr. Santos was
12 wearing gloves; correct?

13 A I'm not sure of that. All I know is what
14 Mr. Barber said, when we were going out there, what we
15 were going out there for.

16 Q Okay. Did he say, Well, Mr. Santos had a
17 glove, or did he say, Santos had gloves on, if you can
18 recall? If you can't, that's fine.

19 A I don't recall.

20 Q Okay.

21 A I wasn't there during the course of the interview.

22 Q Okay. Did he say Santos had on baseball
23 gloves --

24 A No.

25 Q -- if you recall?

1 A He just said there was a black glove out there.
2 That's all he said.

3 Q Oh, now he said there was a black glove out
4 there?

5 A Yes, there was a black glove, along with the tape,
6 and the other items that were in evidence.

7 Q Maybe I'm confused or you're confused. Is
8 what you're saying, you found the black glove out
9 there?

10 A Yes.

11 Q Did you look -- when you found that first
12 glove, did you look around for a second glove?

13 A Yes, I did.

14 Q And you didn't find the second glove?

15 A No.

16 Q Okay. Would this black Franklin baseball
17 glove be a glove that, like, a major league player
18 wears on his hand when he hits, as opposed to a
19 fielding glove --

20 A Yes.

21 Q -- or a mitt?

22 A Yes. It's a type --

23 Q Well, it's a type of glove?

24 A Yes, it's a type of fitting glove.

25 Q But it doesn't look like, for instance, the

1 kind of glove you would wear if it's cold out; correct?

2 A Yeah.

3 Q A hitting glove, a baseball glove, is a type
4 of glove. You grip a bat with; correct?

5 A Yeah.

6 Q They're two different types of gloves.

7 A No, I wouldn't wear it in the cold.

8 Q So it's -- I guess what I'm saying is, and
9 you can correct me if I'm wrong, it's not a normal type
10 glove that you and I and everybody else would think of
11 when somebody says, I got my gloves on?

12 A No.

13 MR. KINARNEY: Nothing further.

14 THE COURT: Mr. Zager?

15 MR. ZAGER: Thank you, Judge.

16 CROSS-EXAMINATION BY MR. ZAGER:

17 Q Good morning, detective.

18 A Good morning.

19 Q The Jeep belonged to someone other than the
20 victim; correct?

21 A Yes.

22 Q Did you get a warrant to process it?

23 A There was a warrant issued, yes.

24 Q There was.

25 The first time Mr. Kinarney asked you the

1 question regarding tests for gunpowder residue, was
2 your response no tests were done?

3 A Yes.

4 Q In the Jeep?

5 A In the Jeep.

6 Q So if a witness were to testify that a
7 shooting took place in the Jeep, and a gun was actually
8 fired in the green Jeep, you have no forensic evidence,
9 whatsoever, to support that statement, do you?

10 A No.

11 MR. ZAGER: Thank you.

12 THE COURT: Mr. Somers?

13 MR. KINARNEY: Judge, I apologize. I had
14 omitted a question, if I may, if you would be so kind?

15 THE COURT: Yes.

16 MR. KINARNEY: Thank you.

17 CONTINUED CROSS-EXAMINATION BY MR. KINARNEY:

18 Q Did you attempt to ascertain the size of that
19 baseball glove?

20 A No, sir, I didn't.

21 Q Do you know if Mr. Santos' hands, his right
22 hand, was measured?

23 A No.

24 MR. KINARNEY: Okay. Nothing further, thank
25 you, Judge.

1 THE COURT: Mr. Somers?

2 MR. SOMERS: Thank you, your Honor.

3 CROSS-EXAMINATION BY MR. SOMERS:

4 Q Now, detective, were any pictures of
5 footprints taken around the scene of the Jeep?

6 A I don't believe so, sir.

7 Q Any reason for that?

8 A It was sugar sand. If you walked in it, it would
9 give you an outline of a footprint, but it would not
10 leave anything that you could use for a comparative
11 value.

12 Q Was it wet that day?

13 A No.

14 Q It wasn't wet?

15 A No.

16 Q It hadn't been drizzling?

17 A Not that I can recall.

18 Q You went out there on the 28th, was it?

19 A Yes, we were out there on the 28th.

20 Q That was the date of this incident; correct?

21 A Yes.

22 Q And you're testifying that it wasn't wet and
23 it had not been drizzling?

24 A I -- I didn't say that. I said I don't recall.

25 Q Now, did you take fingerprint samples from

1 around the gas tank?

2 A I processed the vehicle there, yes, around that
3 area.

4 Q Detective, I'd like to show you what's been
5 marked S-42 into evidence and ask you if you can
6 identify that?

7 A Yes. I took this photograph.

8 Q Okay. Could you show us exactly where you
9 took fingerprints?

10 A I processed around, all around here, on the
11 outside.

12 Q All around there?

13 A Yes.

14 Q Okay. How about on the lid?

15 A Yes.

16 Q There, too.

17 How about the cap? Did you do that, too?

18 A The cap was collected, and I believe that was
19 processed later on for fingerprints.

20 Q Thank you.

21 Now, when you arrived at the scene, did you
22 find a rag in the gas tank?

23 A Yes.

24 Q Did you recover it?

25 A Yes.

1 Q Did you bring it back?

2 A Yes, I did.

3 Q Is it in evidence?

4 A Yes, it is.

5 MR. SOMERS: Thank you. I have no further
6 questions.

7 THE COURT: Mr. Heisler?

8 MR. HEISLER: Yes.

9 REDIRECT EXAMINATION BY MR. HEISLER:

10 Q Detective, you want to check your evidence
11 list to see if that rag is actually in evidence?

12 A I don't see it listed.

13 THE COURT: Anything further, Mr. Heisler?

14 MR. HEISLER: No, sir.

15 THE COURT: Mr. Welle?

16 MR. WELLE: Yes.

17 RECROSS EXAMINATION BY MR. WELLE:

18 Q I'm sorry. Are you still looking for the --

19 A No, sir. I'm just a little confused here.

20 Q Just as a point of clarification, your report
21 indicates that, "There were 69 latent lift cards and
22 photographs submitted in the above case, and 34
23 contained latent fingerprints of comparative value."

24 A Yes.

25 Q Now, what does that mean?

1 A It means they can be compared to another
2 individual.

3 Q Thirty-four?

4 A Yeah.

5 Q Okay. So you got 69, but 34, were you
6 believed, good enough for someone to look at to try to
7 compare?

8 A Well, I collected all 69, right. And the latent
9 fingerprint examiner makes that decision on whether
10 they have comparative value or not, whether they can be
11 compared to an inked impression of a person.

12 Q Okay. Just one question. Did you get a
13 latent lift and mark it MV2-13?

14 A Yes.

15 Q And where did you get that latent from?

16 A The interior inner door frame, the rear passenger
17 door.

18 Q Anything more about that in a descriptive
19 sense?

20 A I would have to look at the latent card that was
21 lifted or -- but it would be on the interior of the
22 frame, more than likely where you close the door and
23 open it.

24 Q Okay. I see here on I guess it's your
25 report, "Interior door frame of right rear passenger

1 door, above interior window frame."

2 Does that sound about right?

3 THE COURT: Well, is that what it says?

4 MR. WELLE: Well --

5 A That's what it says in the report, yes.

6 Q Do you know what, if any, or who, if any,
7 individual that print came back to?

8 MR. HEISLER: Judge, we're going to have the
9 fingerprint examiner in here this morning.

10 THE COURT: All right.

11 Q Did you -- did you do any examination of the
12 two guns in this case to try to lift any fingerprints
13 off those guns?

14 A Yes, yes.

15 Q And did you get any fingerprints off those
16 guns?

17 A No, sir.

18 MR. WELLE: No further questions.

19 THE COURT: Mr. Kinarney?

20 MR. KINARNEY: Nothing your Honor.

21 THE COURT: Mr. Zager?

22 MR. ZAGER: No, sir.

23 THE COURT: Mr. Somers?

24 MR. SOMERS: Yes, your Honor.

25 RE-CROSS EXAMINATION BY MR. SOMERS:

1 Q So, detective, you remember picking up a rag
2 from the gas tank of the Jeep that day?

3 A I recall it. It's just not in the evidence
4 report.

5 Q You just don't know where it is?

6 A I'll make sure I go find out when I'm done here.

7 MR. SOMERS: Thank you. No further
8 questions.

9 THE COURT: Anything further?

10 MR. HEISLER: No, sir.

11 THE COURT: Thank you. You're excused.

12 (The witness is excused.)

13 MR. ZAGER: Judge, could we approach side
14 bar?

15 THE COURT: Without the reporter for a
16 moment?

17 MR. ZAGER: Yes.

18 (A side bar conference take place off the
19 record.)

20 THE COURT: All right. We're going to take a
21 brief mid-morning recess at this time, so you can step
22 into the jury room.

23 (A short recess was taken.)

24 (The following is heard in the presence of
25 the jury.)

1 (S-60, a latent evidence report, and, S-61, a
2 latent listing, are marked for identification.)

3 THE COURT: Mr. Heisler?

4 MR. HEISLER: Investigator Abrams, please?

5 ROBERT ABRAMS, sworn.

6 THE COURT CLERK: Would you state your name
7 and spell your last name, please?

8 THE WITNESS: Robert Abrams, A-b-r-a-m-s.

9 THE COURT CLERK: Thank you.

10 THE COURT: Mr. Heisler?

11 MR. HEISLER: Thank you, your Honor.

12 DIRECT EXAMINATION BY MR. HEISLER:

13 Q Investigator Abrams, by whom are you
14 employed?

15 A The Ocean County Prosecutor's Office.

16 Q In what capacity?

17 A As an investigator.

18 Q And how long have you been an investigator in
19 the Ocean County Prosecutor's Office?

20 A Since January of 1989.

21 Q And what's your current assignment?

22 A Arson and environmental investigations.

23 Q And how long have you had that assignment?

24 A Since 1995.

25 Q And what's the -- your educational

1 background?

2 A I have a Bachelor's Degree of Science in Criminal
3 Justice from Trenton State College, and numerous,
4 numerous fire schools and fire academies.

5 Q Have you received any special training in
6 determining the cause and origin of fires?

7 A Yes.

8 Q And how many schools have you been to?

9 A Approximately fifty.

10 Q And do have any other fire-related
11 experience?

12 A Yes. I'm a volunteer firemen since September of
13 1990, and I currently serve as a lieutenant in the fire
14 department.

15 Q And in your capacity as a prosecutor's
16 investigator, have you conducted investigations into
17 the cause and origin of fires?

18 A Yes, I have.

19 Q And how many, approximately?

20 A Approximately five hundred.

21 Q And is that your job?

22 A Yes.

23 Q Have you ever qualified in Superior Court
24 before as an expert in the area of the cause and origin
25 of fires?

1 A Yes, I have.

2 MR. HEISLER: Judge, at this time I move
3 Investigator Abrams as an expert witness in cause and
4 origin of fires.

5 THE COURT: Counsel?

6 MR. WELLE: No objection.

7 MR. ZAGER: No objection.

8 MR. KINARNEY: No objection.

9 MR. SOMERS: No objection.

10 THE COURT: All right.

11 Ladies and gentlemen, once again, based upon
12 the witness's background, training, education and
13 experience, I'm going to allow him to testify as an
14 expert witness and give you opinion testimony in the
15 field of cause and origin of fires.

16 As I told you with the earlier expert, I'm
17 merely ruling he's qualified to give you his opinion.
18 The merit and worth of his opinion will be strictly up
19 to you to decide during the course of your
20 deliberations.

21 Mr. Heisler?

22 MR. HEISLER: Thank you, your Honor.

23 Q Investigator Abrams, were you called upon to
24 review certain documentation and photographs in
25 connection with a green Jeep Cherokee that was

1 recovered on April 28, 2002?

2 A Yes, I was.

3 Q Now, were the original investigator from the
4 prosecutor's office assigned to make a cause and origin
5 determination with respect to that Jeep?

6 A No, I wasn't.

7 Q Who was originally assigned?

8 A Sergeant John Lightbody.

9 Q And, at the time, where was
10 Sergeant Lightbody in your chain of command?

11 A My supervisor, my immediate supervisor.

12 Q And was he an arson expert?

13 A Yes.

14 Q Did he prepare a report?

15 A Yes, he did.

16 Q Have you reviewed his report?

17 A Yes.

18 Q Did you ever actually examine this Jeep
19 yourself?

20 A No.

21 Q Did you review Detective Pozalante's report
22 of the recovery of the Jeep in connection with your
23 review?

24 A Yes.

25 Q And I think you told us you looked at

1 photographs?

2 A Yes.

3 Q Let me show you what's been marked as S-14 in
4 evidence. Could you tell us what that shows?

5 A Yes. It's a green Jeep Cherokee, and it's the
6 portion of the vehicle where the gas fill door is.

7 Q And what does that show?

8 A That the gas fill door is open and the gas cap is
9 missing. There's some debris at the bottom portion of
10 the opening, some charring. The paint has been
11 blistered or missing, due to the fire below and above
12 the hole, the opening for the gas fill.

13 Q And that photograph appears to have been
14 taken in the woods?

15 A Yes.

16 Q Based on your review of the various
17 documents, is that the condition the Jeep was found in?

18 A Yes.

19 Q And let me show you this other photograph
20 which has been marked S-11 in evidence. Could you tell
21 us what that shows?

22 A Yes. It's the -- it's the same photograph of the
23 same vehicle, or the same vehicle, but just a close-up
24 of the gas door opened, the fill, with the damage that
25 I previously described.

1 Q Okay. Now, if you could show the jury -- you
2 mentioned the paint was blistered and there was some
3 other marks. In your opinion, what caused the marks
4 below the gas tank?

5 A The fire.

6 Q And what caused the marks above the gas tank?

7 A Fire, direct flame impingement.

8 Q And in the area of the filler neck, could you
9 describe, more particularly, what that is?

10 A It's the remains of a material that was placed
11 there, what we would call a trailer, to bring fire from
12 one area to another, or in this instance, a wick.

13 MR. HEISLER: Judge, if I do distribute these
14 photos to the jury again?

15 THE WITNESS: Yes.

16 (The jury views S-11 and S-14 in evidence.)

17 THE COURT: Mr. Heisler?

18 Q Investigator Abrams, based on your review, is
19 it your opinion there was definitely a flame or fire of
20 some sort at that gas tank?

21 A Yes.

22 Q And have you reached a conclusion with
23 respect to the cause and origin of that fire?

24 A Yes.

25 Q Can you tell us what that is, please?

1 A That fire was intentionally set in the area of the
2 gas fill door, more specifically, where the opening
3 where the gas filler -- where you would put the nozzle
4 for the gas pump.

5 Q And there's no way that's an accident?

6 A No.

7 MR. HEISLER: That's all I have, Judge.

8 THE COURT: Mr. Welle?

9 MR. WELLE: No questions Judge.

10 THE COURT: Mr. Kinarney?

11 MR. KINARNEY: None, your Honor.

12 THE COURT: Mr. Zager?

13 MR. ZAGER: No questions.

14 THE COURT: Mr. Somers?

15 MR. SOMERS: Yes, your Honor. Thank you.

16 CROSS-EXAMINATION BY MR. SOMERS:

17 Q Now, investigator, you never actually
18 examined the Jeep, did you?

19 A No, I did not.

20 Q I show you S-11. You just identified this.

21 A Yes.

22 Q Did you actually test this residue?

23 A No, I did not.

24 Q So your opinion is based on your view of this
25 picture; correct?

1 A And reports.

2 Q Oh, I see.

3 But you never actually tested it; right?

4 A No.

5 Q Did you test this paint around here?

6 A No, sir.

7 Q Now, how does this work? Someone would stuff
8 material or a newspaper into this gas tank and light it
9 up?

10 A Yes.

11 Q And then, as it burned, it would then catch
12 fire in the tank, to the tank, and so forth?

13 A That would be the purpose, not actually the
14 result.

15 Q You have open flames around an open gas tank,
16 and it doesn't explode?

17 A Yes.

18 Q How about the fumes? Wouldn't they cause it
19 to explode?

20 A If the proper fuel-fume ratio and air was there,
21 it would be -- you could have a fire.

22 Q You could have a fire even if that gas tank
23 were empty, couldn't you?

24 A Yes.

25 Q Just based on the fumes?

1 A Yes.

2 Q Did you find a rag or examine a rag?

3 A No.

4 Q Did anybody tell you about a rag that had
5 been stuffed into the tank?

6 A No.

7 MR. SOMERS: Thank you. No further
8 questions.

9 THE COURT: Mr. Heisler?

10 MR. HEISLER: No, sir.

11 THE COURT: Thank you. You're excused.

12 THE WITNESS: Thank you, your Honor.

13 (The witness is excused.)

14 THE COURT: Your next witness, Mr. Heisler?

15 MR. HEISLER: Sergeant Matthew Armstrong.

16 MATTHEW ARMSTRONG, sworn.

17 THE COURT CLERK: Would you state your name,
18 please?

19 THE WITNESS: Matthew Armstrong.

20 THE COURT CLERK: Thank you.

21 THE COURT: Mr. Heisler?

22 MR. HEISLER: Thank you, your Honor.

23 DIRECT EXAMINATION BY MR. HEISLER:

24 Q Sergeant Armstrong, by whom are you employed?

25 A The Ocean County Sheriff's Department.

1 Q And you're a sergeant?

2 A Yes, I am.

3 Q And what's your current assignment, sir?

4 A I'm a latent fingerprint examiner, and I'm also
5 operations' officer.

6 Q Operations' officer where?

7 A At CIU.

8 Q The Criminalistics Investigation Unit?

9 A That's correct.

10 Q And in that capacity, as a fingerprint
11 examiner, what do you do?

12 A I examine partial latent fingerprints and compare
13 them and eliminate or verify or identify inked prints
14 to those latent fingerprints.

15 Q And what particular training have you had in
16 the areas of fingerprint examination and
17 identification?

18 A I've had eighty hours of training through the New
19 Jersey State Police; forty hours training with the
20 F.B.I.; forty hours training with the Ron Smith
21 Symposium on Palmprint Identification; also, forty
22 hours of training in ridgeology class from Kasey
23 Werteim; also, a six-month apprenticeship program with
24 the Ocean County Sheriff's Department.

25 Q Now, in that six-month apprenticeship

1 program, what did that consist of?

2 A That consisted of on-the-job training with an
3 experienced examiner.

4 Q Did you actually, in this on-the-job
5 training, compare prints, evaluate prints, make
6 identifications under the supervision of someone else?

7 A That's correct.

8 Q And how many fingerprint comparisons have you
9 conducted in connection with your official duties?

10 A Thousands. Every time you look at a fingerprint
11 to another, that's a comparison.

12 Q Have you made identifications from those
13 fingerprint?

14 A Yes, I have.

15 Q How many?

16 A In and around, over 175 to 200.

17 Q And have you also made eliminations from
18 those?

19 A Absolutely.

20 Q You actually said, This fingerprint, compared
21 to somebody's fingerprint, is not their print? That
22 type of thing?

23 A Yes.

24 Q And how many times have you done that?

25 A We don't keep track of that; only identifications.

1 Q Are you governed by any particular standards
2 that control your -- what you do in your work?

3 A Yes. Most departments use the same standards.
4 It's an international company called -- or it's an
5 organization called SWGFAST, which is a scientific
6 working group on friction-ridge analysis, studying
7 technology, and they are internationally recognized in
8 their guidelines for latent print, fingerprint
9 examiners. That's what we use.

10 Q And you follow their guidelines?

11 A Yes. We're also tested on a yearly basis by a
12 private company called Collaborative Testing.

13 Q Okay. When you say "testing," is that to
14 test your proficiency in fingerprint examination?

15 A Yes. They provide you with actual -- well, not
16 actual cases, but they provide you with cases, and you
17 must conduct the examinations and then submit it to
18 them.

19 Q And have you passed all those examinations?

20 A Yes.

21 Q Have you ever qualified in the Superior Court
22 of New Jersey as an expert witness in fingerprint
23 examination and identification before today?

24 A Yes.

25 MR. HEISLER: Judge, at this time, I would

1 offer Sergeant Armstrong as an expert witness in
2 fingerprint examination and identification.

3 THE COURT: Mr. Welle?

4 MR. WELLE: No objection.

5 THE COURT: Mr. Kinarney?

6 MR. KINARNEY: No objection.

7 MR. ZAGER: Judge, I would like to voire dire
8 the witness, if I may?

9 THE COURT: Sure.

10 VOIR DIRE EXAMINATION BY MR. ZAGER:

11 Q Sergeant Armstrong, did you go to college for
12 this?

13 A No, I didn't.

14 Q Did you, besides the approximately 200 hours
15 in training -- is that with the F.B.I. and the state
16 police -- did you do any other training --

17 A Yes.

18 Q -- or courses?

19 A Forty hours with the palm ridgeology and
20 ridgeology workshops, yes.

21 Q And where is that?

22 A Kasey Werteim runs the ridgeology workshop, and
23 the palmprint symposium is run by Ron Smith, both
24 nationally recognized.

25 Q Do you have certificates for those courses?

1 A Yes, I do.

2 Q Do you have a resume or what we call a CV?

3 A A CV? Yes, I do.

4 Q Do you have that with you?

5 A I believe that was provided. I don't have that
6 with me.

7 Q How old are you?

8 A I'm 37 years old.

9 Q And how long have you been doing this?

10 A Fingerprints? Two-and-a-half years.

11 Q And what did you do before that?

12 A Before that, I was in Fugitive Warrants for seven
13 years.

14 Q Did you get all of your training in the last
15 two-and-a-half years?

16 A Yes.

17 MR. ZAGER: I have nothing further, Judge.

18 THE COURT: Once again --

19 MR. ZAGER: No objection.

20 THE COURT: -- ladies and gentlemen, based
21 upon the witness's background, education, training and
22 experience, I'm going to authorize him to testify as an
23 expert. And what I've said about the other experts
24 also applies to his testimony.

25 Q Sergeant Armstrong, what is the science of

1 fingerprint identification all about?

2 A Basically, there's three major premises it's based
3 upon. The first one is going to be that friction-ridge
4 skin is developed in its definitive form on a fetus,
5 before birth. Friction-ridge skin is basically what's
6 on your palmar and plantar areas of your body, which is
7 the palms of your hands and your fingertips, and also
8 on your feet.

9 The second premise is the fact that those
10 fingerprints do not change. The friction ridges do not
11 change throughout life -- barring permanent scarring --
12 until death, and the body decomposes.

13 The third basic principle is the fact that
14 friction-ridge skin, the small areas of friction ridge,
15 are unique and never duplicated.

16 Q So no two people have the same fingerprints?

17 A That's correct.

18 Q And over the course of time that this has
19 been studied -- and I guess this goes back over a
20 hundred years now?

21 A The first case in America was in 1911.

22 Q The first court case?

23 A Right.

24 Q Have any two fingerprints ever been found to
25 be alike, or identical, I should say?

1 A Not only is no two fingerprints been found, but no
2 partials have ever been found either.

3 Q So one of the basic premises is every
4 fingerprint, every toeprint, is unique to that
5 individual, to that particular digit or plantar area?

6 A Even the small areas of friction-ridge skin,
7 whether it be in the fingerprint, in the areas of the
8 palm or plantar area, but small areas of friction ridge
9 are unique and never repeated.

10 Q And is that generally accepted as a means of
11 identification in the scientific community, the
12 uniqueness of prints?

13 A Yes.

14 Q And that a single person can be identified as
15 a result of prints?

16 A Yes.

17 Q Now, what are latent fingerprints?

18 A A latent fingerprint is what we consider a hidden
19 fingerprint. It's hidden from view until it is
20 processed using a development medium, i.e., black
21 powder, or fuming, or if it's a -- or if it's a porous
22 surface, some kind of chemical treating to bring that
23 fingerprint out to where it can be seen.

24 Q When you say "a porous surface," you mean
25 something like paper?

1 A Yes.

2 Q And what type of chemical would be used to
3 bring out a fingerprint on paper?

4 A There's many different ways to bring it out. It
5 depends on the paper and how long it's been sitting.
6 Ninhydrin is used commonly in our office.

7 Q Okay. Ninhydrin, is that a chemical?

8 A Yes.

9 Q And what's a latent fingerprint, as opposed
10 to a patent fingerprint?

11 A A patent fingerprint is basically one that would
12 be put into another substance on the surface; i.e., a
13 paint or clay, if you were to put a fingerprint, you
14 can actually see if you press into a surface. That
15 would be considered a patent fingerprint.

16 Q And these latent fingerprints are left on
17 hard surfaces?

18 A Yes. Mostly, they are able to be recovered off of
19 hard, non-porous surfaces using different powders.

20 Q And are there surfaces which are more
21 conducive to latent fingerprints than other surfaces?

22 A Absolutely. Glass and mirrors are --

23 Q And what type of substances --

24 A -- are very conducive to latent processing.

25 MR. KINARNEY: I didn't hear the first part

1 of that answer.

2 THE COURT: Glass, mirrors.

3 A Glass, mirrors, any kind of a hard, non-porous
4 surface, it's not rough on the surface, is conducive.

5 Q How are fingerprints actually left?

6 A Well, the fingerprint -- it depends on if it's a
7 patent or a latent fingerprint. A latent fingerprint
8 is made of up 99 percent water. The other part of the
9 fingerprint is amino acids and different nitrates
10 that's left on the surface when the water evaporates.
11 And they're developed using the development means we
12 were talking about earlier. Okay. A patent
13 fingerprint would be developed using a camera, and we
14 would just have to photograph that.

15 Q Does how wet or dry a person's finger is at
16 the time they touch something determine whether a
17 fingerprint would be left or not?

18 A Well, there are many factors that go into whether
19 a fingerprint will be left or not, and not just the
20 person leaving them, but the surface, the weather
21 conditions. You know, is that person exuding at the
22 time? Are their hands sweating? If they are not
23 sweating, you're not going to get the fingerprint.

24 Q Because they're left in liquid?

25 A Right.

1 Q The fingerprint, itself, consists of water
2 and acids?

3 A The fingerprint residue, yeah, or anything they
4 may have touched along the way.

5 Q So if I touch my hand in paint and roll it
6 over here on the jury rail, I'm going to leave a
7 fingerprint in the paint?

8 A Right. You may. It depends on how much pressure
9 you use.

10 Q Obviously, you have to touch an item to leave
11 a fingerprint?

12 A Yes, you do.

13 Q If you touch an item, do you necessarily
14 leave a fingerprint?

15 A Like I said, it depends on those conditions we
16 were talking about, whether the weather -- weather is a
17 big condition, whether the person is actually exuding
18 sweat at the time.

19 Q Okay. So I can touch an item one time, or be
20 in a place one time and touch something, and leave a
21 fingerprint?

22 A Yes.

23 Q And I can also be there many times, and touch
24 something many times, and not leave any fingerprints?

25 A That's correct.

1 Q By the way, with respect to handguns, are
2 revolvers conducive to leaving fingerprints?

3 A A revolver surface, itself, is a hard, non-porous
4 surface, so I would have to say yes. Although the fact
5 that there's not a large surface of that hard,
6 non-porous surface, I would have to say the partial
7 that would be left would probably be found to be
8 inconclusive as far as the detail.

9 Q Not enough hard, flat, porous -- non-porous
10 surface?

11 A Right. What you're looking for is quality and
12 quantity of the detail, okay, if you have a certain
13 quality against a certain quantity. You need both to
14 be able to look at something. So, I would say that it
15 all depends on many factors.

16 Q What do you look for when you compare
17 fingerprints?

18 A Well, you compare a fingerprint to a -- a latent
19 to an inked fingerprint? Is that what you're asking?

20 Q Let's start there. We explained latent.
21 What's an inked fingerprint?

22 A Okay. An inked fingerprint is simply the raised
23 ridges on your skin and friction ridges, okay, and a
24 printer's ink is placed upon the friction ridges, and
25 they are then rolled upon a fingerprint card,

1 preferably -- well, okay. Printer's ink is placed upon
2 the fingers. The fingers are rolled onto the
3 fingerprint card, and you'll see an image, and that is
4 an inked fingerprint.

5 Q Okay. And is that what would be, generally,
6 your known fingerprint that you compare to an
7 unidentified fingerprint to see if they match?

8 A That's your exemplar, yes.

9 Q And as you do that comparison, what are you
10 looking for?

11 A Okay. There's basically three different levels of
12 detail that you're looking for in a comparison.

13 Q Should we save this for the presentation?

14 A I have -- it is illustrated, yes.

15 Q Okay. In this particular case, were
16 fingerprints submitted to you for comparison?

17 A Yes.

18 Q And did you compare fingerprints that were
19 turned up in the evidence by Detective Pozalante and
20 other detectives to individuals whose inked
21 fingerprints were provided to you?

22 A Yes, I did.

23 Q Did you prepare a report concerning that?

24 A Yes.

25 Q And that reflects your findings?

1 A Yes, it does.

2 Q Okay. And do you have a presentation
3 prepared for how you make that comparison and what your
4 findings were?

5 A Yes.

6 Q Okay. Should we go to this now?

7 A That's fine.

8 MR. HEISLER: If we could get the screen up?

9 Q While we're waiting for the projector to warm
10 up, let me just show you what's been marked as S-60.
11 Can you tell us what that is?

12 A This is latent evidence report 0389-2004 which I
13 prepared.

14 Q And what report is that?

15 A This report reflects the latent evidence that was
16 considered non-comparative. This is the complete
17 report.

18 Q And those are all items submitted to you
19 within this case where you were not able to get
20 sufficient detail to make a comparison?

21 A The fingerprints lacked qualitative and
22 quantitative uniqueness to be compared.

23 Q Let me show you S-61. Can you tell us what
24 that is?

25 A Yes. This is the other report where the

1 comparisons were conducted. All the fingerprints,
2 individual latents on this report where the front page
3 is missing, were comparative. In other words, when we
4 conducted our analysis, we concluded that those
5 fingerprints would be able to be compared to inked
6 fingerprints. So, we have a number of those, as well.

7 MR. HEISLER: Judge, I think we need to dim
8 some of the lights.

9 Q Okay. Sergeant, show us your first slide,
10 please?

11 A Okay.

12 Q Could you tell the jury what that is?

13 A This slide is marked MV2 for evidence. This is
14 the Jeep Grand Cherokee that was found by
15 Detective Pozalante and processed.

16 Q Next, please?

17 A This is a photograph showing that same vehicle in
18 the CIU garage with an inset photograph showing the
19 inside. Okay. Recovered from the interior of MV2,
20 between the front driver's seat and the center console,
21 was MV2-38, which is a piece of plastic.

22 Q Okay. Now, the piece of plastic is what's
23 shown in the right lower corner of the slide?

24 A Yes.

25 Q What's on that piec of plastic that we're

1 looking at?

2 A Well, mostly you'll see smudges of blackness.
3 That's the black powder that was applied to the plastic
4 surface. And you'll see a couple of fingerprints on
5 there, as well.

6 Q Okay. Next, please?

7 A MV2-38, which is a piece of plastic, was treated
8 with the black powder and then lifted using a lift card
9 and tape. What you see is two fingerprints that were
10 present, both present, on that piece of plastic.

11 Q Now, there are other apparent prints or marks
12 in there in that black powder.

13 A That's correct.

14 Q What are they?

15 A Those appear to be smudges or areas that lacked
16 sufficient detail for comparison.

17 Q Okay.

18 A The only two fingerprints we found of comparative
19 value here would be the one in the lower left corner
20 and upper right corner marked with my initials.

21 Q Those are the ones you marked with the
22 arrows?

23 A Yes.

24 Q Okay. Next, please?

25 A This is an enlargement from the lift card,

1 evidence MV2-38, showing the fingerprint in the lower
2 left-hand corner. Notice this fingerprint is a
3 whirling pattern which makes up 30 percent of all
4 fingerprints.

5 Q Okay. When you say "a whirling pattern,"
6 what are you describing there?

7 A If you look to the center of the pattern you're
8 looking at, what you'll see is a small core in the
9 center, and the ridges tend to flow around that core.
10 That would be considered a whirl pattern.

11 Okay. What you're looking at now is the left
12 thumb of the victim, Rashon Roy, taken at autopsy.
13 These are Major Case prints.

14 Q So a set fingerprints was taken from
15 Mr. Roy's body at the autopsy?

16 A Yes.

17 Now, what we do at this point is we conduct
18 our comparison. We always conduct a comparison from
19 the latent fingerprint to the inked fingerprint. What
20 we're going to do is we're going to look for details
21 from that latent fingerprint in the inked fingerprint
22 and conduct our comparison.

23 Now, it's important to notice -- to note, for
24 you to take note, that these fingerprints aren't
25 conducted -- these are set up for demonstration

1 purposes only. The actual comparison is done with the
2 actual objects.

3 Now, this is going to show you what we're
4 basically looking for, what they were asking of me
5 earlier, as far as the identification and comparison
6 procedures. What you're looking at is a fingerprint
7 which is of a looping pattern. Okay. Loops make up 60
8 percent of all fingerprints. They are the most common.

9 What we're looking for first is what is
10 called first-level detail, which is general-pattern
11 agreement, okay, which would mean that looping pattern
12 there would have to look the same in the latent as it
13 did in the inked fingerprint. That would be
14 first-level detail.

15 We start talking about second-level detail,
16 we're talking about the actual ridge characteristics.
17 When I say "ridges," you look at the fingerprint up
18 there, the black lines, those are friction-ridge skin.
19 Ridge characteristics you see up there are going to be
20 ridge endings, bifurcations, lakes or enclosures,
21 independent ridges, or some call them short ridges,
22 dots or islands -- and a dot or island is one single
23 ridge unit -- a spur and a crossover. Those are the
24 basic ones.

25 Now, when you're looking at those, you see

1 the white dots on the ridge characteristics. Those
2 white dots are considered third-level detail. They are
3 pore openings in your skin. Okay. And the structure
4 of those pore openings and the structure of the ridges,
5 themselves, are considered third-level detail. Okay.
6 The ridges, even an independent ridge, all by itself,
7 is unique.

8 Basically, when you see a structure of a
9 friction-ridge skin, you're going to see there's two
10 basic skins, the dermis and the epidermis. Between the
11 epidermis and the dermis is the basal layer.

12 Okay. In order to alter a fingerprint,
13 damage must occur to the basal layer which is
14 in-between the epidermis and the dermis. So, it's a
15 pretty deep cut to get in there and cause damage. At
16 that point, you'll see a scar on the surface where the
17 friction ridges are.

18 If you do not penetrate to the basal layer,
19 you'll not -- you'll receive a temporary scar which
20 will heal, and the friction-ridge skin will grow back
21 identically.

22 You see on the top of the surface the ridge
23 characteristic we are talking about, the ending ridge,
24 the bifurcation, an enclosure, a dot. That is the
25 surface of the skin.

1 Now, what we're going to do is we're going to
2 conduct a comparison basically using second-level
3 detail. We're going to look for points, and we're
4 going to look at those points to make sure that they
5 are exactly the way they appear on the inked
6 impression.

7 Okay. Right now we're looking at number 1,
8 which is a bifurcation. This bifurcation is also
9 unique in the way that it curves around the core area
10 of the fingerprint. Point number 2 is going to be an
11 ending ridge.

12 Now, also, when you look at the inked
13 fingerprint to the latent, inked fingerprints sometimes
14 in any ridge may appear as a bifurcation due to ink and
15 pressure, and that's where experience comes in. I'm
16 going to show you 10 points on this finger. The number
17 3 is a short ridge that we were referring to earlier.
18 Number 4 is another short ridge.

19 Now, it's important that we take areas from
20 all over the fingerprint, because there is a lot more
21 than 10 points in this fingerprint.

22 Okay. Number 5 is an ending ridge. And you
23 notice on the fingerprint, on the inked impression, it
24 almost appears as if it's touching at that point. That
25 would be an ink distortion. Number 6 is an ending

1 ridge; number 7, a bifurcation; number 8, another
2 bifurcation; number 9 is an enclosure; and number 10 is
3 another bifurcation.

4 Now, at this point, this fingerprint has been
5 considered to be individualized, which means it cannot
6 have been made by any other source than what you see on
7 the screen. That latent could not be made by any other
8 source than what that inked impression was made by.

9 Q And in this particular print, that was by
10 Rashon Roy --

11 A Yes, it was.

12 Q -- on that piece of plastic?

13 A Yes.

14 Q And if I understand you correctly, as you go
15 through these points, you're not only considering what
16 type they are -- bifurcations, ridges, and so forth --
17 but they must be in the same location, from one to the
18 other, before you can compare to match?

19 A Yes. They must be in sequence with the correct
20 amount of ridges between them. Also, we're looking at
21 third-level detail. One ending ridge is not like any
22 other ending ridge. Okay. So, we're looking at the
23 third-level detail, as well.

24 Now, if you notice the first-level detail on
25 these two fingerprints, you'll notice they are both

1 rolling patterns, and they do have agreement in the
2 first level. First-level detail alone cannot be used
3 to make identification or an individualization. It can
4 only be used in certain cases to exclude, because
5 obviously if you have a looping pattern as a latent,
6 and a whirling pattern as an inked, you can exclude
7 that fingerprint.

8 It's also important to note that one
9 discrepancy inside that fingerprint, in comparing that
10 latent to that inked, would automatically exclude that
11 fingerprint. So as we're looking for points -- and
12 when I say "we're looking for points," that's a generic
13 term. Details.

14 As we're looking for details that are the
15 same, at the same time, we're also looking for details
16 that are different. One detail that is different, then
17 that fingerprint is now considered a
18 non-identification.

19 Q Now, is there any particular number of points
20 of comparison that you look at and say these 8 points
21 or 10 points or 12 points match, and therefore it's a
22 match?

23 A The entire fingerprint is taken into
24 consideration. There's no scientific data basing the
25 point system.

1 Q Okay. What are you showing here?

2 A In the upper right-hand corner, you'll see another
3 fingerprint on this particular item, and this is the
4 enlargement of that fingerprint that I have initialed
5 on the top.

6 Q And this is still item MV2-38?

7 A Yes.

8 Q And that's the one we looked at before?

9 A That's correct.

10 Q But we looked at the lower left fingerprint,
11 and now we're looking at the one in the upper right?

12 A Yes, that's right.

13 Q Okay.

14 A Now, what we're looking at is the right thumb of
15 Gregory Maples. You'll notice the initials in the
16 upper right-hand corner of all those fingerprints which
17 is my -- which are my initials the day the
18 identification was made on that particular finger; in
19 this case, the right thumb.

20 Now what we're going to do is we're going to
21 conduct that same comparison the same way, the same way
22 all comparisons are conducted. First, you conduct the
23 analysis, then the comparison, then you make the
24 evaluation, and then that fingerprint is verified by
25 another examiner. It's the same method over and over

1 and over.

2 There's an enclosure, right off the bat, in
3 the core of the fingerprint. Now, if you look at the
4 fingerprint, the latent, the partial latent
5 fingerprint, you'll see there's a looping-type pattern,
6 so we have first-level agreement.

7 As far as second level, we're looking at an
8 enclosure in the core area right off the bat.
9 Immediately above that, you'll see the ending ridge,
10 which is actually considered the core of the
11 fingerprint. Following that, another ending ridge;
12 another ending ridge; a short ridge over top; another
13 short ridge; that's a dot or an island. And it's
14 important to note that dots or islands are considered
15 the most rare. 8 is another short ridge far away from
16 the core; 9 is a bifurcation; and 10 is another ending
17 ridge next to the short ridge.

18 At this point, we would consider this
19 fingerprint to be individualized, which means it could
20 not have been made, the latent could not have been made
21 by any other finger than that finger in the inked
22 impression.

23 Q That finger being the right thumb of Gregory
24 Maples?

25 A That's correct.

1 Q Now, you don't just zero in on his right
2 thumb when you start this comparison, do you?

3 A That's what the analysis is for. We must -- we
4 analyze what we're looking at first, as far as the
5 latent is concerned, and then we look for fingerprints
6 that have the same level-one matching, level-one detail
7 matching, and then we'll look closer.

8 Q So you have to look at all the prints on the
9 card?

10 A Yes

11 Q And on all the prints on the cards you're
12 comparing?

13 A On all the prints -- on all the cards that are
14 submitted; and in this case 15, I believe it is 15. I'd
15 have to look at the report, but I believe it is 15,
16 yes, comparisons that were conducted.

17 Okay. We're going to show you one more for
18 demonstration purposes. This, once again, is MV2 at
19 the scene where it was recovered. And this is the rear
20 area of MV2 where this particular tape was recovered,
21 evidence number MV2-37.

22 Now, on this tape, a latent lift card, after
23 the tape was processed using the black powder, was
24 developed. This is the lift card that was developed
25 from evidence MV2-37. You'll note that there's a

1 fingerprint present. There are other areas of friction
2 ridge that do not contain qualitative and quantitative
3 detail enough for us to look at those.

4 This is an enlargement of that one
5 fingerprint, the partial fingerprint that you see on
6 the card with my initials. You'll notice this is also
7 a whirling pattern.

8 Now, this is also the right thumb, number 1
9 finger, Renato Santos, the same type of whirling
10 pattern. Now, once again, we're go to conduct our
11 comparison from the latent to the inked impression. We
12 have first-level detail matching for both whirling-type
13 patterns, so we're going to go right into the
14 comparison.

15 Okay. We'll go with number 1 is going to be
16 an ending ridge. 2 is a bifurcation. You'll notice
17 it's a small bifurcation, almost would be considered a
18 spur; and number 3 is a bifurcation, as well; number 4,
19 also a bifurcation close to the core. 5 is two
20 bifurcations facing each other. Like I said, more
21 second-level detail, when combined with each other,
22 makes something a little bit more unique.

23 Number 6 is an ending ridge; number 7,
24 another bifurcation; number 8, another bifurcation;
25 number 9, another bifurcation; and, number 10, an

1 ending ridge. Also, I picked that one, because you see
2 another corresponding ending ridge just above it which,
3 in turn, makes that unique. Every fingerprint is
4 unique in its own right.

5 At this point, we had this fingerprint
6 individualized, as well, which means that the latent
7 could be made by no other finger than the one present
8 in the ink, which is the number 1 right-hand finger of
9 Renato Santos.

10 Q And did you conduct these comparisons on a
11 number of other items that you found latent
12 fingerprints of comparative value?

13 A All the items, yes.

14 Q And do you have your report on your
15 presentation, sergeant?

16 A Yes, I do.

17 Q Can you proceed to it, please?

18 A Okay. This is a basic breakdown on how the case
19 went for us, as far as the Latent Evidence Bureau,
20 given our report number and the actual CIU case number.
21 We had a total of 69 total lift cards that were
22 submitted to us for examination. Out of those, we
23 found 38 of them to be comparative, in other words, 38
24 of them which we would compare. 31 total were
25 non-comparative which we ruled out immediately because

1 they are lacking detail.

2 There were 26 total identifications made, 15
3 total subjects compared, and 12 latents that remained
4 unidentified.

5 Q And with respect to the unidentified ones, to
6 make a match, you need something to compare a
7 fingerprint to; correct?

8 A Yes. You need the exemplar.

9 All of the fingerprints that were not
10 immediately identified using the fingerprints we were
11 provided were sent to the state AFIS bureau.

12 Q AFIS is the Automated Fingerprint
13 Identification System?

14 A Yes. And we actually came back with two
15 identifications from the AFIS system which we then
16 compared and came up with positive identifications.

17 Q Okay.

18 A They are in the report.

19 Q We'll get into that later.

20 A Yes.

21 Q But at the bottom of your slide, I see you
22 got a notation, "All identifications have been
23 verified."

24 What does that mean?

25 A That's part of the process. And, basically, once

1 you're done making your identifications, they are
2 submitted to another latent expert who will then
3 examine the case independently and must come up with
4 the same conclusions. They will then verify the fact
5 that that's an individualization at that point.

6 Q So before your agency will generate a report
7 identifying a fingerprint as belonging to a certain
8 person, it has to be verified by two fingerprint
9 examiners?

10 A Yes, even if it comes back from AFIS.

11 What we're looking at is the report here.
12 Where you see orange blinking, I put that in there to
13 identify where positive results were found. You'll
14 notice there were fifteen comparisons, and one, two,
15 three, four, five, six -- six individuals where they
16 came back positive. The two on the bottom are the AFIS
17 hits, the ones that came back from AFIS that we
18 compared at a later date.

19 You'll see at the top, where it says, "I.D.
20 Info," you'll see, "Major Case Prints," written down on
21 most. Major Case Prints is a record -- are a record of
22 all friction-ridge skin on the palmar area of your
23 hand, okay, including palms.

24 Q And with respect to those first thirteen
25 individuals, they were all provided to you on inked

1 fingerprint cards?

2 A Yes, they were.

3 Q Okay. And at this point, sergeant, I'd like
4 you -- did you conduct those comparisons, like you just
5 showed us, with respect to all these prints that were
6 identified?

7 A The same way every time.

8 Q Okay. So without going through all the
9 different points on each fingerprint, could you just
10 tell us which items contained fingerprints that you
11 identified, and where the item came from?

12 A Yes, by going through the report.

13 Q Please do?

14 A Okay.

15 If you look down at the bottom, you'll see
16 individual latents. What that is, is a record of the
17 latent from when it was generated to its conclusion,
18 when it was individualized. Okay. You'll see the
19 number, that's the I.D. number that latent was given --
20 every latent lift is given an I.D. number for tracking
21 purposes -- the date it was lifted, and you'll see the
22 technique and location area.

23 This particular fingerprint, the first one,
24 is a ninhydrin photograph, and it was located on a
25 brown bag, front passenger floor. That was developed

1 by Officer Pozalante. At that point, it was turned
2 over to the Latent Evidence Bureau where we labeled it
3 as a latent fingerprint.

4 You'll notice it was not submitted to AFIS
5 due to the fact that a direct identification was made
6 using the fingerprint cards that we had, and that's the
7 date it was made on. All the -- to make it easier for
8 you to see, I circled -- I did not circle, I boxed in
9 the different latents that belonged to different
10 people, okay, just 'cause there's many latent lifts in
11 this particular case.

12 All you're going to see in red belonged to
13 Gregory Maples, and you'll see that. And you'll see
14 the finger numbers up there, as well, of what finger
15 that was. If you look at the top, does that say number
16 6 or number 8? I can't quite read that from here. And
17 number 7, below that, 3, 2, 4 and 5 fingerprints.
18 Every single latent you see across there is a separate
19 one.

20 The purple is going to be one of our AFIS
21 hits. Where you see the AFIS section, you'll see a
22 "PMF," which means a possible match has been found.
23 AFIS has given us a possible match. At that point, an
24 actual examiner will take those two fingerprints
25 exactly the way I did it up there, latent to ink, and

1 conduct a comparison and come up with their findings.

2 Q Let me stop you. With respect to AFIS,
3 that's a computer-generated possible match?

4 A That's correct.

5 Q Do you ever declare an identification or a
6 match based on anything that comes out of a computer?

7 A No.

8 Q You actually look at these things yourself,
9 once you're given a possibility?

10 A Right. The actual evidence has to be looked at,
11 in and of itself.

12 Q Okay. Have you ever seen these crime scene
13 shows with the computers side by side that superimpose
14 and declare a match?

15 A Yes, I have.

16 Q Is there anything like that in the real world
17 of fingerprint identification?

18 A No, nothing that will declare a match. It will
19 give you a possible candidate. That's about as far as
20 they'll go and, at this point, I think as far as
21 they'll ever go, due to the fact that there is
22 third-level detail involved.

23 Okay. A bifurcation on one fingerprint may
24 not look -- it may be marked as a bifurcation by the
25 AFIS computer, but that bifurcation may not look

1 exactly like the bifurcation that's actually there.

2 Q So that T.V. stuff we see is actually
3 make-believe?

4 A Yes.

5 Q Do you ever declare an identification without
6 personally examining and having verified the prints
7 yourself?

8 A No.

9 Q Okay. Please continue with what your report
10 shows?

11 A Okay. Moving on to the next page of the report,
12 you'll see there's more red. That would be Gregory
13 Maples' fingerprints. And at the top, you see E.
14 Barber, right thumb, number 1, and a powder lift on the
15 interior inner door frame, right rear passenger door.

16 Q Okay. Let's stop there.

17 So you have a right thumb print from Ernesto
18 Barber that's marked MV2-39?

19 A Yes.

20 Q And that comes from --

21 A It's a powder from the interior inner door frame,
22 right rear passenger door.

23 Q So that fingerprint was actually on the
24 vehicle?

25 A Yes.

1 Q Not on an item in the vehicle?

2 A That's correct.

3 Q Okay.

4 And moving down to these red items, just tell
5 us, generally, what the items were these things were
6 found on, if you can read them from there?

7 A Okay. Basically, most of the items were either
8 CDs or tape boxes. I'm looking at them as we go down.
9 Most of these on this page, yes. And we have -- we
10 have paper insert, a CD. All those on that page are
11 off CDs, the various types.

12 Q And the ones outlined in red were all various
13 fingers of Gregory Maples --

14 A Yes.

15 Q -- from items located within the vehicle?

16 A Yes. If you look to the right, you'll see, where
17 it says, "Left middle," or, "left index, right middle,
18 left middle, right middle, left thumb," and you'll see
19 "Gregory Maples" underneath.

20 Q Okay. Next page, please?

21 A Okay. This particular page, you'll see red on it,
22 once again, and you'll see blinking. I just want to
23 step out the blinking ones a little bit, because those
24 are fingerprint lifts that were lifted that contained
25 both Rashon Roy's and Gregory Maples' fingerprints on

1 those items.

2 Q And what are those items?

3 A Now, the first one was a plastic cover to a CD.
4 That's the one that was demonstrated for you. Then we
5 have a plastic cover -- I can't quite read what that
6 says -- CD cover, front console.

7 Q That's MV2-32?

8 A Yes. The light is kind of glaring there. MV2-38,
9 the bottom, it continues on to the next page where you
10 would see it's a piece of clear plastic. That's the
11 one -- that's another one that we used.

12 Q Okay. So on this particular page of your
13 report, you have five different fingerprints of Gregory
14 Maples from items recovered within this vehicle. Is
15 that right?

16 A It looks like six. One, two, three, four, five
17 six -- seven.

18 Q Six?

19 A Seven on this page.

20 Q You also have fingerprints on at least one
21 item that Mr. Maples' prints are on that had the
22 victim's fingerprints on?

23 A Yes.

24 Q And you also have a fingerprint there,
25 MV2-37, from within the vehicle, that contained a right

1 thumb print of Renato Santos. And that's the one you
2 showed us before?

3 A Yes. If you remember MV2-37 was the front and
4 rear cover tape box, state property.

5 Q Okay. Next, please?

6 A This is the end of the report. You'll see there's
7 another red. And just below it would be another AFIS
8 hit where you see the "PMF," possible match found.
9 That was an AFIS hit that was confirmed by us. And
10 you'll see my signature, as the examiner, and
11 Detective Thatcher's signature as the verifier, below,
12 "Supervisor's Signature," there, and my initials on the
13 bottom.

14 Q Okay. So AFIS kicked out a possible match
15 for somebody named L. Moody?

16 A Yes.

17 Q And you obtained actual inked fingerprints
18 for that person?

19 A That's correct.

20 Q And found that match?

21 A Yes.

22 Q The other one is a Halim Shabazz, the other
23 AFIS matter?

24 A Yes. I'd have to go back and look exactly.

25 Okay. Right, Shabazz, that was also -- that

1 was also an AFIS -- a hit that came in to us.

2 If you look just below that one, in the blue,
3 you'll see the "NMF" next to that, which would mean no
4 match was found; and those would be the twelve that we
5 couldn't find a match for. They were submitted to
6 AFIS, and AFIS came back without a match.

7 Q And does that mean AFIS didn't have something
8 in the database that was a possible match?

9 A Right.

10 MR. HEISLER: That's all I have, Judge.

11 THE COURT: Mr. Welle?

12 MR. WELLE: Yes, Judge.

13 CROSS-EXAMINATION BY MR. WELLE:

14 Q Did you have the inked impressions of a
15 Marvin Worthy?

16 A I'd have to -- yes. I have all the impressions
17 here with me.

18 Q Why don't you get your report out?

19 A Okay. Yes, we did.

20 Q Did you use those inked impressions in your
21 comparative efforts with the latent prints that you
22 had?

23 A Yes.

24 Q Did any of the latent prints that you had
25 from the work that was done on that Jeep match up with

1 the inked impressions of Marvin Worthy?

2 A No.

3 Q Did you have the inked impressions of someone
4 by the name of Ernesto Barber?

5 A Yes, we did.

6 Q Did any of the inked impressions that were
7 obtained by Pozalante comport or match up with any of
8 the inked impressions of Ernesto Barber?

9 A Yes.

10 Q And can you identify that?

11 You didn't have that on your screen, did you?

12 Did you show us that on your screen?

13 A Yes.

14 MR. HEISLER: Yeah, he did.

15 Q Okay. And that was MV2-13?

16 A Yes.

17 Q And where was that particular item found?

18 A It was found on the interior inner door frame,
19 right rear passenger door.

20 MR. WELLE: I don't have any other
21 questions, Judge.

22 THE COURT: Mr. Kinarney?

23 MR. KINARNEY: Thank you.

24 MR. WELLE: Oh, yeah, I do. I'm sorry.

25 Q You said you were the operations' guy, an

1 operations' person?

2 A Yes.

3 Q As the operations' individual in this
4 particular matter, are you aware of whether the
5 clothing of this particular victim was sent to the
6 state police?

7 MR. HEISLER: Judge, I'm going to object to
8 this. It's way outside the scope of direct.

9 THE COURT: Sustained.

10 MR. WELLE: Well, Frey didn't know, and --

11 THE COURT: You don't have to talk to me. I
12 just sustained your objection.

13 Q Do you have anything to do, in your capacity,
14 with the boxing, addressing or sending of any items of
15 possible evidence to the state police for examination
16 by them?

17 A No.

18 MR. HEISLER: Objection.

19 THE COURT: What did you say?

20 THE WITNESS: I said, "No."

21 THE COURT: He said, "No."

22 MR. WELLE: No further questions.

23 THE COURT: Mr. Kinarney?

24 MR. KINARNEY: Thank you, your Honor.

25 CROSS-EXAMINATION BY MR. KINARNEY:

1 Q Good afternoon, sergeant.

2 A Good afternoon.

3 Q In terms of Mr. Santos, the bottom line is of
4 these sixty-nine various items, there was a positive
5 match made to one item, correct, in terms of
6 Mr. Santos?

7 And I refer you, I guess, to --

8 A MV2-13.

9 Q Excuse me?

10 A MV2-13.

11 Q Just bear with me, sergeant.

12 A Oh, that's Mr. Barber. You're looking for
13 Mr. Santos.

14 Q Yeah, Mr. Santos. I think it's -37 or -38?
15 -37, MV2-37, which would be on page 5.

16 A Yes.

17 Q Okay. So out of all these number of items,
18 only one came back to Mr. Santos; correct?

19 A That's correct.

20 Q And that would be a tape box?

21 A Front and rear cover tape box, state property,
22 yes.

23 Q Okay. So the cover of a tape box; correct?

24 A That's correct.

25 Q And that was found in the rear of the Jeep;

1 correct?

2 A Correct.

3 Q And on the floor?

4 A Yes.

5 Q Now, you mentioned -- you used the phrase

6 AFIS. A-F-I-S?

7 A Yes.

8 Q What does that stand for, sir?

9 A Automated Fingerprint Identification System.

10 Q And is this, like, a national data bank?

11 A It's a state database.

12 Q State data bank?

13 A State-police run.

14 Q So it's a state agency --

15 A Yes.

16 Q -- or part of a state agency?

17 A Yes.

18 Q In Trenton?

19 A Yes, it is. There's several locations.

20 Q Okay. And how does one get into the

21 database? How does an individual -- how does an

22 individual end up being in the AFIS database?

23 A You'd have to talk to them.

24 Q You don't know?

25 THE COURT: You're asking how does a person's

1 fingerprints get in there?

2 A I wouldn't have knowledge.

3 MR. KINARNEY: Right.

4 Q I'm trying to get at -- in other words, you
5 gave testimony that there was nothing -- towards the
6 tail end of your direct questioning by Mr. Heisler, you
7 testified that there was nothing in the database about
8 -- I forget exactly what the wordage is, but you said
9 that there was nothing in the database that came back
10 for you to match.

11 Is that correct?

12 A That's correct.

13 Q And what I'm trying to get at is -- in other
14 words, there's a database with a number individuals in
15 it; correct?

16 A Yes, run by the state police.

17 Q Run by the state police.

18 So, it has something to do with the state
19 police?

20 A Yes.

21 Q Okay. You also indicated that revolvers can
22 take prints, but they'll probably come back
23 non-conclusive; correct?

24 A It depends on a number of factors, yes.

25 Q Okay. But you qualified it by saying they

1 would probably come back non-conclusive; correct?

2 A Like I said, it depends.

3 Q Well, let's just focus on that "depends." Let
4 me rephrase it then. Have you ever made a positive
5 fingerprint comparison on a revolver? On a gun?

6 A I'd have to check records on that. There's just
7 so many occasions, I couldn't tell you without going
8 back.

9 Q You don't recall?

10 A No.

11 MR. KINARNEY: I have nothing further, Judge.

12 THE COURT: Mr. Zager?

13 CROSS-EXAMINATION BY MR. ZAGER:

14 Q Sergeant Armstrong, the prints on Mr. Barber,
15 MV2-13 and -16, those are the two positive prints on
16 Barber?

17 A MV2-13 is the positive.

18 Q Positive?

19 A MV2-13 is the right thumb, number 1, Ernesto
20 Barber, yes.

21 Q Okay. That's on the right rear passenger's
22 door?

23 A Interior inner door frame, right rear passenger
24 door.

25 Q So if you were leaning in, would the print be

1 below the window or above the window?

2 A I'd have to refer to the photograph.

3 Q Could you?

4 A Sure. You'll have to bear with me.

5 Q Take your time.

6 A I would say it would be impossible to tell from
7 this photograph.

8 Q Okay. So you don't know if Mr. Barber's
9 print came from below the window or above the window?

10 A I can tell you it came from the interior inner
11 door frame, right rear passenger door. Here's a
12 photograph of it.

13 Q Okay.

14 A And as you can see, you cannot tell where exactly
15 on the door it was.

16 Q Okay. So if Mr. Barber testified that he
17 only entered the van -- I'm sorry, the Jeep in the
18 right passenger's side, you have no prints to support
19 that, do you, of Mr. Barber's?

20 A Right rear passenger's door.

21 Q Okay. Those -- that's the only place that
22 the prints of Barber were found?

23 A Yes.

24 THE COURT: Plural?

25 THE WITNESS: What's that?

1 THE COURT: Plural?

2 THE WITNESS: One fingerprint; right thumb,
3 number 1, Ernesto Barber.

4 Q Right rear passenger's?

5 A Yes.

6 Q Now, there's all sorts of fingerprints of
7 Mr. Maples in that car; right?

8 A There is a number, yes.

9 Q How many?

10 A If you would bear with me?

11 You want the actual fingers or the lift
12 cards?

13 Q Positive hits, positive identifications,
14 positive matches.

15 A So, you want the number of fingers? Because
16 certain lifts have more than one finger on them.

17 Q I really don't care about the fingers. I
18 just want to know --

19 A The lifts?

20 Q The lifts.

21 A Okay.

22 MR. HEISLER: Just so I understand, "lifts,"
23 being a number of items?

24 MR. ZAGER: That's what I'm concerned about,
25 yes.

- 1 A Twenty-two.
- 2 Q Twenty-two?
- 3 How many of those are on the CD covers?
- 4 A CD covers, or CDs, in general?
- 5 Q Either one.
- 6 A Twelve.
- 7 Q A total of both?
- 8 A Twelve.
- 9 Q Twelve.
- 10 The other ten were in other areas of the car?
- 11 A Correct.
- 12 Q Areas of the car or items in the car?
- 13 A There was twenty-one. Did I say twenty-one?
- 14 Q You said twenty-two.
- 15 A Twenty-two? Okay.
- 16 The other items, the other ten items, would
- 17 be other areas of the car, yes.
- 18 Q The car.
- 19 Not items in the car; right?
- 20 A I'd have to go through them and see.
- 21 Q Okay. We've established that there's
- 22 twenty-two matches or items; correct?
- 23 A Yes.
- 24 Q And you said ten were CDs?
- 25 A Twelve.

1 Q Twelve. That would leave ten left, items.

2 A Okay.

3 Q What I'm asking you is out of those ten,
4 would they be parts of the car where the prints were
5 lifted or --

6 A Do you want to know --

7 Q -- articles in the car?

8 A -- if there was any fingerprints on the car?

9 Q Pardon me?

10 A Do you want to know if there was any on the car?
11 Is that what you're looking for?

12 Q Yes.

13 A Okay. No, I don't see any on the car.

14 Q Nothing on the car?

15 Can you get a print, a latent, off of a
16 steering wheel?

17 A It depends on the steering wheel. It depends on
18 the conditions. It depends on the person secreting.

19 Q A steering wheel is more porous than glass;
20 right?

21 A Absolutely.

22 Q The chances of getting a print off of that
23 would be more slim?

24 A It depends on the fingerprint. It depends on the
25 person. It depends on the actual texture of the

1 steering wheel, itself. Some steering wheels are very
2 hard, non-porous surfaces; others are very rough.

3 Q How about the gearshift, would your answer be
4 the same?

5 A Yes.

6 Q So what you've found is that Mr. Maples has
7 been in the car; correct?

8 A I found his fingerprints on items that were in the
9 vehicle.

10 Q Okay. And it wouldn't surprise you if he had
11 been in the car using the car; right?

12 A It wouldn't surprise me.

13 Q That's the question. I'm looking for an
14 answer.

15 A No.

16 Q It wouldn't surprise you? Okay.

17 Based on everything that you've done, you
18 can't say when Mr. Maples was in the Jeep; right?

19 A No.

20 Q So as we sit here today, we know he was in
21 the Jeep; correct?

22 A I don't know he was in the Jeep.

23 Q Okay. We know that his prints are on
24 twenty-two items that were in the Jeep; correct?

25 A That's correct.

1 Q But we have no physical forensic evidence
2 that puts him in the Jeep on April 28, 2002, at High
3 Point. Is that fair?

4 A Not that I have.

5 Q You have none of that?

6 A No.

7 MR. ZAGER: Thank you.

8 THE COURT: Mr. Somers, do you have any
9 questions?

10 MR. SOMERS: Yes, just a few, your Honor.

11 CROSS-EXAMINATION BY MR. SOMERS:

12 Q Now, you indicated that you had to personally
13 examine the prints. Isn't that correct?

14 A Yes.

15 Q You couldn't look at pictures and make your
16 comparison, could you?

17 A Yes.

18 Q You could?

19 A Photographs were submitted to me.

20 Q Okay. And did you make your comparison based
21 on those photographs?

22 A Yes.

23 Q Okay. Did you also examine, physically
24 examine, the fingerprints?

25 A That is considered when you -- certain

1 fingerprints can not be lifted.

2 Q I see.

3 A And usually what we do is we use the photographs
4 and the lifts together. We have that.

5 Q Do you need the lifts --

6 A If you have the photographs?

7 Q -- or could you just rely on the photographs?

8 A It depends on the case.

9 Q Well, did you have to enlarge these
10 photographs of the prints?

11 A No, we never conduct off enlargements. We never
12 conduct examinations off enlargements.

13 Q So you have to --

14 A It's one-to-one.

15 Q So you have to examine the actual tape that
16 the fingerprints come off of, don't you?

17 A Either that, or the photograph is taken
18 one-to-one.

19 Q "One-to one," what does that mean?

20 A That means it's the real size.

21 Q And you can look at that photograph and make
22 your comparison?

23 A Yes.

24 Q You didn't find James Irwin's prints in the
25 Jeep or on the Jeep, did you?

1 A James Irwin? Negative.

2 MR. SOMERS: No further questions.

3 THE COURT: Anything further?

4 MR. HEISLER: No, sir.

5 THE COURT: Thank you.

6 (The witness is excused.)

7 THE COURT: Ladies and gentlemen, it's the
8 magic hour for lunchtime. I'm going to excuse you for
9 lunch at this time. Please be back across the way at
10 1:30, and we'll have you back here.

11 Everybody remain here until the jury leaves.

12 (A luncheon recess was taken.)

13 (The following items are marked for
14 identification:

15 S-62, a large colored diagram.

16 S-63, a computer-assisted dispatch log.

17 S-64, a consent to question form.

18 S-65, a Miranda form.)

19 (The following is heard without the presence
20 of the jury.)

21 THE COURT: Ready to proceed, Mr. Heisler?

22 MR. HEISLER: Yes, your Honor.

23 THE COURT: Jury out then.

24 (The following is heard in the presence of
25 the jury.)

1 THE COURT: Good afternoon to each of you.

2 Mr. Heisler?

3 MR. HEISLER: Patrolman Robert Humeny,

4 please?

5 ROBERT HUMENY, sworn.

6 THE COURT CLERK: Would you state your name

7 and spell your last name, please?

8 THE WITNESS: Patrolman Robert M. Humeny,

9 H-u-m-e-n-y.

10 THE COURT CLERK: Thank you.

11 THE COURT: Have a seat.

12 Mr. Heisler?

13 MR. HEISLER: Thank you, your Honor.

14 DIRECT EXAMINATION BY MR. HEISLER:

15 Q Patrolman Humeny, by whom are you employed?

16 A The Lakewood Police Department.

17 Q In what capacity?

18 A Patrolman.

19 Q And how long have you been a police officer
20 in Lakewood?

21 A Six years and some-odd months.

22 Q And were you so employed on April 28, 2002?

23 A Yes.

24 Q And do you recall that day of the week being
25 a Sunday?

1 A I don't recall it being a Sunday, actually. But
2 if you're saying it is, then I'll . . .

3 Q Were you on duty during the daytime of April
4 28th, 2002?

5 A Yes.

6 Q Did there come a point in time, sometime
7 after eleven in the morning, when you were dispatched
8 to the High Point Condominiums?

9 A Yes, there was.

10 Q What was the nature of your being dispatched?

11 A There was a call of shots fired and man down on
12 the ground in the street on Prospect.

13 Q And when you received that call, did you
14 proceed to High Point?

15 A Yes, I did.

16 Q When you arrived there, were there other
17 police officers already there?

18 A Yes.

19 Q And in connection with you arriving there and
20 being part of the people who were dispatched, was
21 information put out over the air regarding descriptions
22 of people who might be involved?

23 A People and the vehicles, yes.

24 Q And what were the descriptions that you
25 heard?

1 A Green Jeep was the vehicle, seen leaving, possibly
2 involved, and two black males, one with a striped shirt
3 going through the woods from Prospect towards James
4 Street, and one black male running east on Prospect
5 towards Route 9.

6 Q Towards Route 9?

7 A Yes.

8 Q Now, when you got to the scene, there were
9 other officers there. Was somebody attending to the
10 person who was down in the street?

11 A Yes.

12 Q So at that point, did you decide to take some
13 other steps?

14 A Yeah. I was driving around the immediate area
15 looking for anybody matching that description and/or
16 just in the area.

17 Q And what were the conditions that morning?

18 A Light rain.

19 Q So where did you drive?

20 A There's a small residential community just east of
21 High Point, in-between High Point and Route 9, that's
22 right off of Prospect Street, so I start driving in and
23 out of those streets there.

24 Q Let me show you what's been marked as S-62.
25 We'll put it up over here.

1 If you could step down with me?

2 A Yes.

3 (The witness steps down and walks over to the
4 diagram board.)

5 Q Let me go get a marker.

6 Do you recognize what S-62 depicts?

7 A A portion of Lakewood.

8 Q And on that -- it's a regular street map,
9 isn't it?

10 A Yes.

11 Q Okay. And do you see Prospect Street on
12 there?

13 A Yes, I do.

14 Q And do you see Route 9?

15 A Yes.

16 Q And how is Route 9 labeled on that map?

17 A It's labeled as River Avenue. It also has a
18 Highway 9 insignia.

19 Q And at the corner of Prospect and Route 9, is
20 there a significant landmark there?

21 A Kimball Medical Center.

22 Q And could you tell us, is that labeled on
23 that map?

24 A Yes. I believe that's an "H."

25 Q A big red "H"?

1 A Correct.

2 Q And underneath it, it says, "Kimball Medical
3 Center"?

4 A Yes.

5 Q Could you show us on here, in relation to
6 Kimball Medical Center, where the High Point
7 Condominium Complex is located?

8 A Square it out?

9 Q Kind of square it out, and mark it "HP," if
10 you can?

11 A (The witness designates).

12 Q Okay. So High Point is at the corner of
13 Prospect and Massachusetts?

14 A Correct.

15 Q And just generally point on the map, if you
16 would, show the jury where you went -- first off, where
17 was this man down in the street?

18 A Approximately here.

19 (The witness points.)

20 Q Would you mark that with an "X"?

21 A (The witness designates).

22 Q Where was that in relationship to the
23 driveway coming out of High Point onto Prospect?

24 A Basically, in front of it, or just west of the
25 driveway.

1 Q And from there, where did you go?

2 A I drove into this residential neighborhood here,
3 Murray Street, Summit -- Murray Street, Elaine Street,
4 Williams Street, Summit Court.

5 Q And are there ways to get onto Route 9 from
6 Prospect Street without going all the way out to the
7 corner of Prospect and 9?

8 A Yes. You could have taken any of the three or
9 four roads I had just mentioned, taking it to Cedar
10 Court or to West Spruce.

11 Q And they would take you out on Route 9?

12 A Yes, they would.

13 Q Now, after you started driving around these
14 streets, did that come a point in time when you
15 encountered somebody?

16 A Yes.

17 Q And where was that?

18 A That was on Cedar Court, right here.

19 Q And where was it in relation to Route 9 on
20 Cedar Court?

21 A Just east of Route 9.

22 Q So could you mark approximately where you
23 encounter the this person?

24 A With an "X?"

25 Q Please?

1 A (The witness designates.)

2 Q Okay. You can resume your seat, officer.

3 A Okay.

4 (The witness resumes the witness stand.)

5 Q And what was it that drew your attention to
6 this person?

7 A He was walking away from the general area of High
8 Point where the scene was.

9 Q Were there other people out that morning in
10 that residential area?

11 A No, there wasn't.

12 Q I believe you said it was light rain?

13 A Yes.

14 Q So when you saw this person, what did you do?

15 A I pulled to the side of the road, and I had a
16 marked patrol car.

17 Q Were you in uniform, as well?

18 A Yes, I was. And he was walking on the sidewalk
19 towards Route 9. I called over to him to ask to speak
20 to him, and he walked over to me.

21 Q And what happened when he walked over to you?

22 A I let him know that we're investigating a shooting
23 in the High Point area and if he had heard or seen
24 anything.

25 Q Did you ask him where he was coming from or

1 where he was going?

2 A I asked him where he was coming from. He pointed,
3 obviously, back from the direction he was walking,
4 which was towards High Point.

5 I said, "Was it High Point?"

6 And he said, "Yes."

7 Q And after you had that exchange, what took
8 place?

9 A He told me that he didn't see anything, but he
10 heard fireworks and left the area.

11 Q And at that point, did you ask him his name?

12 A Yes.

13 Q What did he tell you?

14 A He told me his name was Israel Cotto.

15 Q C-o-t-t-o?

16 A Correct.

17 Q Did he provide an identification card with a
18 picture and that name on it?

19 A Yes, he did.

20 Q So he said he saw nothing, but he heard what
21 he thought were fireworks?

22 A Yes.

23 Q At that point, what did you do?

24 A I asked him if he would tell that to whomever was
25 going to be investigating the shooting; so far, he was

1 the only person that we knew of that had any knowledge
2 or anything.

3 Q And would it be fair to say this is within
4 minutes of when you were dispatched?

5 A Within the first five minutes of my arrival to
6 that area, yes.

7 Q Do you know what time you arrived?

8 A Could I look at my CAD report?

9 Q Sure.

10 As a matter of fact, I have it marked.

11 A I believe it was 11:15.

12 Q Okay. Let me back up a second. Does the
13 Lakewood Police Department use a computer-assisted
14 dispatch system?

15 A Yes, they do.

16 Q Does that generate records of when officers
17 are dispatched to perform certain functions?

18 A Yes.

19 Q And have we pulled the dispatch log for that
20 morning from the computer?

21 A Yes.

22 Q Let me show you what's been marked as S-63
23 for identification.

24 A Okay.

25 Q Does that reflect units being dispatched to

1 that call?

2 A Yes, dispatched and arrived.

3 Q Okay. What was the dispatch time?

4 A I was dispatched at 11:10 a.m. and 40 seconds.

5 Q Okay. That would be you and how many other
6 officers that were dispatched at that time?

7 A Four officers and two first aid units.

8 Q And the time that's contained in the dispatch
9 is when the call actually comes in and units are
10 actually sent?

11 A I don't see here exactly when the call came into
12 the department. I just see the dispatch times of the
13 units that were responding.

14 Q Okay. Presumably, the incident happened, the
15 call comes in, and then the dispatch happens?

16 A Yes.

17 Q So, are you reflected on there with a
18 particular unit number?

19 A Unit A-1.

20 Q So you're dispatched at 11:10:40?

21 A Um-hum, yes.

22 Q And we know this is for this incident,
23 because it's assigned a case number in Lakewood, or an
24 incident number?

25 A Correct.

1 Q Does that reflect what time you reported back
2 to dispatch that you had arrived at the scene?

3 A Yeah, at 11:15 and 26 seconds.

4 Q Okay. So you're on the scene at 11:15. How
5 long did you stay there before you started checking the
6 streets?

7 A I basically pulled up to the scene, the area of
8 the scene, heard the descriptions go out, realized that
9 the person is already being attended to in the street,
10 and started checking the area.

11 Q And how long did you check before you
12 encountered this person?

13 A Within five minutes.

14 Q So you have this conversation about the
15 fireworks and you asked him if he would go with you to
16 talk to whoever would be investigating?

17 A Yes.

18 Q Does that mean you're not going to be the
19 investigating officer for this shooting?

20 A No, I -- yes, that's correct. I was not going to
21 be the investigating officer.

22 Q Who would be investigating this?

23 A Ultimately, the Detective Bureau probably.

24 Q So you wanted to have this fellow go talk to
25 a detective?

1 A Correct.

2 Q What did you do?

3 A I asked him if he would come into my car so I
4 could drive him back over to the scene so he could
5 speak to somebody and tell him what he heard.

6 Q Now, how was he acting?

7 A Calm.

8 Q And did you handcuff him or tell him he was
9 under arrest?

10 A I did not tell him he was under arrest, no, sir.

11 Q Was he handcuffed?

12 A No.

13 Q Where did he sit in your car?

14 A The back seat.

15 Q And what did you do at that point with this
16 individual?

17 A Drove back over to the area of the scene by High
18 Point and was waiting for someone to come up and speak
19 to him.

20 Q And how long were you there at the scene, at
21 High Point, do you recall?

22 A No, not exactly.

23 Q You were there for awhile?

24 A Awhile. It could be 15 minutes, 20 minutes.

25 Q Okay. And what was the scene like at High

1 Point while you were waiting there?

2 A There were officers securing the scene, taping it
3 off, gathering evidence, talking to other residence in
4 the area. There was a large group of people out there
5 at that point.

6 Q You had a large crowd out there?

7 A Right.

8 Q At that point, did any detective come over to
9 your car to talk to this person?

10 A No.

11 Q Were you given instructions at some point?

12 A Yes. I was asked to bring him back to
13 headquarters so he could be spoken to there.

14 Q Okay. And who did that?

15 A I believe it was Detective Sergeant Isnardi.

16 Q And from the Lakewood Police Department, is
17 Detective Sergeant Isnardi one of the supervisors in
18 the Detective Bureau who was going to be handling this
19 investigation?

20 A At that time, I believe so, yes.

21 Q So what did you do?

22 A Drove him back to the police station, and we sat
23 in an open hallway area which we use for report writing
24 for walk-in citizen reports.

25 Q And what were you doing there?

1 A Sitting there waiting.

2 Q And did there come a point in time when this
3 individual left your presence?

4 A Yes.

5 Q When was that?

6 A Detective Isnardi had come up and started speaking
7 to Israel Cotto, and I left.

8 Q So you turned him over to Sergeant Isnardi?

9 A Yes.

10 Q At any point, was this individual told he was
11 under arrest?

12 A No.

13 Q I mean, at least not while you were there?

14 A Not in my presence.

15 Q And he appeared to be calm?

16 A Yes.

17 Q Do you see that individual who gave his name
18 to you as Israel Cotto in court today?

19 A Yes, I do.

20 Q Could you point him out, please?

21 A He's sitting in the corner.

22 (The witness points).

23 Q And that's the same person?

24 A Yes.

25 THE COURT: The record may indicate the

1 witness has identified the Defendant Santos.

2 MR. HEISLER: Correct, your Honor.

3 That's all the questions I have for
4 Officer Humeny.

5 THE COURT: Mr. Welle?

6 MR. WELLE: I have no questions, Judge.

7 THE COURT: Mr. Kinarney?

8 MR. KINARNEY: Thank you, Judge.

9 CROSS-EXAMINATION BY MR. KINARNEY:

10 Q Good afternoon, patrolman.

11 A Good afternoon.

12 Q Let's take it from the first step. You don't
13 know when the call comes in that there's been a
14 shooting and a man down; correct?

15 A When I received the call --

16 Q No, no, no, no, no. You don't know when the
17 call was received in headquarters that there was a
18 shooting and a man down?

19 A Meaning the time of day?

20 Q Yes.

21 A No.

22 Q Okay. What you do know, however, is that a
23 dispatch is then placed out at 11:10:40 a.m.; correct?

24 A Correct.

25 Q The 11th hour, 10th minute, 40th second?

1 A Yes.

2 Q These records, S-63, is broken down to the
3 second; correct?

4 A Yes.

5 Q Okay. So we know at 11:10:40, there's a
6 dispatch: Shooting, man down; correct?

7 A Correct.

8 Q Obviously, some time prior to 11:10:40, a
9 call is placed to headquarters which resulted in the
10 dispatch subsequently?

11 A Yes, that would normally be the case, unless a
12 police officer initiated the --

13 Q Right, but I mean in this particular case.

14 A I believe it was a phone call that came in. I'm
15 not sure.

16 Q Okay. And we know that at 11:15:26, you
17 arrive at the scene; correct?

18 A Correct.

19 Q How far was the scene from where you were
20 when you heard the dispatch, if you can estimate?

21 A I actually don't know.

22 Q Okay. You don't remember exactly where you
23 were?

24 A I know my zone is north of the lake, west of Route
25 9. That would be Lake Caralaljo -- C-a-r-a-s-a-l-j-o,

1 I believe -- but I don't know that I was in my zone at
2 the time of dispatch. I'm not really sure.

3 Q Okay. So, in any event, we do know that at
4 11:15:26, you arrive at the scene; correct?

5 A Yes.

6 Q And the only information you have at that
7 point -- and correct me if I'm wrong -- the only
8 information you have at that point is that there is a
9 shooting and a man down?

10 A At the point when I arrive at the scene?

11 Q At the scene.

12 A I actually see the man down in the street.

13 Q Okay. But the only information you know as
14 you're going to the scene is that there was a shooting
15 and a man down?

16 A Yes.

17 Q Okay. And then when you get to the scene,
18 you receive further information, including
19 descriptions; correct?

20 A Correct.

21 Q And the descriptions that you've just
22 testified to today is that there were two black males,
23 one in a striped shirt who headed towards the woods;
24 correct?

25 A Correct.

1 Q And then another black male who headed east
2 and apparently was going towards Route 9, in the
3 general direction of Route 9; correct?

4 A Correct.

5 Q And how did you gain this information?

6 A It was put out over the air, over the police
7 radio.

8 Q Okay. There was nothing put out over the
9 police radio that one of the two individuals who left
10 the scene was a Hispanic male; correct?

11 A The only things I remember about what was put out
12 over the air is what I'm relaying to you.

13 Q Okay. So, two black males?

14 A Correct.

15 Q Okay. And did you speak to anybody at the
16 scene?

17 A No.

18 Q Why did you go to the scene -- why did you
19 make the decision then to go to the scene? Just to
20 confirm that there was a man down?

21 A Well, if there's someone down in the street, then
22 I arrive to try to render first aid. At the point
23 where I see that's being handled, I'll go on to the
24 next part.

25 Q Okay. So you didn't receive any additional

1 information -- any additional facts at the scene. The
2 descriptions came over the police radio. You went to
3 the scene, and you confirmed that there was a man down,
4 and then you took off searching?

5 A Yeah. The descriptions of the vehicle and parties
6 leaving the area came out over the air probably pretty
7 close to when I was pulling up.

8 Q Okay. And could you estimate about how long
9 you were at the scene the first time?

10 A I pulled up, got information, saw that first aid
11 was being handled, turned around, and started looking
12 in the area I was in.

13 Q Okay. And I believe you indicated it took
14 you about five minutes to find the individual who
15 identified himself as Mr. Cotto; correct?

16 A Yes.

17 Q And I believe you put an "X" as to where you
18 located him; correct?

19 A That "X" is the man down.

20 Q Okay. So I'm looking at the wrong "X"?

21 A Yes. There's one closer to you.

22 Q Could you come over here a second --

23 A Sure.

24 Q -- and maybe show me?

25 A Sure.

1 (The witness steps down and walks over to the
2 diagram board.)

3 Q Okay.

4 A This would be the man down.

5 (The witness points.)

6 Q Okay.

7 A This would be where Mr. Cotto was.

8 Q Okay. Thank you. You can take your seat.

9 A Okay.

10 (The witness resumes the witness stand.)

11 Q Now, between High Point, heading towards 9,
12 we have Murray Street; correct?

13 A Correct.

14 Q Do you need to come back over?

15 A Correct.

16 Q You know the area?

17 A No, I can read most of it from here.

18 Q Okay. So we have Murray Street. And is
19 Murray Street a north/south or east/west street?

20 A North/south.

21 Q Okay. And we have another north/south
22 street, Elaine Street; correct?

23 A Correct.

24 Q Then we have a third one, Williams Street,
25 which is north/south; correct?

1 A Correct.

2 Q Then we have an east/west street, Summit,
3 which is perpendicular to Murray, Elaine and Williams?

4 A Yes. They all come together.

5 Q They all come together.

6 And then Summit does a little north hook and
7 then continues down Cedar Street; correct?

8 A Cedar Court.

9 Q Cedar Court, I should say. And that is where
10 you found what we now know to be Mr. Santos; correct?

11 A Correct.

12 Q Are Murray Lane and Williams Street are
13 fairly close together?

14 A I would say the properties for the houses pretty
15 much back up to each other, and they are on no more
16 than a quarter-of-an-acre parcels, so I were say they
17 are pretty close.

18 Q Okay. Could you estimate the distance from
19 High Point to where you saw Mr. Santos on Cedar Court?

20 A In just a straight line, forgetting about the fact
21 there's streets involved?

22 Q Yeah, straight -- let's go first with a
23 straight line.

24 A I would say -- I'm going to be basically guessing.

25 Q Obviously -- you didn't measure it; right?

1 A No.

2 Q And as far as you know, nobody measured it?
3 You didn't receive any knowledge that anybody measured
4 it; right?

5 A I have no knowledge of that.

6 Q Okay. I'm going to ask you for your best
7 estimate?

8 A An eighth of a mile.

9 Q Okay. Now, let's assume that an individual,
10 instead of, like, making a straight line -- and you
11 could cut through backyards, theoretically, if you
12 wanted to; right?

13 A Yes, you could.

14 Q Let's assume somebody doesn't, and they went
15 down the streets, the sidewalk, let's say. And let's
16 assume they went down Summit and then went down over to
17 Cedar.

18 Could you estimate -- now, we're not talking
19 about a straight line -- how much more it would be?

20 A I would say 500 feet longer.

21 Q It wouldn't be much more?

22 A No.

23 Q It wouldn't be much more.

24 And let's assume somebody went down Prospect
25 Street, okay, and then maybe turned down Williams

1 Street or one of these other streets, and then turned
2 down Cedar Street.

3 Again, would it be fair to say that it
4 certainly wouldn't be a heck of a lot more?

5 A I think I'd be pretty close in measurement.

6 Q Okay. So we know that the call came in
7 before you're dispatched. We don't know how long the
8 call came in before you're dispatched. Probably not
9 too long; correct?

10 A I'm sure momentarily.

11 Q Okay. Momentarily.

12 And we know you got it at 11:10:40, and we
13 know you got to the scene at 11:15:26. So it takes
14 about five minutes to get to the scene, correct?

15 A Correct.

16 Q So we know that the call was placed to police
17 headquarters five minutes, plus slightly; correct?

18 A I'm sorry. Say that again, please?

19 Q So we know that by the time you got to the
20 scene, the call had to come into headquarters five
21 minutes, plus a little bit; correct?

22 A I'm not sure what a little bit is.

23 Q Well, neither am I; okay?

24 A Yes.

25 Q Okay. And then we know that you're at the

1 scene certainly for some undetermined length of time;
2 correct?

3 A Prior to --

4 Q Prior to leaving to go search.

5 A Yeah. I'm going to say less than a moment.

6 Q Okay. Less than a minute?

7 A Yes.

8 Q Okay. So let's say we're up to about 6
9 minutes or so; correct?

10 And then we know it takes about 5 minutes for
11 you to locate Mr. Santos; correct?

12 A Yes.

13 Q So we're talking about, let's say, 11
14 minutes. And nobody is perfect here -- I know you're
15 not a machine -- but would it be fair to say maybe
16 around 11 minutes, give or take, until you see
17 Mr. Santos out on the street?

18 A I didn't time myself, but by going with those
19 numbers it's probably close.

20 Q Okay. And we know that we're talking about
21 an eighth of a mile from High Point, so maybe an
22 additional 500 yards or so; correct?

23 A Yes.

24 Q Okay. And you've indicated that he was calm.
25 Am I right?

1 A Yes.

2 Q Did you happen to notice whether his clothes
3 were disheveled at all?

4 A Slightly wet --

5 Q Okay.

6 A -- from the rain.

7 Q It was raining. But did you happen to notice
8 if his close were mussed up or anything?

9 A As if in a struggle?

10 Q Yeah, as if he was in a struggle, or
11 anything.

12 A No.

13 Q Did you happen to notice if his hair was all
14 mussed up?

15 A I don't happen to recall if he had any hair.

16 Q Okay. Did you see any markings on him?

17 A No.

18 Q Did he appear to be huffing? Puffing?
19 Sweating?

20 A No.

21 Q And you indicated he was walking; correct?

22 A He was walking when I saw him.

23 Q Okay. And you called him over basically.
24 You're in a marked police vehicle; correct?

25 A Correct.

- 1 Q You're wearing a uniform like you're wearing
2 today?
- 3 A Yes.
- 4 Q Okay. And he came over to your vehicle;
5 correct?
- 6 A Correct.
- 7 Q You had a conversation with him; correct?
- 8 A Yes.
- 9 Q He never attempted to flee?
- 10 A No.
- 11 Q He wasn't under arrest; correct?
- 12 A No.
- 13 Q Yet he did talk to you?
- 14 A Yes, he did.
- 15 Q He agreed to get in your police cruiser;
16 correct?
- 17 A Yes.
- 18 Q He sat in the back seat?
- 19 A Yes.
- 20 Q You drove to the scene?
- 21 A Yes.
- 22 Q Which must have taken you basically seconds
23 really; am I correct?
- 24 A A minute probably.
- 25 Q Very quickly? Okay. Thank you.

1 And then you remain at the scene for 15
2 minutes; right? 15, 20 minutes, I believe you said?

3 A Oh, I'm not sure. I didn't time that exactly.

4 Q I understand. But you stay at the scene for
5 a length of time of more than a minute or two; correct?

6 A Yes.

7 Q He didn't attempt to leave the police cruiser
8 as you're at the scene?

9 A No.

10 Q He's not handcuffed in the cruiser at the
11 scene?

12 A No.

13 Q Okay. He -- he essentially agrees to go down
14 to police headquarters with you; correct?

15 A Yes.

16 Q He goes down to headquarters, and he goes
17 into the hallway, the open hallway area; correct?

18 A Yes.

19 Q And he sits with you until Detective Isnardi
20 started speaking to him; correct?

21 A Right.

22 Q And that pretty much ends your involvement in
23 this case. Am I right?

24 A Yes. I left after that.

25 Q And at the point in time, where he's sitting

1 with you in police headquarters, he never said to you:
2 Hey, I've had it. I'm leaving.

3 Is that correct?

4 A Correct.

5 Q He was cooperative the entire time he was
6 with you. Am I right?

7 A Yes. I had no problems with him, whatsoever.

8 MR. KINARNEY: Just one moment, Judge,
9 please?

10 Q I want to refer you to S-63, if I could.

11 A I have a copy of it. Do you mind if I look at it?

12 Q Sure.

13 And I'm looking at the first A-1, which is
14 your police unit; correct?

15 A First time listed?

16 Q Yes.

17 A Okay.

18 Q 11:10:40 is when you get your dispatch;
19 correct?

20 A Yes.

21 Q And, now, I'd like you to go to the second
22 page, which would be the third time A-1 is listed;
23 correct?

24 A At 11:59, 59 seconds?

25 Q Yes, 11:59:59.

1 A Yes.

2 Q And the activity there is listed as, "En
3 route to headquarters." Is that correct?

4 A Yes.

5 Q So if you go back to your first entry, which
6 is 11:10:40, and then you subtract that from 11:59:59,
7 we're talking about 49 minutes and 19 seconds from the
8 time you first get the dispatch to the time you're in
9 your car going back to headquarters; correct?

10 A Correct.

11 Q So if we follow the example, and it's about
12 11 minutes when you find him, okay, around 11 minutes
13 when you find him, and you're at headquarters for 15 or
14 20 minutes -- strike that -- and you're at the scene
15 the second time with Mr. Santos for 15 or 20 minutes --
16 let's take the 20 minutes, the outside point -- we're
17 talking about 31 minutes, approximately, total;
18 correct?

19 A 39 or 31?

20 Q 31.

21 A 31?

22 Q Right. You've testified that you were at the
23 scene the second time with Mr. Santos you estimated it
24 to be about 15 or 20 minutes; correct?

25 A Yes.

1 Q You already indicated, in response to my
2 questions on cross-examination, that it was about 11
3 minutes from the time you received the call to the time
4 you saw Mr. Santos on the street?

5 A Approximately.

6 Q Okay. And what I'm getting at is you get the
7 call, and 11 minutes later you see Santos. You have
8 short conversation with Santos. You go back to the
9 scene, which is very close, and you remain there only
10 15 or 20 minutes. When you add that 15 or 20 minutes to
11 11, it's a lot more than 49 minutes.

12 Do you follow me? We're missing about 17
13 minutes there.

14 A 17 minutes of time that I would have needed to
15 fill those times? I'm not adding it up, so I'm asking
16 you what you're asking me.

17 Q Okay. Let me -- I know it's kind of hard.
18 Let me try to rephrase it, if I can.

19 You agree with me that it took 49 minutes and
20 19 -- I wasn't a math major either.

21 A My math is terrible.

22 Q It's probably as bad as mine.

23 We know that if you arrived the call at
24 11:10:40, and then you made your way, you were en route
25 to headquarters at 11:59:59, we know that it had to

1 have taken 49 minutes and 19 seconds from the time you
2 got to the -- you got the call, 'till the time you
3 started back to headquarters with Mr. Santos; correct?

4 A Correct.

5 Q You with me so far?

6 A Um-hum.

7 (The witness nods.)

8 Q Okay. Now, we know you've testified that
9 from the time you got the call, it took, give or take,
10 around 11 minutes to see Mr. Santos.

11 A Okay.

12 Q Correct?

13 A Correct.

14 Q So, let's say -- let's do it this way. Let's
15 say that if you got the call at 11:10:40, it took about
16 11 minutes to find Mr. Santos, we're up around 11:21;
17 okay.

18 A I'm at -- I'm just deducting. I have 38 minutes
19 left --

20 Q Okay. You do it your way. I'll do it my
21 way.

22 A -- with the 40-minute calculation.

23 Q Okay. So, let's say that we're up around
24 11:21 when you see Mr. Santos.

25 A Okay.

1 Q Could you say about how long you were talking
2 to Mr. Santos at the scene?

3 A At the point of seeing him on the street?

4 Q Yeah, upon seeing him on Cedar.

5 A 5 or so minutes.

6 Q Okay. So let's say we're up around 11:26
7 then, and then you go back to High Point. It probably
8 took maybe 2, 3 minutes?

9 A A couple moments, yes.

10 Q Let's say 11:30; okay? I'm being generous
11 there.

12 A Okay.

13 Q And then you're there 15 to 20 minutes.

14 A Okay.

15 Q That would bring you up to 11:45 to 11:50.
16 And, yet, you left after that to go back to
17 headquarters 1 second before noon, 11:59:59.

18 A Okay.

19 Q So, there's a gap of 10, 15 minutes.

20 A I have 10 minutes.

21 Q Okay. 10 to 15, because you said 15 to 20.

22 What I'm getting at is, is there anything --
23 could you have been slightly off on your times at the
24 scene?

25 A Giving you estimates?

1 Q Yeah.

2 A That's exactly what they are, they are estimates.
3 There's no way I could say exactly how many minutes I
4 was anywhere.

5 Q So what I'm getting at, these are all rough
6 estimates on your part; correct?

7 A Sure.

8 Q Now, let me ask you this. You're familiar
9 with this area; correct? You're a patrolman in
10 Lakewood.

11 A Correct.

12 Q So you patrol the streets of Lakewood;
13 correct?

14 A Correct.

15 Q If one was to be at High Point and shoot
16 somebody, and there's a light rain out, and he walks
17 even walking in a normal fashion, and he leaves High
18 Point some time prior to 11:10:40, regardless of the
19 route he takes through backyards -- Summit, Prospect,
20 or whatever -- isn't he going to be further than an
21 eighth of a mile away from High Point 11 minutes later,
22 10, 11, 12, 14 minutes later?

23 MR. HEISLER: Judge, I'm going to object to
24 that on the grounds it calls for speculation.

25 THE COURT: Yes, it does. I'll sustain the

1 objection.

2 MR. KINARNEY: I'll withdraw the question,
3 Judge. Thank you.

4 I believe, if your Honor will give me a
5 moment, that's all I have.

6 Q And he was not cuffed at any point in time I
7 believe you indicated; right?

8 A Not by me.

9 Q He was not under arrest?

10 A No.

11 Q Meaning he was free to leave if he so chose?

12 A Correct.

13 Q And he never volunteered, I'm leaving?

14 A No.

15 MR. KINARNEY: Nothing further.

16 THE COURT: Mr. Zager?

17 MR. ZAGER: Thank you, Judge.

18 CROSS-EXAMINATION BY MR. ZAGER:

19 Q Patrolman, I won't ask you any questions
20 about math.

21 A Okay.

22 Q When the dispatch went out, was there any
23 dispatch for a beige Accura?

24 A Not that I recall.

25 Q When you went back to the scene with this

1 gentleman by the name of Cotto, who you've identified
2 as Santos, did you park at the entrance to the High
3 Point Condos?

4 A I pulled into the driveway off of Prospect Street.
5 There's two driveways.

6 Q Right.

7 A I was on the Prospect side.

8 Q So you were facing south?

9 A South.

10 Q And the houses and fencing would be on your
11 left?

12 A The residential community? Yes.

13 Q And the condos would be on your right?

14 A On my right and ahead of me.

15 Q Right. And was the scene secured? You know,
16 that yellow police tape, were they securing the scene?

17 A I'm familiar with that.

18 Q Did you observe the scene being secured?

19 A Yes.

20 Q Did you make observations of the scene, or
21 were you just --

22 A Very general. I wasn't that close to -- which
23 part of the scene are you referring? I was outside of
24 the tape.

25 Q Outside of the tape looking south?

1 A Looking south.

2 Q Okay. Do you recall what, if anything, you
3 saw at the scene?

4 A Lots of civilians standing around by the fence
5 line.

6 Q Okay. Would you have made any observations
7 of vehicles?

8 A That place has got quite a few vehicles.

9 Q I know there are parking spots on both sides.

10 A Yes.

11 Q The bottom line is there was no APB, I guess
12 we could call it, for a beige Accura?

13 A I don't recall hearing anything for a beige
14 Accura. I could have missed it. I don't know.

15 Q And there was no dispatch to look for a red
16 Pontiac Grand Am either, was there?

17 A I don't recall that either.

18 MR. ZAGER: Thank you.

19 THE COURT: Mr. Somers?

20 MR. SOMERS: No questions your Honor.

21 THE COURT: Mr. Heisler?

22 MR. HEISLER: Judge, I have one.

23 REDIRECT EXAMINATION BY MR. HEISLER:

24 Q Officer, having nothing to do with you, but
25 helping us with the next witness possibly, do you know

1 where the Brettwood Apartments are in Lakewood?

2 A On Route 9, 780 River Avenue.

3 Q Okay. Are they located on this map
4 somewhere? Could you show us on this map where they
5 are?

6 A Approximately?

7 Q Yeah.

8 A Yes.

9 (The witness steps down and walks over to the
10 diagram board.)

11 Q Mark it "BW," if you would, please?

12 A (The witness designates.)

13 Q Okay. So that would be south and east of the
14 High Point Apartments?

15 A It would be south and east, yes.

16 Q Okay. And Brettwood is located right on
17 Route 9?

18 A The driveway takes you right onto Route 9, yes.

19 MR. HEISLER: That's all I have, Judge.

20 THE COURT: Any recross on the location of
21 the Brettwood Apartments?

22 MR. KINARNEY: No, Judge. I just have an
23 omitted cross, if I may?

24 THE COURT: Yes.

25 CONTINUED CROSS-EXAMINATION BY MR. KINARNEY:

1 Q The description you were given, patrolman,
2 was two black males and a clothing description;
3 correct?

4 A Yes.

5 Q You weren't given any other descriptions as
6 to height, weight, markings, anything like that?

7 A Not anything else that I could recall.

8 MR. KINARNEY: Thank you.

9 (The witness is excused.)

10 THE COURT: Mr. Heisler?

11 MR. HEISLER: Sergeant Thomas Hayes, please?

12 THOMAS HAYES, sworn.

13 THE COURT CLERK: Would you state your name,
14 please?

15 THE WITNESS: Thomas Hayes.

16 THE COURT: Mr. Heisler?

17 MR. HEISLER: Thank you, your Honor.

18 DIRECT EXAMINATION BY MR. HEISLER:

19 Q Sergeant Hayes, by whom are you employed?

20 A The Ocean County Prosecutor's Office.

21 Q In what capacity?

22 A I'm a sergeant assigned to the Major Crime
23 Homicide Unit.

24 Q And how long have you been an investigator in
25 the Ocean County Prosecutor's Office?

1 A Seventeen years.

2 Q And how long have you been assigned to the
3 Major Crime Homicide Unit?

4 A Fifteen years.

5 Q Were you called into work on Sunday, April
6 28, 2002?

7 A Yes, I was.

8 Q Were you on duty at the time?

9 A Basically, being in the unit I'm in, we're always
10 on duty.

11 Q Okay. But you're not actually working in the
12 office?

13 A Not working, no. Sunday was a day off.

14 Q Okay. What time were you notified you had to
15 report to work?

16 A Approximately 11:30 in the morning.

17 Q And where were you?

18 A I was at the Home Depo in Toms River.

19 Q And you were notified by what, pager or cell
20 phone?

21 A Cell phone, correct.

22 Q And advised to do what?

23 A To respond to -- actually, I was notified by the
24 Sheriff's Department that there was a shooting in
25 Lakewood. I was requested to contact the Lakewood

1 Police Department to get further details, which I did.

2 Q Okay. Do you know who you spoke to at the
3 Lakewood Police Department?

4 A No, one of the dispatchers initially.

5 Q Okay. So from Home Depo, where did you go?

6 A I went home.

7 Q You had to get your equipment and your police
8 vehicle?

9 A Yes, correct.

10 Q You live in Toms River, as well?

11 A Yes, I do.

12 Q From there, did you proceed to Lakewood?

13 A Yes, I did.

14 Q And on the way to Lakewood, did you speak to
15 anybody?

16 A I spoke with Detective Sergeant Joseph Isnardi
17 from the Lakewood police.

18 Q And do you know Detective Sergeant Isnardi?

19 A Very well, yes.

20 Q Have you conducted investigations with him in
21 the past?

22 A Yes, many.

23 Q On your way to Lakewood police headquarters,
24 do you recall about what time it was when you spoke to
25 Sergeant Isnardi?

1 A It would have been after noon, after twelve noon.

2 Q And what information was relayed to you in
3 that conversation?

4 A He advised me that the victim had been pronounced
5 dead at 11:55 a.m. at Jersey Shore Medical Center.

6 Q And you knew at that point you had a gunshot
7 victim?

8 A That's correct.

9 Q What time did you arrive at Lakewood?

10 A I would say about 10 after 12:00 or 12:15.

11 Q And when you arrived there, were you briefed
12 on whatever information was available?

13 A I met with Detective Sergeant Isnardi, yes.

14 Q And at that point, what information was
15 available to you?

16 A Very little at that time. I was advised that the
17 victim had been shot multiple times in the apartment
18 complex known as High Point, in the parking lot area.
19 He was transported to Jersey Shore Medical Center where
20 he subsequently was pronounced dead.

21 Q Did you have an identification on the victim
22 at that point?

23 A No. We had nothing, no name, no address.

24 Q Okay. So at that point, what steps did you
25 take?

1 A Detective Sergeant Isnardi advised me that a
2 patrol officer had brought into headquarters a subject
3 that he saw walking away in the area of the shooting.

4 Q And was that individual identified to you?

5 A I was advised his name was Israel Cotto.

6 Q At that point, what steps did you and
7 Sergeant Isnardi decide to take?

8 A We decided we were going to interview Mr. Cotto.

9 Q And while you're doing this, are there other
10 officers, patrolman, from Lakewood, and other people
11 out doing things at the scene?

12 A Yes.

13 Q Canvassing the apartments?

14 A That's correct.

15 Q Speaking to other people who may have been
16 witnesses?

17 A Correct.

18 Q Where did you first encounter Mr. Cotto?

19 A It was in an interview room located off of the
20 Detective Bureau at Lakewood Police Department.

21 Q Okay. Do you know how he got there?

22 A I believe he was let into the room by
23 Detective Sergeant Isnardi.

24 Q And what took place when you and
25 Sergeant Isnardi and this person were in the room?

1 A We walked into the room. I identified myself. I
2 made it clear to him that he was not under arrest; he
3 was free to leave. I wanted to make it clear, because
4 he was transported there by a Lakewood patrol unit,
5 that he was not under arrest and that he could leave if
6 he so wished.

7 Q And do you use any forms in connection with
8 that type of an interview?

9 A Yes. There's a form that we call the consent to
10 question form which we administered to Mr. Cotto.

11 Q Let me show you what's been marked as S-64
12 for identification. Can you tell the jury what that
13 form is?

14 A Yes. This is the consent to questioning form that
15 was read to Mr. Cotto at the Lakewood Police Department
16 before myself and Detective Sergeant Isnardi
17 interviewed him.

18 Q Was it read aloud to him?

19 A Yes.

20 Q By whom?

21 A Detective Sergeant Isnardi.

22 Q Okay. And could you just read for us what
23 the form says?

24 A Yes. Under the heading of, "Consent to
25 Questioning:"

1 "I hereby acknowledge that I have voluntarily
2 agreed to answer questions by a representative of the
3 Lakewood Police Department. I have been advised that
4 these questions will pertain to the shooting at High
5 Point," which is written in by Detective
6 Sergeant Isnardi.

7 Underneath that:

8 "I am appearing for this questioning
9 voluntarily, and I am aware that I am free to terminate
10 the questioning and leave at any time I so choose."

11 There's then an area for Mr. Cotto
12 to sign, as well as an area for witnesses, date, and
13 time.

14 Q Okay. And did Mr. Cotto sign that form in
15 your presence?

16 A Yes, he did.

17 Q After it was read to him aloud, did he appear
18 to read it to himself?

19 A Yes. It was handed to him, and he appeared to
20 read it.

21 Q And then he signed it?

22 A Correct.

23 Q And was it witnessed by anyone?

24 A Yes, myself and Detective Sergeant Isnardi.

25 Q And are the date and time put on the form?

1 A Yes.

2 Q Now, by the way, the time on this form, what
3 is it?

4 A The time on the form says, "11:31 a.m."

5 Q Okay. And is that correct?

6 A No. It's an hour off. It's an hour early.

7 Q Okay. This is April 28th. This is a few
8 weeks after Daylight Savings Time starts?

9 A That's correct.

10 Q Who put the time on the form?

11 A Detective Sergeant Isnardi.

12 Q So this form is actually executed at 12:31
13 p.m. in the afternoon?

14 A Correct.

15 Q And once that form was signed, what took
16 place in that room?

17 A We began to question Mr. Cotto about what he may
18 have seen that day, his activities.

19 Q And what was his demeanor at the time?

20 A He was very calm. He was cooperative. He
21 appeared to be lucid. He was aware of his
22 surroundings.

23 Q And did you start asking him where he had
24 been the night before and that morning?

25 A Yes.

1 Q And what did he tell you about where he spent
2 the night, on Saturday night?

3 A He said that he stayed at Dell's Motel on Route
4 37, in Toms River, in Room 14 with his girlfriend,
5 Donna Brown, on the evening of April 27th.

6 Q And did he tell you how he got to Lakewood on
7 Sunday, Sunday the 28th?

8 A Yes, he took a bus to Lakewood. He exited the bus
9 near a used car lot south of the Brettwood Apartment
10 Complex.

11 Q And the Brettwood Apartment Complex is on
12 Route 9 --

13 A Yes.

14 Q -- or River Avenue, in Lakewood?

15 A Yes. The actual address is 780 River Avenue.
16 It's just a section of Route 9 that's referred to as
17 River Avenue.

18 Q And did he tell you what he did when he got
19 off the bus there?

20 A Yes. He stated that he walked to a female's
21 apartment at the Brettwood Apartment Complex. He was
22 going there to ask her for some money. He went to the
23 apartment, he got no response, and he decided he was
24 going to walk to the High Point Apartments.

25 Q Now, did you ask him for the name and

1 apartment number for this female he was going to see at
2 Brettwood?

3 A Yes, I did.

4 Q Was he able to provide either?

5 A No.

6 Q And did he say why he was walking towards the
7 High Point Apartments?

8 A I don't recall why he was going there.

9 Q And what did he say happened when he went to
10 the High Point Apartments or toward the High Point
11 Apartments?

12 A While walking in that direction, he heard what he
13 thought were fireworks. He stated he turned around and
14 he began to walk back towards the Brettwood Apartments.

15 Q And what did he say happened when he was
16 walking back towards the Brettwood Apartments?

17 A He was approached by a Lakewood police car. And
18 then subsequently that police officer asked him to
19 respond to police headquarters.

20 Q And did you continue to question him?

21 A Yes, we did.

22 Q What kind of questions were you asking, and
23 what were the responses?

24 A I asked him if he had gone to Lakewood alone that
25 morning. He told me he had not, that he had received a

1 ride from someone.

2 MR. ZAGER: Objection.

3 THE COURT: I'll see you at side bar with the
4 reporter.

5 (The following is heard at side bar.)

6 THE COURT: Take a deep breath.

7 MR. ZAGER: Judge, my understanding is
8 Mr. Hayes -- Investigator Hayes is going to be confined
9 to Santos, Santos did this, Santos did that, without
10 implication of any other defendant.

11 I assume that he knows that. I know
12 Mr. Heisler told him that, but -- maybe I jumped the
13 gun on the objection, but I thought it was coming out
14 that it was Maples that gave him a ride.

15 MR. HEISLER: No, that's not coming out.

16 THE COURT: Yes, that was my concern, as soon
17 as I started to hear it, also.

18 MR. HEISLER: No. Sergeant Hayes knows very
19 well he's not to mention Mr. Maples by name. The story
20 changes from, I went on the bus, to, I got a ride with
21 somebody, and that's as far as it goes.

22 MR. ZAGER: I may have been overly cautious.

23 THE COURT: Better to be overly cautious in
24 this area than to start all over. Okay.

25 THE COURT: Objection withdrawn, I guess, as

1 long as that answers that?

2 MR. ZAGER: Actually, I would like -- I would
3 prefer it's sustained.

4 MR. KINARNEY: And I'd like to win the
5 lottery.

6 MR. ZAGER: I'll withdraw it.

7 (Side bar is concluded.)

8 THE COURT: Mr. Heisler?

9 Q Now, sergeant, the first version of events
10 that you got from Mr. Cotto about getting up to
11 Lakewood was he took a bus?

12 A That's correct.

13 Q As you continued to question him, did he
14 change that and say he got a ride with somebody up that
15 way?

16 A He did, yes.

17 Q And did he say where he went when he got to
18 Lakewood?

19 A He went to the Brettwood Apartments.

20 Q So he stuck to that particular story about
21 going to the Brettwood --

22 MR. KINARNEY: Your Honor, I'm going to
23 object to the characterization --

24 THE COURT: Yes.

25 MR. KINARNEY: -- he "stuck" to that story.

1 THE COURT: Sustained.

2 Q Did he reiterate the version that he went to
3 this female's apartment?

4 A Yes, he did.

5 Q And what went on during that questioning?
6 What were you asking, and what did he say?

7 A I asked him what happened when he went to the
8 female's apartment. He again stated that he got no
9 response there, so he decided to walk to the High Point
10 Apartments.

11 Q And did he say this time what happened at
12 High Point?

13 A While walking to High Point, he said he heard what
14 he thought were gunshots.

15 Q So in the first rendition, it was fireworks.
16 Now it's gunshots?

17 A That's correct.

18 Q So, what happened at that point?

19 A Again, he stated that he turned around to head
20 back for the Brettwood Apartments when he was stopped
21 by a Lakewood patrol officer and brought into
22 headquarters.

23 Q Did you continue questioning?

24 A Yes, we did.

25 Q By the way, when you say "we," who is in the

1 room at this particular time?

2 A Myself and Detective Sergeant Isnardi.

3 Q How are you dressed?

4 A I was probably wearing a pair of jeans and a
5 sweatshirt or a light jacket.

6 Q So, you weren't dressed for work like you are
7 today?

8 A No, I was not.

9 Q What about Sergeant Isnardi?

10 A He was dressed the same way I was.

11 Q Were you armed?

12 A No. I removed my weapon before I went into the
13 interview room.

14 Q Do you do that as a matter of course?

15 A I do, yes.

16 Q Was Sergeant Isnardi displaying a weapon?

17 A No, he was not.

18 Q So, now, after Mr. Cotto tells you that he
19 has heard gunshots, what transpires?

20 A We continue to question him further.

21 Q What kinds of questions were you asking, and
22 what information was he giving you?

23 A Well, I confronted him with the fact that his
24 story had changed already, and I asked him if he had
25 anything to hide. He subsequently told me and

1 Detective Sergeant Isnardi that he had lied to us about
2 his identity, and that his real name was, in fact,
3 Renato Santos.

4 Q And did he give you a reason for why he
5 changed -- why he lied because his name?

6 A Yes, he --

7 MR. KINARNEY: Your Honor, I'm going to
8 object. If I could approach side bar?

9 THE COURT: Yes.

10 (The following is heard at side bar.)

11 MR. KINARNEY: Perhaps, Judge, Mr. Zager's
12 disease is catchy, I may have objected prematurely, but
13 I figure I'd rather be safe rather than sorry.

14 If what's going to be elicited is that the
15 defendant had a parole warrant, that's the basis of my
16 objection. If what's going to be elicited is he had
17 been locked up on Friday night, I have no objection.

18 MR. HEISLER: No. It wasn't that he was
19 locked up on Friday night, just that he thought there
20 was a warrant for him, that's all.

21 MR. KINARNEY: See, that's what I'm objecting
22 to.

23 THE COURT: He thought there was a warrant.

24 MR. KINARNEY: That leads to so much
25 speculation. A warrant for murder? A warrant for an

1 indictable charge? A warrant for a violation of
2 parole? In fact, my client has indicated to me he does
3 have a parole warrant. I just think it's an area that
4 shouldn't be gotten into at all.

5 THE COURT: The jury is entitled to know why
6 he would give a different name than his right name. He
7 has told them that he has lied to them.

8 MR. KINARNEY: Well, I just think, Judge, to
9 reiterate, I just think he -- unless Bill is going to
10 indicate -- maybe I can --

11 MR. HEISLER: Hayes has been instructed not
12 to mention the word "parole."

13 MR. KINARNEY: Okay. And your Honor would
14 have no objection to me on cross asking, He wasn't
15 talking about a warrant for this case?

16 You don't have any problem with me asking
17 that, I assume? The answer would be no.

18 MR. HEISLER: No.

19 THE COURT: No problem.

20 (Side bar is concluded.)

21 Q You asked -- now, he's given you his name as
22 Renato Santos?

23 A That's correct.

24 Q You asked him why he lied about his name?

25 A Yes.

1 Q He told you he thought he had a warrant for
2 his arrest?

3 A That's correct.

4 Q And that wasn't in connection with this case,
5 because no warrant had been issued for him?

6 A Correct.

7 Q In fact, at this point, did you have any idea
8 what his involvement is?

9 A No.

10 Q Just that he's somebody who says he thought
11 he heard gunshots?

12 A Right.

13 Q After he advised you he thought he had this
14 warrant, did he say anything else?

15 A Yes. He stated. "I know I'm not free to leave
16 now."

17 Q And what did you respond?

18 A I told him that was, in fact, the case, and I
19 advised him of his Miranda rights.

20 Q And, again, how do you accomplish that,
21 Sergeant Hayes?

22 A From a standard rights waiver form. The rights
23 are read to him.

24 Q Let me show you what's been marked as S-65.
25 Can you identify that document?

1 A Yes. This is the rights waiver form that was read
2 to Mr. Santos at the Lakewood Police Department on
3 April 28th, 2002, at one o'clock in the afternoon.

4 Q Okay. And how do you know it was at one
5 o'clock in the afternoon?

6 A The place, date and time are indicated at the top
7 of the form.

8 Q And whose handwriting are they in?

9 A That's mine.

10 Q So Sergeant Isnardi didn't fill out the time
11 this time?

12 A No, I did.

13 Q Okay. Was that form read aloud to
14 Mr. Santos?

15 A Yes. I read it to him.

16 Q Okay. Would you read it aloud for the jury,
17 please?

18 A Yes.

19 "Before we ask you any questions, you must
20 understand your rights.

21 "You have the right to remain silent.
22 Anything you say can be used against you in court. You
23 have the right to talk to a lawyer for advice before we
24 ask you any questions and to have him with you during
25 any questions.

1 "You have this right to the advise and
2 presence a lawyer even if you cannot afford to hire
3 one. If you wish to have a lawyer and you cannot pay
4 for one, you may apply to the court, and one will be
5 appointed for you.

6 "If you wish to answer questions now, without
7 a lawyer present, you have the right to stop answering
8 questions at any time. You also have the right to stop
9 answering questions at any time until you talk to a
10 lawyer."

11 Q And that's what you read aloud to Mr. Santos?

12 A Yes.

13 Q And did you provide the form to him to read
14 to himself?

15 A Yes, I did.

16 Q Did he appear to read it to himself?

17 A He did, yes.

18 Q What's the next section of that form?

19 A There's a heading, it's called, "Waiver," with a
20 paragraph under it.

21 Q Okay. Would you read that aloud for the
22 jury, please?

23 A Yes.

24 "I have read the statement of my rights shown
25 above. I understand what my rights are. I am willing

1 to answer questions and make a statement. I do not
2 want a lawyer present during this interview. I
3 understand and know what I am doing, and no promises or
4 threats have been made to me, and no pressure of any
5 kind has been used against me."

6 Q Now, was that part read out loud?

7 A No.

8 Q Did you ask Mr. Santos if he would sign the
9 form?

10 A Yes, I did.

11 Q And how did he respond?

12 A He stated that he would not sign the form, but he
13 would continue to answer questions pertaining to our
14 investigation.

15 Q And did he ever ask for a lawyer?

16 A No, he did not.

17 Q And what did you do with that form, once he
18 said he wouldn't sign it?

19 A I made a notation at the bottom, underneath where
20 he would have signed, "Read and refused to sign."

21 Q And did you sign it and have
22 Sergeant Isnardi, as well?

23 A Yes.

24 Q And is there another time on that?

25 A Underneath that is the time, "1303," which is

1 1:03.

2 Q Which is the time you and Sergeant Isnardi
3 signed this form?

4 A Witnessed, signed it, correct.

5 Q Is this the first time you ever experienced
6 somebody refusing to sign the form but continuing to
7 talk?

8 A No, sir. No, not at all.

9 Q So it happens?

10 A It happens, yes.

11 Q Now, at that point, did you resume
12 questioning of Mr. Santos?

13 A Yes.

14 Q And, by the way, do you see Israel Cotto,
15 Renato Santos, in court today?

16 A Yes, I do.

17 Q Would you point him out?

18 A He's seated in the corner in the back jacket to
19 the left of Mr. Kinarney.

20 THE COURT: The record will indicate he's
21 identified the Defendant Santos.

22 Q And at that point, did you start to get some
23 other pedigree information, so to speak?

24 A Yes, we did. He indicated that the original date
25 of birth he had given us was not correct. He told us,

1 when we started to interview him, his date of birth was
2 July 3rd, 1978. He told us that his actual birthday
3 was July 3rd, 1979. He also supplied a home address of
4 355 Pacific Avenue, in Jersey City.

5 Q Did he indicate to you he graduated from high
6 school?

7 A Yes, did he.

8 Q Where was that?

9 A High School East, Toms River.

10 Q Did you get back into going over what had
11 happened, where he had been Saturday night, and how he
12 got to Lakewood on Sunday?

13 A Yes, we did.

14 Q And, again, did he mention Dell's Motel and
15 Donna Brown?

16 A He spent the night with Donna Brown in Room 14 at
17 Dell's Motel. He said on Sunday he took a cab to the
18 Toms River Bus Terminal where he boarded a bus, and he
19 took that bus to the Brettwood Apartments.

20 Q Okay. So now he's back to a bus; he's not
21 being given a ride.

22 A Correct.

23 Q And what did he say happened from the time he
24 got to the Brettwood Apartments this time by bus?

25 A Again, he stated he went to the female's

1 apartment, he got no response, and started to walk
2 towards High Point.

3 Q And, again, was he able to provide a name or
4 apartment number for this female?

5 A No.

6 Q What did he say happened when he got to High
7 Point, or as he was going towards High Point, I should
8 say?

9 A While walking to High Point, he heard ten
10 gunshots, and he continued to walk in that direction.

11 Q Okay. He heard ten gunshots and walked
12 towards it?

13 A Correct.

14 Q And what did he say happened at that point?

15 A When he got to the parking lot at High Point, he
16 saw numerous people running around in the parking lot
17 and five or six cars leaving at a high rate of speed.

18 Q And was he able to describe any of these
19 individuals he saw running around?

20 A He described one. He said he saw a black male
21 that had either a clean-shaven head, or possibly
22 wearing a dew rag, and he saw that individual run
23 across Prospect Street into the woods, which would have
24 been in a northerly direction.

25 Q Could he give you a description of anybody

1 else that he saw running?

2 A No, he did not.

3 Q Did he give you a vehicle description?

4 A He was able to recall the description of one
5 vehicle. He described it as a conversion van, dark in
6 color.

7 Q Did he have any other identifiers? License
8 plate number? Direction of travel?

9 A No, he did not.

10 Q Now, did, there come a point in time when
11 Detective Sergeant Isnardi left the room?

12 A Yes.

13 Q And what was his purpose in doing that?

14 A I believe he was going to check on the status of a
15 warrant.

16 Q To see if there actually was a one?

17 A To see if there was a warrant, as well as
18 communicate with the investigators and officers who
19 were out at the scene.

20 Q Now, at this point, do you and
21 Sergeant Isnardi know the identity of the victim?

22 A No, we did not.

23 Q Do you have any other information besides
24 what you were provided before you went into that room?

25 A No.

1 Q So Sergeant Isnardi is trying to find out
2 what else is going on?

3 A That's correct.

4 Q Did you continue to talk to Mr. Santos while
5 Sergeant Isnardi was out of the room?

6 A Yes, I did.

7 Q And what kinds of questions were you asking,
8 and what were you covering, what areas?

9 A Again, his activities for the morning, that
10 morning, what he may have seen, his knowledge of the
11 shooting, or involvement. He denied, you know, having
12 any involvement.

13 Q Did he mention going to the Metropole Motel
14 in Seaside Heights at some point?

15 A Yes, he did. He stated he was picked up and
16 driven to the Metropole where they picked up an
17 individual who he knew as Jamal.

18 Q And is this the first time you're hearing the
19 name Jamal?

20 A Yes.

21 Q So Santos is now in the Jeep with Jamal?

22 A Correct.

23 Q And did he say where he went?

24 A He was picked up at Dell's. They went to the
25 Metropole where they picked up the victim that he

1 described as only knowing him as Jamal.

2 Q Who's calling him a victim now?

3 A I'm referring to him as a victim. I believe he
4 referred to him as the person that was eventually shot.

5 THE COURT: Could I see you at side bar with
6 the reporter?

7 (The following is heard at side bar.)

8 THE COURT: Is this Saturday night you're
9 talking about?

10 MR. HEISLER: No. This is Sunday morning.

11 MR. ZAGER: I have a problem.

12 THE COURT: You're implicating other people.

13 MR. ZAGER: He's indicated -- on two
14 occasions, he used the word "they," and --

15 MR. HEISLER: I'll back him off from that.

16 Jamal and Santos are the people in the Jeep.

17 MR. ZAGER: I don't know. He said "they. "
18 If they picked up on --

19 MR. HEISLER: I'll wade him through it.

20 THE COURT: I think you better just get him
21 there simply by himself, without anybody else.

22 MR. HEISLER: Right.

23 MR. ZAGER: My question is, at this point, it
24 might be an appropriate to take a break, only because I
25 don't know how he could do it, because they are going

1 to thinking where are we in not asking the questions
2 about who are "they"?

3 (Side bar is concluded.)

4 THE COURT: We're going to take a
5 midafternoon break at this time. You can step into the
6 jury room.

7 (A short recess was taken.)

8 (The following is heard without the presence
9 of the jury.)

10 THE COURT: Ready to continue?

11 MR. HEISLER: Yes, Judge.

12 THE COURT: Jury out, please?

13 (The following is heard in the presence of
14 the jury.)

15 THE COURT: Mr. Heisler?

16 MR. HEISLER: Thank you, your Honor.

17 Q Now, Sergeant Hayes, when we broke, I believe
18 you told us that Mr. Santos said that he was at the
19 Metropole with the person who was ultimately the
20 victim?

21 A That's correct.

22 Q And you had some discussion about this name
23 Jamal?

24 A That's right.

25 Q And at some point, did Santos ask you a

1 question about his condition?

2 A He asked me if we had positively identified him.

3 Q And did you respond to that?

4 A I told him we did not.

5 Q And, at that point, what occurred?

6 A At that point, I continued to ask him further
7 questions, because he had come so far from not knowing
8 anything, to now being in a Jeep with the victim. So I
9 put him on the spot and questioned him, and he said to
10 me, "I killed him. I shot him inside the Jeep and when
11 he ran out."

12 Q And did he continue to talk about what had
13 happened?

14 A Yes, he did.

15 Q And this was in response to more questions
16 from you?

17 A That's correct.

18 Q Now, at this point, you're still alone in the
19 interview room with him?

20 A Yes.

21 Q And what did he tell you at that point?

22 A I brought him back to the night before again. He
23 said that he had been at Dell's Motel.

24 Q Let's stop and break this down.

25 A Okay.

1 Q When he first told you that he killed him
2 inside the Jeep, shot him inside the Jeep, and when he
3 ran out, did he tell you what he did with the gun at
4 the scene at that point?

5 A Yes, he did. He said he left it at the scene near
6 the Jeep.

7 Q And did he describe the gun?

8 A Yes.

9 Q What did he say it was?

10 A It was a revolver with black pistol grips.

11 Q Did he say what caliber it was?

12 A A .38 caliber. He believed it was a six-shot.

13 Q Did he know for sure it was a six-shot?

14 A No, he did not.

15 Q And did he say what had happened to him
16 immediately after that, what he did?

17 A Can I refer to my report, please?

18 Q Please do?

19 And my question specifically is directed to
20 specifically after he described the gun.

21 A Right.

22 After describing the gun, he was returned to
23 the scene in the patrol car, at which time he noted the
24 gun and the Jeep were both gone.

25 Q Okay. So he described the gun --

1 A Right.

2 Q -- to you?

3 A Correct.

4 Q And then mentioned that when he came back to
5 the scene in the patrol car with Patrolman Humeny, the
6 gun was gone, and so was the Jeep?

7 A The gun and Jeep were both gone.

8 Q Did you continue to question him? Did he
9 continue to talk about what had happened?

10 A Yes.

11 Q Okay. From there, what did he tell you went
12 on starting the night before?

13 A The night before, he said that he had the victim's
14 Jeep, that the victim had loaned him the vehicle. He
15 spent the night at Dell's Motel. The following
16 morning, he went to the Metropole, where he picked up
17 the victim. They then drove to Lakewood where they
18 entered the parking lot of the High Point Apartment
19 Complex. Santos parked the vehicle.

20 Q What did he tell you he did or said to the
21 victim while he was in the Jeep at High Point?

22 A He said that he had to exit the vehicle to
23 urinate.

24 Q Did he say he said that to the victim?

25 A Yes.

1 Q So he told him he had to get out to urinate?

2 A That's correct.

3 Q And did he tell you what he did at that
4 point?

5 A Yes. He exited the Jeep. He walked around the
6 back of the Jeep and snuck up on the side, the
7 passenger's side. He saw the victim talking on his
8 cell phone, and the victim saw him approaching with a
9 gun in his hand. He tried to exit the passenger's side
10 Jeep -- of the Jeep, and Santos said he blocked the
11 door from opening, and he fired the weapon into the
12 Jeep at the victim.

13 Q And did he say what happened then?

14 A Yes. The victim slid across and exited the Jeep
15 through the driver's side door. And Santos said he
16 followed, he chased him and shot at him, 'till the gun
17 was empty.

18 Q Santos chased the victim and shot at him
19 until the gun was empty?

20 A That's correct.

21 Q Did he offer a reason for the shooting?

22 A Yeah. He stated that the victim who way
23 originally from Philadelphia had tried to kill him on
24 two prior occasions while he was in Philadelphia.

25 Q And did you ask Santos where he obtained the

1 gun?

2 A He stated that the gun he used that day he had for
3 a long time and that he had always carried a gun.

4 Q Did he say anything else with respect to
5 guns?

6 A I asked him if the victim had a gun on him that
7 day. He stated he did not. He said he had seen him
8 with guns in the past, but he did not have one on him
9 that day.

10 Q Did Santos say anything about his hands?

11 A Yes. He stated he washed his hands prior to being
12 interviewed, because he knew we would be testing him
13 for gunshot residue.

14 Q And this was sometime before you interviewed
15 him?

16 A That's correct.

17 Q Was he ever allowed to use the bathroom while
18 you were taking to him up to that point?

19 A He had indicated he had already used the bath.

20 Q But he didn't ask you?

21 A No.

22 Q And you or Sergeant Isnardi didn't take him?

23 A No, that's correct.

24 Q He told you before that he had used the
25 bathroom?

1 A Before we interviewed him, correct.

2 Q And he said he wanted to wash his hands to
3 make there was no gunshot residue?

4 A Correct.

5 Q At that point, what did you do?

6 A At that point, I exited the interview room to get
7 the attention of Detective Sergeant Isnardi to bring
8 him back into the room.

9 Q And did you tell him what had gone on?

10 A Yes.

11 Q And did you bring him back in,
12 Sergeant Isnardi?

13 A Yes.

14 Q And what took place at that point?

15 A At that point, he -- Mr. Santos recounted the very
16 last version he had given to me, when I was alone with
17 him, about exiting the vehicle, telling the victim he
18 had to urinate, and sneaking around on the passenger's
19 side.

20 Q And shooting the victim?

21 A And shooting the victim.

22 Q And at that point, what happened?

23 A After telling both of us that story, he stated
24 that he felt he may have said too much, and he wanted
25 to consider whether or not he should speak to an

1 attorney before we talked to him any further.

2 Q And did you stop your questioning at that
3 point?

4 A Yes.

5 Q Now, you're just talking back and forth with
6 him up to this point; correct?

7 A Right.

8 Q If he's willing to keep talking, what's your
9 next procedure in terms of memorializing what's going
10 on?

11 A When we believe we've gotten all the facts that
12 there are to get, and we've established a chronology of
13 the events as they actually occurred that day, we'll
14 ask the individual if he will give us a taped
15 statement.

16 Q And at that point, you were unable to take a
17 taped statement?

18 A Right, because he had already asked for an
19 attorney.

20 Q Did he actually ask for one, or did he say
21 you wanted to think about it?

22 A He wanted to think about it, correct.

23 MR. HEISLER: That's fine, Judge. That's all
24 I have.

25 THE COURT: Mr. Welle?

1 MR. WELLE: No questions, Judge.

2 THE COURT: Mr. Kinarney?

3 MR. KINARNEY: Thank you, Judge.

4 CROSS-EXAMINATION BY MR. KINARNEY:

5 Q Good afternoon, sergeant.

6 A Good afternoon.

7 Q You filled out a police report in this case;
8 correct?

9 A Yes, I did.

10 Q And you filled out several police reports,
11 right?

12 A I believe a total of two.

13 Q Okay. And the first report that you filled
14 out would be a seven-page police report which contains
15 the information that you've testified to today?

16 A That's correct.

17 Q And that report was filled out on May 7th,
18 '02; correct?

19 A That's the date on the report, yes.

20 Q So that would be nine days after the
21 shooting; correct?

22 A Correct.

23 Q Now, in the report, you go into great detail,
24 correct, about what was said, what went on, the
25 versions that her Santos gave? Correct?

1 A Correct, yes.

2 Q And would it be fair to say that in your
3 training as a police officer, when you fill out a
4 police report, you attempt to make it as accurate as
5 possible?

6 A Yes.

7 Q Correct?

8 When you fill out a police report, do you
9 fill out a police report from notes that you've
10 written?

11 A Yes.

12 Q Okay. And then they end up in a typed
13 version which you sign; correct?

14 A That's correct.

15 Q So it's a process of taking notes, as you go
16 along, and then when you prepare the reports, putting
17 it in a typed version?

18 A That's correct.

19 Q And would it also be fair to say that in your
20 police report, you attempt to be as accurate as you can
21 be?

22 A Of course.

23 Q You want to put in all things that are
24 important; correct?

25 A Yes, that's correct.

1 Q And one of the reasons for that is if a
2 defendant elects to go to trial, there's going to be a
3 passage of time, which in some cases can be
4 significant, and you need to refer to your report to
5 refresh your recollection, 'cause you continually are
6 involved in other police work, and you need to refresh
7 your memory.

8 Is that correct?

9 A Yes, that's correct.

10 Q Now, just getting to the last part of the
11 testimony that you gave on direct examination, the only
12 evidence that the jury has that Mr. Santos confessed is
13 your testimony; correct?

14 A I don't --

15 Q Your testimony today that he confessed.

16 A Through me, yes. I'm not sure what other
17 witnesses testified to.

18 Q Okay. We don't have a videotaped statement;
19 correct?

20 A That's correct.

21 Q We don't have an audiotape where we can hear
22 Mr. Santos' voice confessing; correct?

23 A That's correct.

24 Q And we don't have a signed formal statement;
25 correct?

1 A That's correct.

2 Q And these are all vehicles that we see in
3 certain cases; correct?

4 A Absolutely.

5 Q Okay. And you've indicated that the
6 reason -- when Mr. Santos gives his final version and
7 then repeats it for Detective Isnardi, the reason that
8 we don't have a videotaped statement is because the
9 defendant says he wants to thank about it, and now he
10 wants to perhaps consult with an attorney.

11 Is that correct?

12 A Could you repeat that? Did you say videotaped
13 statement?

14 Q Well, let me amend that -- let me rephrase
15 the question. Any type of formal statement.

16 A That's correct.

17 Q Okay. And did you ever follow-up, when he
18 indicated to you, Let me think about, you know, whether
19 I want to give it, did you ever follow-up, you know,
20 ten minutes later, or whatever, saying, Have you made
21 your mind up yet as to whether you want to give a
22 formal statement?

23 A He never said that -- he never said, I want to
24 think about giving a formal statement. He just said,
25 "I want to think about talking to you any further

1 before I consider," meaning a lawyer.

2 Q And did he elect then not to give any further
3 information?

4 A There was a time later on when he asked to speak
5 to me.

6 Q Okay. But he never came off that version
7 that he was responsible, that confessed?

8 A No.

9 Q He indicated -- he stuck to that?

10 A Yes, he did.

11 Q Okay. And your report which was prepared on
12 May 7th is a total of seven pages. Is that correct?

13 A That's correct.

14 Q Do you have anywhere in that report where you
15 indicate the defendant refused to give a formal
16 statement?

17 A No, I do not.

18 Q That's a significant factor; right?

19 A It's not uncommon, counsellor.

20 Q Well, I didn't ask you that. It's
21 significant though; correct?

22 A Of course to have a formal taped statement would
23 always be better for us, but in this particular case,
24 we couldn't get one.

25 Q Okay. Is there any reason you didn't put his

1 refusal to give a formal statement in your police
2 report?

3 A No, no reason.

4 Q Do you recall Hakeem Shabazz -- and if you
5 don't, just say you don't recall; okay?

6 Do you recall a call being placed to the
7 victim's cell phone in your presence by one of the
8 Shabazz brothers?

9 A A call being placed to the victim's cell phone?

10 Q Yes.

11 A No, I do not.

12 Q You know that the victim's cell phone was
13 recovered?

14 A Yes.

15 Q It was recovered at the scene?

16 A That's correct.

17 Q Do you know what happened to the victim's
18 cell phone?

19 A I believe CIU would have collected it into
20 evidence.

21 Q Were you ever present with the victim's cell
22 phone --

23 A Not to my knowledge.

24 Q -- if you recall?

25 A I don't recall ever being present, no.

1 Q Okay. When Mr. Santos indicated that there
2 was a warrant, he indicated it was out of Jersey City;
3 correct?

4 A That's correct.

5 Q And you found in his pedigree that he was
6 from Jersey City; correct?

7 A Right.

8 Q Do you recall about what time he said, "I
9 shot him"?

10 A I would say probably about 1:15.

11 Q And he indicated the type -- he described the
12 gun he supposedly used; correct?

13 A That's correct.

14 Q Are you aware of any forensic evidence that
15 ties him to any gun in this case?

16 A Forensic evidence?

17 Q Yes.

18 A No, I'm not.

19 MR. KINARNEY: One moment, Judge?

20 Nothing further, Judge.

21 THE COURT: Mr. Zager?

22 MR. ZAGER: Thank you, Judge.

23 CROSS-EXAMINATION BY MR. ZAGER:

24 Q At some point during your investigation,
25 detective, you have information that maybe Mr. Maples

1 might be involved. Is that correct?

2 A That's correct.

3 Q And you reached out for him telephonically to
4 call him; correct?

5 A Yes. I had his cell phone number, that I believed
6 to have been his.

7 Q And you dialed that number and talked to
8 someone whom you thought was him; correct?

9 A The individual that I called identified himself
10 initially as Khaleef.

11 Q And he asked you why you were calling;
12 correct?

13 A That's correct.

14 Q And you advised him that you were calling
15 regarding an incident at High Point; correct?

16 A That's correct.

17 Q And that you wanted to talk to him?

18 A Right.

19 Q And he told you that he was out of town?

20 A He stated he was out of town at the time.

21 Q And that he would respond shortly?

22 A I believe he said on the following day, he would
23 come to Lakewood headquarters.

24 Q And, in fact, he did turn himself in;
25 correct?

1 A Eventually.

2 Q I take that as a yes?

3 A Yes.

4 Q Not on the day -- not on April 30th?

5 A No. It was quite some time after that.

6 Q May 13th; right?

7 A I would say close to two weeks later, right.

8 Q Okay. And he turned himself in at the
9 prosecutor's office; correct?

10 A Correct.

11 Q He was charged?

12 A Yes.

13 Q He posted bail, and he was released; correct?

14 A I believe so, yes.

15 Q Shortly thereafter, perhaps in November, he
16 was indicted and formally charged for which we're here
17 today; correct?

18 A I don't know the day of the indictment, but, yes,
19 obviously, he was eventually indicted.

20 Q And you're aware that he turned himself in
21 and -- voluntarily a second time; correct?

22 A I'm not aware of the second time. I can't say I
23 recall that.

24 Q Okay. The first time he turned himself into
25 the prosecutor's office?

1 A That's correct. I recall that.

2 Q Okay. Do you know whether he turned himself
3 into your office or Lakewood the second time?

4 A That I don't recall.

5 Q You don't recall.

6 During the course of your investigation,
7 Mr. Barber was interviewed; correct?

8 A That's correct.

9 Q And as you gathered information from
10 Mr. Barber, you then spoke to a Mr. Matt La Blanc;
11 correct?

12 A I believe it was Matt La Batch.

13 Q La Batch.

14 A Yes.

15 Q I had a --

16 MR. HEISLER: Judge, I'm going to object. At
17 this point, we're getting rather far afield from the
18 direct regarding the statement of Mr. Santos. If
19 Mr. Zager has some questions for Sergeant Hayes he
20 would like to ask on his own case, he's free to.

21 MR. ZAGER: Judge, I believe
22 Investigator Hayes is the chief prosecutor's
23 investigator on this case. I'm not going very far, and
24 it doesn't make sense to call him back tomorrow as my
25 witness.

1 THE COURT: As long as you're not going to
2 start to get into a hearsay area or any other
3 objectionable area, go right ahead.

4 MR. ZAGER: Presumably not, no.

5 THE COURT: Go ahead.

6 MR. ZAGER: Thank you.

7 Q You then spoke to Mr. La Blanc -- La Batch?

8 A La Batch.

9 Q Thank you.

10 To confirm Mr. Barber's story; correct?

11 A Yes.

12 Q As a result of speaking to him, you then
13 confronted Barber and realized he was lying; correct?

14 MR. HEISLER: Judge, could we have a
15 clarification of who this "you" is, whether it's
16 Sergeant Hayes, personally, or other investigators?

17 THE COURT: I think I better have you at side
18 bar.

19 (The following is heard at side bar.)

20 THE COURT: You're not going very far?

21 MR. ZAGER: If he wanted a clarification,
22 it's right in the report, that Mr. Hayes interviewed
23 Mr. La Batch, so that's really only where I'm going.

24 THE COURT: You're not going to get into any
25 further hearsay, just that he interviewed Mr. La Batch?

1 MR. ZAGER: And he realized Mr. Barber was
2 lying. He just said he was.

3 THE COURT: As a result of that --

4 MR. ZAGER: Conversations with Mr. La Batch,
5 he then went back to Mr. Barber and confronted him and
6 determined --

7 MR. HEISLER: But he didn't go back to
8 Barber. That was Finnegan or Frulio.

9 MR. ZAGER: Well, he knows about it. He's
10 the chief of --

11 THE COURT: He can't testify to that. That's
12 what I said, hearsay.

13 MR. ZAGER: Okay.

14 MR. HEISLER: Wait until you get Finnegan
15 tomorrow.

16 MR. ZAGER: Okay. Thank you.

17 (Side bar is concluded.)

18 Q You and Detective Isnardi interviewed Matt
19 La Batch?

20 A That's correct.

21 Q After talking to Mr. Barber?

22 A I did not speak to Mr. Barber.

23 Q Okay. After someone investigated and spoke
24 to Mr. Barber, you and Detective Isnardi spoke to
25 La Batch.

1 A Correct.

2 Q Correct?

3 A I spoke with Mr. La Batch twice, on the 29th, once
4 at his residence, and then a little while later, at
5 Lakewood headquarters.

6 Q And as a result of speaking to him, there was
7 a need to then reinterview Mr. Barber. Would that be
8 fair to say?

9 A I don't recall that being the case. I know that
10 there were investigators speaking to Mr. Barber.

11 Q Do you need to refer to your report?

12 A Sure.

13 Q Page 7.

14 A Any particular area?

15 Q I guess what I'm trying to ask you is, as a
16 result of speaking to Mr. La Batch, you then spoke to
17 Detective Finnegan and the other investigators; right?

18 A I can't specifically recall that, but that's a
19 very common occurrence. We share information when
20 people are being interviewed, yes.

21 Q Okay. And then there was a reinterview of
22 Mr. Barber as a result of the information you
23 ascertained from Mr. La Batch?

24 A I know Mr. Barber was interviewed more than one
25 time.

1 Q Okay. But you didn't reinterview him?

2 A No, I didn't.

3 Q Most likely, you conveyed the information to
4 the person interviewing Mr. Barber. Is that correct?

5 A That's the way it would have worked, that's
6 correct.

7 Q Let me just direct your attention to page 3
8 of your report. The beginning of the third full
9 paragraph, it says:

10 "Santos stated that the reason for the
11 shooting was because the victim reportedly tried to
12 kill him on two occasions in Philadelphia."

13 A That's correct.

14 Q Is that accurate?

15 A That's what he stated.

16 Q That's what he told you?

17 A That's correct.

18 Q And you wrote it down correctly?

19 A That's right.

20 Q Okay.

21 MR. ZAGER: Nothing further.

22 THE COURT: Mr. Somers, any questions?

23 MR. SOMERS: No question your Honor.

24 THE COURT: Mr. Heisler?

25 MR. HEISLER: A couple, Judge.

1 REDIRECT EXAMINATION BY MR. HEISLER:

2 Q Sergeant Hayes, as you sit here right now, do
3 you need a note in report to know that Renato Santos
4 did not give you a taped or written statement?

5 A No, I don't.

6 Q You know that independently?

7 A That's correct.

8 Q And you had a conversation with Gregory
9 Maples on his cell phone that very day, April 28th?

10 A I believe it was the next day.

11 Q Okay. And he told you he was out of town, on
12 Monday?

13 A Correct.

14 Q Did he tell you where out of town?

15 A No.

16 Q Okay. Out of town could have been Jackson?

17 A Correct.

18 Q And he said he would see you on when, the
19 30th?

20 A He stated he would be in the following day, I
21 believe April 30th, he would respond to Lakewood police
22 headquarters.

23 Q And did he ever respond to Lakewood police
24 headquarters on the 30th?

25 A No, he did not.

1 Q Did he respond anywhere until he was arrested
2 on April 13th?

3 A I have no --

4 MR. ZAGER: Objection, objection. The
5 testimony is he turned himself in, not arrested.

6 Q Well, what happened when he turned himself
7 in?

8 A He was placed under arrest.

9 Q Was there any contact with him between April
10 29th and May 13th?

11 A Not from me, no.

12 Q Any other police agency that you're aware of?

13 A Not that I know of.

14 MR. HEISLER: That's all I have, Judge.

15 THE COURT: Counsel?

16 MR. KINARNEY: Just briefly, Judge.

17 RE CROSS EXAMINATION BY MR. KINARNEY:

18 Q Sergeant, you're the lead detective in this
19 case?

20 A That's correct.

21 Q And all the police personnel involved in this
22 case are obviously sharing information; correct?

23 A Yes.

24 Q Part of the information you received is that
25 supposedly the victim tried to run Maples down in

1 Philly with a Cadillac Escalade; correct?

2 A That information we received later, yes.

3 MR. KINARNEY: Nothing further your Honor.

4 THE COURT: Anything further, counsel?

5 MR. SOMERS: No questions.

6 MR. ZAGER: Judge, I just want to perhaps
7 straighten out something.

8 RECROSS EXAMINATION BY MR. ZAGER:

9 Q Mr. Heisler asked you, I guess maybe
10 facetiously, that had Mr. Maples said he was out of
11 town, that he could have been in Jackson; right?

12 A Correct. He asked me that.

13 Q Do you know where Mr. Maples lives, or at the
14 time where he resided?

15 A I believe at the time of the shooting, he had an
16 address in Bricktown.

17 Q Okay. Would you care to look at his arrest
18 report to confirm or refresh your recollection?

19 A Sawmill Road, in Brick.

20 Q Okay. He didn't live in Jackson at the time?

21 A Not that we're aware of, no.

22 MR. ZAGER: Okay. Thank you.

23 THE COURT: Anything further?

24 MR. HEISLER: No, sir.

25 THE COURT: If not, you're excused.

1 THE WITNESS: Thank you, your Honor.

2 (The witness is excused.)

3 THE COURT: Mr. Heisler?

4 MR. HEISLER: Judge, I have one more witness
5 scheduled for 9:00 a.m. tomorrow morning.

6 THE COURT: That's the final witness that's
7 anticipated now for the state's case?

8 MR. HEISLER: Yes, sir.

9 THE COURT: All right.

10 Ladies and gentlemen, I thank you for your
11 continued attention to our matter. The state is going
12 to be winding up its case tomorrow morning, so we're
13 moving right along. I'm going to excuse you for the
14 evening. Have a pleasant evening. Please be back at
15 nine tomorrow morning, if you will?

16 Everybody remain in place until the jury
17 leaves.

18 (The following is heard without the presence
19 of the jury.)

20 THE COURT: All right.

21 Juror No. 9 will be calling me in the morning
22 to let me know what the situation is. As soon as I
23 know, I'll discuss it with you when you get hear. I
24 probably won't know much before you get here, but we'll
25 recess until nine tomorrow.

1 Since the state will be resting, I assume the
2 witnesses for the defense will be here and ready to go?

3 MR. ZAGER: We're working on that, Judge.

4

5 (The hearing was concluded for the day.)

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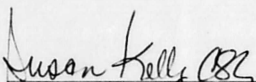
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C E R T I F I C A T E

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Dated: 9-9-04