

A-2039-0674

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
ESSEX COUNTY, IND. NO: 03-06-2254
A# 2039 06

STATE OF NEW JERSEY, :
:
vs. :
LUIS F. DaSILVA, :
Defendant. :

RECEIVED
TRANSCRIPT OF APPELLATE DIVISION
TRIAL SEP 14 2007
SUPERIOR COURT
OF NEW JERSEY

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APPELLATE DIVISION
SEP 14 2007
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Place: Essex County Courthouse
50 Market Street
Newark, New Jersey
Date: June 10, 2004
Pages: 1 - 224

BEFORE:

HONORABLE PETER J. VAZQUEZ, J.S.C., AND A JURY.

TRANSCRIPT ORDERED BY:

HELEN C. GOLBY, ESQ., (Office of the Public Defender)

APPEARANCES:

THOMAS McTIGUE, ESQ., Assistant Prosecutor, For the
County of Essex, Attorney for the State

RONALD SAMPSON, ESQ., (Pope, Bergrin & Verdesco),
Attorney for the Defendant

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Official Court Reporter
Essex County Courts Building
50 Market Street
Newark, New Jersey 07102

NC

I N D E X

1					
2	Witnesses	Direct	Cross	Redirect	Recross
3	For the State				
4	GLORIA NIEVES	11	30		
5	JAIMIE SOLANO	49			
6	JOSEPHINA GARCIA	62	96	126	127
7	ALEXIS TIXI	129	182	218, 223	221
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Colloquy

1 THE COURT: Good morning, gentlemen. What is
2 it?
3 MR. McTIGUE: Good morning, Judge. Yes,
4 Judge. As the Court knows, on the first day of trial,
5 6-7-04, there was an incident involving Carlos
6 Marquez and the defendant. That was the subject of a
7 statement given by Mr. Marquez, which has been
8 provided to counsel in discovery.
9 There was also a report received by me
10 yesterday, Judge, from the Hudson County police
11 officers involved. I am providing a copy of the report
12 to Mr. Sampson at this time. The two officers involved
13 are a Detective R. Frank and an Officer B. Garcia.
14 THE COURT: Could you give those names to me
15 again.
16 MR. McTIGUE: Detective F. Frank. F. Frank.
17 F-R-A-N-K and Officer B. Garcia.
18 THE COURT: V as in victory?
19 MR. McTIGUE: B as in boy, Judge.
20 THE COURT: Garcia of the Hudson County
21 Sheriff's Department?
22 MR. McTIGUE: Yes, Judge, they were the
23 officers transporting the defendant to Essex County for
24 purposes of testimony.
25 Judge, there was an error on my part. I did

Colloquy

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1 not mention the names of those two officers to the
 2 prospective jury panels during the course of the
 3 proceedings. It would be the State's intention at an
 4 appropriate time in the trial to call those officers to
 5 corroborate what I anticipate will be Mr. Marquinez's
 6 statements during his testimony.

7 To that extent, I would ask the Court to
 8 indulge me. Perhaps you could ask the jurors sitting
 9 now to acknowledge if they know those people.

10 THE COURT: Anything else?

11 MR. MCTIGUE: Beyond that, Judge, and I have
 12 Mr. Marquinez's attorney in court today as we speak on
 13 other matters. My information, Judge, and I have
 14 provided it to Mr. Sampson, is that Mr. Marquinez has
 15 entered a retraxit guilty plea on charges of burglary
 16 in Somerset County. He has also entered a retraxit
 17 plea to CDS charges. More particularly, possession of
 18 CDS with the intent to distribute within a thousand
 19 feet of a school in Hudson County. He has not been
 20 sentenced on either charge.

21 Further, Judge, and I provided this to Mr.
 22 Sampson in discovery, there's an issue as to the
 23 viability of his plea in Somerset County. Apparently
 24 he was given a seven flat offer on a charge of second
 25 degree burglary. The Prosecutor's Office has written a

Colloquy

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1 letter to the judge involved, as well as counsel,
 2 indicating that the matter falls within the No Early
 3 Release Act, and basically invited defense counsel to
 4 file a motion to withdraw the plea.

5 I don't know how that will be resolved,
 6 Judge, whether the State is going to have to eat a
 7 mistake or be held to the offer. But in any event, on
 8 neither charge is there a conviction at this point, so
 9 the defendant -- actually the witness, Judge, is not
 10 subject to impeachment on this, and based on
 11 discussions with Mr. Sampson, I have a pretty good idea
 12 that he was going to try to go into that area, so I am
 13 trying to head it off at the pass at this point.

14 MR. SAMPSON: Did I hear the prosecutor say
 15 at this point that they don't regard it as a
 16 conviction.

17 THE COURT: It is definitely not a
 18 conviction, yes, that goes without saying.

19 MR. SAMPSON: Very convenient.

20 THE COURT: But pending charges --

21 MR. SAMPSON: Right.

22 THE COURT: -- can be gone into.

23 MR. SAMPSON: Fine, Judge.

24 With regard to the other matters, the
 25 prosecutor --

Colloquy

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1 MR. McTIGUE: Judge, I agree that the pending
2 matters can be gone into; however, not gone beyond the
3 pending matter as to the facts of the case.
4 THE COURT: Yes.
5 MR. McTIGUE: Just the existence of the
6 charge in and of themselves.
7 THE COURT: That's correct.
8 MR. SAMPSON: And the fact that he has
9 entered into a plea and is awaiting sentencing.
10 THE COURT: Certainly not the plea.
11 MR. SAMPSON: It still stands, Judge,
12 according to the letter we received from the State and
13 from the judge, the plea still stands. There has been
14 no motion to withdraw that plea. He has entered a plea
15 of guilty to the charge and is awaiting sentencing, and
16 I would assume is awaiting some consideration from the
17 State for his participation in this matter, otherwise I
18 don't know why he's here.
19 MR. McTIGUE: Judge, that does not fall
20 within the rules of impeachment in the evidence rules.
21 Certainly Mr. Sampson can bring out the
22 pendency of the charge as tending to show a motivation
23 for interest for this witness to testify.
24 Certainly if he had a conviction, that would
25 be under evidence rule and permissible mode of

Colloquy

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1 impeachment. But anything in between, Judge, does not
2 fall within the scope of impeachable matters.
3 THE COURT: Which witness is he going to be?
4 MR. McTIGUE: I anticipate two civilian
5 witnesses from the cab company this morning, Judge.
6 Then depending on witness availability, he will be the
7 second or third witness after that.
8 THE COURT: All right. We'll take a break
9 before -- I assume we'll have our mid-morning break
10 before he's a witness and we'll resolve this witness at
11 that time.
12 MR. SAMPSON: Judge, with regard to the other
13 matter, Judge, it would seem to me that this falls
14 within, I would assume, other crimes that we're talking
15 about. Allegedly, Judge, Mr. Marquez is in custody.
16 Mr. DaSilva is in the holding cell. Apparently on two
17 occasions he was brought into the holding cell where
18 Mr. DaSilva was being detained and there were some
19 words that were exchanged, Judge.
20 The question is, what were the words. First,
21 whether -- first, what were the words that were
22 exchanged? Judge, there's a statement from Mr.
23 Marquez who described the conversation I believe in
24 Portuguese. We have a sheriff's officer who says he
25 overheard and is interpreting a conversation that he

1 heard in Spanish. I have received a -- I received the
2 statement from Mr. Marquinez who says one thing. I
3 received a statement from the sheriff's officer that
4 says something different. The language, the words were
5 different.

6 Judge, it seems that we're getting into some
7 collateral issues. We are going to need -- it's going
8 to be the prejudicial effect of all this, Judge,
9 greatly outweighs any evidential value of this. And,
10 Judge, as a result, I'm requesting that the whole area
11 be barred. I don't see that it's relevant, and I think
12 it opens up a whole can of worms. We have got
13 different versions of statements, we have got different
14 language. We have got an officer that I have been told
15 kind of speaks Spanish, as you remember the
16 conversation from the other day, and he's interpreting
17 some street language which he says he heard in the
18 holding cell, which is at variance from what the
19 witness says.

20 THE COURT: Well, that would I guess help you
21 in impeaching what the witness says. But certainly a
22 witness who claims to have been intimidated by a
23 defendant, that certainly seems like it's pertinent
24 information to me.

25 MR. SAMPSON: Judge, don't we have to

1 determine if there was an effort at intimidation before
2 we begin, and who did the intimidation? There were
3 words.

4 THE COURT: I only know what you gentlemen
5 tell me. I haven't read any statements. You have told
6 me what they said.

7 MR. SAMPSON: Judge, the intimidation
8 apparently took part by a third person who was Mr.
9 DaSilva's cell mate at the time. So, Judge, it's going
10 to get terribly complicated and I believe it's highly
11 prejudicial to the defendant, and he will be held
12 accountable for words of a third party over whom he has
13 no control.

14 THE COURT: Is that correct, Mr. McTigue?

15 MR. McTIGUE: Judge, there were words of
16 intimidation by both Mr. DaSilva and the second person
17 in the holding cell who joined in. The officers also
18 indicate that Mr. DaSilva -- the difference in the
19 statement is that the officers indicate that they heard
20 profanity. There was one white female officer who has
21 a minor knowledge of Spanish. However, the second
22 officer is a Spanish-speaking officer, and Mr.
23 Marquinez, that the defendant spoke to him both in
24 Portuguese and in Spanish.

25 MR. SAMPSON: Judge, first of all, there

1 needs to be a determination as that whatever was said
2 was intimidation.

3 THE COURT: That's not for me to determine.
4 How is that for me to determine?

5 MR. SAMPSON: Well, don't you have to
6 determine that before you allow the testimony?

7 THE COURT: How am I suppose to determine
8 whether its intimidation or not? That's for the jury
9 to determine.

10 MR. SAMPSON: Judge --

11 THE COURT: There's going to be a witness
12 that says he was intimidating me. And what is -- is
13 there some reason why you are not telling me what's
14 going on here with the languages?

15 MR. SAMPSON: It's his proffer, Judge.

16 MR. McTIGUE: Judge, the easiest way is just
17 to submit to you what I have and let you look at it.

18 THE COURT: Meanwhile, you know I have been
19 here since 8:30. Mr. McTigue has been here since 8:30.
20 Mr. Sampson, you show up at a quarter after 9. If we
21 have these problems, I would like to resolve them while
22 the jury is not sitting in the juryroom wondering
23 what's going on. You have certainly known about this
24 for some time. This happened when, on Monday?

25 Look, just put this all away and hold off

Nieves-direct

1 until the break time. Let's get the jury out.

2 You ready to go with a witness?

3 MR. McTIGUE: Yes.

4 THE COURT: Both of you keep in mind that my
5 court reporter must leave at 10 minutes to 4. So
6 whenever the last witness is on, keep that in mind.
7 Let's not start either a witness or start cross
8 examination if it's going to impede with that. I mean,
9 within reason.

10 Are you ready, Mr. McTigue?

11 MR. McTIGUE: Yes, Judge.

12 THE COURT: All right, bring out the jury.
13 (Jury brought out)

14 THE COURT: Call your witness.

15 MR. McTIGUE: Good morning, your Honor,
16 ladies and gentlemen.

17 THE JURY: Good morning.

18 MR. McTIGUE: Please call Gloria Nieves.

19 G L O R I A N I E V E S, Sworn.

20 THE COURT: All right.

21 MR. McTIGUE: Thank you, your Honor.

22 DIRECT EXAMINATION BY MR. McTIGUE:

23 Q. Good morning, Ms. Nieves.

24 A. Good morning.

25 Q. Now, I'm just going to ask you to keep your

- 1 voice up so all the jurors can hear you. Okay?
2 A. Okay.
3 Q. All right.
4 Ms. Nieves, I'm going to ask you some
5 questions about some events that occurred in November
6 of the year 2002. At that time, were you employed?
7 A. Yes, sir.
8 Q. And where did you work and what was your job?
9 A. I was a phone and dispatcher phone operator and
10 dispatcher at the Millennium Cab Company.
11 Q. Where is the Millennium Cab Company located?
12 A. On Market Street and Jackson.
13 Q. All right.
14 And what did you do in your job?
15 A. I took the phone calls, customers who call in, "I
16 need a cab here and there," and I took the phone call
17 and I will dispatch a cab out.
18 Q. Back at around that time, and I'm referring
19 now to November of the year 2002, did you know a young
20 man by the name of Felix Chininin?
21 A. Yes.
22 Q. How is it that you knew Mr. Chininin?
23 A. He was one of our drivers.
24 Q. And at some point did you become aware that
25 he had died?

- 1 A. Yes.
2 Q. And did you learn the manner of his death?
3 A. Murdered.
4 Q. Now, Mr. Chininin was shot and killed on
5 November 4, 2002. When did you learn of his death?
6 A. The next day.
7 Q. Now, on November 3 and into November 4, what
8 were your working hours?
9 A. November 3 -- November 3rd, I started at 4 in the
10 afternoon and I worked till 2 o'clock in the morning on
11 the 4th.
12 Q. All right.
13 Were you the only dispatcher? Were there
14 other dispatchers working at the same time?
15 A. There was a phone operator with me at the same
16 time, Yvonna. Yvonna, I don't recall her last name.
17 Q. Now, at some point during the hours of your
18 work on November 3, did you get a chance to speak or
19 see Felix Chininin?
20 A. As soon as I got off.
21 Q. All right.
22 And around what time was that?
23 A. Around 2 o'clock, 2:05.
24 Q. Now, do you know a person by the name of
25 Jaimie Reyes?

- 1 A. Who?
2 Q. Mr. Reyes.
3 A. He's the driver that took myself and Yvonna home
4 coming off of our shift.
5 Q. All right.
6 Now, how did you get home that night?
7 A. Line 1 said earlier, Mr. Reyes is the driver who
8 took us home. Every night we would have a someone take
9 us home since there's no bus, no public transportation
10 after one.
11 Q. And how would you get a hold of those
12 drivers?
13 A. There was the radio, the dispatch radio.
14 Q. Would you call a particular driver, or would
15 you just go over the air "driver in the area, please
16 come and pick up employee"?
17 A. Well, the procedure is, there's a list. As they
18 are free from the previous call, they get back on the
19 list to take another call. So we go in order of the
20 list of how it comes in.
21 Q. All right.
22 And how did you go about getting picked up to
23 be taken home that evening, November -- well, it would
24 be November 4, at that point?
25 A. Yes, November 4.

- 1 Q. Please correct me if I mistake. How did you
2 go about getting home on November 4?
3 A. Well, one driver picks up Jaimie to bring him into
4 work at 2, and replaces me leaving.
5 Q. When you say Jaimie, which Jaimie is that?
6 A. Solano.
7 Q. Now, Mr. Reyes --
8 A. No. Jaimie Solano replaces me at 2 o'clock in the
9 morning to take over the shift, and Felix Chininin was
10 the driver who picked him up. So next in line was
11 Jaimie Reyes to take the next ride, and the next ride
12 was myself and Yvonna.
13 Q. All right.
14 Now, did you see Felix Chininin at around
15 that time?
16 A. Yes.
17 Q. Under what circumstances -- did he try to
18 give you a ride home?
19 A. Yes.
20 Q. Will you explain what happened to the jury?
21 A. Well, we come out of the -- we come out of the
22 dispatch office. He's sitting outside cause he just
23 finished dropping Jaimie Solano off, and Jaimie Reyes
24 is already waiting there. So he's like: "Come on.
25 Come on. Come with me. I will give you a ride."

- 1 Q. When you just said "come on, come on with
2 me," to whom are you referring to, Jaimie Reyes or
3 Felix Chininin?
4 A. Felix Chininin is telling myself and Yvonna to
5 come along with him, that he will give us the ride.
6 Q. Now, was Mr. Chininin in his vehicle at this
7 time?
8 A. Yes.
9 Q. Did you notice anything in his vehicle?
10 A. Yes.
11 Q. What did you notice?
12 A. His computer.
13 Q. Did you see what type of computer it was?
14 A. It was a lap top.
15 Q. Had you seen that lap top computer in Mr.
16 Chininin's car before that evening?
17 A. Yes.
18 Q. What type of lap top was it?
19 A. I'm not sure of the brand name, but it plays
20 movies, it made movies.
21 Q. Had you seen Mr. Chininin watching movies on
22 that lap top computer on prior occasions?
23 A. Yes.
24 Q. All right.
25 And where was the computer located in his

- 1 car?
2 A. Between both the front seats. There's his seat
3 here, and his seat here between the arm rests. You can
4 see it from the back. You're in the back, you can see
5 the computer or the movie.
6 Q. Now, did you actually get in his vehicle at
7 that time?
8 A. No.
9 Q. Whose vehicle did you get into?
10 A. We got into Jaimie Reyes's vehicle.
11 Q. And was that at the Market Street location of
12 Millennium Cab?
13 A. Yes.
14 Q. Now, are employees suppose to pay the
15 drivers?
16 A. Yes, we were.
17 Q. Sometimes you did not pay?
18 A. They didn't want us to.
19 Q. All right.
20 Was there any discussion with you or any of
21 the drivers about payment or nonpayment?
22 A. That's why we won't take the ride from Felix
23 because we felt that he already had picked up Jaimie,
24 we didn't feel that he should take us home cause he was
25 one that didn't want us to pay.

- 1 Q. Now, you saw Mr. Chininin that night, did you
2 notice anything unusual about him?
3 A. No.
4 Q. Would you describe what his demeanor was
5 like, how he looked?
6 A. Happy, you know, gung ho about working. It was
7 slow certain nights, so that was his reason to bring in
8 the movie thing. He was happy the last time I saw him,
9 we were joking around, he wanted to give us the ride
10 and we said no. And that was it.
11 Q. Now, at some point you got into Jaimie
12 Reyes's vehicle?
13 A. Yes.
14 Q. Where did you go immediately after you left
15 the Market Street location at Millennium Cab?
16 A. We proceeded to cross over into the Harrison --
17 that's Jackson Street into the Harrison Quick Chek.
18 Q. Now, had you been to that Quick Chek before?
19 A. Yes.
20 Q. To your knowledge, do other drivers from
21 Millennium Cab hang out there?
22 A. Yes.
23 Q. And did you stop at the Quick Chek that
24 night?
25 A. Yes.

- 1 Q. And why did you stop there?
2 A. I don't recall if it was Yvonna or the driver,
3 Jaimie, who needed cigarettes that night.
4 Q. Now, did you see Mr. Chininin at this point?
5 A. Yes, he followed us.
6 Q. All right.
7 He followed you from the Millennium Cab?
8 A. Yes.
9 Q. Did you speak with him at the Quick Chek?
10 A. Yes.
11 Q. Again, did you get out of the car?
12 A. No.
13 Q. Did he get out of the car?
14 A. Yes.
15 Q. And what was the nature of the conversation?
16 A. Come with me. Come with me, I have movies. I
17 have movies.
18 Q. All right.
19 Please forgive me, was there any sort of
20 relationship between you and Mr. Chininin or Yvonna and
21 Mr. Chininin?
22 A. Other than co-workers?
23 Q. Yes.
24 A. No.
25 Q. How long had Yvonna worked at Millennium, if

- 1 you know, at that time?
2 A. About five months.
3 Q. How long had Mr. Chininin worked there, if
4 you know?
5 A. I don't recall. I was there from July till
6 December, and he was already a driver.
7 Q. So at least that period of time?
8 A. Yes.
9 Q. Did you get into his car, accept his
10 invitation to see the movies?
11 A. No.
12 Q. At some point did you leave the Quick Chek
13 store?
14 A. Yes.
15 Q. And was that in -- again, correct me if I'm
16 wrong, was that Mr. Reyes's car?
17 A. Yes.
18 Q. Was Yvonna still with you?
19 A. Yes.
20 Q. Where was Yvonna dropped off? How far away
21 from the Quick Chek did she live?
22 A. Around the block from the Quick Chek. I don't
23 recall the name of the street, but if you go around the
24 back of the parking lot in the Quick Chek, cause her
25 street was a one-way, so that would be the easiest way

- 1 to get into her street. And she gets dropped off and
2 then we cross to the north Newark area where I live.
3 Q. And did Mr. Reyes take you to your north
4 Newark address?
5 A. Yes.
6 Q. After leaving the Quick Chek, I guess that's
7 Harrison?
8 A. Yes.
9 Q. Did Mr. Chininin continue to follow you?
10 A. Only to Yvonna's house.
11 Q. And did you see where his vehicle went at
12 that point, or did you just lose sight?
13 A. I lost sight after that.
14 Q. All right.
15 As you left Yvonna's house to go to your
16 house in north Newark, did you notice if Mr. Chininin
17 continued to follow you in his vehicle?
18 A. No, he didn't.
19 Q. Do you remember what type of vehicle Mr.
20 Chininin was driving that night?
21 A. No, I don't recall.
22 Q. Was it a regular car, any sort of different
23 car, if you know?
24 A. I'm not sure. It was either a -- I'm not sure if
25 it was the classic Lincoln or the Crown Victoria, I

1 can't remember at this time.

2 Q. And did you have any further contact with Mr.
3 Chininin that night?

4 A. No, sir.

5 Q. Did you have any further contact with Mr.
6 Reyes that night?

7 A. Besides him dropping me off, no.

8 Q. When did you go to work next?

9 A. I returned to Millennium that afternoon, the 4th,
10 but it was because I learned of Mr. Chininin's death.

11 Q. How is it that you learned of Mr. Chininin's
12 death? Don't tell us what was said by anyone, but how
13 did you learn, from whom?

14 A. I was going to school at that time, right here in
15 Essox County College, and the next morning, when I woke
16 up, I get up to go to class and I catch -- I call a
17 cab, but I don't call the same one from Millennium, I
18 call a different company. Again, I don't want to feel
19 obligated, they don't like charging me because they
20 know me, so I call someone else. So then I hear from
21 that driver: Oh, you know, how you doing? And did you
22 hear about your driver at Millennium who got shot?

23 Q. All right.

24 You raised the issue of payment a few times.
25 Is it a question of time being money, and the time a

1 driver spends taking you is money out of his pocket?

2 A. Yes.

3 Q. Now, at some point -- were you working on the
4 4th after you finished school? Did you go to work or
5 school?

6 A. No, I didn't even finish school. I went to the
7 office, to the Millennium.

8 Q. Now, on some occasion after that, were you
9 working at a time when you received a telephone call
10 regarding the death of Felix Chininin?

11 A. Yes.

12 Q. And do you recall the exact date on which you
13 received that telephone call?

14 A. I don't recall the date exactly as in date of the
15 month, but I recall it was the night of the wake.

16 Q. All right.

17 The night of Mr. Chininin's wake?

18 A. Yes.

19 Q. So it would have been some days after
20 November 4?

21 A. Correct.

22 Q. Can you approximate how many days, if you can
23 just say so?

24 A. Around four. Three, four days.

25 Q. All right.

1 And at the time you received the phone call
2 pertaining to the death of Felix Chininin, where were
3 you and what were you doing?

4 A. I was in the office by myself. I was in the
5 Millennium Cab Company by myself because we were taking
6 turns that night to go to the wake, so it was my turn
7 to take over, and I was dispatching and being the phone
8 operator.

9 Q. All right.

10 Were you the only phone dispatcher on duty
11 that night that you received the call that we are
12 referring to?

13 A. Yes.

14 Q. And approximately, if you recall, do you know
15 exactly what time it came in or are you able to
16 approximate?

17 A. Ten o'clock, 10:02 or 10:05, around there.

18 Q. Are you sure of the exact time, or is it
19 within a range?

20 A. No, that's the time.

21 Q. Sometime between 10:02 and 10:05?

22 A. Yes.

23 Q. And the person who called you, were you able
24 to determine what gender or sex the person was?

25 A. Yes.

1 Q. And what was the person's gender?

2 A. Female.

3 Q. Were you able to tell from the voice -- first
4 of all, was the voice clear on the phone?

5 A. Yes.

6 Q. Were you able to tell from the voice you
7 heard on the phone the age of the person?

8 A. Sounded like mid-thirties, mid-twenties, thirties,
9 late twenties, early thirties.

10 Q. Why do you say that?

11 A. It sounded like a mature woman.

12 Q. All right.

13 And the person speak to you in English or
14 some other language?

15 A. Spanish.

16 Q. And were you able -- what is your national
17 origin, man?

18 A. Puerto Rican.

19 Q. And you worked in Millennium Cab for how long
20 at the time?

21 A. For six months.

22 Q. All right.

23 Were there people who are cab drivers of
24 different ethnic origins there?

25 A. Yes.

- 1 Q. How about the country of Ecuador?
2 A. Ninety percent of them.
3 Q. Are you able to distinguish either through
4 accent or dialect the Spanish spoken by someone such as
5 yourself, born in Puerto Rico, as opposed to another
6 Spanish-speaking country?
7 A. Yes.
8 Q. What's the different?
9 A. The accent, the dialect.
10 Q. And in listening to the female voice, the
11 voice of the mature female, I believe you stated on the
12 phone, were you able to distinguish any particular
13 accent or dialect that you recognized?
14 A. Yes.
15 Q. And what did you recognize that dialect or
16 accent to be?
17 A. Ecuadorian.
18 Q. Now, without going into specifics of what
19 somebody else said to you, did that person discuss with
20 you the death of Felix Chininin?
21 A. Yes.
22 Q. Did that person discuss with you the manner
23 in which he died?
24 A. Yes.
25 Q. And the persons involved?

- 1 A. Yes.
2 Q. Did you attempt in any way to try and get the
3 number of that call?
4 A. Yes.
5 Q. How did you do that?
6 A. Well, the phone has a couple of lines, you know,
7 and they have caller I.D. And so when that call came
8 in, I hit the button for the caller I.D., but it was a
9 private number.
10 Q. All right.
11 Did the person who spoke to you ever identify
12 themself by name, or anything? Give you any other
13 information which would give you an idea of their
14 identity?
15 A. Only thing she said --she didn't give me a name,
16 she just said --
17 Q. All right. Only as to the identity of the
18 person.
19 A. That she's a relative, she's a relative to one of
20 the guys.
21 Q. Now, what did you do after receiving that
22 telephone call?
23 A. I hung up the phone and I called my boss.
24 Q. Who was your boss at that time?
25 A. Ana Goya.

- 1 Q. Did you call the police or the Prosecutor's
2 Office that evening?
3 A. No, not that night.
4 Q. All right.
5 The following day, did you speak with Ms.
6 Goya about that telephone call?
7 A. Yes.
8 Q. And did you relate to her -- first of all,
9 that night, how did you reach Ms. Goya?
10 A. On her cell phone.
11 Q. Were you able to determine where she was?
12 A. No.
13 Q. Did she come down to Millennium Cab at that
14 point?
15 A. No, sir.
16 Q. The following day when you saw her, where was
17 that? Was that at work?
18 A. Yes.
19 Q. And did you discuss the nature of the
20 telephone call you had received?
21 A. Yes.
22 Q. Did Ms. Goya ask you to do anything?
23 A. She asked me to call the Prosecutor's Office.
24 Q. And did you do it that day or did you wait
25 any period of time before you called the Prosecutor's

- 1 Office?
2 A. No, I did it that day.
3 Q. And who did you call in the Prosecutor's
4 Office, if you recall?
5 A. Detective Nicole.
6 Q. Do you recall Nicole's last name?
7 A. No, I don't really.
8 Q. I ask you to describe what she looks like.
9 A. Tall, black hair, slim.
10 Q. And does the name Nicole Berrian ring a bell
11 with you?
12 A. Yes, that's her.
13 Q. And did you see Investigator Berrian that
14 day, or did you see her on any other occasion with
15 regard to the information you received in that phone
16 call?
17 A. We set up an appointment for me to come in here
18 instead.
19 Q. And when you say "here," you mean?
20 A. Downstairs, to the Prosecutor's Office.
21 Q. And how many days, or do you know when was
22 that appointment, if you recall?
23 A. I think the next day or that afternoon, I don't
24 recall. You know, I came out of school straight here.
25 Q. And did you give the information that you had

- 1 received in the telephone call to Investigator Berrian?
2 A. Yes.
3 Q. At that time did Ms. Berrian ask you to sign
4 any formal written statement?
5 A. No.
6 Q. Did she just take note of the information you
7 gave her?
8 A. Yes.
9 MR. MCTIGUE: I have no further questions.
10 THE COURT: Cross examine.
11 MR. SAMPSON: Thank you, your Honor.
12 CROSS EXAMINATION BY MR. SAMPSON:
13 Q. Ms. Nieves, how long did you work at
14 Millennium Cab?
15 A. For six months.
16 Q. And during the time that you were there, were
17 you always working as a dispatcher?
18 A. Yes.
19 Q. And during that period of time, how long did
20 you know Felix Chininin?
21 A. Out of six months -- well, out of the five months
22 that we encountered, I would say about three.
23 Q. Now, your duty as a dispatcher was to send
24 calls out to the various drivers to pick up fares. Is
25 that correct?

- 1 A. That's correct.
2 Q. Okay.
3 And on the day of November the 3rd, going
4 into the morning of November the 4th, that's what you
5 were doing. Correct?
6 A. Yes. Yes.
7 Q. And you said that there was a telephone
8 operator. Was that Yvonna?
9 A. Yes.
10 Q. And Yvonna was working along side you?
11 A. Well, the desk is here, and her desk is maybe
12 where that door is.
13 Q. And the calls would come into her desk?
14 A. Well, to both desks.
15 Q. And you would contact the drivers via radio.
16 Is that correct?
17 A. Yes.
18 Q. Now, in order to contact the drivers, you did
19 that over the radio. Correct?
20 A. Correct.
21 Q. And was there a backup system in case there
22 was a problem? Let me rephrase the, ma'am.
23 Did you have cell phone numbers for any of
24 the drivers?
25 A. Some of the drivers.

- 1 Q. Okay.
 2 And for Mr. Chinin, do you know if there
 3 was a cell phone where you could reach Millennium in
 4 case of an emergency?
 5 A. No, I didn't have the number.
 6 Q. Now, ma'am, when you dispatched these cabs to
 7 various locations, Millennium Cab served a large area
 8 around Newark. Correct?
 9 A. That's correct.
 10 Q. And some of the cabs were from north Newark?
 11 A. Yes.
 12 Q. And east Newark?
 13 A. Yes.
 14 Q. Sometimes down in the Ironbound section of
 15 Newark. Correct?
 16 A. Correct.
 17 Q. Harrison?
 18 A. Correct.
 19 Q. Carnegie?
 20 A. Yes.
 21 Q. Any other towns?
 22 A. No, those were mainly the main areas.
 23 Q. And you indicated that -- well, there was a
 24 fare, there was a system of fares. Correct? You
 25 charged people differently depending upon where they

- 1 were going; correct?
 2 A. Correct.
 3 Q. The minimum fair I understand was five
 4 dollars?
 5 A. That's correct.
 6 Q. And if I was going from Carnegie to Newark,
 7 do you know what my fair would be?
 8 A. Between 8 and 10 dollars.
 9 Q. And how about from east Newark into Newark,
 10 do you know what the fair would be?
 11 A. To Down Neck area of Newark?
 12 Q. Yes.
 13 A. Between seven -- between six and seven dollars.
 14 Q. And was it customary --
 15 THE JURY: Your Honor, we're having trouble
 16 concentrating.
 17 THE COURT: Just hold it up a second.
 18 Okay, go ahead.
 19 Q. Now, so the minimum fair would have been five
 20 dollars and sometimes it could be six, seven, eight
 21 dollars?
 22 A. Correct.
 23 Q. And if I wanted to come from, say Carnegie --
 24 MR. McTIGUE: Judge, at this point I will
 25 object as to relevance. Again, Judge, it's --

1 THE COURT: I'll allow it.

2 Q. If I wanted to take a cab from Carnegie to
3 downtown, to the Ironbound section of Newark, what
4 would the fair be?

5 A. Depending on where in Carnegie. It would be,
6 again, it would be between 8 and 10 dollars.

7 Q. Okay.

8 And, ma'am, in addition to that, do people
9 sometimes tip the cab drivers, do you know?

10 A. Yes.

11 Q. And all the drivers at the Millennium had, if
12 you know, had a license to do that?

13 A. Yes.

14 Q. Now, ma'am, you said that after Mr.
15 Chininin's death, the next day you were on your way to
16 class at Essex County College?

17 A. That's correct.

18 Q. And you said you found out about his death
19 from a driver from a different cab company?

20 A. That's correct.

21 Q. Do you remember what cab company you used on
22 that particular day?

23 A. Classic Lincoln Service.

24 Q. And the driver from that service recognized
25 you as being an employee of Millennium. Correct?

1 A. That's correct.

2 Q. And that person began to speak to you about
3 the death of Mr. Chininin. Correct?

4 A. That's correct.

5 Q. Ma'am, in the -- do you recall that day? Did
6 you need the newspaper? Did you ever read the
7 newspaper?

8 A. Yes.

9 Q. That day, on the 4th, did you recall reading
10 any articles about Mr. Chininin's death?

11 A. I recall buying the newspaper that day after I got
12 dropped off at school.

13 Q. Yes.

14 A. But I don't recall finding it that day.

15 Q. In addition to this particular cab driver
16 from the Classic Lincoln Company speaking to you, did
17 the drivers -- were the drivers at Millennium talking
18 about Mr. Chininin's death?

19 A. Yes.

20 Q. And they were talking about some of the
21 details of his death as they knew them to you?

22 A. Not precisely. I mean, speculating on what could
23 have happened.

24 Q. Okay.

25 Now, the day of Mr. Chininin's wake, you said

- 1 that was three to four days after his death. Correct?
2 A. That's correct.
3 Q. That would have been around November the 7th
4 or November the 8th. Correct?
5 A. Correct.
6 Q. And you were working that evening. Is that
7 correct?
8 A. That's correct.
9 Q. And you said that you had been working alone.
10 Is that correct?
11 A. Correct.
12 Q. Now, around 10 o'clock in the evening of
13 November the 7th, do you recall receiving -- you said
14 you recall receiving a telephone call. Correct?
15 MR. McTIGUE: Judge, I will object just to
16 the statement of the date. There was no exact date
17 given, just three or four days.
18 THE COURT: I'll allow it. Go ahead.
19 Q. Do you recall receiving a telephone call --
20 you said somewhere in the area of 10 p.m. Correct?
21 A. Yes.
22 Q. Now, this telephone call lasted for some
23 period of time. Correct?
24 A. Correct.
25 Q. Do you recall approximately how long you were

- 1 on the phone with the person who called?
2 A. About five to six minutes.
3 Q. So it wasn't a very, very brief phone call,
4 there was some substance to it; correct?
5 A. Correct.
6 Q. Now, you have indicated that you knew that
7 the caller was a woman. Correct?
8 A. Yes.
9 Q. And you indicated that you spoke to
10 Investigator Berrian about this. Right?
11 A. Yes.
12 Q. And Investigator Berrian was from the Essex
13 County Prosecutor's Office?
14 A. Yes.
15 Q. And you called her about that; correct?
16 A. Correct.
17 Q. Do you recall describing the caller as being
18 an older woman?
19 A. Yes.
20 Q. Those were the words you used when you spoke
21 to Investigator Berrian back in November of 2002. This
22 was an older woman; correct?
23 A. Yes.
24 Q. And you indicated that you speak both Spanish
25 and English; correct?

- 1 A. That's correct.
2 Q. And based upon your experience, you're able
3 to determine different accents. Correct?
4 A. That's correct.
5 Q. And it was your determination that the woman
6 who called you, this older woman, spoke with an
7 Ecuadorean accent. Correct?
8 A. Correct.
9 Q. And she was speaking to you about the death
10 of Mr. Chininin. Is that correct?
11 A. That's correct.
12 Q. And she provided you with certain details
13 about his death. Correct?
14 A. That's correct.
15 Q. And when you were asked by the assistant
16 prosecutor, you said that she identified herself as a
17 relative of one of the guys. Is that right?
18 A. That's correct.
19 Q. That's what she told you?
20 A. Yes.
21 Q. Now, you provided this information to the
22 Prosecutor's Office. Correct?
23 A. Correct.
24 Q. And you went down and you spoke to
25 Investigator Berrian of the Prosecutor's Office.

- 1 Correct?
2 A. Correct.
3 Q. As a dispatcher at Millennium Cab Company,
4 you are familiar with the various phone numbers that
5 the Millennium Cab Company uses to receive telephone
6 calls. Correct?
7 A. Yes.
8 Q. Now, on the date that you received this phone
9 call, you were able to determine which line you
10 received the telephone call on. Correct?
11 A. That's correct.
12 Q. Did you give that information to Investigator
13 Berrian?
14 A. Yes.
15 Q. And after you got that phone call, you spoke
16 to the owner of the cab company?
17 A. That's correct.
18 Q. And you told her the information you
19 received. Correct?
20 A. That's correct.
21 Q. And shortly after you got that call, you
22 received a phone call from Mr. Chininin's father.
23 Correct?
24 A. I don't recall.
25 Q. Well, when you spoke to Investigator Berrian

1 at the Essex County Prosecutor's Office, didn't you
2 tell her that shortly thereafter you got a phone call
3 from Mr. Chininin's father who requested that you tell
4 him what the caller had said about his son's death?

5 A. Yes.

6 Q. Yes?

7 A. Yes.

8 Q. At that time, did you receive information
9 about some individual by the name of El Chato?

10 MR. McTIGUE: Judge, I object at this point.
11 May I be heard at sidebar?

12 (The following takes place at sidebar)

13 MR. McTIGUE: Judge, Mr. Sampson is going to
14 the hearsay statement which is contained in the
15 telephone call.

16 THE COURT: Hearing argument.

17 MR. SAMPSON: Judge, it would seem to me that
18 if the Prosecutor's Office received information
19 concerning it, I didn't even go into the details, I
20 just asked her if he received information concerning El
21 Chato, and I think I'm allowed to find out if there was
22 an investigation conducted with regard to that
23 information. He opened the door, Judge. He asked her
24 about the phone call. He asked her about receiving
25 this information and someone saying that was a

1 relative. So it seems to me that I am at least allowed
2 to in fact ask about that. He opened --

3 THE COURT: No, he didn't open any door to
4 the hearsay.

5 MR. SAMPSON: That she was a relative of one
6 of the individuals. He elicited that.

7 THE COURT: Well, in any event, the details
8 of the phone call are not coming out through this
9 witness.

10 MR. SAMPSON: But they already have, Judge,
11 in terms of being a relative.

12 THE COURT: The answer is the objection is
13 sustained.

14 MR. SAMPSON: Yes, your Honor.

15 (The following takes place in open court)

16 Q. And, ma'am, in terms of the information that
17 you received that night on the phone, did you ever come
18 down to the Prosecutor's Office to give a sworn or
19 written statement?

20 A. No.

21 Q. You told them what you knew?

22 A. Correct.

23 Q. But you never were asked to sign any document
24 or any statement?

25 A. I don't remember.

1 Q. All right, ma'am, thank you very much.
2 THE COURT: Anything else, Mr. McTigue?
3 MR. McTIGUE: No further questions, Judge.
4 THE COURT: You may step down.
5 THE WITNESS: Thank you.
6 (Witness excused)
7 THE COURT: You need an interpreter now?
8 MR. McTIGUE: We may need about a five-minute
9 break, Judge, to get the interpreter.
10 THE COURT: Ladies and gentlemen, you can
11 just go into the juryroom for a short period of time so
12 we can get an interpreter for the next witness.
13 (Jury excused)
14 THE COURT: In any event, to avoid having
15 another mid-morning break, let's have a discussion we
16 were going to have at the mid-morning break now.
17 MR. SAMPSON: Judge, is this Mr. Marquez?
18 THE COURT: Excuse me?
19 MR. SAMPSON: I'm sorry, Judge.
20 MR. McTIGUE: I believe the discussion we
21 were to have, Judge, was regarding the allegations made
22 by Mr. Marquez against Mr. DaSilva. And, Judge, what
23 I will do, Judge, is offer a statement to your Honor
24 which will be marked as an exhibit, Judge. The next
25 consecutive number I believe is in the seventies,

1 Judge. I'm looking for my list.
2 I believe, Judge, the marking on that should
3 be S-74.
4 THE COURT: Mr. McTigue, do you intend to try
5 to bring out anything this other person said other than
6 the defendant?
7 MR. McTIGUE: Not the exact words, Judge,
8 only the person joined in yelling at him, that person
9 had been in the cell with Mr. DaSilva and joined into
10 the conversation. The exact words, Judge, I think are
11 obviously hearsay.
12 I have located a copy of the report submitted
13 by the officer, which I will mark as S-75.
14 MR. SAMPSON: Your Honor, respectfully, it
15 would seem --
16 MR. McTIGUE: Judge, if I could just finish
17 getting the marking in and submitting it. And that is
18 a one-page report of Detective R. Frank.
19 THE COURT: All right.
20 Mr. Sampson.
21 MR. SAMPSON: Your Honor, it seems to me that
22 by opening this issue, we raise a number of other
23 issues that are prejudicial to this defendant and I
24 think has a real chance of causing an unfairness to
25 this defendant.

1 First of all, we are going to have to explain
2 to the jurors that we have a conversation that's taking
3 place in the holding cell of this court. I don't know
4 how else we explain to them the presence of these two
5 sheriff's officers.
6 THE COURT: They were escorting the witness.
7 MR. SAMPSON: And the conversation took place
8 where and how?
9 THE COURT: We can eliminate where the
10 conversation took place.
11 MR. SAMPSON: Oh, well, Judge, that --
12 THE COURT: What?
13 MR. SAMPSON: And then we have this other
14 person.
15 THE COURT: We can eliminate the other
16 person.
17 MR. SAMPSON: Finally, Judge, do we have a
18 discrepancy between the words that Mr. Marquez says
19 were used and the words that the sheriff's officer says
20 are used?
21 THE COURT: It goes to credibility. How
22 often do you have two witnesses that don't have some
23 different words about a statement?
24 MR. SAMPSON: Judge, these have vastly
25 different --

1 THE COURT: They are not vastly different.
2 One includes a curse and one doesn't.
3 MR. SAMPSON: Well, Judge, if you are going
4 to intimidate someone, that would be the best way to do
5 that by screaming profanities. And, Judge, the
6 question was whether the intent was to intimidate.
7 THE COURT: Not in my mind. There's no doubt
8 in my mind what these words are intended to mean. If
9 there's a doubt in the mind of the jurors, they are free
10 to and should adopt whatever they feel the intent is.
11 MR. SAMPSON: Which words, Judge, are you
12 talking about, the sheriff's officer or the words of
13 Mr. Marquez?
14 THE COURT: Both.
15 MR. SAMPSON: Judge --
16 THE COURT: But whether they are in my mind
17 or not is not really important. The jurors will make
18 the determination.
19 MR. SAMPSON: Judge, I just put my objection
20 on the record, and I think it does have a great
21 possibility of causing prejudice to the defendant at
22 this point. Most things that the prosecutor introduces
23 are for the purpose of causing prejudice to the
24 defendant.
25 MR. McTIGUE: Judge, just for the record, I

1 would also indicate, as your Honor knows, it is
2 prejudicial but it is not impermissively prejudicial.
3 And case law, and I refer particularly to State vs.
4 Pratt. I don't have the cite, but I know the case,
5 Judge. A defendant is not permitted to benefit from
6 his own misconduct.

7 THE COURT: And the other issue was what
8 could be used to impeach Mr. Marquinez with regard to
9 those pending charges, and it is only pending charges.
10 The fact that there's a plea is inadmissible.

11 MR. SAMPSON: Why is it inadmissible, Judge?

12 THE COURT: Because there's a court rule that
13 says so.

14 MR. SAMPSON: Judge, I have got a copy of a
15 plea that this defendant put through, and I have got a
16 copy of a letter from the Court advising him that it
17 would be up to his counsel if he wishes to speak to
18 withdraw the plea.

19 Judge, if I may have a copy of the motion by
20 counsel suggesting to me that the plea has been
21 withdrawn, I will withdraw my objection.

22 THE COURT: I don't care if the plea has been
23 withdrawn or not, it's not admissible.

24 MR. SAMPSON: Judge, then do I get to ask
25 this defendant why he's here testifying today? He's

1 obviously testifying here hoping to receive some
2 benefit.

3 THE COURT: That's possible. That's why you
4 are allowed to ask him about his pending charges.

5 MR. McTIGUE: Judge, for the record, that may
6 be his expectation. There is no deal with him
7 whatsoever with regard to either of those charges, and
8 I can confirm that through his attorney who is sitting
9 in court and told me there was no connection this
10 morning.

11 MR. SAMPSON: Judge, being defense counsel, I
12 understand this is why pending is being held, I assume,
13 to see how he does at trial so that later on he can
14 receive the benefit of his testimony.

15 THE COURT: Well, my understanding is that
16 the rules of evidence don't permit a guilty plea to be
17 used in any criminal or civil proceedings against that
18 person who pled, so I'm not allowing it and that's the
19 end of that.

20 Was there another issue? I think there was
21 another issue, wasn't there?

22 Oh, I never did tell the jurors about the two
23 officers whose names were mentioned, so we'll do that
24 as soon as we bring out the jurors.

25 Are we ready to bring out the jurors now?

1 MR. McTIGUE: Yes.
2 THE COURT: Bring them out.
3 (Jury brought into courtroom)
4 THE COURT: Ladies and gentlemen, it took a
5 little longer than I expected. We did some additional
6 things, so this was your mid-morning break, even though
7 I didn't allow you out of the courtroom this time.
8 Additionally, there are two additional names
9 that are going to be added to the list of people whose
10 names may be mentioned or may be witnesses in the case.
11 One is a Detective R. Frank, and another, an officer B.
12 Garcia, both from the Hudson County Sheriff's
13 Department. Is there anyone who recognizes either of
14 those names?
15 (No response)
16 THE COURT: And I see no hands raised.
17 You may call your next witness, Mr. McTigue.
18 MR. McTIGUE: Thank you, your Honor.
19 The State calls as its next witness, Mr.
20 Jaimie Solano.
21 I will indicate to the Court and the jury we
22 will be requiring the services of an official court
23 interpreter for this witness's testimony.
24 (Interpreter, Illiana Marty, sworn)
25 J A I M E S O L A N O, Sworn.

1 THE COURT: You may proceed.
2 MR. McTIGUE: Thank you, your Honor.
3 (The following questions and answers are
4 given through the interpreter)
5 DIRECT EXAMINATION BY MR. McTIGUE:
6 Q. Good morning, Mr. Solano.
7 A. Good morning.
8 Q. Mr. Solano, do you speak a language other
9 than English?
10 A. No.
11 Q. Do you speak Spanish?
12 A. Of course, Spanish and English.
13 Q. All right.
14 How much English do you speak?
15 A. I would say half.
16 Q. All right.
17 Are you more comfortable speaking in your
18 native language?
19 A. Yes, I am.
20 Q. All right.
21 I would ask you that as I put questions to
22 you, to wait for the court interpreter to translate the
23 questions, even though you may understand some of the
24 words that I speak to you.
25 A. Okay.

- 1 Q. Mr. Solano, I'm going to ask you some
2 questions about some events that occurred in the year
3 2002; more particularly, in the year of November, 2002.
4 Do you recall anything unusual happening with regard to
5 one of the drivers of Millennium Cab Company at about
6 that time?
7 A. At that time?
8 Q. Yes or no.
9 A. Yes.
10 Q. In November of 2002, were you employed by the
11 Millennium Cab Company?
12 A. Yes.
13 Q. What was your job with the Millennium Cab
14 Company?
15 A. Dispatcher.
16 Q. And what were your duties as a dispatcher for
17 the Millennium Cab Company?
18 A. Take the calls and send out the cars.
19 Q. And were you working at any time on November
20 3 or November 4, the year 2002?
21 A. Yes. I had the early morning hour shift.
22 Q. And what time of the day or night did that
23 shift start?
24 A. From 1 to 7 a.m.
25 Q. All right.

- 1 Now, did you know a person by the name of
2 Felix Chininin on that date and time, November, 2002?
3 A. Yes.
4 Q. How is it that you knew Felix Chininin?
5 A. He started to work in the company. He was a new
6 driver.
7 Q. Do you recall how long he had been working
8 there as of November of 2002?
9 A. About four months.
10 Q. Four months?
11 A. Something like that, uh huh.
12 Q. Do you know a person at that time, and I
13 refer to November of 2002, by the name of Jaimie or
14 Hymie Reyes?
15 A. Yes.
16 Q. How is it that you knew Mr. Reyes, and do you
17 know what he did for a living?
18 A. He was working as a driver, as a taxi driver. He
19 was the brother of one of the owners of a --
20 THE INTERPRETER: Interpreter needs to
21 clarify something. Answer: Of that cab company.
22 Q. Do you know if Felix Chininin owned the car
23 he drove?
24 A. No, he was not, he was just a driver.
25 Q. Do you know who -- was Felix Chininin driving

- 1 a car, to your knowledge, on November 4?
2 A. Yes, he was.
3 Q. Do you know the owner of that car?
4 A. Yes.
5 Q. Who was that person?
6 A. His name is Sergio Eras.
7 Q. Is that Z-R-A-S?
8 A. Yes.
9 Q. Now, on November 4, what time did you get to
10 work?
11 A. At one o'clock in the morning.
12 Q. All right.
13 And how did you get to work that morning?
14 A. I used to always call the base so that they would
15 send a car home to pick me up.
16 Q. Did you do that on November 4 to get to work?
17 A. Yes, I did.
18 Q. And was the driver sent to your house to pick
19 you up?
20 A. Yes, and it was him.
21 Q. When you say "him," to whom do you refer?
22 A. Felix Chininin.
23 Q. Without telling us the number or your
24 address, on what street and city did you live at that
25 time?

- 1 A. Pacific Avenue in Harrison.
2 Q. How far away was that from the Millennium Cab
3 Company where you worked?
4 A. About five minutes away.
5 Q. All right.
6 When Mr. Chininin came to get you, did you
7 get into the vehicle he was driving?
8 A. Yes.
9 Q. And were you able to observe how he looked at
10 that time?
11 A. He was fine. He was happy.
12 Q. Did you notice -- other than that, did you
13 notice anything unusual or out of the ordinary about
14 his demeanor?
15 A. No, he was pretty much the same every day.
16 Q. And how is that?
17 A. He was always happy. He was a happy person. He
18 liked his job.
19 Q. When you got into Mr. Chininin's car, did you
20 see anything in the car?
21 A. Yes, I saw a computer.
22 Q. Could you describe the computer that you saw
23 in his car?
24 A. A lap top.
25 Q. Okay.

- 1 Had you seen that computer in Mr. Chininin's
2 car before?
3 A. No.
4 Q. All right.
5 Was the computer on when you got there?
6 A. It was on, and he was watching a movie.
7 Q. Now, after you got into the car at your home,
8 did you go directly to your base at Millennium?
9 A. Yes.
10 Q. Do you know a lady by the name of Gloria
11 Nieves?
12 A. Yes.
13 Q. How is it that you know Ms. Nieves?
14 A. She was a dispatcher, just like I was. She did
15 the same job, and I would replace her.
16 Q. All right.
17 Did she work on the shift before you?
18 A. Yes.
19 Q. Do you know a young lady by the name of
20 Yvonna?
21 A. Yes.
22 Q. Do you know what Yvonna's last name is?
23 A. I really don't remember it.
24 Q. All right.
25 How is it that you know Yvonna?

- 1 A. She used to take calls with the dispatcher. She
2 used to help the dispatcher with the calls.
3 Q. Was she working at the same time or at a
4 different time that night or morning with Gloria
5 Nieves?
6 A. They started at the same time. They would finish
7 at the same shift.
8 Q. Did you see how Ms. Nieves and the lady you
9 knew as Yvonna left their work place that night?
10 A. As far as I remember, they called a taxi cab to
11 come pick them up to take them. And as far as I
12 remember, I think it was Jaimie Reyes who picked them
13 up.
14 Q. Did you see where Felix Chininin went after
15 he dropped you off?
16 A. He left me there, he reported himself free, and
17 then he started -- he reported so that he was starting
18 taking calls.
19 Q. And was anyone else working with you that
20 night as an operator, or another dispatcher, or were
21 you alone that evening?
22 A. No, I would work alone.
23 Q. And is that because of the hour, or for some
24 other reason?
25 A. Mostly because of the hour, because at that hour

1 that I came in, there wasn't really that much work.

2 Q. After Felix Chininin checked in, reported him
3 back on the air, did you see where his vehicle went?

4 A. I really didn't.

5 Q. I take it you were working inside on the
6 radio?

7 A. He was working for the company.

8 Q. Okay, all right.

9 Mr. Solano, does the Millennium Cab Company
10 keep a record of the dispatches that go out over the
11 air?

12 A. Yes.

13 Q. And on November 4, what time did you actually
14 start working as a dispatcher as opposed to when you
15 arrived?

16 A. At about 1:15.

17 Q. And throughout the rest of the morning, say
18 till about 6 o'clock in the morning, were there any
19 other dispatchers on duty, other than yourself?

20 A. No.

21 Q. Now, you had indicated that the company keeps
22 records of dispatches you make to particular drivers?

23 A. Yes.

24 Q. I'm going to show you an exhibit which has
25 been marked S-73 for identification. Do you recognize

1 this document, S-73, Mr. Solano?

2 A. Yes.

3 Q. What do you recognize S-73 to be?

4 A. Those were the calls that I dispatched.

5 Q. And those are calls you dispatched to Felix
6 Chininin?

7 A. No. Mostly they went to a number 19. I'm not
8 sure if it's here. They would all pick up a call. I
9 don't know who was going to get it, so I don't know
10 which one was his.

11 Q. All right.

12 Do you recall dispatching Felix Chininin to a
13 location at 330 Woodside that evening in Newark?

14 A. Yes.

15 Q. And do the records indicate what time you
16 made that dispatch?

17 A. Yes.

18 Q. And what time do the records reflect?

19 A. Two fifty-six a.m.

20 Q. All right.

21 Now, do you know if Felix Chininin responded
22 to that call?

23 A. Yes, he did.

24 Q. All right.

25 And how is it that you know he responded to

- 1 that call?
2 A. Through the radio we were communicating.
3 Q. Now, are you familiar with the city of
4 Newark?
5 A. Yes.
6 Q. Where generally is Woodside Avenue, what part
7 of the city?
8 A. North Newark.
9 Q. Now, was 330 Woodside Avenue the last
10 location you dispatched Felix Chininin to?
11 A. Yes.
12 Q. After that, did you have any communication
13 with Mr. Chininin regarding fares that he had in his
14 car?
15 A. When he took the call, he ended up in Down Neck.
16 Then he reported himself that he was free. A few
17 minutes later, he reported that he picked someone from
18 the street.
19 Q. All right.
20 Did he indicate to you the number of people
21 and the type of people he had picked up, or just that
22 he had picked up a fair?
23 A. Just that he picked up a fare.
24 Q. Did he indicate to you the location where he
25 may have been when he picked up the fair?

- 1 A. On the five corners.
2 Q. Where is that located?
3 A. It's around 200 Ferry Street where Wilson Avenue
4 starts.
5 Q. Now, after that communication with Mr.
6 Chininin, did you have any further contact with him
7 that night?
8 A. No.
9 Q. Did you attempt to call him on the radio to
10 give him further dispatches?
11 A. Yes, because he had been out for a long time, and
12 I had him out, and I needed to know what was going on.
13 Q. Were you able to reach him on the radio?
14 A. No, never.
15 Q. How many times, if you recall, did you
16 attempt to reach him on the radio dispatch service that
17 you had?
18 A. We always do it about three times.
19 Q. Do you have a specific recollection or is
20 that just your knowledge of general procedure?
21 A. That's what I did three times.
22 Q. Do you recall at approximately what time it
23 was that you last heard from Felix Chininin?
24 A. It was around 3:30, 3:35.
25 Q. Now, after you were unable to reach Mr.

- 1 Chininin using the radio equipment you had at
 2 Millennium, did you attempt to communicate with him in
 3 any other way?
 4 A. Not really, until I got a call from Elizabeth that
 5 the car was parked in a driveway, and it should be
 6 picked up because otherwise the tow truck will take it.
 7 Q. Approximately what time was that?
 8 A. At about 5:30 in the morning.
 9 Q. Did you ever attempt to communicate with Mr.
 10 Chininin that morning using his cell phone?
 11 A. Yes, a few times.
 12 Q. Was that before or after you received a call
 13 from the Elizabeth Police Department?
 14 THE INTERPRETER: Interpreter needs
 15 repetition of that answer.
 16 A. That was before, that was before the call I
 17 received because they called me, the man called me that
 18 the car was blocking the driveway.
 19 Q. I'll rephrase.
 20 You indicated that there was a time when you
 21 last heard from Felix Chininin. Is that correct?
 22 A. Yes. The last time he reported on the radio that
 23 he had picked someone up.
 24 Q. And there was another time when you received
 25 a call from the Elizabeth Police Department?

- 1 A. Yes.
 2 Q. Between the time you last heard from Felix
 3 Chininin and the time you received a call from the
 4 Elizabeth Police Department, did you try to reach Mr.
 5 Chininin on a cell phone?
 6 A. Yes.
 7 Q. How many times, if you recall?
 8 A. About seven times.
 9 Q. And after you received a call from the
 10 Elizabeth Police Department, did you try again to reach
 11 him on the cell phone?
 12 A. Yes, of course.
 13 Q. Do you recall how many times you tried after
 14 getting the call from the Elizabeth Police?
 15 A. Many times.
 16 Q. At any time, did you receive an answer to
 17 those calls to his cell phone number?
 18 A. No.
 19 MR. MCTIGUE: I have no further questions,
 20 Judge.
 21 MR. SAMPSON: No questions. Thank you, your
 22 Honor.
 23 THE COURT: You may step down.
 24 (Witness excused)
 25 THE COURT: May I release the interpreter?

1 MR. McTIGUE: Yes, Judge.
2 THE COURT: Thank you.
3 MR. McTIGUE: Judge, may I have one moment to
4 release the witness using the services of the
5 interpreter?
6 THE COURT: Yes.
7 MR. McTIGUE: Thank you, your Honor. I
8 apologize.
9 THE COURT: You may call your next witness.
10 MR. McTIGUE: Yes, Judge. The State calls as
11 its next witness Ms. Josephina Garcia.
12 J O S E P H I N A G A R C I A, Sworn.
13 THE COURT: Go ahead.
14 MR. McTIGUE: Thank you, your Honor.
15 DIRECT EXAMINATION BY MR. McTIGUE:
16 Q. Good morning, Ms. Garcia.
17 A. Good morning.
18 Q. Ms. Garcia, I'm going to ask you to keep your
19 voice up and to speak clearly so all the jurors can
20 hear you, and please keep all your answers to me in
21 words, verbal, rather than nodding your head as you are
22 now.
23 A. Okay, sir.
24 Q. Ms. Garcia, I'm going to ask you some
25 questions about some events that occurred late in the

1 year 2002, in November, 2002, regarding the shooting
2 death of a man by the name of Felix Chininin. Do you
3 recall those events?
4 A. Yes.
5 Q. Ms. Garcia, where were you living in November
6 of the year 2002?
7 A. 148 Wilson Avenue, apartment 1, first floor, in
8 Kearny, New Jersey.
9 Q. And as of November 4, or the general time
10 around there, did you know a person by the name of
11 Carlos Marquez?
12 A. Yes, I did, sir.
13 Q. How long had you known him at that time,
14 around November of 2002?
15 A. Around a period of two to three years.
16 Q. All right.
17 And what was the nature of your relationship,
18 if any, with him?
19 A. I had a relationship with him. I dated him at the
20 time.
21 Q. Was that an intimate relationship?
22 A. Yes.
23 Q. Did you know a person at that time by the
24 name of Alex or Alexis Tixi?
25 A. Yes, I did.

- 1 Q. How long had you known him, Tixi, as of that
2 time, November of 2002?
3 A. Well, I didn't know him for long, like about six
4 months or so.
5 Q. How is it that you came to know Mr. Tixi?
6 A. Through Carlos.
7 Q. To your knowledge, was he a friend of Carlos?
8 A. Yes.
9 Q. Now, I say Carlos, I refer to Carlos
10 Marquez.
11 A. Yes.
12 Q. Did you know a person by the name of Fernando
13 at that time?
14 A. Yes.
15 Q. Do you see him in court today?
16 A. Yes.
17 Q. Would you point him out and describe what
18 he's wearing?
19 A. He's wearing like a blue/gray shirt, gray/blue
20 shirt and the tie got like gold and black.
21 MR. SAMPSON: Identifying the defendant for
22 the record, your Honor.
23 Q. How long had you known this man that you
24 pointed out in court at that time?
25 A. I know him for about the same amount of time that I

- 1 met Alex, like a period of six, five to six months.
2 Q. And how is it that you came to know the
3 defendant in this case?
4 A. Through Carlos.
5 Q. Was he a friend of Carlos, to your knowledge?
6 A. Yes.
7 Q. Had he been to your house before?
8 A. Yes.
9 Q. On how many occasions, if you recall?
10 A. A couple of occasions.
11 Q. Had Alex Tixi been to your house prior to
12 November 4?
13 A. Yes.
14 Q. Approximately how many occasions?
15 A. He went more than Fernando did, because he was
16 always with Carlos.
17 Q. Now, I'm going to direct your attention to
18 the early morning hours of November 4, 2002, at that
19 time were you at home?
20 A. Yes.
21 Q. And did there come a time, sometime in the
22 early morning hours, where you saw any one of the three
23 men I just described, Carlos Marquez, Alex Tixi or
24 the man you have described as Fernando?
25 A. Can you repeat the question again, sir?

- 1 Q. Did you see them that night, the three men I
2 just named?
3 A. Yes.
4 Q. And where was it that you saw them?
5 A. At my house.
6 Q. At the time you saw them at the your house,
7 just before they arrived, what were you doing?
8 A. Sleeping.
9 Q. Did you have any children in the house at
10 that time?
11 A. Yes.
12 Q. What child or children were present in the
13 house at that time?
14 A. Well, my little son, which I call Tito, whose name
15 is Giancarlo, and my son Louie, and my nephew
16 Guillermo.
17 Q. Were they in the house?
18 A. Yes.
19 Q. Were they in separate rooms?
20 A. Yes.
21 Q. And what were they doing, if you know?
22 A. Sleeping.
23 Q. Would you describe how it was that you came
24 to see the men that night?
25 A. They came to my house and they knocked.

- 1 Q. Who is it that knocked, if you know?
2 A. I'm not exactly sure, but I think it was Alex.
3 Q. Who was the person -- did you open the door?
4 A. Yes.
5 Q. Who was the first person you saw as you
6 opened the door?
7 A. Alex.
8 Q. And where was the defendant, and where was
9 Carlos, as you opened the door?
10 A. They were outside.
11 Q. Do you know how they arrived at your house?
12 And by that I mean, on foot, in a vehicle?
13 A. I have no idea.
14 Q. And when you opened the door, did any of the
15 men say anything to you as they were at the door?
16 A. No.
17 Q. Did they come into your house?
18 A. Yes.
19 Q. Did each of the three, all three come in?
20 A. Yes.
21 Q. Were any of the men holding anything as they
22 came into your house?
23 A. Yes.
24 Q. Who was holding something?
25 A. Fernando.

- 1 Q. The man you pointed out in court today?
2 A. Yes.
3 Q. Were the lights on or off in your house?
4 A. They were off.
5 Q. At some point were the lights turned on after
6 they entered?
7 A. No.
8 Q. Were you able to see in the lighting
9 conditions who you were looking at and what they were
10 doing?
11 A. Yes.
12 Q. And what did you see Fernando have in his
13 possession?
14 A. Like a notebook lap top.
15 Q. Could you describe it, please?
16 A. Well, I guess it was black.
17 Q. And when you say a lap top, what do you mean?
18 A. One of them little computers, a computer.
19 Q. And how was he holding it?
20 A. I don't exactly recall because I was sleeping at
21 the time, and I went to bed, but he was holding it in
22 his hand.
23 Q. Was it wrapped in anything, or was it free
24 standing under his arm?
25 A. No, it was not.

- 1 Q. Now, had you ever seen Fernando with a lap
2 top computer before?
3 A. No, sir.
4 Q. And what did the men do as they came in your
5 house?
6 A. Well, Carlos laid in my bed, and then Alex sat on
7 some bag of clothes that I had by my bed. Fernando
8 went to the bathroom, he went to the bathroom, I guess
9 to use it.
10 Q. All right.
11 Did you see him go into the bathroom?
12 A. No.
13 Q. Where were you at the time he went into the
14 bathroom?
15 A. Laying in my bed.
16 Q. All right.
17 Where is the bathroom with regard to your
18 bed?
19 A. It's like a distance from -- like my living room
20 is after my room, and then the kitchen, and then the
21 bathroom.
22 Q. All right.
23 How many rooms are there in your apartment?
24 A. Three bedroom apartments, but a living room and
25 kitchen.

- 1 Q. Now, did any of your children that you have
2 described as being in the house come out of their rooms
3 at this time?
4 A. No.
5 Q. Now, you indicated you laid down on your bed?
6 A. Yes.
7 Q. Am I correct in restating your testimony that
8 Carlos also laid down with you?
9 A. Yes.
10 Q. And you said Alex did something, what was it
11 he did?
12 A. He sat down by the bed on some bags, some bags of
13 clothes.
14 THE COURT: Could you repeat that answer?
15 MR. SAMPSON: I'm sorry, your Honor, I
16 couldn't hear that?
17 THE WITNESS: I said he sat by the side of
18 the bed in some bags of clothes.
19 Q. And what about Fernando, what did he do?
20 A. He came back from the bathroom and sat down at the
21 foot of my bed.
22 Q. And what was he doing at that time?
23 A. He wasn't doing nothing, he was just there.
24 Q. All right.
25 Around what time of the morning was this?

- 1 A. Around 3 or 4 o'clock in the morning.
2 Q. Do you recall the exact time?
3 A. Yes.
4 Q. Around what time?
5 A. Around 3, 3 or 4.
6 Q. Do you know the exact time, or are you just
7 estimating?
8 A. I don't know the exact time, it was around that
9 time.
10 Q. So around 3 or 4 in the morning?
11 A. Yes.
12 Q. Now, did you have any conversation with the
13 men as they came in, did you talk to them?
14 A. Yes.
15 Q. With whom did you speak?
16 A. To Fernando.
17 Q. And what was the nature of your conversation
18 with Fernando?
19 A. Well, I just asked him, because he had some stains
20 on his shirt, and I asked him what happened, and he
21 said he got into a little accident.
22 Q. Well, did you notice, when you say stains,
23 did you notice the clothing he was wearing?
24 A. Yes.
25 Q. Could you describe the type of clothing he

- 1 was wearing that night that you saw?
2 A. He was swearing like a bone white sweater and it
3 had like some kind of logo in the front.
4 Q. Anything about his pants?
5 A. His pants, like khaki pants.
6 Q. You indicated you saw some stains on some of
7 his clothing. What areas of his clothing did you
8 observe stains on?
9 A. Like around his broad shoulder, and like in the
10 middle.
11 Q. Did you notice any stains on his pants?
12 A. No.
13 Q. Did you get a look at the computer?
14 A. No.
15 Q. Did you see if there was anything unusual
16 about the computer?
17 A. No, sir.
18 Q. Now, you asked him about the stains on his
19 clothing?
20 A. Yes.
21 Q. What did the stains appear to be, to your
22 observation?
23 A. Blood stains.
24 Q. And he indicated to you that he had gotten in
25 some sort of fight?

- 1 A. Yes.
2 Q. What did he say?
3 A. He said that somebody tried to jump him.
4 Q. And did he indicate that that fight was over
5 the computer?
6 A. No, he never stated such a thing.
7 Q. Excuse me?
8 A. No, he never stated such thing.
9 Q. Okay.
10 Did he give you any details of the fight that
11 occurred between him and the person he said jumped him?
12 A. No, sir.
13 Q. How long was your conversation with him?
14 A. Not long, like five minutes, probably less.
15 Q. Now, you indicated that you don't know how
16 the three men arrived. It's a your apartment; is that
17 right?
18 A. Yes, that is correct.
19 Q. Excuse me?
20 A. That is correct.
21 Q. Do you know if Carlos owned a car?
22 A. No.
23 Q. Is it that you don't know if he owned a car
24 or he didn't own a car?
25 A. I did not know if he owned one.

- 1 Q. You had been dating him for how long?
 2 A. For two to three years. Well, he had one at the
 3 time, but I don't know what happened to it.
 4 Q. All right.
 5 For the several months before --
 6 A. He didn't have one.
 7 Q. What about Alex, do you know if Alex had a
 8 car?
 9 A. No, he didn't have one also.
 10 Q. Did Fernando have a car?
 11 A. Yes.
 12 Q. What type of car was it that he had?
 13 A. A black jeep.
 14 Q. Now, did Alex Tixi have any nickname that you
 15 knew him by?
 16 A. I always knew him by Alex.
 17 Q. When the men came in, did you get a chance to
 18 look at them, see how they looked, what their demeanor
 19 was?
 20 A. No.
 21 Q. Well, were any of them excited, nervous,
 22 anything out of the ordinary?
 23 MR. SAMPSON: Objection, your Honor. I
 24 object to the question.
 25 THE COURT: Hold it. Objection sustained.

- 1 Q. What observations did you make of the men as
 2 they came in, say, with regard to Alex?
 3 MR. SAMPSON: Asked and answered, your Honor.
 4 THE COURT: I'll allow the question.
 5 A. Can you repeat the question again, or explain it
 6 in a term that I could understand?
 7 Q. When the three men, Alex, Carlo and Fernando,
 8 came into your house, did you get a look at them?
 9 A. Yes.
 10 Q. Did you get a chance to see how they looked?
 11 A. Yes.
 12 Q. What did you observe, if anything, about
 13 Alex?
 14 A. That he was nervous.
 15 Q. When you say nervous, what do you mean?
 16 A. Like sad. Like sad and depression, like worried.
 17 Q. What about Carlos, how did he look to you?
 18 A. He was acting calm.
 19 Q. What about Fernando?
 20 A. He was just pacing back and forth.
 21 Q. All right.
 22 Was he speaking as he was pacing?
 23 A. No.
 24 Q. Now, you had indicated at one point in the
 25 morning you had a conversation with -- or at least Mr.

- 1 DaSilva told you about a fight he had had. Is that
2 correct?
3 A. Yes.
4 Q. Did he go into any of the details of that?
5 A. No.
6 Q. While you were there with the three men in
7 your apartment, did you consume any food or beverage,
8 or anything else?
9 A. No, sir.
10 Q. How long -- did you eventually go back to
11 bed?
12 A. Yes.
13 Q. And how long were you up when the three men
14 came in?
15 A. Like for 20 to 30 minutes.
16 Q. And during that period of time, did you have
17 any discussions with these men?
18 A. No.
19 Q. Well, did Carlos tell you why he came to your
20 house?
21 A. No.
22 MR. SAMPSON: Objection, your Honor. She
23 just answered she didn't have any discussion.
24 THE COURT: I'll allow it.
25 Q. Did Carlos tell you why he had come to your

- 1 house at 3 or 4 in the morning?
2 A. No, sir.
3 Q. Did you ask him why?
4 A. No.
5 Q. Was that something usual?
6 A. Yes.
7 Q. For Carlos?
8 A. For Carlos.
9 Q. Based on your relationship with him?
10 A. Yes.
11 Q. What about Alex, your relationship with him
12 was different; is that correct?
13 A. Yes.
14 Q. Was it usual for Alex to come over at 3 or 4
15 in the morning?
16 A. No.
17 Q. Did you ask Alex why are you here?
18 A. No.
19 Q. What about Fernando, you had a different
20 relationship with Fernando than you did with Carlos; is
21 that correct?
22 A. Yes.
23 Q. Did you ask him why are you at my house at 4
24 in the morning?
25 A. No, sir.

- 1 Q. After that period of time passed, 20, 30
2 minutes, did you go to sleep?
3 A. Yes.
4 Q. Did you see what happened with Alex?
5 A. He left.
6 Q. Approximately what time was it that he left?
7 A. A few minutes before I went back to sleep.
8 Q. Now, you had indicated that he had laid down
9 on a pile of clothes. Is that correct?
10 A. Yes.
11 Q. Did he fall asleep for any period of time?
12 A. No.
13 Q. Excuse me?
14 A. No.
15 Q. Did Carlos leave?
16 A. No.
17 Q. Did he stay the night?
18 A. Yes.
19 Q. When, if you recall, was it that he left?
20 A. Six o'clock in the afternoon, the next day.
21 Q. He went to sleep with you?
22 A. Yes.
23 Q. And he awoke with you?
24 A. Yes.
25 Q. What about Fernando, how long did he remain

- 1 at your house?
2 A. He left when Alex left.
3 Q. And how long had Fernando been at your house
4 from the time he arrived with the other two men until
5 the time he left?
6 A. A half hour.
7 Q. And other than the brief conversation that
8 you have described having with Fernando, and his
9 pacing, was he doing anything else in your house
10 between the time he arrived and the time he left?
11 A. No.
12 Q. When he left, did he take the computer with
13 him?
14 A. Yes.
15 Q. During the time he was in the house with the
16 computer, where was the computer?
17 A. It was on top of the bed.
18 Q. All right.
19 Did you look at it?
20 A. No.
21 Q. You had a computer on your bed, and you did
22 not observe it?
23 A. He had it by my foot.
24 MR. SAMPSON: I'm sorry, could you repeat the
25 answer, please?

1 THE COURT: You could you repeat the answer?

2 THE WITNESS: It was by the side of my foot.

3 Q. Did it upset you at all when you found out
4 from Fernando that he had been in a fight?

5 A. No.

6 Q. Did Alex leave with Fernando, or did they
7 leave separately?

8 A. They left together.

9 Q. And did you see -- were you in a position to
10 observe whether or not they got into any sort of car
11 when they left?

12 A. No, sir.

13 Q. Did you stay in your bed or your bedroom as
14 they left?

15 A. Yes, I stood in my bedroom.

16 Q. Did they indicate to you they were leaving?
17 Did they say anything when they were leaving?

18 A. They just said they was leaving.

19 Q. Do you know where Alex lives, generally,
20 if you don't know his specific address?

21 A. I know he live on Central Avenue in Harrison.

22 Q. What about Fernando?

23 A. No, I have no idea.

24 Q. You have no idea where Fernando lived?

25 A. No idea.

1 Q. Did you know Fernando's full name at that
2 time?

3 A. I only knew him by Fernando.

4 Q. When was it -- did you know him as Louis
5 DaSilva at that time?

6 A. No.

7 Q. Did there come a time after that, that you
8 learned what his full name was?

9 A. Yes.

10 Q. Now, at any time that night or in the days
11 following the early morning hours when the three men
12 came to your house, did you report that or mention it
13 to anybody in law enforcement?

14 A. Excuse me?

15 Q. Did you call the cops?

16 A. No.

17 Q. At some point, were you contacted by the
18 police?

19 A. No.

20 Q. Well, at some point were you asked to come
21 down to the Essex County Prosecutor's Office?

22 A. Yes.

23 Q. When was that?

24 A. About a month later.

25 Q. And who was it from the Prosecutor's Office,

- 1 if you recall, that contacted you?
2 A. Nicole Berrian.
3 Q. And how did she reach you, by telephone, in
4 person?
5 A. She came personally to the house.
6 Q. And were you asked to come to the
7 Prosecutor's Office?
8 A. Yes.
9 Q. And did you understand that you were going to
10 be asked questions at the Prosecutor's Office?
11 A. Yes.
12 Q. And did you understand that the questions you
13 were going to be asked were about the three men who
14 came to your house?
15 A. Yes.
16 Q. And that was when?
17 A. I don't recall the exact date.
18 Q. You indicated about a month later?
19 A. About a month later.
20 Q. Now, in the time between the three men came
21 to your house in the early morning hours of November 4,
22 and the time that the Prosecutor's Office sought you
23 out for questioning, did you learn of the death of a
24 livery cab driver in Newark?
25 A. Yes.

- 1 Q. How is it that you learned of his death.
2 A. Through the news.
3 Q. The news?
4 A. Yes.
5 Q. Did you read about it in the newspapers or
6 see it on TV?
7 MR. SAMPSON: Objection.
8 A. TV.
9 MR. McTIGUE: May we be heard at sidebar,
10 Judge?
11 (The following takes place at sidebar)
12 MR. McTIGUE: I'm not asking her about
13 content, I'm asking her about mode of media. There
14 were a number of wanted posters out, there were
15 newspaper articles, and there were TV spots on
16 Spanish-speaking television on Channel 41.
17 MR. SAMPSON: I don't understand the
18 relevance of how she found out about this incident.
19 MR. McTIGUE: It goes, I think, partially to
20 the nature of her cooperation with the State, whether
21 she found that out and still withheld her cooperation
22 and failed to report it until we went out and got her.
23 THE COURT: I'll allow it.
24 MR. McTIGUE: Thank you.
25 (The following takes place in open court)

- 1 Q. Ms. Garcia, I'm going to ask you the same
2 question. Without telling me what you read or what you
3 saw or heard, how was it that you found out about the
4 shooting death of a livery cab driver?
5 A. Through the news and the TV.
6 Q. And when was that? How long after the death
7 of that livery cab driver?
8 A. About two days later.
9 Q. And at any time did you receive any
10 information pertaining to Fernando?
11 A. No.
12 Q. And that slaying?
13 A. No, sir.
14 Q. That was not contained in any of the matters
15 you saw?
16 A. No.
17 Q. Now, when you went down to the Prosecutor's
18 Office, how did you get there?
19 A. They drove me over here to the court.
20 Q. All right.
21 And did you go voluntarily?
22 A. Yes.
23 Q. And where were you brought when you came to
24 the Prosecutor's Office?
25 A. This building.

- 1 Q. And did you give statements at that time?
2 A. Yes.
3 MR. McTIGUE: Judge, exhibits S-11 and S-12.
4 Q. Ms. Garcia, I'm going to show you two
5 documents that have been marked for identification,
6 that's how we keep track of records in the court. One
7 is marked S-11, that appears to be a hand written
8 document, does it not?
9 A. Yes.
10 Q. Whose handwriting is that?
11 A. Mines.
12 Q. All right.
13 And there appears -- I show you another
14 document, S-12. Do you recognize that document?
15 A. Yes.
16 Q. That appears to be a type-written statement,
17 four pages in length. Is that right?
18 A. Yes.
19 Q. And that is dated 12-2-02?
20 A. Yes.
21 Q. And is that the statement that you gave to
22 Investigator Berrian?
23 A. Yes.
24 Q. And it indicates that the time that statement
25 was started was 1:14 in the afternoon. Is that

1 correct?

2 A. Yes.

3 Q. You need a tissue?

4 THE WITNESS: Yes.

5 MR. McTIGUE: Can I get a tissue, Judge?

6 Officer, do we have tissues? Thank you,
7 officer.

8 COURT OFFICER: You're welcome.

9 Q. I will continue. It indicates the statement
10 ended at 2:45?

11 A. Yes.

12 Q. Going back to S-11, the handwritten document,
13 how did that come to be prepared?

14 A. Because when they went to pick me up, I just
15 wanted to get out of there so I didn't know they was
16 going to ask me questions, and I just wrote it.

17 Q. Were you seated alone for some period of time
18 at the Prosecutor's Office?

19 A. Yes.

20 Q. And correct me if I'm wrong, did you grab a
21 piece of paper and write down what you thought they
22 were going to ask you?

23 A. Yes, I did.

24 Q. Did anyone suggest any of the answers to
25 this?

1 A. No, sir.

2 Q. This is just what you said happened?

3 A. Yes.

4 Q. All right.

5 Did the investigator who ultimately
6 questioned you, Investigator Berrian, know that you
7 were writing this?

8 A. No.

9 Q. Was anyone in the room with you when you
10 wrote it?

11 A. No, just my little son.

12 Q. All right.

13 When the investigator came back, did she ask
14 you why did you write that out?

15 A. Yes, she did.

16 Q. Did she indicate to you that she wanted to
17 take a more formal statement from you?

18 A. Yes.

19 Q. And did she in fact do that?

20 A. Yes, she did.

21 Q. And looking at S-12, is that the more formal
22 statement?

23 A. Yes.

24 Q. And how is this statement prepared?

25 A. By questioning, computer.

- 1 Q. You would be asked a question?
2 A. Yes.
3 Q. Would you then give an answer?
4 A. Yes.
5 Q. And would she type it down?
6 A. Yes.
7 Q. And was it being done in front of you?
8 A. Yes.
9 Q. And as you went along, did you have a chance
10 to see if there were any errors or things you wanted to
11 change?
12 A. Yes.
13 Q. And did that process occur as it was being
14 typed on the computer?
15 A. Yes.
16 Q. And then after that was typed up on the
17 computer, did she print it out?
18 A. Yes.
19 Q. And did you again have a chance to read it
20 over and make sure everything in there was as you
21 wanted it to be?
22 A. Yes.
23 Q. Did anyone suggest to you any of the answers
24 in there?
25 A. No.

- 1 Q. Did they write down what you told them?
2 A. Yes.
3 Q. Did anybody try to put words in your mouth?
4 A. No.
5 Q. Now, during the course -- after you read that
6 statement over, and you had a chance to be satisfied as
7 to its contents, did you sign that statement and swear
8 that what was in there was true?
9 A. Yes.
10 Q. Did you sign each of the pages?
11 A. Yes.
12 Q. Indicating that you were satisfied that what
13 was in there was true?
14 A. Yes.
15 Q. Now, on the top of S-12 there's a correction
16 that appears as to the date, and there are some
17 initials after that.
18 A. Yes.
19 Q. Can you explain to the jury what that is?
20 A. My initials and a 2.
21 Q. There's a date crossed out?
22 A. Yes.
23 Q. What's the date that's crossed out?
24 A. A 3.
25 Q. So the statement was taken on December 2nd?

- 1 A. Yeah.
2 Q. Now, during the course of giving that
3 statement, were you asked questions about the -- you
4 were asked questions about the men who were at your
5 house?
6 A. Yes.
7 Q. Is that correct?
8 And were you asked to look at certain
9 photographs so that you could indicate who, to the
10 investigator, who you were talking about; is that
11 correct?
12 A. Yes.
13 Q. Were you shown a photograph of Alex Tixi?
14 A. Yes.
15 Q. I'm going to show you an exhibit which has
16 been marked S-12A. Do you recognize that?
17 A. Yes.
18 Q. What do you recognize S-12A to be?
19 A. Alex, and my signature.
20 Q. Who is the person who appears in what appears
21 to be a photograph?
22 A. Alex Trini.
23 Q. Trini you call him?
24 A. Uh huh.
25 Q. Is that the person that came to your house

- 1 with Fernando and Carlos?
2 A. Yes.
3 Q. And you indicate your name is there; is that
4 correct?
5 A. Yes.
6 Q. And there's also a date written there?
7 A. Yes.
8 Q. What date is written there?
9 A. December 2nd, 2002.
10 Q. And in particular on these there appears to
11 be something else?
12 A. Alex.
13 Q. Who wrote that on 12A?
14 A. I did.
15 Q. Okay.
16 And showing you now S-12B for identification.
17 A. That's Carlos.
18 Q. And when you say "Carlos," what is Carlos's
19 last name?
20 A. Marquinez.
21 Q. And were you shown his photograph during the
22 taking of the statement S-12?
23 A. Yes.
24 Q. And there again appears to be a signature, a
25 name and a date in parenthesis. What's the signature?

- 1 A. Josephina Garcia.
2 Q. And the date?
3 A. 12-2-02.
4 Q. And the name?
5 A. Carlos.
6 Q. Is that your writing?
7 A. Yes.
8 Q. And the person in that photograph, is that
9 Carlos Marquez who you described coming to your house
10 early in the morning hours of November 4?
11 A. Yes, that is Carlos.
12 Q. Showing you now S-12C for identification, do
13 you recognize that?
14 A. Yes.
15 Q. What is that?
16 A. Fernando.
17 Q. It's a photograph of Fernando?
18 A. Yes.
19 Q. And, again, there appears to be a name, date
20 and a name in parenthesis on that exhibit S-12C for
21 identification. Whose signature is on there?
22 A. Mine.
23 Q. And the date?
24 A. 12-02-02.
25 Q. And the name in parenthesis?

- 1 A. Fernando.
2 Q. Is that all in your writing?
3 A. Yes.
4 Q. Is that the person who came into your house
5 with Carlos and Alex in the early morning hours of
6 November 4, 2002?
7 A. Yes.
8 Q. Now, directing your attention to page 3 of
9 exhibit S-12, the statement indicates that you were
10 shown a picture a black and white photo of an Hispanic
11 male. Is that correct?
12 A. Yes.
13 Q. And that's the photo you identified as
14 Fernando?
15 A. Yes.
16 Q. Were you able to provide Investigator Berrian
17 with a last name at that point?
18 A. Silva.
19 Q. Excuse me?
20 A. Silva.
21 Q. Were you able to give S-I-L-V-A, Silva,
22 S-I-L-V-A?
23 A. Yes.
24 Q. And were you able to provide an address for
25 Fernando at that point?

- 1 A. No, sir.
2 Q. You still had not found out where he lived?
3 A. No.
4 Q. Now, you had also indicated that you were
5 aware that Fernando had a car. Is that right?
6 A. Yes.
7 Q. Were you asked to give a description of that
8 car by Investigator Berrian?
9 A. Yes.
10 Q. Were you able to give her a description?
11 A. Yes.
12 Q. And what description did you give her?
13 A. A black jeep.
14 Q. All right.
15 And on December 2, were you shown photos of
16 that jeep?
17 A. Yes.
18 MR. McTIGUE: S-12D, your Honor.
19 I'm going to show you an exhibit which has
20 been marked S-12 for identification, your Honor. It
21 appears to be a photograph. On the back of that
22 photograph there appears to be a name and date.
23 A. Yes.
24 Q. Do you recognize this exhibit?
25 A. Yes.

- 1 Q. What do you recognize this exhibit to be?
2 A. That's the jeep that Fernando used to own.
3 Q. All right.
4 And were you shown this photo by Investigator
5 Berrian on December 2?
6 A. Yes.
7 Q. And after you identified what was in the
8 photograph, did Investigator Berrian ask you to date
9 and sign that photo?
10 A. Yes.
11 Q. And does your signature and the date 12-2-02
12 appear on the back of the exhibit marked S-12D?
13 A. Yes.
14 Q. Did you see Fernando again after he came to
15 your house in the early morning hours of November 4?
16 A. No.
17 Q. You never saw him again?
18 A. No, sir.
19 Q. Did you see Carlos after that?
20 A. Yes.
21 Q. Did you discuss the incident with him?
22 A. No.
23 Q. Not at all?
24 A. Not at all.
25 Q. What about Alex?

- 1 A. No. I saw him like a couple of months later.
2 Q. Did you speak with him at that time?
3 A. No.
4 Q. Did you mention anything about that night?
5 A. No, sir.
6 Q. Why is it that you didn't?
7 A. Excuse me?
8 Q. Why didn't you speak to him about that night?
9 A. Because.
10 Q. Well, you had, by that time, spoken to the
11 Prosecutor's Office, had you not?
12 A. Yes.
13 Q. You didn't choose to discuss it with either
14 one of them after that?
15 A. No, I chose not to speak about it.
16 MR. McTIGUE: No further questions, Judge.
17 THE COURT: Cross examine.
18 CROSS EXAMINATION BY MR. SAMPSON:
19 Q. Ma'am, did you just say that you never
20 discussed this incident again with Carlos after that
21 night?
22 A. Yes.
23 Q. Do you have your statement in front of you,
24 your statement the prosecutor just asked you about? Do
25 you have that?

- 1 A. No.
2 Q. Well, let me show you -- may I have the
3 marked exhibit, please. Thank you.
4 Let me show you your statement. This is the
5 statement that you just said you gave; right?
6 A. Uh huh.
7 THE COURT: S-12.
8 Q. Now, let me ask you. Prior to you testifying
9 here today, you have been here in the courthouse this
10 morning. Correct?
11 A. Yes, sir.
12 Q. Did you talk to the prosecutor before you
13 testified --
14 A. Yes.
15 Q. -- this morning.
16 How about Investigator Berrian, did you speak
17 to her about your testimony?
18 A. Today?
19 Q. Yes.
20 A. No.
21 Q. How about yesterday?
22 A. No.
23 Q. Did you speak to the prosecutor's other
24 investigator about your testimony?
25 A. No.

- 1 Q. You have never talked to any member of the
2 Prosecutor's Office about your testimony today?
3 A. No.
4 Q. Ma'am, a moment ago you said that you had not
5 spoken to Carlos about this after that incident.
6 Correct?
7 A. Yes.
8 Q. Let me show you page 4 of your statement
9 here. Now, you gave this statement on December the
10 2nd, 2002. Correct? You gave this statement December
11 the 2nd, 2002. Correct?
12 A. Yes.
13 Q. On December the 2nd, 2002, you were asked the
14 question: What did you and Carlos talk about last
15 night? Correct?
16 A. Yes.
17 Q. So last night would have been December the
18 1st, 2002. Correct?
19 A. Correct.
20 Q. So when the Assistant Prosecutor asked you if
21 you had talked about that incident after November the
22 4th, and you said no, that was untrue. Right?
23 A. Excuse me, can you recall the question?
24 Q. When you told the prosecutor a moment ago
25 that you never spoke to Carlos about this incident

- 1 after November the 4th, 2002, that was not true.
2 Correct?
3 A. After November the 4th?
4 Q. It says here in your statement that you spoke
5 to Carlos December the 1st, 2002. Correct? That's
6 what it says right there, right? You signed this
7 document, didn't you?
8 A. Yes.
9 Q. You signed this?
10 MR. McTIGUE: Judge, can we get one question
11 at a time?
12 THE COURT: One question at a time, Mr.
13 Sampson.
14 Q. Did you sign this document?
15 A. Yes.
16 Q. That is your signature, Josephina Garcia.
17 Correct?
18 A. Yes.
19 Q. Now, the assistant prosecutor asked you if
20 you had even made corrections to it?
21 A. Yes.
22 Q. Because you had changed the date showing that
23 you had read it and were familiar with its contents.
24 Correct?
25 A. Correct.

1 Q. So this is your statement?
2 A. Yes.
3 Q. It was true when you gave it?
4 A. Yes.
5 Q. To the best of your knowledge?
6 A. Yes.
7 Q. Today, when the assistant prosecutor asked
8 you if you talked about it with Carlos after November
9 the 4th, 2002, you said you did not.
10 MR. McTIGUE: Judge, can I be heard at
11 sidebar?
12 (The following takes place at sidebar)
13 MR. McTIGUE: The question was, if she spoke
14 to Carlos after November 4, and she says in the
15 statement that she spoke to him December 1. How is
16 this a prior inconsistent statement, and why?
17 THE COURT: I'm sorry, go ahead. I was
18 reading this.
19 MR. McTIGUE: My question has been repeated
20 by Mr. Sampson several times, did you speak to Carlos
21 about this after December 4th?
22 THE COURT: November 4.
23 MR. McTIGUE: After an hour he is saying
24 December.
25 THE COURT: No, he said November 4.

1 MR. McTIGUE: Then I will withdraw it.
2 (The following takes place in open court)
3 Q. Now, ma'am, have you had a chance to think
4 about my question?
5 A. Yes.
6 Q. So after, to put it plainly, December the
7 1st, 2002, you did speak to Carlos. Correct?
8 A. Correct.
9 Q. And you have had an opportunity to read this.
10 Correct?
11 A. Yes.
12 Q. Did the prosecutor give you a copy of your
13 statement?
14 A. No.
15 Q. You have never read this after you gave it?
16 A. Well, I read it when they took it, but I never had
17 a copy.
18 Q. And you didn't review it for your testimony
19 here today?
20 A. Today, no.
21 Q. All right.
22 In the statement of December the 2nd, 2002,
23 you were asked: "What did you and Carlos talk about
24 last night?"
25 Do you remember being asked that question on

1 December the 2nd, 2002?

2 A. Well, sir, I don't remember cause too many things
3 happened to me after that.

4 Q. I understand, ma'am. So if you would be kind
5 enough, would you please read your statement?

6 A. You want me to read it?

7 Q. See if it helps refresh your recollection as
8 to what you told the prosecutor on December the 2nd,
9 2002.

10 A. You want me to read it out loud?

11 Q. No, ma'am, just read it to yourself, please,
12 first.

13 Ma'am, does that help you refresh your memory
14 as to what you told the prosecutor on that day?

15 A. Yes.

16 Q. So when you spoke to Carlos on December the
17 2nd, 2002, is it fair to say that he told you if anyone
18 talks to you --

19 MR. McTIGUE: Objection, Judge. Mr. Sampson,
20 I believe, is mixing dates.

21 MR. SAMPSON: All right, I'm sorry.

22 Q. On December the 1st, 2002, when Carlos spoke
23 to you, correct, did you tell the Prosecutor's Office
24 that he told you: If anyone asks you question if he
25 was there two or three Sundays ago, to tell them that

1 he was with you all night?

2 A. Yes.

3 Q. So on December the 1st, Carlos called you and
4 asked you to lie about the events of that night.
5 Correct?

6 A. Correct.

7 Q. On November the 4th, 2002, you were residing
8 at 148 Wilson Avenue in Kearny. Correct?

9 A. Yes.

10 Q. Who did you live with at that location?

11 A. My two sons and my nephew.

12 Q. You have one son that's three years old?

13 A. Yes, he was three at the time.

14 Q. That's Tito?

15 A. Yes.

16 Q. And have you another son Louis who is 21?

17 A. Yes.

18 Q. And your nephew Guillermo was living with you
19 as well?

20 A. Yes.

21 Q. That apartment, how many bedrooms is it?

22 A. Three.

23 Q. And at that point was Carlos Marquez living
24 with you as well?

25 A. No, sir.

- 1 Q. Did he have a key to the apartment?
2 A. No.
3 Q. How often did he stay with you during that
4 period of November, 2002?
5 A. On and off.
6 Q. On and off.
7 So he was free to come and go as he chose,
8 sometimes he stayed with you?
9 A. Not when he chose, when I wanted him to come.
10 Q. Whenever you wanted him to come over, he
11 would come over?
12 A. Yes.
13 Q. How much was he staying with you during that
14 period of time?
15 A. Like once a month.
16 Q. Now, you said this was a relationship, a
17 romantic relationship with him?
18 A. Was just a fling thing.
19 Q. Well, you had feelings for him, he had
20 feelings for you, as far as you knew?
21 A. You could put it that way.
22 Q. Now, on the day we are talking about, you
23 were in bed asleep. Correct?
24 A. Yes.
25 Q. Do you know what time he went to sleep that

- 1 evening?
2 A. No.
3 Q. Would it have been your normal -- this was a
4 Sunday night. Correct?
5 A. Yes.
6 Q. Would it be -- do you know what time you
7 would normally go to bed?
8 A. Around 10. I work nights.
9 Q. So you had gone to bed around 10 o'clock that
10 evening; correct?
11 A. Yes.
12 Q. And you were awakened by a sound at the door.
13 Correct?
14 A. Yes.
15 Q. Now, did you say Carlos has a key or he
16 didn't have a key?
17 A. He doesn't have a key, sir.
18 Q. So someone was knocking at your door?
19 A. Yes.
20 Q. Do you know who was knocking at your door?
21 A. Alex.
22 Q. Now, if you were asleep and the door was
23 closed, how do you know Alex was knocking at the door?
24 A. Because the knock woke me up.
25 Q. And when you went -- you went to the door to

- 1 answer it yourself?
2 A. Yes.
3 Q. And when you went to the door, Alex was at
4 the door?
5 A. Yes.
6 Q. Correct?
7 A. Yes.
8 Q. So even though it was Carlos that you had the
9 relationship with, it was Alex who was knocking at the
10 door. Yes?
11 A. Yes.
12 Q. And it was Alex who was the first one through
13 the door --
14 A. Yes.
15 Q. -- to enter the apartment. And after him
16 came Carlos and Fernando DaSilva. Correct?
17 A. Correct.
18 Q. How long after Alex entered the apartment did
19 Carlos and Mr. DaSilva enter the apartment?
20 A. Right after.
21 Q. Right after.
22 So are you a heavy sleeper? Were you sound
23 asleep when you heard the knock?
24 A. Yes.
25 Q. And you are asleep and the lights are off in

- 1 the apartment. Correct?
2 A. Yes.
3 Q. Because everyone in the apartment is asleep?
4 A. Yes.
5 Q. Right.
6 And you did testify earlier that when you
7 came in, you never turned the lights on?
8 A. I didn't.
9 Q. Right?
10 A. Right.
11 Q. So the lights in the apartment stayed off.
12 Right?
13 A. Yes.
14 Q. And this is 3 or 4 o'clock in the morning, so
15 it's dark outside?
16 A. Yes.
17 Q. So the only light in the apartment would have
18 been coming from --
19 A. The street.
20 Q. Outside street lights.
21 Did you have blinds or curtains on the
22 windows?
23 A. Mini blinds.
24 Q. Mini blinds. And they were closed?
25 A. Yes.

- 1 Q. So it would have been relatively dark within
2 the apartment. Correct?
3 A. Correct.
4 Q. Now, when you -- when they entered the
5 apartment, what was Alex carrying, if anything? What
6 was he carrying?
7 A. I don't remember seeing him carrying anything.
8 Q. Okay.
9 How about Carlos, was he carrying anything?
10 A. No, not that I recall.
11 Q. Okay.
12 You said you saw Mr. DaSilva carrying
13 something?
14 A. Yes.
15 Q. Now, within that dark room with the lights
16 turned off, you saw something in his hand?
17 A. Yes.
18 Q. Okay.
19 And how big an object was it?
20 A. Like that computer --
21 MR. McTIGUE: Excuse me. Can we get an
22 indication which object she was pointing to?
23 MR. SAMPSON: Well, there are two in front
24 of -- are you talking about this one?
25 A. Yes.

- 1 Q. All right. I don't know.
2 I don't know, your Honor, maybe 12 by 10.
3 MR. McTIGUE: May I hold the object up for
4 the jury? Ms. reporter, for the record, I'm holding up
5 a lap top computer that's being utilized by the court
6 reporter.
7 MR. SAMPSON: Twelve by 10, your Honor.
8 MR. McTIGUE: Judge, I think the jury has
9 seen it, we can measure later and come to an agreement.
10 Q. In any event, ma'am, you saw him carrying a
11 rectangular-shaped object. Correct?
12 A. Yes, correct.
13 Q. And it was black, according to your
14 statement. Correct?
15 A. Correct.
16 Q. And you are telling me that in the dark,
17 lights off, shades on the window, a black lap top, you
18 were able to see dark stains on this object?
19 A. I didn't say I saw dark stains on the object, sir.
20 Q. Oh, so you didn't see dark stains on the
21 object?
22 A. Excuse me?
23 Q. So you did not see dark stains on the object?
24 A. No, I didn't.
25 Q. When you came to the door, you let them in.

- 1 Correct?
2 A. Yes.
3 Q. Did any of the other occupants of the
4 apartment get out of bed when they heard all this?
5 A. No.
6 Q. So your three-year-old son didn't come out of
7 his bedroom?
8 A. No.
9 Q. And not your other son, or your other nephew,
10 no one came out of the room?
11 A. No, sir.
12 Q. After you let them in -- well, when they
13 entered the apartment, this was into the living room
14 area?
15 A. Yes.
16 Q. And did you stay in the living room area for
17 a while?
18 A. No.
19 Q. Everyone immediately went back to your
20 bedroom?
21 A. I went to my room and then Carlos followed me to
22 the room, and then Alex and Fernando came right behind
23 him.
24 Q. Did you go back to your room because you were
25 tired and you had been awakened in the middle of night?

- 1 A. Correct.
2 Q. Is it fair to say that you were still half
3 asleep when this was going on?
4 A. Yes.
5 Q. And you went back to your room and got back
6 in bed?
7 A. Yes.
8 Q. And you also said that Carlos laid down on
9 the bed with you?
10 A. Yes.
11 Q. Did he take his clothes off? Did he take his
12 boots off?
13 A. No, he didn't took nothing off.
14 Q. He just laid down?
15 A. Yes.
16 Q. And while he was doing that, Alex Tixi also
17 came into the room?
18 A. Yes.
19 Q. And where did you say Alex was?
20 A. He was to the right of the bed, sitting on ~~some~~
21 bag.
22 Q. He was sitting on some bags?
23 A. Bag of clothes.
24 Q. They were your clothes?
25 A. Yeah, laundry clothes that I had did two days

- 1 before.
2 Q. So these weren't things that they brought
3 into the apartment, these were things already in the
4 apartment, the laundry?
5 A. Yes.
6 Q. And at that point Alex headed forward -- I'm
7 sorry, Mr. DaSilva headed towards the bathroom?
8 A. Yes.
9 Q. Did he make any stops on the way to the
10 bathroom?
11 A. No.
12 Q. No stops, okay.
13 And when he went into the bathroom, did you
14 hear water running, toilets flushing, anything?
15 A. He used -- he went to use the bathroom.
16 Q. Well, I assume the door was closed. How do
17 you know that?
18 A. Because that's where he was saying he was going.
19 Q. My question was, did you hear any water
20 running, like the sink being turned on, or the toilet
21 flushing, or anything?
22 A. No, sir.
23 Q. Now, do you recall how Mr. -- well, do you
24 recall what Alex was wearing at that particular night?
25 A. What he was wearing?

- 1 Q. Yes. Do you recall what Alex was wearing?
2 A. Well, he always would wear a cap.
3 Q. A baseball cap?
4 A. A baseball cap.
5 Q. He had on sneakers, boots, do you recall?
6 A. Yes, he had, I guess he had sneakers, and he was
7 wearing a jacket.
8 Q. Uh huh.
9 Did you see, was Alex covered in blood?
10 A. No, sir.
11 Q. Did you see any blood on his pants?
12 A. No.
13 Q. Did you see any blood on his shirt?
14 A. No.
15 Q. How about Carlos, what was he wearing?
16 A. He was wearing jeans.
17 Q. Yes.
18 A. And a jacket.
19 Q. What did he have on his feet?
20 A. Boots.
21 Q. Boots.
22 Do you know what kind of boots?
23 A. Tims.
24 Q. What color boots?
25 A. Tan.

- 1 Q. Tan, light color.
2 When you saw Carlos that evening, did he have
3 any blood on his shirt?
4 A. No, sir.
5 Q. Did Carlos have any blood on his pants?
6 A. No, sir.
7 Q. Did you notice any blood on Carlos's boots?
8 A. No.
9 Q. In the morning when you woke up, you say
10 Carlos was still there?
11 A. Yes.
12 Q. His clothes were still there?
13 A. Yes.
14 Q. And in the light of day, were you able to see
15 any blood on any of Carlos's clothes?
16 A. No.
17 Q. When Mr. DaSilva entered your home that
18 evening, how was he dressed?
19 A. With a bone-white sweater.
20 Q. I'm sorry?
21 A. He had a bone-white whether.
22 Q. Bone white, white almost the color, like this
23 pad?
24 A. Bone, like beige.
25 Q. What kind of pants?

- 1 A. Khaki pants.
2 Q. What kind of footwear did he have on?
3 A. I didn't look at his foot.
4 Q. You didn't look at it. In your statement to
5 the police, you said this bone-white shirt, this
6 sweater he had on, had some kind of symbol on the
7 chest. Correct?
8 A. Yes.
9 Q. Do you recall what kind of symbol it was?
10 A. No, sir.
11 Q. Was it like a sports logo, or do you recall?
12 A. Maybe like a flag?
13 Q. Are you guessing, or you don't -- are you
14 sure?
15 A. I don't recall it.
16 Q. You don't recall.
17 In your statement, there's nothing in there
18 about Mr. DaSilva wearing a jacket --
19 A. No.
20 Q. -- is there?
21 A. No, sir.
22 Q. No mention whatsoever of a jacket anywhere in
23 your statement. Correct?
24 A. Correct.
25 Q. And when you gave the statement to the

- 1 Prosecutor's Office back on December the 2nd, 2002, you
2 mentioned there were spots on Mr. DaSilva's --
3 A. Yes.
4 Q. -- shirt and pants.
5 A. I didn't say on his pants.
6 Q. Where did you see the spots?
7 A. In his shirt.
8 Q. Was he like completely covered.
9 A. No, only spots like sparkles.
10 Q. Sparkles. Well, sparkles are -- well.
11 A. The size of a dime.
12 Q. The size of a dime. He wasn't like coated?
13 A. No.
14 Q. And you didn't see smears on his pants?
15 A. No, sir.
16 Q. I asked you before if Mr. -- you said Mr.
17 DaSilva came in and went to the bathroom. Correct?
18 A. Correct.
19 Q. And I asked you a few minutes ago if when he
20 came in, he was on his way to the bathroom, he made any
21 stops along the way. Do you remember me asking that?
22 A. Yes.
23 Q. And you said no, he didn't. Right?
24 A. Right.
25 Q. Do you remember talking to the prosecutor on

- 1 December the 2nd, Miss Berrian?
2 A. Yes.
3 Q. Do you remember telling her that when he came
4 in, he put the lap top under your bed. Well,
5 without -- do you remember saying that?
6 A. Yes.
7 Q. Now you remember saying that?
8 A. Yes.
9 Q. But when I asked you a moment ago, you said
10 he didn't make any stops. True?
11 A. Yes.
12 Q. But now you say that he stopped to put the
13 lap top under your bed. Right?
14 A. Right.
15 Q. Did you say: Gee, Fernando, why are you
16 putting that under my bed?
17 A. No.
18 Q. Didn't ask any questions about that?
19 A. No, sir.
20 MR. SAMPSON: Excuse me just one minute,
21 please, your Honor.
22 During the course of the questioning by the
23 Essex County Prosecutor's Office, you were asked a
24 question whether -- well, do you know if Alex, Carlos
25 or Fernando had anything to do with the taxi cab

- 1 driver's death? Do you remember being asked that
2 question. Do you remember ma'am, being asked that
3 question?
4 A. Yes.
5 Q. And you told them: "I don't know, they never
6 told me anything about it"?
7 A. That is correct.
8 Q. That was correct, and that's the truth, even
9 here today. Correct?
10 A. That's the truth.
11 Q. You were also asked whether or not you ever
12 saw Mr. DaSilva with a gun on that night. Correct?
13 A. Correct.
14 Q. And you told them no, you didn't see him, you
15 didn't see Mr. DaSilva with a gun?
16 A. No.
17 Q. That night, correct?
18 A. Correct.
19 Q. In fact, you never have seen Mr. DaSilva
20 with --
21 A. No.
22 Q. -- with a gun?
23 A. No, I never did, correct.
24 Q. Correct?
25 A. Correct.

- 1 Q. You were asked some questions about vehicles.
2 You identified a vehicle?
3 A. Yes.
4 Q. Correct?
5 A. Yes.
6 Q. Which you said belonged to Mr. DaSilva?
7 A. Yes.
8 Q. Do you know what make of car that was, what
9 kind of car it was?
10 A. No, sir.
11 Q. Do you know what model car it was?
12 A. No.
13 Q. Do you know what year car it is?
14 A. No, sir, I'm not good with car models or what year
15 they made them.
16 Q. So when you picked out that photo of a
17 vehicle -- well, let me ask you this. How many
18 vehicles -- how many photos of cars were you shown that
19 day?
20 A. One.
21 Q. Just one.
22 They didn't give you a choice of cars to
23 choose from?
24 A. No.
25 Q. Just the one?

- 1 A. Just one.
2 Q. And you are not good with cars.
3 Now, ma'am, if you didn't know the make,
4 model, or -- did you know the license plate of the car?
5 A. No.
6 Q. So if you didn't know the make, the model, or
7 the year of the car, how did you select it?
8 A. Excuse me?
9 Q. If you did not know the make, the model, or
10 the year of the car, how were you able to select that
11 photo? Was it because it was the only photo shown to
12 you?
13 A. Cause I had seen the jeep before.
14 Q. And how many times had you seen the jeep
15 before?
16 A. Like twice.
17 Q. Twice.
18 And you were asked by the Assistant
19 Prosecutor whether Mr. Marquinez owns a vehicle.
20 Right?
21 A. Right.
22 Q. He didn't own a car in November?
23 A. No.
24 Q. Did he own a car before that?
25 A. Yes.

- 1 Q. What kind of car?
2 A. An Eclipse.
3 Q. A Mitsubishi Ellipse?
4 A. I guess.
5 Q. What color was it?
6 A. White.
7 Q. You have known Mr. Marquinez for, according
8 to your statement, what, two or three years?
9 A. Yes.
10 Q. Have you ever met his family?
11 A. His mother.
12 Q. What's her name?
13 A. Betty.
14 Q. Excuse me?
15 A. Betty.
16 Q. And do you know where she lives?
17 A. On Tappan Street in Kearny.
18 Q. Tappan Street in Kearny.
19 And she owns a car, doesn't she?
20 A. His mother?
21 Q. Yes.
22 A. I never saw her driving one.
23 Q. Did you ever see Carlos driving his mother's
24 car?
25 A. If she owns one, sir, they never let me know.

1 Q. Ma'am, would you know the difference between
2 a lap top computer and a DVD player?
3 A. If I know the difference?
4 Q. Yes.
5 A. One is a lap top, and the other one plays movies.
6 Q. So on the night in question, on November the
7 4th, 2002, you didn't get a chance to inspect --
8 A. No.
9 Q. -- what you say Mr. DaSilva was carrying, did
10 you?
11 A. No, sir.
12 Q. And when you were there, it wasn't turned on?
13 A. No.
14 Q. Right.
15 And you therefore don't know if it was a lap
16 top computer or a DVD player. Right?
17 MR. McTIGUE: Judge, I'll object.
18 May I be heard at sidebar? The two are not
19 mutually exclusive terms.
20 MR. SAMPSON: Thanks for the testimony.
21 (The following takes place at sidebar)
22 MR. McTIGUE: Unless Mr. Sampson is prepared
23 to bring in an expert to say that a lap top computer
24 can't play DVDs, you can't have a DVD drive in a lap
25 top computer, they are unfair.

1 MR. SAMPSON: Judge, cars have DVD players.
2 THE COURT: No, I understand that there are
3 things called DVD players that only play DVDs, and
4 there are computers that have DVD playing capability.
5 To the extent that that creates confusion here, and I
6 understand, there's nothing wrong with your question,
7 except for that possible confusion that's engendered,
8 for example, if you used -- and I can't think of what
9 other similar things.
10 MR. SAMPSON: I will move on, Judge. I will
11 withdraw the question.
12 THE COURT: All right.
13 MR. SAMPSON: Your Honor, I will withdraw the
14 question.
15 (The following takes place in open court)
16 Q. Ma'am, you said that you have known Mr.
17 Marquinez for a number of years?
18 A. Yes.
19 Q. You had a relationship with him?
20 A. Uh huh.
21 Q. Yes?
22 A. Yes.
23 MR. McTIGUE: Judge, I will object at this
24 point, it has been asked and answered several times.
25 THE COURT: Continue.

1 Q. And was he living with you, or were you
2 having a relationship with him between November 4th,
3 2002, and the night you got the phone call from him on
4 December the 1st?

5 A. No.

6 Q. Why weren't you having a relationship with
7 him between November the 4th and December the 1st?

8 MR. MCTIGUE: Judge, I'll object just to the
9 form.

10 THE COURT: I'll allow the question.

11 MR. MCTIGUE: Judge --

12 THE COURT: You want to go to sidebar?

13 MR. MCTIGUE: Yes.

14 (The following takes place at sidebar)

15 MR. MCTIGUE: Just to the form of question,
16 Judge. She has testified that it was an on and off
17 fling thing, just to use her testimony.

18 THE COURT: She just testified she wasn't
19 having a relationship with him between those two dates.

20 MR. MCTIGUE: Okay. I don't see any form
21 problem.

22 (The following takes place in open court)

23 Q. Ma'am, can you tell the Court why you were
24 not having a relationship with Mr. Marquez between
25 November the 4th, and December the 2nd --

1 A. Because he went back with his wife.

2 THE COURT: You can't speak while he's still
3 talking.

4 THE WITNESS: I'm sorry. He went back with
5 his wife.

6 Q. And, ma'am, you testified to the assistant
7 prosecutor that when you wrote out the statement by
8 hand, you did so cause really you wanted to get out of
9 there. Correct?

10 A. Yes.

11 Q. And you also said that at the time when you
12 made the observations you said you made of Mr. DaSilva,
13 that you didn't place much importance on his appearance
14 at that time. Correct?

15 A. Excuse me, can you repeat the question?

16 Q. Ma'am, in your handwritten statement, ma'am,
17 S-11, you were asked about this. In your own words,
18 you said you didn't place much importance on it at the
19 time. Is that fair to say?

20 A. If I what?

21 Q. When you talked to him about the fight, you
22 did not pay much -- you didn't pay more importance, you
23 didn't give it any significance. Right?

24 A. Right.

25 MR. SAMPSON: Thank you, ma'am.

1 I have no questions, your Honor.
2 THE COURT: Mr. McTigue.
3 MR. MCTIGUE: Very briefly, Judge.
4 REDIRECT EXAMINATION BY MR. MCTIGUE:
5 Q. Ms. Garcia, had you told the investigator,
6 Investigator Berrian, the day you met with her, that
7 Carlos had called you?
8 A. Yes.
9 Q. Were you -- did you try to conceal that from
10 her in any way?
11 A. Can you --
12 Q. You told her; right?
13 A. Yes.
14 Q. Were you trying to hide that from her?
15 A. No.
16 Q. And Carlos had asked you to do something. Is
17 that correct?
18 A. Yes.
19 Q. You didn't do it, though, did you?
20 A. No, I didn't.
21 Q. Okay, ma'am. Not saying what he had asked
22 you to do, you told what you knew; is that correct?
23 A. Yes, that is correct.
24 Q. Now, in that conversation with Carlos, did he
25 disclose to you whether or not he had said he had given

1 a statement to the Prosecutor's Office?
2 A. No.
3 Q. Did he discuss any of the other details of
4 what happened that night with you?
5 A. No.
6 Q. Prior to giving your statement to the
7 Prosecutor's Office on December 2, did you speak to
8 Alex Tixi?
9 A. No, sir.
10 Q. Did you discuss any of the details with Alex
11 Tixi about what occurred that night?
12 A. No, sir.
13 Q. Did Alex Tixi try to get you to say anything?
14 A. No, sir.
15 Q. What about Fernando, Mr. DaSilva, did you
16 speak with him?
17 A. No, sir.
18 Q. Were you aware of whether or not he asked you
19 to say anything?
20 A. No, sir.
21 MR. MCTIGUE: I have further questions.
22 THE COURT: Anything else?
23 RECROSS EXAMINATION BY MR. SAMPSON:
24 Q. So is it fair to say on December the 1st,
25 2002, Carlos called you and said: If they contact you,

1 tell them I was with you all night. Correct?

2 A. Yes, that is correct.

3 Q. Do you know if he was ever charged with that,
4 for trying to get you to testify falsely?

5 A. Excuse me?

6 Q. Do you know if he was ever charged for trying
7 to get you to testify falsely?

8 A. No, sir.

9 MR. SAMPSON: Thank you, ma'am.

10 THE COURT: Anything else?

11 MR. McTIGUE: No, sir.

12 THE COURT: You may step down. Thank you.

13 (Witness excused)

14 THE COURT: All right, ladies and gentlemen,
15 we're adjourning for lunch at this time. We'll see you
16 back here in an hour, it's approximately a quarter
17 after twelve, we'll see you back here approximately a
18 quarter after one. Will everyone remain in the
19 courtroom until the jurors are off the floor.

20 MR. McTIGUE: Judge, may I be heard at
21 sidebar with Mr. Sampson? We need not be on the
22 record, sir, unless you deem it appropriate after I
23 start.

24 (Jury excused for lunch)

25 (The following takes place at sidebar)

Tixi-direct

1 THE COURT: Go ahead, Mr. Sampson.

2 MR. SAMPSON: Your Honor, just so I'm clear
3 on it and I don't create any problems, I know the Court
4 has ruled that the matter in Somerset County is not a
5 conviction. I understand that. In terms of my cross
6 examination of the witness, am I allowed to ask him if
7 he has already entered a plea to the charge?

8 THE COURT: No, your are not.

9 MR. SAMPSON: Very well, your Honor.

10 MR. McTIGUE: Thank you, sir.

11 (Lunch recess)

12 (Jury brought into courtroom)

13 THE COURT: Mr. McTigue.

14 MR. McTIGUE: Thank you, your Honor.

15 Judge, the State calls as its next witness,

16 Mr. Alexis Tixi.

17 A L E X I S T I X I, Sworn.

18 THE COURT: All right Mr. McTigue.

19 MR. McTIGUE: Thank you, your Honor.

20 DIRECT EXAMINATION BY MR. McTIGUE:

21 Q. Mr. Tixi, I'm going to ask you some questions
22 about an incident which occurred on November 4th, 2002.
23 Do you recall that day?

24 A. Yes.

25 Q. All right.

- 1 I'm going to ask you to keep your voice up so
2 that all the jurors can hear your testimony and to
3 answer me with a verbal answer, in words, rather than
4 shake your head or nod your head. Do you understand
5 those instructions?
6 A. Yes.
7 Q. Mr. Tixi, back in November of the year 2002,
8 where were you living?
9 A. 313 Central Avenue, East Newark.
10 Q. East Newark, New Jersey?
11 A. Yes.
12 Q. And at that time did you know a person by the
13 name of Carlos Marquinez?
14 A. Yes.
15 Q. How was it that you knew Carlos Marquinez?
16 A. He used to live around where I used to live at.
17 Q. For how long had you known Mr. Marquinez up
18 to November of 2002?
19 A. Maybe like a year.
20 Q. Before proceeding further, Mr. Tixi, I'm
21 going to show you an exhibit which has been marked S-6
22 for identification. Mr. Tixi, I'm going to show you
23 what appears to be a Judgment of Conviction from the
24 Superior Court in Hudson County. This document
25 reflects that on February 13th of this year, 2004, you

- 1 pled guilty to count 7 of an indictment. They are
2 charging you with conspiracy to dispense or distribute
3 CDS. Is that correct?
4 A. Yes.
5 Q. And that was pursuant to a plea arraignment
6 with the Hudson County Prosecutor's Office?
7 A. Yes.
8 Q. And as part of that plea arraignment, was
9 another count, count 6 of that indictment, dismissed?
10 A. Yes.
11 Q. And that charged you with a similar charge?
12 A. Yes.
13 Q. And is it correct that on February 13th,
14 2004, Judge DePascale in Hudson County sentenced to you
15 a term of two years probation?
16 A. Yes.
17 Q. And that was a plea bargain negotiated with
18 the Hudson County Prosecutor's Office?
19 A. Yes.
20 Q. Does the Essex County Prosecutor's Office
21 have anything to do with this?
22 A. No.
23 Q. Now, going back to November of 2002, at that
24 time did you know a person by the name of Fernando?
25 A. Yes.

- 1 Q. Do you see Fernando in court today?
2 A. Yes.
3 Q. Could you point him out and tell the jurors
4 what type of clothes he's wearing?
5 A. A suit. A suit with a tie.
6 MR. McTIGUE: Indicating the defendant, your
7 Honor.
8 THE COURT: Indicating the defendant.
9 Q. As of November of 2002, how long had you
10 known Fernando?
11 A. A couple of months, like four, five months.
12 Q. And how is it that you came to know Fernando?
13 A. Through Carlos.
14 Q. And with what frequency would you see him?
15 How much would you see him during that four- or
16 five-month period before November of 2002?
17 A. Like every week; twice, three times a week.
18 Q. Would you characterize him as a friend of
19 yours?
20 A. No -- yeah, I knew him.
21 Q. Now, going to November, particularly November
22 4th, 2002, did you see Carlos that night in the early
23 morning hours?
24 A. The morning, yeah.
25 Q. Around what time?

- 1 A. Like in the morning, like I don't know what time
2 really, it was in the morning.
3 Q. All right.
4 Were you and Carlos together?
5 A. Yes.
6 Q. Where were you?
7 A. In his house.
8 Q. Is that the house where his mother lives?
9 A. Yeah.
10 Q. Where is that located?
11 A. In Kearny.
12 Q. And what were the two of you doing at that
13 time?
14 A. We were just in his house drinking and playing
15 Play Station.
16 Q. Just for the benefit of the jury, what's Play
17 Station? What's Play Station? I think we all know
18 what it is, but what's your understanding of it?
19 A. Video game.
20 Q. And what were you drinking?
21 A. Beer.
22 Q. And at some point did Carlos hear from
23 somebody else?
24 A. No.
25 Q. Did he get paged?

- 1 A. Yeah, but that was at night, yeah.
2 Q. About what time was that?
3 A. Three, four.
4 Q. Would that be in the afternoon or the
5 morning?
6 A. No, that was in the afternoon, like at night.
7 Q. Well, in the night?
8 A. Yeah, when I was in his house.
9 Q. All right.
10 Would that be three in the morning?
11 A. Yeah, three in the morning.
12 MR. SAMPSON: Your Honor, he's leading the
13 witness.
14 THE COURT: I'll allow it.
15 Q. Do you understand what I'm saying, sir?
16 A. Yes.
17 Q. All right.
18 You know the difference between day and
19 night?
20 A. I didn't remember.
21 Q. Was this like in the afternoon when the sun
22 was out, or was this early in the morning?
23 A. Early in the morning.
24 Q. Okay.
25 Now, did you own a car at that time?

- 1 A. If I own a car?
2 Q. Did you own a car.
3 A. No.
4 Q. Do you know if Carlos owned a car?
5 A. No.
6 Q. Do you know if Carlos had access to a car
7 that day?
8 A. Yeah.
9 Q. What car did he have access to?
10 A. A black car, three-door car.
11 MR. SAMPSON: I'm sorry, your Honor, I can't
12 hear him.
13 THE COURT: You have to keep your voice up.
14 THE WITNESS: A black car.
15 Q. I see you leaning forward. That microphone
16 doesn't amplify your voice. That's when taking it on
17 tape, when the court uses it for specific occasions.
18 So you are going to have to depend on your own vocal
19 chords. Please try to keep your voice up so everyone
20 can understand you.
21 A. Okay.
22 Q. You indicated that you did not own a car. Is
23 that correct?
24 A. No.
25 Q. Did Carlos own a car at that time?

- 1 A. No.
2 Q. Did Fernando own a car, to your knowledge?
3 A. Yes.
4 Q. What type of car was that?
5 A. A black four by four.
6 Q. All right.
7 You indicated how many doors did it have?
8 A. Three.
9 Q. And how is it that Carlos, if you know, had
10 Fernando's car that night?
11 A. He let him borrow it, I guess.
12 Q. And was that car at or near Carlos's house in
13 that early morning, around three or four?
14 A. Yes.
15 Q. That was in what town, sir?
16 A. Kearny.
17 Q. Do you recall the street in Kearny?
18 A. Tappan. Tappan.
19 Q. All right.
20 Now, he got a page. Is that correct?
21 A. Yes.
22 Q. Did Carlos have a cell phone with him at that
23 time?
24 A. No.
25 Q. Did you have a cell phone with you?

- 1 A. No.
2 Q. Do you own a cell phone at all?
3 A. No.
4 Q. After -- how do you know Carlos got the page?
5 A. His beeper rang.
6 Q. It went off?
7 A. Yes.
8 Q. Was it a buzzing sound or a beeping sound?
9 A. A beeping sound.
10 Q. Like that?
11 A. Yeah.
12 Q. For the record, I have just activated my
13 beeper and made a beeping sound.
14 Does it sound like that?
15 A. Yes.
16 Q. Were you in a position to see what Carlos did
17 after getting that page?
18 A. Not really.
19 Q. Well, did he leave you?
20 A. Yeah, he left the room.
21 Q. Did you determine where he went?
22 A. Make a phone call.
23 Q. Did you actually see him make the phone call
24 or are you assuming he made a phone call?
25 A. I'm assuming he made a phone call.

- 1 Q. When Carlos came back, what did he say to
2 you?
3 A. Let's go pick up Fernando.
4 Q. And did you in fact go to pick up Fernando?
5 A. Yes.
6 Q. Did Carlos say why Fernando had called or
7 give any reason?
8 A. No.
9 Q. Did you think it unusual that you had to pick
10 up Fernando at that hour of the morning?
11 A. No.
12 Q. Right now?
13 A. I'm used to hanging around with him at night.
14 Q. So did you go to a vehicle, or did you use
15 public transportation? How did you go to pick up
16 Fernando?
17 A. In the car, in the black car.
18 Q. The car that you described as being owned by
19 Fernando?
20 A. Yes.
21 Q. Who was driving?
22 A. Carlo.
23 Q. And where did you go, by the way? Where were
24 you seated in the car when you first got in?
25 A. In the front seat.

- 1 Q. Is that a -- you say that's a three-door.
2 How many doors are on each side of the car?
3 A. Two on the side and one in the back.
4 Q. Is that two on each side?
5 A. No. One on each side and one in the back.
6 Q. Had you ridden in that car before?
7 A. Yes.
8 Q. Do you recall on how many occasions
9 approximately you may have been in that car before the
10 night of November 4th, 2002?
11 A. More than five times.
12 Q. More than five times?
13 A. Yeah.
14 Q. Do you know where you were going? Did you
15 know what your destination was when you first got in
16 the car?
17 A. Not at the moment, no.
18 Q. At some point while you were in the car, did
19 you determine where you were going?
20 A. Yeah.
21 Q. Did Carlos tell you where you were headed
22 for?
23 A. No.
24 Q. All right.
25 How is it you were able to see? Were you

- 1 just looking where you were?
2 A. Yeah.
3 Q. Describe to the jury where you went and the
4 route you took, as best you can.
5 A. Route 21 headed like going to the airport and just
6 took an exit there.
7 Q. All right.
8 What exit off Route 21 did you take?
9 A. I really don't know.
10 Q. Was it in the city of Newark or another city?
11 A. I think it was in the city of Elizabeth.
12 Q. All right.
13 Was it many exits into Elizabeth, the first
14 or second?
15 A. Like the first one.
16 Q. When you get off the exit in the city of
17 Elizabeth, what road was that, if you know?
18 A. No, I don't know. 1 & 9.
19 Q. All right.
20 When you get off that road and you went into
21 the local streets, do you know the street names down
22 there?
23 A. No.
24 Q. How far into the streets did you travel, if
25 you recall?

- 1 A. Not that far, like about three minutes, three to
2 five minutes.
3 Q. Do you recall how many blocks you may have
4 traveled in off the highway?
5 A. No.
6 Q. At some point did you come upon Fernando?
7 A. Yes.
8 Q. All right.
9 When you first saw Fernando, where was he?
10 A. Sitting down.
11 Q. What was the area like in which he was
12 sitting down?
13 A. Houses, like townhouses.
14 Q. And was he seated on a step, on a stoop, a
15 curb?
16 A. Stairs like on a porch.
17 Q. Did your vehicle pull up there?
18 A. The one I was in?
19 Q. Yeah.
20 A. Yes.
21 Q. And did you notice if Fernando had anything
22 with him at that time?
23 A. Yeah.
24 Q. Excuse me?
25 A. Yes, like a bundle, like a lap top.

- 1 Q. Could you describe the bundle containing what
2 looked to be a bundle to us?
3 A. Black, not that big, wrapped around in a shirt.
4 MR. SAMPSON: I'm sorry, your Honor.
5 THE COURT: Would you repeat that again.
6 THE WITNESS: Black, not that big, like the
7 size of a computer, like a lap top computer. Looked to
8 be a lap top to us.
9 Q. There are lap tops in front of you. Could
10 you give us an approximation, was it that size or
11 approximately that size?
12 A. Approximately.
13 Q. Was it the same size as this one?
14 A. Yes.
15 Q. Did you notice anything about the computer --
16 A. No, not really.
17 Q. -- at that point?
18 A. Not at that point.
19 Q. All right.
20 Did Fernando get in the car?
21 A. Yes.
22 Q. In which seat did he get into?
23 A. In the front.
24 Q. All right.
25 Well, you were sitting in the front, were you

- 1 not?
2 A. Yes, I moved to the back.
3 Q. All right.
4 So you get out of the car?
5 A. No, I just moved to the back, moved the seat and
6 moved to the back.
7 Q. Hopped over the back?
8 A. Yeah.
9 Q. When Fernando got into the car, did you have
10 any discussions with him about why you were picking him
11 up or any other thing?
12 A. No.
13 Q. While you were in the car, did you get a
14 look, a further look at the computer?
15 A. No, not the computer.
16 Q. All right.
17 Did you notice anything about it while you
18 were in the car?
19 A. No.
20 Q. At some point, where did you -- well, at that
21 point where did you go?
22 A. We drove around and then we headed back to Kearny.
23 Q. All right.
24 Whose house did you go to?
25 A. Fina's house.

- 1 Q. Could you describe the bundle containing what
2 looked to be a bundle to us?
3 A. Black, not that big, wrapped around in a shirt.
4 MR. SAMPSON: I'm sorry, your Honor.
5 THE COURT: Would you repeat that again.
6 THE WITNESS: Black, not that big, like the
7 size of a computer, like a lap top computer. Looked to
8 be a lap top to us.
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10 you give us an approximation, was it that size or
11 approximately that size?
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14 A. Yes.
15 Q. Did you notice anything about the computer --
16 A. No, not really.
17 Q. -- at that point?
18 A. Not at that point.
19 Q. All right.
20 Did Fernando get in the car?
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23 A. In the front.
24 Q. All right.
25 Well, you were sitting in the front, were you

- 1 not?
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3 Q. All right.
4 So you get out of the car?
5 A. No, I just moved to the back, moved the seat and
6 moved to the back.
7 Q. Hopped over the back?
8 A. Yeah.
9 Q. When Fernando got into the car, did you have
10 any discussions with him about why you were picking him
11 up or any other thing?
12 A. No.
13 Q. While you were in the car, did you get a
14 look, a further look at the computer?
15 A. No, not the computer.
16 Q. All right.
17 Did you notice anything about it while you
18 were in the car?
19 A. No.
20 Q. At some point, where did you -- well, at that
21 point where did you go?
22 A. We drove around and then we headed back to Kearny.
23 Q. All right.
24 Whose house did you go to?
25 A. Fina's house.

- 1 Q. Do you know Fina's full name?
2 A. I know her by Fina.
3 Q. Is her name Josephina Garcia?
4 A. Josephina, yeah.
5 Q. Where is Josephina's house?
6 A. In Kearny. I don't know the exact street, but it
7 was not that far from Carlos's house.
8 Q. Now, was Mr. Marquinez driving this whole
9 time?
10 A. No.
11 Q. All right.
12 At some point did you switch off drivers?
13 A. Yeah, they switched off drivers.
14 Q. When did the occur?
15 A. When we pick him up.
16 Q. All right.
17 Now, you had a chance to look at Mr.
18 Fernando, Mr. DaSilva, when he got into the car?
19 A. Yes.
20 Q. Did you notice anything about him?
21 A. Yes.
22 Q. What was it that you noticed?
23 A. Stains in his pants.
24 Q. Any other part of his clothing?
25 A. No, like his pants.

- 1 Q. And did you ask him what those stains were?
2 A. Yeah.
3 Q. Is that while you were driving in the car?
4 A. Excuse me?
5 Q. Is that while you were still in the car?
6 A. Yeah, it was in the car.
7 Q. And what did those stains appears to be to
8 you?
9 A. Blood.
10 Q. And did you ask him about that?
11 A. No, not in the moment.
12 Q. Well, at some point did you ask him about
13 that?
14 A. Well, when we got to the house.
15 Q. What did he look like, what was his demeanor?
16 A. Shook.
17 Q. Excuse me?
18 A. Like scared.
19 Q. Your first word?
20 A. Like shook.
21 Q. Was that, as you observed him, as he got into
22 the car?
23 A. Yeah.
24 Q. While you were in the car, did he tell you
25 anything about how he had gotten the computer, or what

- 1 had happened to put blood on his pants?
2 A. No, he just said: I met a man, and something went
3 wrong.
4 Q. He met a man and something went wrong?
5 A. Yes.
6 Q. Did you get into any further detail with him
7 while he was in the car?
8 A. No.
9 Q. In the time that you had known Fernando, up
10 to that time had you ever known him to possess a lap
11 top computer?
12 A. No.
13 Q. Had you been to his house at any time?
14 A. No.
15 Q. Did you know where he lived?
16 A. No.
17 Q. Had he ever brought a computer with him to
18 Carlos's house?
19 A. No.
20 Q. Or to your house?
21 A. No.
22 Q. Or to Josephina's house?
23 A. Not before that day.
24 Q. How long did it take you -- strike that.
25 Do you recall approximately what time it was

- 1 that you picked up Fernando in Elizabeth, New Jersey?
2 A. Five, 5:30.
3 Q. Are you sure of that time or are you
4 estimating?
5 A. Estimating.
6 Q. How long did it take you to get from
7 Elizabeth back to Fina's house?
8 A. Fifteen to 20 minutes.
9 Q. Now, whose idea was it to go to Fina's house?
10 You had come from Carlos's house; is that right?
11 A. Yes.
12 Q. How was it decided among you, if that's the
13 way it was, to go to Fina's house?
14 A. Because we just spoke about it and just went over
15 there.
16 Q. Excuse me?
17 A. They spoke about it and we just went over there.
18 Q. Who spoke about it?
19 A. Like Fernando and Carlo and me, we just decided to
20 go over there.
21 Q. And what were you going to do when you got
22 there?
23 A. Chill and drink.
24 Q. All right.
25 What were you going to drink?

- 1 A. Beer.
2 Q. Did you have any beer in the car?
3 A. Yes.
4 Q. What type?
5 A. Heineken, 22 ounces, Coronas.
6 Q. And Heineken?
7 A. Yes.
8 Q. Did you drink any of the beer while you were
9 in the car?
10 A. I don't remember.
11 Q. All right.
12 Now, you indicated that some time you
13 switched off drivers?
14 A. Yes.
15 Q. Why was that done?
16 A. Because that was his car and he decided to drive.
17 Q. Where was it along the trip between Elizabeth
18 and Newark that Fernando indicated he wanted to drive
19 his own car?
20 A. It was not that far after we picked him up, maybe
21 a couple of blocks.
22 Q. Was it before or after you got on any
23 highway?
24 A. Before we got on any highway.
25 Q. Were you on local streets?

- 1 A. Yes.
2 Q. Now, beyond the conversation that Carlos --
3 excuse me, Fernando had with you about something went
4 wrong with the guy.
5 A. Uh huh.
6 Q. Were there any other conversations during the
7 trip about how or about the details of what happened?
8 A. No.
9 Q. Did he indicate to you where he had gotten
10 the computer?
11 A. No.
12 Q. Not while you were in the car?
13 A. No.
14 Q. At some point, I take it, you go to Fina's
15 house?
16 A. Yes.
17 Q. And did all of you get out of the car, or did
18 somebody stay in the car?
19 A. No, all three of us got out of the car.
20 Q. And at that point did you get a look at the
21 computer or Fernando?
22 A. No.
23 Q. All right.
24 What did you do when you got out of the car?
25 A. Well, we went inside the house.

- 1 Q. What type of house did Fina have? Was it an
2 apartment, a private house?
3 A. Like an apartment.
4 Q. All right.
5 And is it on the first floor? What floor of
6 the building is it on?
7 A. The first floor.
8 Q. Did you walk right up to it from the street
9 or do you have to go up in stairways or hallways?
10 A. You got to go up the stairs, open the door, and
11 then go inside the building.
12 Q. Was there a hallway that you walked through?
13 A. Yes.
14 Q. Were the lights on in that hallway?
15 A. I don't remember.
16 Q. Well, was it light or dark as you walked into
17 the building?
18 A. It was kind of dark.
19 Q. All right.
20 Now, who knocked on the door?
21 A. I don't remember who knocked on the door.
22 Q. At some point did Fina answer the door?
23 A. No, her little son.
24 Q. Do you know his name?
25 A. All I know him as Tito.

- 1 Q. Eventually did someone else come to the door?
2 A. I think Fina was behind him.
3 Q. And did she permit you in?
4 A. Yes.
5 Q. Who went in first?
6 A. I don't remember if it was me or Carlos that went
7 in first.
8 Q. And Fernando would have come in behind you,
9 the two of you.
10 A. Yeah, he was behind us.
11 Q. All right.
12 Was he still holding the computer?
13 A. Yes.
14 Q. As you went into Fina's house, did you get a
15 further chance to look at the computer?
16 A. Yeah.
17 Q. Now, did you notice anything about it?
18 A. It had like spots on it.
19 Q. And did you ask him about that?
20 A. No.
21 Q. What did the spots look to be?
22 A. Blood.
23 Q. Describe how it looked, color?
24 A. Dark, dark red.
25 Q. And was that still wrapped in a shirt?

- 1 A. Yeah.
2 Q. And once you're inside Fina's, did Fernando
3 show you the computer?
4 A. No. I don't remember if he placed it under the
5 bed or on top of the dresser. He put it down.
6 Q. All right.
7 And did you have a discussion with Fernando
8 or did he tell you what had happened when you were in
9 the apartment?
10 A. He told us what happened.
11 Q. What did he tell you happened?
12 A. That he met with a man and he shot him.
13 Q. Had you ever seen him with a gun before?
14 A. Yes.
15 Q. On how many occasions?
16 A. Like once.
17 Q. And when was that?
18 A. Before that, before that happened.
19 Q. About how long before, if you recall?
20 A. A couple of weeks.
21 Q. And can you describe the type of gun you saw
22 Fernando with?
23 A. Like a .9 millimeter, chrome, not that big.
24 MR. McTIGUE: Judge, S-64 for identification.
25 I'm going to show you an exhibit which has

- 1 been marked S-64 for identification. It appears to be
2 a handgun and what appears to be an ammunition clip.
3 Is there any resemblance to the gun that you had seen
4 Fernando with?
5 A. Yes.
6 Q. Do you know if it's the gun for certain?
7 A. No.
8 Q. Or does it just look like the gun?
9 A. No, it looks like the gun.
10 Q. Now, did Fernando tell you what type of
11 person he had robbed?
12 A. No.
13 Q. Did he indicate what the person was doing at
14 the time he robbed him?
15 A. No.
16 Q. Did he indicate whether he had been in a cab
17 prior to the shooting?
18 A. No.
19 Q. Okay.
20 Did Fernando indicate why he had robbed the
21 person?
22 A. Because he needed money and he didn't, you know,
23 he had a family and he needed money.
24 Q. All right.
25 Did he mention being in a cab at all that

1 night?
 2 MR. SAMPSON: Objection, asked and answered.
 3 THE COURT: Different question, I'll allow.
 4 It?
 5 A. Can I answer it?
 6 Q. Yes.
 7 A. No, I don't remember.
 8 Q. I'm going to show you an exhibit which has
 9 been marked S-6 for identification, which appears to be
 10 a statement you gave to the Essex County Prosecutor's
 11 Office on 12-19-02. Do you recall being asked the
 12 question: What exactly did Fernando say about the
 13 shooting? Can you read -- read it to yourself, sir.
 14 Okay. Does that refresh your recollection?
 15 A. Yes.
 16 Q. All right.
 17 Did Fernando say anything to you about a cab
 18 that night?
 19 A. Yes.
 20 Q. What was it that he said to you?
 21 A. That he robbed a cab driver.
 22 Q. All right.
 23 Was the cab present or a limousine present in
 24 the area where you picked him up?
 25 A. No.

1 Q. Do you know the name of the street where you
 2 picked him up?
 3 A. No.
 4 Q. Other than -- did he indicate whether or not
 5 he took anything other than the computer?
 6 A. No.
 7 Q. Sir, I show you the statement again, and I
 8 ask you if you would read that.
 9 MR. SAMPSON: I'm sorry, which statement are
 10 you referring to?
 11 THE COURT: S-6.
 12 Q. Are you able to read that?
 13 A. Yes.
 14 Q. Does that refresh your recollection?
 15 A. Yes.
 16 Q. Are you having trouble remembering, sir?
 17 A. A little bit.
 18 Q. All right.
 19 Why is that?
 20 A. I'm kind of nervous.
 21 Q. Tell the jury what Fernando said to you that
 22 night?
 23 A. That he needed money, and that he robbed a cab
 24 driver, and that he thinks that he killed him.
 25 Q. All right.

- 1 Did he show you any money that night?
2 A. No.
3 Q. Did he say this to you or to anyone else?
4 A. He told the three of us when we was in the room.
5 Q. All right.
6 And what was your reaction when he told you
7 that?
8 A. We just stood quiet.
9 Q. Excuse me?
10 A. I stood quiet and said: Lay back.
11 Q. Was this a long discussion or a short
12 discussion?
13 A. Not that long.
14 Q. Excuse me, keep your voice up.
15 A. Not that long.
16 Q. All right.
17 After you had that discussion, what room of
18 the house did that discussion take place in?
19 A. In Fina's room.
20 Q. When you say Fina's room, is that a bedroom,
21 a living room, what is it?
22 A. A bedroom.
23 Q. Now, did you know if Carlos and Fina had a
24 relationship at that point?
25 A. Yes.

- 1 Q. What was the nature of that relationship, as
2 you understood it?
3 A. Girlfriend and boyfriend.
4 Q. And when you went into Fina's bedroom, did
5 people stand or what did they do?
6 A. We were sitting on the bed.
7 Q. All right.
8 At some point did anyone go to sleep?
9 A. Yes.
10 Q. Who was that?
11 A. Carlos and Fina went and got in the bed and I laid
12 down on the floor.
13 Q. Was there anything on the floor that you laid
14 down on?
15 A. Yeah. I laid down on top of like laundry bags, it
16 was like -- and used them like a pillow.
17 Q. And what was your intention when you laid
18 down?
19 A. Sleep for a little bit.
20 Q. All right.
21 You indicated you had been drinking beer at
22 that time. Is that right?
23 A. Yes.
24 Q. What was your condition?
25 A. I was not drunk.

- 1 Q. You were not drunk?
2 A. No.
3 Q. Well, did you have a buzz on? Why were you
4 high?
5 A. No.
6 Q. All right.
7 Now, other than alcohol, did you smoke
8 anything else, any other substance that night?
9 A. No.
10 Q. Was any other substance present?
11 A. No.
12 Q. Marijuana, anything?
13 A. No.
14 Q. What was Fernando doing as Carlos lay down on
15 the bed and you lay down on the bundles you have
16 described?
17 A. Standing up or sitting in the bed, I guess.
18 Q. All right.
19 And how did he look to you at this time?
20 A. Like confused, scared.
21 Q. Were there any further discussions about what
22 he had done that evening?
23 A. No.
24 Q. Did you stay the night at Josephina's?
25 A. Yeah.

- 1 Q. Did you leave at some point?
2 A. Yes.
3 Q. How long did you stay?
4 A. Maybe for a couple of hours until it was day time.
5 Q. All right.
6 And did you leave alone or did you leave with
7 somebody else?
8 A. I left with Fernando.
9 Q. Now, at the time you left, where was Carlos
10 and Josephina?
11 A. In the bed.
12 Q. Were they awake or asleep when you left?
13 A. They were sleeping.
14 Q. Did you see a gun that night?
15 A. No.
16 Q. At any time did Fernando and Carlos speak
17 separately that you were able to see?
18 A. No.
19 Q. Now, did you go to the police when you got
20 this information, volunteer it?
21 A. No.
22 Q. Why not?
23 A. Cause I was scared.
24 Q. Cared of what?
25 A. Fernando.

1 Q. You were also scared for yourself?
 2 A. Yes.
 3 Q. Why?
 4 A. Because I didn't want to get involved with it.
 5 Q. Why not?
 6 A. I was scared. Like I didn't want to have nothing
 7 to do with it.
 8 Q. Did you believe Fernando when he told you he
 9 had shot and killed somebody?
 10 MR. SAMPSON: Objection your Honor.
 11 MR. McTIGUE: His impression, Judge.
 12 THE COURT: I'll allow it.
 13 MR. SAMPSON: Sidebar, please
 14 (The following takes place at sidebar)
 15 MR. SAMPSON: This witness's belief is
 16 irrelevant, your Honor. It is for the jury to decide
 17 what is true and what is not true. Where does his
 18 belief come in?
 19 THE COURT: His impression, I will give the
 20 appropriate instruction to the jury. It has to do with
 21 his mental structure and whether he had fear, or a
 22 reason to be scared.
 23 MR. SAMPSON: He said he believed Fernando
 24 when he said he did this. That's not fear of Fernando,
 25 that something is going to happen to him, he's asking

1 about the incident, itself.
 2 THE COURT: I understand.
 3 MR. SAMPSON: He can't comment on whether or
 4 not the allegations are true.
 5 THE COURT: He's not commenting on whether or
 6 not the allegation is true, he is commenting on whether
 7 he believed it or not.
 8 MR. SAMPSON: What's the relevance of whether
 9 he believed it or not?
 10 THE COURT: I just said what the relevance
 11 is.
 12 MR. SAMPSON: Judge, there is no relevance
 13 and this can't come in.
 14 MR. McTIGUE: His impression, that's the
 15 jury's decision.
 16 THE COURT: I agree with you. It's
 17 appropriate as the jury's decision, but his mental
 18 impression of Fernando as to why he is afraid is
 19 relevant.
 20 MR. SAMPSON: Judge, he's not talking about
 21 being afraid, he's asking him if he believed him about
 22 doing the robbery.
 23 THE COURT: We are going in a circle, you are
 24 obviously not paying attention to what I'm saying.
 25 MR. SAMPSON: Oh, I'm paying attention.

1 (The following takes place in open court)
 2 THE COURT: Ladies and gentlemen, I'm going
 3 to allow the answer to the question, but understand
 4 that his belief as to what happened is not material to
 5 your decision on the issues before you. It is only
 6 allowed as to his mental state.

7 Go ahead, Mr. McTigue into.

8 Q. Mr. Tixi, did you believe what Fernando told
 9 you that night, that he had shot and killed a cab
 10 driver?

11 A. Yes.

12 Q. And he had the computer?

13 A. Yes.

14 Q. And what led you to believe that?

15 MR. SAMPSON: Objection, your Honor.

16 THE COURT: No, there's an objection.

17 MR. McTIGUE: Your Honor, depending on his
 18 belief, I think it's --

19 THE COURT: I think that's enough, Mr.

20 McTigue.

21 MR. McTIGUE: Very well, Judge.

22 (The following takes place in open court)

23 Q. You had seen a computer; is that correct?

24 A. Yes.

25 Q. You had seen what appeared to be blood on

1 Fernando?

2 A. Yes.

3 Q. Now, when you left with Fernando, did he take
 4 the computer with him?

5 A. I didn't see him. I guess, yeah.

6 Q. Yes or no, sir?

7 A. Yes.

8 Q. Did you both leave together or at separate
 9 times?

10 A. We left together.

11 Q. And how is it that you left the air?

12 A. I walked to my house and he got in his car and he
 13 left.

14 Q. Did why you did not ride with him?

15 A. Because I didn't want to be no more involved.

16 Q. How far away were you from your house when
 17 you walked home?

18 A. A couple of blocks, maybe like five, six blocks.

19 Q. Well, which is it, sir, a couple of blocks or
 20 five or six blocks?

21 A. Five or six blocks.

22 Q. Did you ask Fernando for a ride?

23 A. No.

24 Q. Why not?

25 A. Because I didn't want to ride with him.

- 1 Q. Now, you had indicated you didn't call the
2 police. Is that correct?
3 A. No.
4 Q. Other than Alex, do you have any other name
5 that people call you?
6 A. Chato.
7 Q. Excuse me?
8 A. Chato.
9 Q. Does that have a meaning in Spanish?
10 A. Not really.
11 Q. Just Chato?
12 A. Yes.
13 Q. And who called you Chato?
14 A. Friends.
15 Q. Your family and friends call you Chato?
16 A. No.
17 Q. Your mother, or any close relatives call you
18 Chato?
19 A. No.
20 Q. Only friends?
21 A. Yeah.
22 Q. How many friends would call you Chato?
23 A. People that I know in Harrison.
24 Q. All right.
25 Is that generally the name you are known as

- 1 in the neighborhood, other than among members of your
2 family?
3 A. Yeah.
4 Q. And how long have people been calling you
5 Chato?
6 A. Since I moved to Harrison, like three or four
7 years.
8 Q. Prior to November of 2002?
9 A. Yes.
10 Q. Now, at some point, though you did not go to
11 the police, did the police come to you?
12 A. Yes.
13 Q. When did you first come into contact with the
14 police?
15 A. Maybe like a month after that, what happened.
16 Q. All right.
17 And was it the police, or people from the
18 Prosecutor's Office, or both?
19 A. I think both. It was both.
20 Q. And did they come to your house?
21 A. Yes, they came to my house.
22 Q. And did they ask you to come with them?
23 A. Yes.
24 Q. And did you go with them?
25 A. Yes.

- 1 Q. And did you know that you were going to be
2 questioned about the incident involving the cab
3 driver's death?
4 A. No, not at the moment.
5 Q. All right.
6 What were you told?
7 A. That they just needed to speak to me.
8 Q. Did they tell you what they wanted to speak
9 to you about?
10 A. No.
11 Q. At some point did you come to the
12 Prosecutor's Office?
13 A. Yes.
14 Q. In this building?
15 A. Yes.
16 Q. And at that point did you learn why they
17 wanted to speak to you?
18 A. Yes.
19 Q. And did they do an initial interview with
20 you?
21 A. Yes.
22 Q. They spoke to you?
23 A. Yes, they spoke to me.
24 Q. And then after speaking to you, were you
25 asked to give a written statement?

- 1 A. Yes.
2 Q. And I'm going to show you an exhibit which
3 has been marked S-3 for identification. Judge, for the
4 record, all the exhibits being shown as well as the
5 present exhibit S-3, have been provided in discovery
6 pursuant to the court rules.
7 Showing you S-3, that appears to be a
8 type-written document, and it appears to be a statement
9 given by you on November 25, 2002, that appears to be a
10 nine-page statement. Is that correct?
11 A. Yes.
12 Q. And the first page is what is commonly known
13 as a Miranda warning. Is that correct?
14 A. Yes.
15 Q. Was that read to you prior to you giving the
16 statement?
17 A. Yes.
18 Q. And were you advised of your right to remain
19 silent?
20 A. Yes.
21 Q. To have an attorney?
22 A. Yes.
23 Q. Did you understand those rights?
24 A. Yes.
25 Q. And did you agree to waive those rights?

- 1 A. Yes.
2 Q. And it appears on the document that that was
3 started at 2:20 p.m.?
4 A. Yes.
5 Q. And you signed this at 2 30 p.m.?
6 A. Yes.
7 Q. And is your signature on that first page?
8 A. Yes.
9 Q. And did you understand these rights?
10 A. Yes.
11 Q. And did you agree to waive those rights, give
12 them up and give the statement?
13 A. Yes.
14 Q. And after that, were you questioned by
15 Detective Vitiello?
16 A. Yes.
17 Q. Of the Newark Police Department?
18 A. Yes.
19 Q. And was Investigator Nicole Berrian present
20 too?
21 A. Yes, she was.
22 Q. How did they take the statement from you?
23 What was the procedure?
24 A. On a typewriter.
25 Q. Would you be asked a question?

- 1 A. Yes.
2 Q. And would that be typed out?
3 A. Uh huh, yes.
4 Q. And then would you give an answer?
5 A. Yes.
6 Q. What would they do at the point?
7 A. They kept asking me questions about what happened.
8 Q. And did they type your answers down?
9 A. They would type my answers down.
10 Q. All right.
11 Do you have any trouble reading English?
12 A. No.
13 Q. How far did you go in school?
14 A. I graduated.
15 Q. What grade did you graduate?
16 A. High school.
17 Q. High school.
18 And they asked you what happened. Is that
19 correct?
20 A. Yes.
21 Q. Now, during the course of taking that
22 statement, were you asked if you knew Carlos Marquez?
23 A. Yes.
24 Q. Were you asked to sign a photograph of him?
25 A. Yes.

- 1 MR. McTIGUE: S-4, your Honor.
2 Q. I'm going to show you an exhibit which has
3 been marked S-4 for identification. It appears to be a
4 photo of a man, and there's some writing on the back
5 and a date. Who is that a photo of?
6 A. Carlos.
7 Q. Carlos.
8 And his last name?
9 A. Marquinez.
10 Q. Is that the person you have been discussing
11 and testifying about today? Is that the person who was
12 with you on the night of November the 4th?
13 A. Yes.
14 Q. And on the back there's a date, and there
15 appears to be a name. What's the date?
16 A. 11-25-02.
17 Q. Who put that day?
18 A. I did.
19 Q. And there's a signature.
20 A. That's my signature.
21 Q. All right.
22 And I take it by doing that, you identified
23 Carlos Marquinez?
24 A. Yes.
25 Q. Now, sometime after that, did the police ask

- 1 you to come back in and did they question you?
2 A. Yes.
3 Q. And did you give a second statement to the
4 police?
5 A. Yes, I did.
6 MR. McTIGUE: S-6, your Honor.
7 I'm going to show you an exhibit which has
8 been marked S-6. It appears to be, again, a
9 type-written statement of four pages. And attached to
10 it is, again, what appears to be Miranda warning.
11 A. Yes.
12 Q. And it's dated 12-19, and it has a start time
13 for the Miranda at 9:45 in the morning. Do you
14 recognize this document?
15 A. Yes.
16 Q. What do you recognize that to be?
17 A. My statement.
18 Q. All right.
19 Were you again advised of your right to
20 counsel, the right to remain silent, the right to have
21 an attorney appointed for you, and your right to
22 silence?
23 A. Yes.
24 Q. Did you agree to waive those rights?
25 A. Yes.

- 1 Q. As with the other document, did you place
2 your initials there indicating that you understood?
3 A. Yes.
4 Q. And did you sign that?
5 A. Yes.
6 Q. And is that your signature?
7 A. Yes.
8 Q. And is there a time there?
9 A. Yes.
10 Q. What's the time?
11 A. 9:50 a.m.
12 Q. Whose hand writing is that?
13 A. Mine.
14 Q. And after again being advised of your rights,
15 were you again questioned this time by Investigator
16 Nicole Berrian?
17 A. Yes.
18 Q. Now, did Investigator Berrian indicate to you
19 why she wanted to question you?
20 A. Yes.
21 Q. What did she say to you, and what was your
22 understanding of why you were being reinterviewed?
23 A. The statement that I gave before was not true.
24 Q. Well, was it true or not?
25 A. Some of it was not true.

- 1 Q. What wasn't true in your first statement?
2 A. About me picking -- me and Carlos picking Fernando
3 up in Penn Station.
4 Q. Well, what is the truth? Where did you pick
5 up Fernando?
6 A. In Elizabeth.
7 Q. Why was it that you told the Prosecutor's
8 Office back in November that you had picked up Fernando
9 at Penn Station?
10 A. Because I was scared, and I didn't want to get
11 more involved with it.
12 Q. What were you scared of, sir?
13 A. Fernando, and what he could have done to me and my
14 family.
15 Q. Were you also scared of involving yourself in
16 this?
17 A. Yes.
18 Q. Did you wish to conceal from the police that
19 you had gone down to Elizabeth?
20 A. Yes.
21 Q. Why did you want to conceal from the police
22 that you went to Elizabeth on the night of November
23 4th, 2002?
24 A. Because I don't want to put myself in it.
25 Q. In what?

- 1 A. In what happened that night.
 2 Q. What happened that night?
 3 A. When --
 4 MR. SAMPSON: Objection, your Honor.
 5 Q. What did you understand happened that night?
 6 MR. SAMPSON: Objection, your Honor.
 7 THE COURT: As to what he understood
 8 happened?
 9 MR. SAMPSON: Judge, it's a long night.
 10 THE COURT: All right, try to be more
 11 specific.
 12 Q. What about that night didn't you want to be
 13 part of?
 14 A. I didn't want to be part of it.
 15 Q. What didn't you want to be part of?
 16 A. About the shooting, and me being there when we
 17 went to pick him up.
 18 Q. Sir, in your first statement which you gave
 19 on 11-25, did you indicate what Fernando had told you?
 20 MR. SAMPSON: Sir, what page, please?
 21 MR. McTIGUE: Page 2, large paragraph.
 22 A. Yes.
 23 Q. What did you tell the police on November 25
 24 that Fernando had done?
 25 A. That he shot a cab driver.

- 1 Q. And what else? Did you say anything about
 2 seeing blood?
 3 A. Yes, that he had stains on his pants.
 4 Q. Looking at your second statement, S-6,
 5 December 19th --
 6 THE COURT: I'm sorry, Mr. McTigue, the first
 7 statement you just showed him was November 25th?
 8 MR. McTIGUE: Yes.
 9 THE COURT: That was S-3, right?
 10 MR. McTIGUE: It is S-3, Judge.
 11 THE COURT: Now you're using --
 12 MR. McTIGUE: I will state it for the record,
 13 Judge, S-6.
 14 Were you asked a question: What did Fernando
 15 say about the shooting?
 16 A. Yes.
 17 Q. What was your answer?
 18 A. That he thinks that he killed -- that he shot --
 19 that he thinks that he killed a cab driver.
 20 Q. Sir, were you trying to conceal your role in
 21 this?
 22 A. Excuse me?
 23 Q. Were you trying to conceal from the police
 24 what your role was, what you did that night?
 25 A. Yes.

- 1 Q. Now, during the course of the taking of your
2 statement on December 19th, 2002, as part of the
3 statement, you asked to identify a Fernando?
4 A. Yes.
5 Q. Were you shown a photo?
6 A. Yes.
7 MR. McTIGUE: S-7, your Honor.
8 Q. I put before you an exhibit which has been
9 marked S-7 for identification. Do you recognize what
10 that is?
11 A. Yes.
12 Q. What is that?
13 A. It's a picture of Fernando.
14 Q. All right.
15 And is that the picture that is shown to you
16 at the Prosecutor's Office?
17 A. Yes.
18 Q. Did you sign and date that?
19 A. Yes, I did.
20 Q. And there is writing below the photo?
21 A. Yes.
22 Q. What's that writing?
23 A. My name and the date.
24 Q. All right.
25 And is that Fernando the person who was with

- 1 you in the car in Elizabeth?
2 A. Yes.
3 Q. On the night of November 4, 2002?
4 A. Yes.
5 Q. Is that the same person that you have
6 identified in court here today?
7 A. Yes.
8 Q. During that statement of December 19th, were
9 you shown additional photographs?
10 A. Yes.
11 Q. And was that of a car?
12 A. Yes.
13 MR. McTIGUE: S-8A and B, your Honor.
14 I'm going to show you two photographs. They
15 appear to be Polaroid photographs, S-8S and S-8B. On
16 the back of each photo there appears to be some
17 writing, a signature and a date. Is that correct?
18 A. Yes.
19 Q. Showing you first S-8A. Looking at the
20 backs, whose name is there?
21 A. My name.
22 Q. Who put it there?
23 A. I did.
24 Q. And did you date it?
25 A. Yes.

- 1 Q. What's the date that appears there?
2 A. 12-19-02.
3 Q. And what is S-8A a photograph of? Do you
4 recognize what's in it?
5 A. Yes. It's a picture of his car.
6 Q. Whose car?
7 A. Fernando's car.
8 Q. Is that the car you were in on the night that
9 the cabby was shot?
10 A. Yes.
11 Q. Showing you S-8B, looking on the back of
12 that, is there a name and a date on that?
13 A. Yes.
14 Q. Whose name is that?
15 A. My name.
16 Q. Who put it there?
17 A. I did.
18 Q. Is there a date?
19 A. Yes. 12-19-02.
20 Q. And is that another view of an automobile?
21 A. Yes, that's another view.
22 Q. And what does that show?
23 A. The back of the car.
24 Q. What car?
25 A. Fernando's car.

- 1 Q. Is that the car you were in on November 4,
2 2002?
3 A. Yes.
4 Q. Mr. Tixi, after giving your statements, did
5 there come a time when you appeared before the grand
6 jury?
7 A. Yes.
8 Q. Would that have been on June 6th, 2003?
9 A. Yes.
10 Q. And did you appear before the grand jury and
11 tell those grand jurors what you recall happened?
12 A. Yes.
13 MR. McTIGUE: I have no further questions of
14 this witness, Judge.
15 THE COURT: Cross examine.
16 We'll take a 10-minute break at this time.
17 Ladies and gentlemen, why don't we stay in the juryroom
18 rather than leave the courtroom.
19 (Recess)
20 (Jury brought into courtroom)
21 THE COURT: Mr. McTigue.
22 MR. McTIGUE: Judge, with your permission I
23 do have one or two more questions. I move to reopen.
24 CONTINUED DIRECT EXAMINATION BY MR. McTIGUE:
25 Q. Mr. Tixi, at some point did you find out who

- 1 the cab driver was who had been killed?
2 A. Yes.
3 Q. How did you find out?
4 A. By my mother.
5 Q. And did you determine if other people in your
6 building were related to the cab driver?
7 A. Yes, I did. The people from upstairs.
8 Q. And you learned what their relationship, the
9 people upstairs in your building, were to the dead man?
10 A. My mother just told me they was family members.
11 Q. Mr. Tixi, after the night of the shooting,
12 November 4, 2002, did you see Fernando again?
13 A. No.
14 Q. At any time did he call you?
15 A. Yeah, he called the house.
16 Q. Was that about a week after?
17 A. About.
18 Q. Did you tell the police that in your
19 statement of the 19th?
20 A. Yes, I did.
21 Q. Did you indicate that on the Saturday before
22 your statement, December 14th, he had called you?
23 A. Yes.
24 Q. And what was the nature of that call?
25 A. That that was messed up, what me and Carlos did.

- 1 Q. What was messed up?
2 A. That we told the cops what happened.
3 Q. Do you know how Fernando knew you had spoken
4 to the police?
5 A. No.
6 Q. But did he make it clear to you that he knew
7 you had given statements implicating him in the
8 shooting death of Felix Chininin?
9 A. Yes.
10 Q. What else did you say in the conversation?
11 A. That before he goes away, that he was going to pay
12 me and Carlos a visit.
13 Q. What did you understand that to mean?
14 A. Threat.
15 Q. Excuse me?
16 A. A threat.
17 Q. What did you think in your mind was going to
18 happen?
19 A. That he was going to do something to me or Carlos.
20 MR. McTIGUE: No further questions, Judge.
21 THE COURT: Cross examine.
22 CROSS EXAMINATION BY MR. SAMPSON:
23 Q. On November the 4th, 2002, you and Carlos
24 Marquezinez robbed and killed Felix Chininin, didn't you?
25 A. No.

- 1 Q. You admit you were with Mr. Marquinez on that
2 day. Correct?
3 A. Yes.
4 Q. You admit you were in Newark on that morning.
5 Is that correct?
6 A. No.
7 Q. You don't say you were in Newark that
8 morning?
9 A. No.
10 Q. When you were driving the car, what road did
11 you drive down?
12 A. 1 & 9.
13 Q. Did you drive on Route 21?
14 A. Excuse me?
15 Q. Did you drive on Route 21?
16 A. Yeah.
17 Q. Is that the McCarter Highway that goes
18 through the city of Newark?
19 A. Yes.
20 Q. So you were in Newark; correct?
21 A. Yeah.
22 Q. You were on 1 & 9. Where does that start?
23 A. By Newark, I guess.
24 Q. It starts in Newark. It starts in Newark?
25 A. Yes.

- 1 Q. So were you in Newark?
2 A. Yes.
3 Q. With Carlos Marquinez. Is that correct?
4 A. Yes.
5 Q. Now, you and Mr. Marquinez have a history
6 together, don't you?
7 A. What do you mean?
8 Q. You have been arrested with him on at least
9 two prior occasions.
10 MR. McTIGUE: Objection.
11 THE COURT: Hold it, there's an objection.
12 Please come to sidebar.
13 (The following takes place at sidebar)
14 THE COURT: Arrest?
15 MR. SAMPSON: Judge, he said he has been
16 arrested with Mr. Marquinez on two prior occasions. I
17 can ask him about that. This isn't the defendant,
18 Judge, this is a witness. Why can't I ask him his past
19 history?
20 THE COURT: Well, arrests aren't criminal
21 history.
22 MR. SAMPSON: Only for the defendant, Judge.
23 For witnesses they are impeachable. You can use these
24 for purposes of impeachments.
25 THE COURT: Arrests?

1 MR. McTIGUE: I don't believe that you can
2 impeach any person, Judge.
3 THE COURT: Arrest is no evidence of
4 anything, other than the fact that he was arrested.
5 MR. SAMPSON: Why can't I ask him about his
6 history with Mr. Marquez?
7 THE COURT: You can, but not about arrests.
8 MR. SAMPSON: Fine, Judge.
9 (The following takes place in open court)
10 Q. You and Mr. Marquez are buddies; right?
11 A. Yes.
12 Q. You do things together; correct?
13 A. Yeah, we hang.
14 Q. Spend time together?
15 MR. McTIGUE: Judge, can we --
16 THE COURT: You know, Mr. Sampson, you do
17 have to give the witness an opportunity to answer your
18 first question before you ask the second question.
19 MR. SAMPSON: I'm sorry, your Honor.
20 Q. Now, you indicated to the assistant
21 prosecutor that you have given a series of statements
22 in this particular case. Is that correct?
23 A. Yes.
24 Q. Now, we have the two statements that you
25 signed and you also appeared before the grand jury.

1 Correct?
2 A. Yes.
3 Q. And you testified here today?
4 A. Yes.
5 Q. Is that correct?
6 A. Yes.
7 Q. Is it fair to say that during the course of
8 the various statements that you have given, that your
9 story has changed?
10 A. Yes.
11 Q. Now, you didn't tell us that when the police
12 first came to see you they had information about an
13 individual named El Chato. That's you; right?
14 A. Yes.
15 Q. Are you El Chato?
16 A. Yes.
17 Q. When the police came to you and the assistant
18 prosecutor to speak to you, didn't you deny any
19 knowledge whatsoever of any of these events?
20 A. Yes.
21 Q. That's true, right?
22 A. Yes.
23 Q. Now, when you gave that statement, when you
24 told the police that, they didn't reduce that to
25 writing, right? You didn't sign anything saying: I

- 1 don't know anything?
2 A. No.
3 Q. Right?
4 A. No.
5 Q. And it was only when one of the detectives
6 from Newark came to you and confronted you with that,
7 that you began to tell them this story that you have
8 told us here today. Correct?
9 A. Yes.
10 Q. Now, let's start with the basics. Your true
11 name is what?
12 A. Alexis Tixi.
13 Q. You are known by other names; correct?
14 A. No.
15 Q. No?
16 A. No, Alexis Tixi.
17 Q. You ever use the name Alex Munoz?
18 A. Well, that is my name.
19 Q. Excuse me?
20 A. That's my last name, my second last name.
21 Q. So, you know, you are known as Alex Munoz,
22 and you are also known as Alexis Tixi; correct?
23 A. Tixi, correct.
24 Q. How about Sebastian T. Alexis, another name
25 you used?

- 1 A. That's my whole name. Alexis Sebastian Tixi
2 Munoz.
3 Q. So you are known by all these different
4 names. Correct?
5 A. That's my name.
6 Q. And you said friends and people in Harrison
7 call you El Chato. Correct?
8 A. Yes.
9 Q. And the assistant prosecutor asked you a few
10 minutes ago about a conviction that you had.
11 A. Yes.
12 Q. Is that correct?
13 So that February 13th, 2004, you were
14 sentenced on a conspiracy to distribute CDS. Is that
15 correct?
16 A. Yes.
17 Q. And you are on probation right now?
18 A. Yes.
19 Q. Now, it's fair to say that you told different
20 versions of what happened on November the 4th, 2002.
21 Right?
22 A. Uh huh, yes.
23 Q. You say that you lived and reside at 313
24 Central Avenue in East Newark?
25 A. Yes.

- 1 Q. You ever use Millennium Taxi Company --
2 A. Yes.
3 Q. -- to get a cab?
4 A. Yes.
5 Q. So you are familiar with them. Correct?
6 A. Yes.
7 Q. You are familiar with their fare structure.
8 Right?
9 A. Yes.
10 Q. How much it costs to get from your place to
11 wherever you are going. Correct?
12 A. Yes.
13 Q. Felix L. Chininin, did you know him?
14 A. No.
15 Q. But just coincidentally his aunt and uncle
16 live upstairs from you. Right?
17 A. Yes.
18 Q. Did you ever meet Mr. Chininin that you know
19 of?
20 A. No.
21 Q. Did you ever know if he came to visit his
22 aunt and uncle at your house?
23 A. No.
24 Q. You don't know, or no, it never happened?
25 A. No, I never seen him there.

- 1 Q. Do you know what he looks like?
2 A. No.
3 Q. So you don't know if you have ever seen him?
4 A. No.
5 MR. McTIGUE: Judge, Mr. Sampson made a
6 comment about proving a negative in his opening.
7 THE COURT: Well, this is not time for
8 argument.
9 MR. McTIGUE: Yes.
10 THE COURT: Continue.
11 Q. Now, your first statement was November the
12 25th, 2002. Right?
13 A. Yes.
14 Q. And so after you told the police that you
15 didn't know anything at all about this, and they told
16 you you were lying, you then started to give this
17 statement. Right?
18 A. Yes.
19 Q. One of the things they wanted to know from
20 you is basic information, name and address, your date
21 of birth. Right?
22 A. Yes.
23 Q. You told them that you were born February
24 1st, 1983. Right?
25 A. Yes.

- 1 Q. Sir, where were you born?
2 A. Where I was born?
3 Q. Yes.
4 A. Ecuador.
5 Q. Ecuador?
6 A. Yes.
7 Q. So your people are from Ecuador. Right?
8 A. Yes.
9 Q. Your mom is from Ecuador?
10 A. Yes.
11 Q. Does she speak with an Ecuadorian accent?
12 A. My mom, yes. Yes.
13 Q. Now, when the police first came to you and
14 started to ask you about the murder of Felix Chinin, in
15 they asked you in your own words to tell them what
16 happened; right? Now, you told them that your friend
17 Carlos paged you 7:45 in the morning. Is that right,
18 that's what you told them?
19 A. Yes.
20 Q. Right?
21 A. Yes.
22 Q. And that was a lie?
23 A. Yes, it was a lie.
24 Q. Did you, do you even have a pager?
25 A. At the moment I did.

- 1 Q. Then you had one?
2 A. Yes.
3 Q. But Carlos didn't page you?
4 A. No.
5 Q. And when you told them that you called him
6 back, that was a lie. Right?
7 A. Yes.
8 Q. And when you told the police that he asked
9 you to go for a ride with them, that was a lie.
10 Correct.
11 A. Yes.
12 Q. When you told them that Fernando had called
13 and wanted you to pick him up in Penn Station in
14 Newark, that was a lie. Right?
15 A. Yes.
16 Q. You told the police, or you told the -- well,
17 the Newark Police and the Essex County Prosecutor's
18 Office that at 7:45 on a Monday morning you picked up
19 Mr. DaSilva in front of Penn Station. Right?
20 A. Yes.
21 Q. When you told them that, did anybody say to
22 you: This is ridiculous. How are you going to pick up
23 a man in blood-soaked clothing eight o'clock in front
24 of Penn Station on a Monday morning? Did anyone ask
25 you that?

- 1 A. I don't remember.
2 Q. But you just continued to lie. Right?
3 A. Yes. Yes.
4 Q. You told them that you saw blood on his pants
5 that morning. Right?
6 A. Yes.
7 Q. That was a lie. Right?
8 A. No, no.
9 Q. Well, you say that this was in front of Penn
10 Station. Right?
11 A. Yes.
12 Q. And that was a lie?
13 A. Yes.
14 Q. And it wasn't 7:45 in the morning. Right?
15 A. Yes.
16 Q. Because at 7:45 in the morning, it's light
17 out. Correct?
18 A. Yes.
19 Q. You testified that whatever you saw occurred
20 in the dark. Correct?
21 A. Yes.
22 Q. Now, this was November of 2002. Correct?
23 A. Yes.
24 Q. Is it fair to say, based on your experience,
25 that the days are a little bit shorter in November than

- 1 they are in June? The sun comes up later in the
2 morning; right?
3 A. Yeah.
4 Q. Five o'clock, six o'clock in the morning in
5 November it's still dark out. Right?
6 A. Yeah.
7 Q. So under any set of circumstances when you
8 say you saw Mr. DaSilva, it was still dark outside.
9 Right?
10 A. Yes.
11 Q. Okay.
12 Now, it was your testimony then, it was your
13 testimony then that Mr. DaSilva called you and at that
14 time you had only known him for a couple of months.
15 Correct?
16 A. Yes.
17 Q. And it's your testimony that in November of
18 2002, you didn't know anything at all about the
19 shooting or the death of Felix Chinin. Right?
20 A. Yes.
21 Q. Well, it's your testimony that Mr. DaSilva
22 just came up to you and out of the blue confessed
23 everything to you. Right?
24 A. Yes.
25 Q. Is Mr. DaSilva like one of your boys, real

1 close friend of yours?

2 A. Not really.

3 Q. Why in the world would he call you in the
4 middle of the morning to come and confess to you about
5 this? Do you have any idea?

6 A. No, because I --

7 MR. McTIGUE: What was that last answer,
8 Judge?

9 THE COURT: Could you repeat your last --

10 THE WITNESS: Oh, no, cause that ain't
11 happen.

12 Q. And if he had been planning this, he
13 certainly wouldn't have given you his car in advance
14 because he would need it to get away. Right?

15 MR. McTIGUE: Objection, Judge, calls for
16 speculation.

17 THE COURT: Objection sustained.

18 Q. According to your testimony now, you and
19 Carlos on November the 4th, 2002, had Mr. DaSilva's
20 car. Right?

21 A. Yes.

22 Q. The getaway vehicle, according to you, was in
23 your possession and that of Mr. Marquez. Right?

24 MR. McTIGUE: Objection Judge,
25 characterization of testimony.

1 THE COURT: Objection sustained.

2 Q. So you went through this entire statement on
3 November the 25th, 2002, and you continued to lie to
4 the police. Correct?

5 A. Yes.

6 MR. McTIGUE: Objection, Judge.

7 THE COURT: Hold it.

8 MR. McTIGUE: Sidebar, please.

9 (The following takes place at sidebar)

10 THE COURT: What's the objection?

11 MR. McTIGUE: The objection is it's an over
12 broad generalization of the entire contents of the
13 statement. The witness has clearly stated that there
14 are some portions true and some are untrue. And if Mr.
15 Sampson wants to go through and determine what they
16 are, certainly that's cross examination. But to go
17 broad stroke --

18 MR. SAMPSON: I will go point by point, but
19 he does admit that he lied. That was my question.

20 THE COURT: The objection is overruled.

21 MR. McTIGUE: Okay.

22 (The following takes place in open court)

23 Q. So then, sir, it's fair to say that when you
24 talked to the police that day, you continued to lie to
25 them. Right?

1 A. Yes, I did.

2 Q. Now, you said you didn't want to get anybody
3 else involved in this. Right?

4 A. Right.

5 Q. Do you remember telling the police on that
6 day they asked you whose car was it that you were
7 driving around in, do you remember being asked that
8 question?

9 A. No, I don't remember.

10 Q. Do you remember telling them that you and
11 Carlos were driving around in Carlos's mother's car?
12 Do you remember telling the police that?

13 A. I don't remember.

14 Q. Sir, let me show you the statement. Mr.
15 Tixi, let me show you your statement, page 3, the third
16 question, I believe.

17 THE COURT: Which statement?

18 MR. SAMPSON: Page 3, the statement, November
19 25th, 2002.

20 THE COURT: S-3.

21 Q. You were asked a question: Whose car was it?
22 What was your answer?

23 A. I said it was Carlos's mother's car.

24 Q. You told the police it was Carlos's mother's
25 car you were operating that day?

1 A. Yes.

2 Q. Now, earlier that day you said you didn't
3 want to get anyone else in trouble?

4 A. Right.

5 Q. But you didn't mind throwing Carlos's mother
6 into the mix by saying it was her car that was used in
7 this; right? Is that true?

8 A. Yes.

9 Q. And when you were asked on that day if you
10 were told where the incident occurred, you said you
11 didn't know. Right?

12 A. Yes.

13 Q. And when you were asked to tell them whether
14 it occurred in a house, or on the street, or in a car,
15 or anywhere else, your answer was you didn't know?

16 A. Yes.

17 Q. Was that true then, you didn't know where
18 this happened. Right?

19 A. No, I didn't know where it happened.

20 Q. And when you were asked if you knew who it
21 was that had been shot and killed, you said you didn't
22 know. Correct?

23 A. Yes.

24 Q. And you didn't know. Right?

25 A. Well, I did know, but I lied at that moment.

- 1 Q. You were asked a question November 25th,
2 2002: Did you see Fernando with a gun that morning?
3 What was your answer?
4 A. No.
5 Q. You were then asked: Had you ever seen
6 Fernando with a gun? And on November the 25th, 2002,
7 what was your answer?
8 A. It was on this statement, you are talking about
9 this statement?
10 Q. Yes.
11 A. No.
12 Q. So you told them that you didn't see a gun.
13 You have never seen him with a gun. Correct?
14 A. Yes.
15 Q. Now, on that date you told them, told the
16 investigator and the Newark Police that you saw Mr.
17 DaSilva holding something that looked like a white tee
18 shirt wrapped around something?
19 A. Yes.
20 Q. At the time you said you thought it could
21 have been a radio inside the tee shirt. Correct?
22 A. Yes.
23 Q. And at the time you said you didn't see any
24 blood on that white tee shirt. Correct?
25 A. I don't remember.

- 1 Q. You want to take a look at page 4 of the
2 document that's in front of you, and on the third
3 question you were asked whether you could describe the
4 object which looked like it was wrapped under the tee
5 shirt. And in your answer you don't say anything about
6 seeing blood on that white tee shirt, do you?
7 A. Yeah.
8 Q. All right.
9 So there's nothing there about you saying
10 seeing blood on that white tee shirt that morning.
11 Correct?
12 A. Yes.
13 Q. Now, earlier you said you didn't want to get
14 anybody else involved in this case. Correct?
15 A. Yes.
16 Q. And the next question was: How did you find
17 out that the cab driver had been killed? Now, did you
18 tell them that you found out this information from your
19 mother when you got home that night?
20 A. Yes, I did.
21 Q. You weren't lying on your mother, were you?
22 A. No, my mother did tell me.
23 Q. And you were asked: How did she find out
24 about it? Do you remember being asked that question?
25 A. Yes.

- 1 Q. And you said that the people that live
2 upstairs from us are cousins with the scab driver.
3 Right?
4 A. Yes, that was family with them.
5 Q. And not only that, but you said that that
6 whole week your mother had been telling you about
7 things she heard from the people upstairs about this
8 incident. Correct?
9 A. Yes.
10 Q. So over the course of the next week, your mom
11 is talking to you about the death of Felix Chininin.
12 Correct?
13 A. Yes, she mentioned it.
14 Q. And she had a source from the people upstairs
15 who were related to Mr. Chininin. Correct?
16 A. Yes, they spoke to her about it.
17 Q. You were also asked: Did your mother know
18 that you had picked up Fernando that morning, and that
19 he had been bloody and told you that he killed someone?
20 Did you confess this to your mother? Did you go to her
21 and say: Mom, I got a problem. I got all this
22 knowledge, I need to tell somebody?
23 A. No.
24 Q. Now, sir, after that occurred, that was
25 November the 25th, 2002; is that correct?

- 1 A. Yes.
2 Q. Nearly a month later the police came back to
3 you, right, December 19th, 2002?
4 A. Yes.
5 Q. Investigator Barrian of the Essex County
6 Prosecutor's Office came to you?
7 A. Yes.
8 Q. And just by way of information, the first
9 time that you were interviewed, November the 25th,
10 2002, one of the questions they asked you was about
11 your social security number?
12 MR. McTIGUE: Objection, Judge. Can I be
13 heard at sidebar?
14 (The following takes place at sidebar)
15 MR. McTIGUE: Judge, Mr. Sampson had asked --
16 MR. SAMPSON: I'm sorry, I don't want to
17 interrupt you. The first question was the social
18 security number. The second one -- the first one is
19 yes, I just want to ask him how he found out that
20 information.
21 MR. McTIGUE: You are not going to use any
22 more CCH materials they gave you?
23 MR. SAMPSON: No. This is both on these two
24 statements.
25 MR. McTIGUE: All right.

1 (The following takes place in open court)

2 Q. Just by way of information, sir, when you
3 were first asked questions back on November the 25th,
4 2002, they asked you if you knew your social security
5 number. Correct?

6 A. Right.

7 Q. And you didn't know it back then; right?

8 A. No.

9 Q. But when you were questioned again on
10 December the 19th, 2002, you were able to give them a
11 social security number?

12 A. No, I didn't give them no social security number.

13 Q. If I could just ask you, the second time you
14 were questioned, you were able to provide them with
15 your social security number? Did you give that
16 information to the Prosecutor's Office, or did they get
17 it from somewhere else?

18 A. They got it from somewhere else, I don't know.

19 Q. Okay.

20 In this second statement they came to you and
21 asked you to clarify the information you give them
22 before. Is that correct?

23 A. Yes.

24 Q. In this second statement, you indicated that
25 you and Carlos were at Carlos's mother's house playing

1 Play Station and drinking basically all day. Correct?

2 A. Yes.

3 Q. Now, you told them around 4 o'clock in the
4 morning Fernando, Mr. DaSilva, beeped Carlos?

5 A. Yes.

6 Q. Around 4 o'clock in the morning. Correct?

7 A. Yes.

8 Q. So you knew that Carlos had a beeper?

9 A. Yes.

10 Q. Did you ever call him on his beeper?

11 A. Yes.

12 Q. So you knew the beeper number. Correct?

13 A. Yeah, I did know the beeper number.

14 Q. Did you give it to the police that day so
15 they could verify the information on the phone calls?

16 A. No.

17 Q. But now you are saying that after you got
18 that call, that Mr. DaSilva beeped Carlos, that Carlos
19 made a phone call?

20 A. Yes, he did.

21 Q. And you heard the demonstration the
22 prosecutor did and his beeper went off, that's the kind
23 of noise you heard that morning?

24 A. Yes, something like that.

25 Q. And then you said that Carlos went and made a

- 1 phone call. Right?
2 A. Yep.
3 Q. Did Carlos leave the apartment that day? Did
4 he leave, after he got the beep, did he leave the
5 apartment?
6 A. To make the phone call?
7 Q. Yeah.
8 A. He left the room.
9 Q. All right.
10 And he went and used his mom's phone. Right?
11 A. Yeah.
12 Q. So did you know his mother's phone number?
13 A. No, I didn't know his mother's phone number.
14 Q. Did the police ever ask you for the number
15 where Carlos lived so they could verify the
16 information?
17 A. No.
18 Q. Then you say you drove, you and Carlos went
19 to the car and you drove somewhere in Elizabeth.
20 Correct?
21 A. Yes.
22 Q. I take it that you guys had been together all
23 day, pretty much all day?
24 MR. McFIGUE: Can we have a clarification,
25 "you guys"?

- 1 Q. There's only two of you, Carlos and you,
2 present in the house together, right, on that day?
3 A. Among others, yeah.
4 Q. And you two, besides playing Play Station,
5 you were drinking. Right?
6 A. Yes.
7 Q. And how much did you have to drink?
8 A. Like two beers. Like we had like two beers, two
9 to three beers.
10 Q. Two to three beers apiece?
11 A. Yes.
12 Q. And then you got in the car and drove
13 somewhere in Elizabeth. Right?
14 A. Yes.
15 Q. You don't know where in Elizabeth?
16 A. No.
17 Q. Had you ever been to that location before?
18 A. No.
19 Q. When you decided to go to that location, ~~and~~
20 did Carlos say: Hey, this is the address we're going
21 to?
22 A. Oh, no.
23 Q. Did you ever -- did you see Carlos like write
24 a number down so he would know where he was going?
25 A. No, I didn't see him write the number.

- 1 Q. Now, you are not from Elizabeth; right?
2 A. No.
3 Q. Carlos in from Elizabeth?
4 A. No.
5 Q. So you didn't know where you were going.
6 Right?
7 A. No.
8 Q. And you didn't know where you went?
9 A. No.
10 Q. This was the early morning hours of November
11 the 4th?
12 A. Yes.
13 Q. So I take it that at that hour of the
14 morning, it's pretty quiet outside, there aren't a lot
15 of people out. Right?
16 A. Yes.
17 Q. And you said that you drove up and you just
18 see Mr. DaSilva seated outside on somebody's front
19 stoop?
20 A. Yes.
21 Q. What did the house look like where he was
22 seated?
23 A. Family house.
24 Q. Family house.
25 Did you tell that to the police?

- 1 A. Yes, I did.
2 Q. Did you describe the building?
3 A. I told them it was a family house, and he was
4 sitting on the porch.
5 Q. Did anyone ever take you out to Elizabeth,
6 drive around to see if you could find the location and
7 say: Yeah, that's the stoop where he was sitting?
8 A. No.
9 Q. When you pulled up, did you guys blow the
10 horn or anything to let Mr. DaSilva know you were
11 there?
12 A. No.
13 Q. Did you see any people on the street?
14 A. No.
15 Q. When you pulled up in front of that unknown
16 location?
17 A. No, we didn't see nobody.
18 Q. And then it was decided that you are going
19 back to Fina's house, Josephina's Garcia's house?
20 A. Yes.
21 Q. Was there a question about that? Did Mr.
22 DaSilva say: Could you guys drive me back to
23 Josephina's house? Or anything?
24 A. I don't remember. We just decided to go over
25 there.

- 1 Q. So according to your statement, you guys were
2 going back to Fina's to keep drinking and smoking.
3 Right?
4 A. Yes.
5 Q. By weed you mean marijuana?
6 A. Yes.
7 Q. So you were going there to smoke marijuana?
8 A. We never did, though.
9 Q. When you got to Fina's house, you say that
10 one of you knocked at the door. Right?
11 A. Yes.
12 Q. Do you recall who knocked at the door?
13 A. No, I don't remember who.
14 Q. According to your sworn statement of December
15 19th, 2002, you got to that house about 5 o'clock in
16 the morning or so?
17 A. Like around that, 5:30.
18 Q. And Tito, Fina's three-year-old son, opened
19 the door for you. that's what you say in your
20 statement?
21 A. Yes.
22 Q. Just stand up for a minute, please. How big
23 would you say that Tito is? Can you illustrate for the
24 jury how tall this three-year-old is?
25 A. Like this size.

- 1 Q. So if you are standing up, that's about where
2 he would be on you?
3 A. Yeah.
4 Q. Thank you, sir.
5 And it's that three-year-old that you say
6 came to the door and opened the door for you at five
7 o'clock in the morning?
8 A. Well, I don't know if he was three years old, I
9 didn't know his age.
10 Q. But that's the person because the other one,
11 her sons or nephews are 21, 22. You are not confused
12 about the three-year old or the 21-year-old. Right?
13 A. No.
14 Q. It was definitely the three-year-old that
15 opened the door for you that morning?
16 A. Yes.
17 Q. And you are sure of that?
18 A. Yeah, I'm pretty sure.
19 Q. When you got in, did Fina come to the door?
20 A. I don't remember. She was probably -- she
21 probably woke up and she was probably behind Tito.
22 Q. Probably, does that mean you don't remember?
23 A. I don't remember.
24 Q. So if I could ask, at that hour in the
25 morning, in early November, it's still dark outside.

- 1 Right?
2 A. Yes.
3 Q. Nobody turned the lights on in the apartment,
4 did they?
5 A. No.
6 Q. So it must have still been dark inside the
7 apartment when you guys got in there?
8 A. Yes.
9 Q. Right.
10 And in that darkened apartment with you and
11 Carlos and Fina and Mr. DaSilva, you are saying that
12 Mr. DaSilva then began to tell you all the details.
13 Right?
14 A. No, when we got to the room.
15 Q. When you got to the room, what?
16 A. When we got to Fina's room, we all went into the
17 room.
18 Q. All right.
19 So it's your testimony that when Mr. DaSilva
20 was saying all of this, Josephina Garcia was also
21 present in the room?
22 A. Yes, she was in the room.
23 Q. Now, you said that during the course of --
24 MR. SAMPSON: Your Honor, can we go to
25 sidebar for a moment, please?

- 1 (The following takes place at sidebar)
2 MR. SAMPSON: Judge, I know we got started
3 late, I know we got started late, but I'm going to be a
4 while with the witness, and I know the jury -- have
5 they had a break? I don't know. You want me to just
6 keep going?
7 THE COURT: Yeah.
8 MR. SAMPSON: Okay.
9 (The following takes place in open court)
10 Q. So that on this early morning, you say Mr.
11 DaSilva told everyone in the room what had occurred.
12 Right?
13 A. He was speaking about.
14 Q. In front of Josephina?
15 A. Yeah, she was in the room.
16 Q. She was in the room. And was she awake?
17 A. Yeah, she was awake.
18 Q. And you are sure that none of you guys had
19 smoked marijuana while you were sitting there in the
20 apartment?
21 A. No.
22 Q. Can I ask, you say that you saw blood on Mr.
23 DaSilva?
24 A. Yes.
25 Q. And you said it was like dots or -- pinpoints

- 1 or dots on his clothing?
 2 MR. McTIGUE: Objection, Judge.
 3 MR. SAMPSON: I will rephrase the question.
 4 Did you see blood on Mr. DaSilva?
 5 A. Yes.
 6 Q. What does the blood look like?
 7 A. What did it look like?
 8 Q. Yes.
 9 A. Red, dark red.
 10 Q. All right.
 11 Put the pattern that you saw on his clothing?
 12 A. It was on his pants.
 13 Q. It was on his pants.
 14 Now, did you ever cut yourself, Mr. Tixi?
 15 MR. McTIGUE: Objection, Judge, relevance.
 16 THE COURT: I'll see where he's going with
 17 that.
 18 Q. Did you ever cut yourself?
 19 A. Yes.
 20 Q. Did you ever get blood on your clothes?
 21 A. Yes.
 22 Q. Did you ever see blood smeared, it drips and
 23 you try to wipe it off or anything?
 24 A. Yes.
 25 Q. You haven't said anything at all about blood

- 1 being smeared all over the clothing of Mr. DaSilva,
 2 have you?
 3 MR. McTIGUE: Objection, Judge.
 4 A. No.
 5 MR. McTIGUE: It's argumentative.
 6 THE COURT: Well, I think I heard the
 7 question, he answered it, I will allow it.
 8 Q. So you didn't see blood smeared on his boots
 9 or all over the soles of his shoes, did you?
 10 A. No.
 11 Q. And when you pulled up in front of that house
 12 in Elizabeth, I assume that the headlights were on;
 13 right?
 14 A. Yes.
 15 Q. You could see Mr. DaSilva; right?
 16 A. Yes.
 17 Q. There's nothing at all about blood being
 18 spattered all over his clothing, is there?
 19 A. No.
 20 MR. McTIGUE: Objection, Judge. There's been
 21 no testimony of that. It's a characterization of
 22 testimony, it's improper.
 23 THE COURT: I will sustain that objection.
 24 Q. Did you have an opportunity to look at Mr.
 25 DaSilva's clothing that morning?

- 1 A. When we got in the car.
 2 Q. Do you remember how he was dressed on that
 3 day?
 4 A. A jacket.
 5 Q. What kind of jacket?
 6 A. A black jacket.
 7 Q. A black jacket?
 8 A. Yeah, and some --
 9 Q. And you said --
 10 A. Some pants.
 11 MR. McTIGUE: Judge, the witness is still
 12 answering.
 13 THE COURT: Hold it.
 14 MR. SAMPSON: I'm sorry, Judge. He speaks
 15 softly, I didn't hear him.
 16 A. And his pants, like beige, I guess beige pants.
 17 Q. Like khaki color?
 18 A. Yeah.
 19 Q. Can I ask you, in Newark or Harrison, East
 20 Newark, Kearny, in the morning, when guys are going to
 21 work, construction, fair to say a lot of them got on
 22 khakis and work boots?
 23 MR. McTIGUE: Objection, Judge.
 24 THE COURT: Objection sustained.
 25 Q. In any event, you say Mr. DaSilva had on his

- 1 black jacket?
 2 A. Yes.
 3 Q. What kind of jacket was it?
 4 A. I don't remember. It was black.
 5 Q. Do you remember what kind of material it was
 6 made of?
 7 A. No.
 8 Q. Do you remember him wearing some kind of a
 9 bone-colored shirt with some kind of emblem or
 10 something on the front?
 11 A. No, I don't remember.
 12 Q. Blood would be hard to see on a black jacket
 13 as opposed to a white shirt. Correct?
 14 MR. McTIGUE: Judge, objection calls for a
 15 conclusion.
 16 THE COURT: Sustained.
 17 Q. Did you ever see Mr. DaSilva hide the lap top
 18 computer under Josephina's bed?
 19 A. No.
 20 Q. Sir, you have identified a handgun or at
 21 least you were shown a photo of a handgun. Correct?
 22 MR. McTIGUE: Objection, Judge.
 23 THE COURT: When, Mr. Sampson?
 24 MR. SAMPSON: I'm sorry.
 25 During the course of testimony today, did you

1 talk about seeing a handgun -- I may be mistaken,
2 Judge.

3 MR. McTIGUE: Judge, for the record, just to
4 clarify, an exhibit which has been marked S-64, which
5 is in fact a real handgun, was shown in the courtroom
6 today.

7 Q. Sir, do you have familiarity with handguns?

8 A. No.

9 Q. When were you questioned by the police, did
10 you identify any particular weapon as being seen that
11 evening, November the 4th?

12 A. No.

13 MR. SAMPSON: Sorry for the confusion, your
14 Honor.

15 Can I ask, sir, how much did you and Mr.
16 DaSilva speak on the phone in the months before?

17 MR. McTIGUE: Judge --

18 THE COURT: There's an objection.

19 MR. McTIGUE: Judge, I have got an objection
20 as to relevance. If we can narrow it down to some time
21 period that may be relevant here.

22 MR. SAMPSON: Judge, can I ask the question
23 first, and then the Court can rule?

24 THE COURT: Yes, I will hear the whole
25 question.

1 Q. In the months prior to November 4th, 2002,
2 how often did you and Mr. DaSilva speak on the phone?

3 THE COURT: Allowed.

4 A. Not much.

5 Q. Did you have a telephone number for him?

6 A. His number?

7 Q. Yes.

8 A. No.

9 Q. And in November and December, 2002, did you
10 have a cell phone?

11 A. No.

12 Q. Did you ever give Mr. DaSilva your telephone
13 number?

14 A. My house number, yes.

15 Q. When did you do that?

16 A. It was before that happened.

17 Q. Excuse me?

18 A. Even before that happened, he had it.

19 Q. And you say that at some point you got a
20 phone call from Mr. DaSilva threatening you?

21 A. Yes.

22 Q. Did you tell -- you told that to the
23 prosecutor?

24 A. Yes, I did.

25 Q. Did you tell them the date in which that

1 occurred?
2 A. No, I didn't remember the date.
3 Q. Did you tell them the phone number of which
4 you received a threat?
5 A. No, my house.
6 Q. Did you tell them your house phone number?
7 A. Yes, they knew my house number.
8 MR. SAMPSON: Just one moment, please, your
9 Honor.
10 Thank you, your Honor, I have no more further
11 questions.
12 THE COURT: Mr. McTigue.
13 REDIRECT EXAMINATION BY MR. MCTIGUE:
14 Q. Mr. Tixi, did you recognize Fernando's voice
15 when you heard it on the phone?
16 A. Yes.
17 Q. And was that based on your prior contact with
18 him?
19 A. Yes.
20 Q. Now, you indicated that at various times you
21 told things to the police. Is that correct?
22 A. Various times, what?
23 Q. At various times, you told things to the
24 police. On one date, November 25th, as to certain
25 parts of your statement, you told certain things. Is

1 that correct?
2 A. Yes.
3 Q. And you changed that later on, 12-19. Is
4 that correct?
5 A. Yes.
6 Q. And did that have anything to do with the
7 actual participation of Fernando as to what he did that
8 night?
9 MR. SAMPSON: Objection, your Honor, calls
10 for a conclusion.
11 Q. Did you change anything as to what you told
12 the police Fernando had told you about that night?
13 A. No.
14 Q. Did the police suggest any answers to you?
15 A. No.
16 Q. They just, as Mr. Sampson put it, kept
17 writing down what you said. Is that right?
18 A. Yes.
19 Q. Before you gave a statement to the police on
20 November 25th, did you discuss what you were going to
21 say with Carlos?
22 A. No.
23 Q. How about Josephina, did you get together and
24 decide what you were going to say?
25 A. No.

- 1 Q. After you gave your first statement, you
2 spoke to Mr. DaSilva, is that correct, on the
3 telephone?
4 A. Yes.
5 Q. Did you go into any detail with him as to
6 what you had told the police?
7 A. No.
8 Q. Did you find out how he knew you had spoken
9 to the police?
10 A. No, I didn't find out.
11 Q. Did you ask him?
12 A. No.
13 Q. Between your second statement on the 19th,
14 had you met with Josephina Garcia or Carlos Marquinez?
15 A. No.
16 Q. Did you discuss what you were going to say to
17 the police at that time?
18 A. No.
19 Q. Did the police at any time tell you anything
20 that somebody had said something different?
21 A. No.
22 Q. Were you ever able to give an address to the
23 police for Fernando?
24 A. No.
25 MR. MCTIGUE: No further questions, Judge.

- 1 THE COURT: Mr. Sampson.
2 RECROSS EXAMINATION BY MR. SAMPSON:
3 Q. Sir, after you gave your statement to the
4 police, you did speak to Carlos and told him that you
5 had spoken to the police. Correct?
6 A. Yeah, I did. Yes, I did.
7 Q. So you did tell Carlos that you had spoken to
8 the police?
9 A. Yes.
10 Q. You told Carlos --
11 THE COURT: You have got to wait until the
12 answer finishes. What was the answer?
13 THE WITNESS: He asked me if they came to see
14 me and I said yes.
15 Q. And did you tell the police what you -- did
16 you tell Carlos what you had told the police?
17 A. I told the police, that was what I told Carlos.
18 Q. Did you tell Carlos what you told the police?
19 A. No.
20 Q. You didn't talk about it?
21 A. No.
22 Q. At all?
23 A. At all.
24 Q. You just said: The police were here, and I
25 talked to them. That was it?

- 1 A. Yes.
 2 Q. He didn't ask you what you said?
 3 A. No.
 4 Q. You said that your motivation in not telling
 5 the police that of your involvement was that of fear.
 6 Right?
 7 A. Yes.
 8 Q. You were scared?
 9 A. Yes, I was.
 10 Q. Who were you scared of?
 11 A. I was scared of getting involved and scared of
 12 Fernando.
 13 Q. And if you got involved in it, you are afraid
 14 of getting locked up and going to jail for a long time.
 15 Right?
 16 A. Yeah.
 17 Q. And you were afraid that if you got charged,
 18 you would get held and have to put up bail and all that
 19 stuff, and that's why you didn't want to get involved.
 20 Right?
 21 A. Yes.
 22 MR. SAMPSON: Thank you.
 23 THE COURT: Anything else?
 24 REDIRECT EXAMINATION BY MR. McTIGUE:
 25 Q. Did you tell the truth about what Fernando

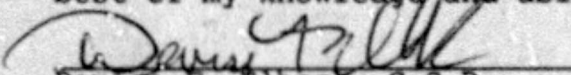
- 1 said to you?
 2 MR. SAMPSON: What time, please, your Honor?
 3 Q. Either occasion.
 4 A. Yes, I did.
 5 MR. McTIGUE: Nothing further, Judge.
 6 THE COURT: Anything else, Mr. Sampson?
 7 MR. SAMPSON: No, your Honor. Thank you.
 8 THE COURT: You may step down, sir.
 9 (Witness excused)
 10 THE COURT: Ladies and gentlemen, we are not
 11 going to start another witness at this late hour. We
 12 are going to excuse you.
 13 Now, tomorrow I have other things to do in
 14 the morning, but we do have a witness or two for the
 15 afternoon. So we will see you back here tomorrow
 16 afternoon at 1:30. Okay?
 17 Remember, do not discuss the case. We'll see
 18 you back here tomorrow at 1:30.
 19 Everyone please remain until the jury is off
 20 the floor.
 21 (Jury excused)
 22 THE COURT: All right, gentlemen, I will see
 23 you here tomorrow at 1:30 promptly.
 24 MR. SAMPSON: I will shoot for 9 o'clock
 25 Judge, that way I will get here.

THE COURT: That goes for both of you. I know you both have things to do at 1:30, just make sure you are both here so we don't delay the jury.

MR. SAMPSON: Yes.
(Court adjourned)

CERTIFICATION

I, Denise F. Elbeck, C.S.R., License Number X101121, an Official Court Reporter in and for the State of New Jersey, do hereby certify the foregoing to be prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of my stenographic notes taken in the above matter to the best of my knowledge and ability.


Denise F. Elbeck, C.S.R.
Essex County Courts Building

September 7, 2007
Date

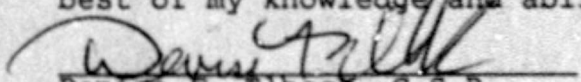
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THE COURT: That goes for both of you. I know you both have things to do at 2:30, just make sure you are both here so we don't delay the jury.

MR. SAMPSON: Yes.
(Court adjourned)

CERTIFICATION

I, Denise F. Elbeck, C.S.R., License Number X101121, an Official Court Reporter in and for the State of New Jersey, do hereby certify the foregoing to be prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of my stenographic notes taken in the above matter to the best of my knowledge and ability.


Denise F. Elbeck, C.S.R.
Essex County Courts Building

September 7, 2007
Date

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