

A 2039-0674

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

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

RECEIVED
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 15, 2004
Pages: 1 - 178

BEFORE:

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

TRANSCRIPT ORDERED BY:

HELEN C. GODBY, 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

DENISE ELBECK, C.S.R., C.M.
Official Court Reporter
Essex County Courts Building
50 Market Street
Newark, New Jersey 07102

MA

	I N D E X			
	Direct	Cross	Redirect	Recross
1				
2	Witnesses			
3	For the State			
4	CARLSO MARQUINEZ	11	63	135, 142
5	JESUS PAZ	143	149	152
6	FERNARD WILLIAMS	158		140, 142 155
7				
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Colloquy

1 MR. SAMPSON: Judge, if I can just run inside
 2 and get that paper?
 3 THE COURT: Go ahead.
 4 All right, Mr. McTigue.
 5 MR. MCTIGUE: Yes, sir.
 6 THE COURT: You have provided a report of a
 7 conversation you had in the presence of your
 8 investigator with the witness, Mr. Marquinez, to Mr.
 9 Sampson. You have raised some issue with regard to the
 10 last sentence of that report in which Mr. Marquinez
 11 indicates that the defendant, Mr. DaSilva, was a driver
 12 for him in his drug dealings, I believe. Is that what
 13 it says?
 14 MR. MCTIGUE: Yes.
 15 MR. SAMPSON: Yes, your Honor, it says that.
 16 THE COURT: All right.
 17 And you raised that that should be barred
 18 under Rule 404(b).
 19 MR. SAMPSON: Yes, your Honor.
 20 THE COURT: And my ruling is that the fact
 21 that he was driving for him is admissible, but the part
 22 about driver for him for specifically drug deals should
 23 not be admissible.
 24 THE COURT: Okay.
 25 MR. SAMPSON: Your Honor, if I could, it's

1 going to be aptly -- well, the State is going to offer
2 this statement that he drives for him in relation -- he
3 drives for him, Judge, my first objection is on the
4 grounds of relevance. I don't see that the fact that
5 he drives for him, that allegedly Mr. DaSilva drives
6 for Mr. Marquinez, has any relevance to the issues in
7 this case. Clearly there will be some discussions that
8 the parties know each other. That according to Mr.
9 Marquinez they are friends and have been friends for
10 some period of time. Therefore, Judge, the
11 information, the allegation that Mr. DaSilva drives for
12 Mr. Marquinez, Judge, has no relevance. It's not
13 offered, Judge, for any purposes which are set forth in
14 Rule 404(b)

15 THE COURT: That he drives for Mr. Marquinez
16 is not a bad act, 404(b) doesn't apply to that
17 statement. The only part of the statement it applies
18 to is drugs, dealing with a straight rule on relevance.

19 MR. SAMPSON: Fine, Judge.

20 THE COURT: I believe the relevance argument
21 made at least in -- why should I make your argument for
22 you, Mr. McTigue, you can make it on the record.

23 MR. MCTIGUE: Judge, without flying in the
24 face of your ruling just to make a ruling, the State's
25 position is that under 404(b), such evidence would be

1 admissible. During the course of this trial we heard a
2 witness, Alex Tixi. He went under considerable cross
3 examination and he knows, or he testified he knew the
4 defendant for a period of time similar to that which
5 Mr. Carlos Marquinez knew him, basically for
6 approximately two months prior to the date of the
7 homicide, which is November 4, 2002. And Mr. Sampson
8 at length in cross examination made the point that:
9 You only knew him for two months. Why would this
10 person come over in the middle of night to unburden
11 himself to you by a criminal act that he had conducted?
12 And, Judge, if you are engaged in an ongoing course of
13 criminal activity with someone, then it starts to make
14 sense. So I think it's highly relevant not just that
15 he was a driver, but the nature of the driving. Mr.
16 Marquinez is going to admit to the fact that he has an
17 eight-count criminal indictment pending against him in
18 Hudson County. His co-worker was Alex Tixi. And in
19 the context of this case, Judge, this does make sense,
20 it does give context. It does explain motive for an
21 action, and I think it is relevant.

22 And based on what I have a right to bring out
23 in direct as far as the pending charges against Mr.
24 Marquinez, and I don't know what Mr. Sampson is going
25 to do on cross, but I know what I have got a right to

1 bring out. We are bringing the jury up to the
2 threshold on it any way and, quite frankly, I think
3 it's better to let them know the truth, subject to
4 cross examination, than to leave this gap because it
5 does explain the motivation for the act.

6 MR. SAMPSON: I would respectfully disagree,
7 your Honor. I don't see that it puts -- gives any
8 motivation. The mere fact that it has some
9 relationship, even if it's a business relationship, I
10 mean, it's not as if one of your officers, or one of
11 your employees came to you as a learned man of the job
12 and said: I have got this problem, can you advise me?
13 Why wouldn't anyone go and confess to Mr. Marquinez,
14 it's not a part of any ongoing criminal activity? It's
15 not part of a common plan. It certainly has nothing to
16 do with intent. And the motive that we are talking
17 about, the motive is with regard to the, I think the
18 motive goes to the criminal act. It wouldn't even go
19 to the motive of why Mr. DaSilva would have committed
20 the homicide and of Mr. Chininin, not as to why Mr.
21 DaSilva would have admitted to any kind of criminal
22 activity to Mr. Marquinez.

23 So, Judge, I'm just saying I think any
24 relevance which can be -- and any of this information
25 can be proved otherwise. The relationship is certainly

1 proved by reference to the relationship and this
2 alleged involvement in this business activities, which
3 are clearly illegal, I believe are so prejudicial to
4 the defense as to outweigh any relevance issue and
5 should be precluded under Rule 104-3.

6 THE COURT: I am going to allow the statement
7 that he drove for him in whatever business, without the
8 introduction of the business. And there is relevance
9 to that based on the attack that the defense would
10 make, why should he reveal any of this to this
11 particular person, and so the closer relationship, the
12 more likely it is, and therefore it is relevant and I
13 will allow it.

14 And while there is some argument that makes
15 some sense, the act of drug activity makes it more
16 likely, I'm not satisfied that is so. It may or may
17 not be so. Had some other business, maybe more likely
18 to relate such activity to his co-worker.

19 In any event, weighing the prejudicial to the
20 probative, I am not allowing that he drove for him in
21 drug dealing. That he drove for him, yes. To the
22 extent that his charges for drugs may come out any way,
23 that's a separate issue. There's always a separate
24 instruction to the jury that they can only consider
25 that for credibility purposes and they shouldn't

1 speculate.

2 MR. SAMPSON: Your Honor, not to belabor the
3 point, but on another issue which is kind of related.
4 With regard to the alleged incident in the holding
5 cell, with regard to words between Mr. DaSilva and Mr.
6 Marquinez, I would just renew my application to join
7 under the same argument to preclude that if it's a --

8 THE COURT: I'm not going to revisit my
9 ruling. I believe this is on the record. It's on the
10 record, is it not?

11 MR. McTIGUE: Yes.

12 THE COURT: I'm not going to revisit my
13 ruling.

14 MR. SAMPSON: Judge, the only thing I'm going
15 to argue, the combination of the two events, the
16 cumulative impact upon my client, I believe is
17 prejudicial.

18 MR. McTIGUE: Judge, as I understand your
19 ruling, I am not to mention anything about a holding
20 cell. Unless, your Honor, unless the Court or counsel
21 object, I'm going to lead through that portion to make
22 sure there's no improper reply.

23 THE COURT: Are those the Hudson County
24 officers?

25 COURT OFFICER: Those are, Judge. But as far

1 as I know, your subpoena wasn't answered.

2 THE COURT: Excuse me?

3 COURT OFFICER: You subpoenaed the two
4 officers. As far as I know, unless they are downstairs
5 on the third floor, those aren't them.

6 MR. McTIGUE: No, no, that I will check into.

7 THE COURT: Did they bring the witness?

8 COURT OFFICER: Yes, Judge. Yes.

9 THE COURT: Well, how are we going to do
10 this? You are going to bring him next door or what,
11 the witness?

12 COURT OFFICER: Judge, the witness is next
13 door. He's in Judge Lester's holding cell right now.

14 THE COURT: Okay, go talk to him.

15 MR. McTIGUE: You want to say anything? I
16 don't know if you want to instruct the jury, give them
17 a break, leave them where they are.

18 THE COURT: How long is it going to take?

19 MR. McTIGUE: I don't know.

20 THE COURT: Leave them where they are. We
21 have wasted enough time this morning.

22 (Recess)

23 MR. McTIGUE: Yes, Judge, Mr. Marquinez is on
24 the stand right now. He is shackled with waist chains
25 and hand covers. There's a Hudson County officer

1 standing beside him, and I understand will be in the
2 chair near him during the taking of testimony. And we
3 have three other officers in the room. My request is
4 that he be unshackled for the purpose of testimony. He
5 is in prison clothing, it's going to be apparent that
6 he's in custody, but I don't think we need to emphasize
7 it.

8 THE COURT: I don't see any problem with
9 that.

10 MR. SAMPSON: Judge, I assume we have no
11 exhibits that this witness is going to be pointing to,
12 and therefore he has no need for the use of his hands.
13 As I understand, and I understand that the defendant
14 has a right not to be shackled in front of the jury, I
15 do not understand that a witness has a similar right
16 and I would therefore object.

17 THE COURT: Being that the people who are in
18 charge of the security have no objection, I have no
19 objection.

20 MR. McTIGUE: Thank you, sir.

21 THE COURT: Bring out the jury.

22 (Jury brought out)

23 THE COURT: Good morning, ladies and
24 gentlemen. Sorry for the delay.

25 Mr. McTigue.

1 MR. McTIGUE: Yes.

2 THE COURT: Direct examination.

3 MR. McTIGUE: Judge, the State calls as its
4 witness, Carlos Marquinez.

5 THE COURT: Swear him in.

6 C A R L O S M A R Q U I N E Z, Sworn.

7 DIRECT EXAMINATION BY MR. McTIGUE:

8 Q. Thank you, Judge.

9 Good morning, Mr. Marquinez. I'm going to
10 ask you to keep your voice up so the jurors, all the
11 jurors can hear you.

12 A. All right.

13 Q. That microphone in front of you doesn't
14 amplify anything, so you are going to have to keep your
15 voice up so that they can hear and understand you.

16 A. All right.

17 Q. And if I ask you a question, please give me a
18 verbal respond rather than shaking your head as you
19 just did?

20 A. All right, okay.

21 Q. Okay?

22 A. All right.

23 Q. Mr. Marquinez, I'm going to ask you some
24 questions today about a homicide which occurred on
25 November 4, in the year of 2002, in the city of Newark,

- 1 New Jersey. Are you aware of that homicide?
2 A. Yes.
3 Q. Back in November of 2002, did you know a
4 person by the name of Alex Tixi?
5 A. Yes.
6 Q. What was the nature of your relationship with
7 Alex Tixi?
8 A. We was friends. Friends.
9 Q. For how long had you known him?
10 A I known him for about, now, like three years right
11 now, like I speak to him.
12 Q. All right.
13 Back then in November of 2002, how long had
14 you known him?
15 A. That was just like probably a year, the most.
16 Q. All right.
17 Back in November of 2002, did you know a
18 person by the name of Fernando?
19 A. Yes.
20 Q. Do you see Fernando in court today?
21 A. Yes.
22 Q. Would you point him out and describe what
23 he's wearing?
24 A. That's him right there in the blue shirt.
25 THE COURT: Identifying the defendant.

- 1 A. Blue shirt.
2 Q. Back in November of 2002, how long had you
3 known the person you described as Fernando?
4 A I would say about three months. I just met the guy
5 three, four months, the mcst.
6 Q. All right.
7 And before going further, sir, you are
8 presently pending charges in two counties. Is that
9 correct?
10 A. Yes. Yes.
11 Q. And you are obviously in custody?
12 A. Yes.
13 Q. And is it correct that in Hudson County, you
14 have an indictment pending indictment 03-02231?
15 A. I don't know the number, but.
16 Q. All right. It's a drug indictment?
17 A. Yes.
18 Q. Charges you with possession?
19 A. Yes.
20 Q. Third and fourth degree distribution?
21 A. Yes.
22 Q. Thousand foot counts, distribution within a
23 thousand feet of a school?
24 A. Yes.
25 Q. Conspiracy?

- 1 A. Yes.
2 Q. And distribution of paraphernalia?
3 A. Yes.
4 Q. And likewise in Somerset County, you have one
5 indictment open against you?
6 A. Yeah.
7 Q. That's indictment 03-02-69, that's a
8 two-count indictment?
9 A. Yes.
10 Q. The charges are conspiracy to commit
11 burglary?
12 A. Yes.
13 Q. And attempted burglary in the second degree?
14 A. Yes.
15 Q. Is that armed burglary?
16 A. That's what they say, yeah, armed.
17 Q. Attempt?
18 A. Yeah.
19 Q. Okay.
20 And you were charged with a number of
21 co-defendants in that case?
22 A. Yes.
23 Q. How many?
24 A. Three more.
25 Q. Excuse me?

- 1 A. Three more co-defendants.
2 Q. And you are charged with one co-defendant in
3 the case in Hudson County?
4 A. Yes, which is Alex Tixi.
5 Q. Alex Tixi?
6 A. Yes.
7 Q. Now, how is it that you knew Fernando? What
8 was the nature of your relationship with him and did --
9 were you friends?
10 A. Yeah we were friends, you could say.
11 Q. All right.
12 At any time would he drive for you?
13 A. Yes.
14 Q. Under what circumstances, and just tell us
15 why?
16 A. All right. Like he used to drive me off and like
17 to pick up stuff, drugs.
18 Q. In other words --
19 MR. SAMPSON: Your Honor, can we be heard at
20 sidebar, please?
21 (The following takes place at sidebar)
22 MR. SAMPSON: Your Honor, this is
23 specifically what we talked about ahead of time. I'm
24 moving for a mistrial, your Honor. My client is on
25 trial for homicide, and now the State's witnesses got

1 him driving as a part of the drug conspiracy. Judge,
2 he's supremely prejudicial. And in light of that,
3 Judge, whether or not the prosecutor intended, I don't
4 think that a curative instruction at this point gives
5 me client the opportunity to receive a fair
6 consideration for these charges, Judge.

7 MR. McTIGUE: Judge, based on conversations
8 that Mr. Sampson and I both had, that was a surprise.
9 He indicated in the conversation that that was just his
10 activity, and Mr. DaSilva was not involved in it. I
11 think to the extent -- I think a curative instruction
12 at this point can be given.

13 MR. SAMPSON: Judge, not only do we have
14 stuff that shouldn't come in, but we agreed that he is
15 now lying about it because five minutes ago you gave
16 him the opportunity to interview him, and he said that
17 this was not the case, that my client had nothing to do
18 with any drug activity.

19 THE COURT: He didn't say just now that he
20 that anything to do with it.

21 MR. SAMPSON: Yes, he did, your Honor. And I
22 would ask for a readback then.

23 THE COURT: Well, nobody said -- he said he
24 would drive him to pick up things like drugs. That
25 doesn't necessarily mean that he knew what he was

1 doing.

2 MR. SAMPSON: Yeah, well, how many people in
3 this court get convicted for doing exactly that, Judge?

4 THE COURT: In any event.

5 MR. SAMPSON: And there's the presumption,
6 Judge, I believe this really prejudices my client. We
7 took careful steps to try to avoid this, and here we
8 are.

9 THE COURT: All right. I'm not going to
10 grant a mistrial. Do you care to have input into the
11 instruction to the jury?

12 (The following takes place in open court)

13 THE COURT: Could I excuse the jurors into
14 the juryroom for a few minutes, please?

15 (Jury excused)

16 THE COURT: You want a few minutes, Mr.
17 Sampson?

18 MR. SAMPSON: I would like two minutes,
19 Judge, just to give it some thought. I'm not sure what
20 his instructions were.

21 THE COURT: There will be an instruction,
22 there's no question about that. The only question is,
23 you want to have input into the instruction?

24 MR. SAMPSON: Judge, could I just ask, rather
25 than wasting time, Judge, you can just tell me what you

1 propose to instruct the jury.

2 THE COURT: They will disregard any mention
3 of drugs, and there's no evidence linking this
4 defendant in any way to any drug activity, and it has
5 nothing to do with this case, and it should be put out
6 of their minds and not considered.

7 MR. SAMPSON: Judge, with all due respect,
8 I'm not sure that that is sufficient to cure whatever
9 damage. Can we do this outside the presence of
10 witness, please, Judge, just for two minutes, Judge?

11 THE COURT: Yes, sidebar.

12 (The following takes place at sidebar)

13 MR. SAMPSON: Judge, here's my problem.

14 That, in addition to what we have talked about, just --
15 I mean, Mr. McTigue and I interviewed this guy a couple
16 of minutes ago, and he said my guy didn't have anything
17 to do with this, and he drove him because his license
18 was suspended.

19 MR. McTIGUE: That's why I didn't expect it.

20 MR. SAMPSON: So, Judge, if you give the
21 instruction, I have got to ask the guy: I didn't I
22 talk to you? You said this wasn't the case. You just
23 said this a couple of minutes ago. So, Judge, if you
24 give them the instruction, I guess I have to ask him, I
25 don't see any way around.

1 THE COURT: Why do you have to go deep in an
2 area that would prejudice your client?

3 MR. McTIGUE: The next question I'm going to
4 lead him though is that was he driving around because
5 his license was suspended, just answer yes or no. And
6 he hasn't indicated anything about the knowledge of
7 your guy in his activities.

8 MR. SAMPSON: Judge, could we just ask the
9 reporter to just read back his last answer, Judge, just
10 so I can be sure.

11 THE COURT: Yeah, sure.

12 Denise, would you read back the last answer
13 of the witness?

14 (Whereupon reporter reads back last answer)

15 THE COURT: That's what we all heard.

16 MR. SAMPSON: Judge, I will ask for the
17 instruction. I mean, I have got to ask him, Judge, I
18 got to ask him if he just didn't say something
19 different. That's my choice, Judge. I would just ask
20 for the instruction.

21 THE COURT: Your call.

22 MR. SAMPSON: I will make the choice, Judge.
23 Just ask the jury -- tell them to disregard it. I
24 would still continue my motion for a mistrial, but --

25 THE COURT: I am going to tell them to

1 disregard the comments of dealing with drugs. There's
2 no evidence that the defendant had any knowledge of --
3 MR. McTIGUE: His activities.
4 THE COURT: Of his activities.
5 MR. SAMPSON: Fine, Judge.
6 THE COURT: Okay. Bring the jury back.
7 (The following takes place in open court)
8 THE COURT: Instruct the witness.
9 MR. McTIGUE: Mr. Marquinez, for the record,
10 I am going to instruct you not to mention anything
11 about drug activity with regard to Mr. DaSilva. I am
12 going to ask you that he drove you from place to place
13 because your license was suspended. You can indicate
14 how many times and to what locations, but not the
15 activity involved. That's based on the Judge's ruling.
16 THE WITNESS: All right.
17 MR. McTIGUE: Likewise, so the record is
18 clear, when I ask you questions about threats allegedly
19 made, you are not to mention a holding cell. You
20 listen carefully to my statements.
21 THE WITNESS: All right.
22 (Jury brought out)
23 THE COURT: All right, ladies and gentlemen,
24 you are to disregard the last answer by the witness.
25 To the extent that it contained the word "drugs" should

1 be entirely disregarded by you. There's nothing in
2 this case about drugs or any connection that the
3 defendant may have to drugs, or that the defendant had
4 any knowledge whatsoever about any drug activity. So
5 that should be totally disregarded.
6 You may continue, Mr. McTigue.
7 MR. McTIGUE: Thank you.
8 Q. Mr. Marquinez, you, Mr. Marquinez, you
9 indicated at various times the defendant, who you know
10 as Fernando.
11 A. Yes.
12 Q. Would drive you.
13 A. Yeah.
14 Q. All right.
15 Now, how often in the weeks or months before
16 November 4 would he have cause to drive you around?
17 A. The whole time, since I met him. Since I met him,
18 you know, he started picking me up all the time.
19 Q. Was this on a daily basis?
20 A. Yeah, every day.
21 Q. And, again, without indicating anything more,
22 could you indicate where he would pick you up from,
23 where he would take you to?
24 A. He would pick me up from my house or from Alex's
25 house, either one.

- 1 Q. And this was a thing almost every day?
2 A. Yeah, every day.
3 Q. Every day?
4 A. Every day.
5 Q. And would you pay him for these services?
6 A. Yeah.
7 Q. How much would you pay him? In terms of
8 money, how much money would you pay?
9 MR. SAMPSON: Relevance, your Honor?
10 A. I don't want to mention.
11 MR. McTIGUE: I withdraw the question.
12 Q. Now, did you own a car at that time?
13 A. No.
14 Q. Had you ever owned a car?
15 A. Yeah.
16 Q. And what happened with that car?
17 A. I had different cars, I had about four or five.
18 Q. I'm referring back to the time around 2002,
19 late in the year, did you have a car?
20 A. I don't recall that, but I think I did had a car.
21 I just bought a car but, you know, the engine broke
22 down, so.
23 Q. Was your license in effect at that time?
24 A. No.
25 Q. What was the status of your driver's license?

- 1 A. It was suspended. It was suspended.
2 Q. Okay.
3 Now, what vehicle would Fernando pick you up
4 in on these daily trips?
5 A. It was a two-door truck -- oh, Mitsubishi,
6 Montero.
7 Q. Had you been in that car many times?
8 A. Yeah.
9 Q. Had Alex been in that car?
10 A. Yeah, Alex, a lot of people been in the car, a lot
11 of people that I know.
12 Q. And had you been in that car on occasions
13 prior to November 4 with Alex Fernando and yourself?
14 A. Yes.
15 Q. Now, Mr. Marquinez, the late night hours of
16 November 3, into the early morning hours of November 4,
17 do you recall that time?
18 A. Yes.
19 Q. That night, where were you?
20 A. All right. That night I was at my mother's house.
21 Q. What's the address there, please?
22 A. 16 Tappan Street, that's in Kearny, New Jersey.
23 Q. And were you there alone or with anyone else?
24 A. Well, it was my mother, my father, my stepfather,
25 Alex, my sister, that's it.

- 1 Q. All right.
2 And what were you doing there that evening?
3 A. Well, I was -- we was in my room. I think I just
4 had bought a game, Play Station game, so we were just
5 playing, drinking, you know, usual stuff. Sometimes I
6 used to go to Alex's house and do that, and sometimes
7 he would come to my house and do that.
8 Q. All right.
9 Was Alex there that night?
10 A. Yeah, yes.
11 Q. What time had he arrived?
12 A. He arrived earlier in the day, like I used to be
13 with him mostly all day from afternoon, so it should
14 have been probably 6, 7 o'clock. It was early that
15 day.
16 Q. Now, at some point into the early morning
17 hours was Alex -- did Alex stay in your house?
18 A. Excuse me?
19 Q. Did Alex stay at your house into the early
20 morning hours?
21 A. Yes. Yes.
22 Q. And what were you two doing?
23 A. We was drinking, playing Play Station.
24 Q. What were you drinking?
25 A. We were drinking 40 ounces, I think it was Corona

- 1 beer.
2 Q. You were playing with the Play Station?
3 A. Yeah, playing with the Play Station.
4 Q. At some point did you become aware that the
5 man you knew as Fernando had come into to your house?
6 A. Yes.
7 Q. Tell the jury how you became aware of that?
8 A. All right. My mother, she's the type of person
9 that she hears every single thing, a step. So, you
10 know, she was hearing -- I didn't hear it, but she was
11 hearing horns outside the house the whole time. So I
12 guess she got up and then she came into my room and she
13 said: Carlos, I think somebody is looking for you.
14 And it's too late for you to be making noise at this
15 time.
16 Q. And when you got that information from your
17 mother, what did you do?
18 A. I went out to the window and I saw it was
19 Fernando's truck outside my house.
20 Q. All right.
21 And, again, was that the black Mitsubishi?
22 A. Yes.
23 Q. Around what time was that?
24 A. That was something around, probably 5, 6 o'clock,
25 I'm not sure.

- 1 Q. Now, was it unusual for Fernando to come to
2 your house at that sort of hour?
3 A. No, it was not unusual.
4 Q. Had he been over at your house in the early
5 morning hours --
6 A. Yeah.
7 Q. -- on other occasions?
8 A. Yes.
9 Q. Now, you indicated that your stepfather lives
10 in the house too?
11 A. Yes.
12 Q. All right.
13 What did you and Alex do, if anything?
14 A. All right. Since my mother said it's too late for
15 us to be making noise in the house, so I said we had to
16 go, you know. All right, so we went out. We went to
17 Fernando's car, which was right in front, and whatever,
18 I got in the car and Alex got in the car and, you know,
19 we immediately saw that Fernando had blood on his
20 pants, a lot, like to his knees.
21 Q. All right.
22 You are indicating one of your legs. Which
23 leg are you indicating?
24 A. The right leg.
25 Q. Was he in the driver's seat?

- 1 A. Yeah, he was in the driver's seat.
2 Q. Do you know where you sat in the car when you
3 got in?
4 A. I'm not sure pretty good, but I think I probably
5 was in the front. I'm not sure very good.
6 Q. When you opened that car, did a light go on,
7 a dome light? Was that working, if you know?
8 A. No, I don't know.
9 Q. You don't recall?
10 A. No, I don't remember.
11 Q. Did Alex get in the car also?
12 A. Yeah, Alex got in the car.
13 Q. Now, you indicated you had been drinking at
14 that point?
15 A. Yes.
16 Q. Were you intoxicated?
17 A. Yes, I guess I was a little intoxicated.
18 Q. Well, can you describe how much -- what did
19 you feel like?
20 A. I felt good, but I was not too, you know, not too
21 bad like not walking, but I was good. I could still
22 have a conversation with you.
23 Q. What about Alex?
24 A. Alex, probably the same way as me.
25 Q. Now, you indicated you saw something unusual

- 1 about the pant leg of Mr. DaSilva?
2 A. Yes.
3 Q. And what was that?
4 A. Well, it was blood.
5 Q. Did you question him about that?
6 A. Yeah. I asked him what happened, you know.
7 Q. Did he say anything to you in return?
8 A. He said yeah, that something went wrong, you know,
9 whatever. Let's go to Josephine's house. We took off,
10 you know, he was very nervous. Josephine's house is
11 not too far from my house.
12 Q. About how far?
13 A. About two blocks.
14 Q. Whose idea was it to go to Josephine's house?
15 A. My idea.
16 Q. Is there any reason why you didn't invite
17 Fernando up to your house?
18 A. He never went to my house. I didn't know the guy
19 that much, you know.
20 Q. You knew him from driving every day?
21 A. Yeah, from driving, but.
22 Q. Not personally?
23 A. Not that good.
24 Q. All right.
25 So it was your idea to go to Josephina's

- 1 house?
2 A. Yes.
3 Q. What's Josephina's full name.
4 A. Josephina Garcia.
5 Q. All right.
6 What was the nature of your relationship with
7 her at that time?
8 A. We was going out, you could say we was going out.
9 Q. And you say going out like intimate
10 relationship?
11 A. Yeah. Yeah, yes.
12 Q. Okay.
13 Would it be unusual for you to go over to
14 Josephina's house at that hour in the morning?
15 A. No, sir.
16 Q. So how did you get there?
17 A. Through his car. He drove us there.
18 Q. How long did it take you to get there?
19 A. Most probably one minute.
20 Q. And what did you do upon arriving there?
21 A. Upon arriving, once we got there, you know, parked
22 the car, started explaining to us what started.
23 Q. And what was it that he explained happen?
24 A. He started with that he took a cab from North
25 Newark some place, North Newark into the Ironbound

- 1 section, you know. That he shot and robbed a cab
2 driver. And then something about once he got there,
3 the cab driver asked him how much, you know, how much
4 was the fare, and he just shot him in the back of the
5 head, whatever. He pulled him out of the cab and that
6 he took his wallet. His wallet. That's when he took
7 the wallet out and showed --
8 Q. Let me stop you there at that point. All
9 right. At any time did you see a weapon that night?
10 A. Yes.
11 Q. Describe to the jury what you saw that night?
12 A. It was like a platinum, he had like a platinum
13 gun.
14 Q. Where was it that you saw the weapon that
15 night, November 4?
16 A. It was right here in the right waist.
17 Q. You are pointing to your waist?
18 A. Yes.
19 Q. Where was it with Mr. DaSilva, could you be
20 more specific?
21 A. Excuse me. It was right here in the waist like,
22 you know.
23 Q. You are indicating a downward motion in his
24 pant like?
25 A. Yec.

- 1 Q. All right.
2 Had you seen that gun before?
3 A. Yes.
4 Q. Under what circumstances?
5 A. That was the first night, I think he just took it
6 from -- he said he took it from his first floor.
7 Q. Well, had you seen that gun before?
8 A. Yeah.
9 Q. How long before the night of the 4th?
10 A. How long before? I would say about three weeks,
11 something like that.
12 Q. Are you certain or are you estimating?
13 A. I think, not certain. But I think it's not too
14 long ago.
15 Q. And how is it that Fernando and Mr. DaSilva
16 came to show you the gun?
17 A. Okay. When he showed me the gun, I used to live
18 on Schuyler Avenue with my wife and my daughters, so he
19 came up at that time, it was very late, like around
20 four in the morning, five in the morning. It was very
21 late, you know, talking about that he just had broken
22 into a house on his first floor and that he had
23 gotten -- he had found a gun somewhere in the closet.
24 Q. All right.
25 Did he indicate to you if that was a house

- 1 where he lived or someone else lived?
2 A. The house he broke into?
3 Q. Yeah.
4 A. He doesn't live there. He didn't live there. He
5 lived on the second floor. The house he broke into, it
6 was a supposedly a cop that used to live there on the
7 first floor.
8 Q. Did he show you a gun?
9 A. Yes.
10 Q. Was there anything unusual about it?
11 A. Well, he showed me, he asked me: Do you know what
12 this stands for, NPD? I didn't know. Then he says:
13 Newark Police Department. That's why I didn't get to
14 trust him that much, I thought he was a cop or
15 something.
16 MR. MCTIGUE: Your Honor, I have an exhibit
17 S-64.
18 COURT OFFICER: Cleared weapon.
19 MR. MCTIGUE: Thank you, Officer.
20 Q. Okay.
21 Sir, I'm going to show you an exhibit which
22 has been marked S-64. It's a handgun. It has been
23 cleared for safety by the court officer, and I'm going
24 to ask you, do you recognize what that is?
25 A. Yeah.

- 1 Q. What do you recognize that to be?
2 A. Well, that's the gun that he showed me.
3 Q. Who showed you?
4 A. Fernando.
5 Q. The person sitting over there?
6 A. Yes.
7 Q. And this is the gun he told you that he had
8 stolen from someone?
9 A. Yes.
10 Q. Who did he steal it from?
11 A. Supposedly a cop live on the first floor from his
12 house, and he broke into that night.
13 Q. All right.
14 And you indicated that the gun had some
15 markings on it that were --
16 A. Yeah.
17 Q. All right.
18 Do you see any markings on it that you
19 recognize?
20 A. Other side, NPD, right there.
21 Q. Just point it out where it is.
22 A. Right there.
23 Q. It says: NPD?
24 A. NPD 1701.
25 Q. And according to your recollection, Mr.

- 1 DaSilva had first shown you this gun some weeks before
2 the shooting?
3 A. Yes, before that.
4 Q. Now, you saw that gun, you recognized that
5 gun in his waistband on the night of the shooting?
6 A. Yes.
7 Q. All right.
8 When did you first see that gun that evening?
9 A. That was once we parked into the house, you know,
10 cause he had had a leather jacket, a black jacket, you
11 know, that was covering it a little bit. So once he
12 started like -- he pulled out the wallet and started
13 explaining to us, you know, you could have seen it.
14 Q. Now, you indicated that he had told you about
15 a robbery he had committed?
16 A. Yes.
17 Q. Did he tell you any details about the
18 robbery?
19 A. Yes.
20 Q. What details did he tell you about the
21 robbery?
22 A. Okay. That once he shot, you know, the cab
23 driver.
24 Q. One thing, did he tell you where the cab
25 driver was shot?

- 1 A. Yeah, he said in the back of the head right here.
2 Q. You are pointing, you are turning your head
3 and indicating to the jury.
4 A. Right here.
5 Q. All right, indicating an area.
6 A. Yes.
7 Q. A couple of inches.
8 MR. SAMPSON: Objection, your Honor, it's
9 leading.
10 MR. McTIGUE: I'm describing.
11 THE COURT: Describing for the record.
12 Q. Would you again turn your head to the side
13 and point to an area.
14 A. Right here.
15 Q. All right. Leave your fingers there for one
16 second.
17 MR. SAMPSON: Your Honor, would the Court
18 describe it for the record, please.
19 MR. McTIGUE: No objection. Please.
20 THE COURT: Could you turn your head a little
21 more, please. Pointing to the right side of the back
22 of the lower head, or upper neck, approximately in the
23 same level as the bottom of his right ear.
24 MR. SAMPSON: Thank you, your Honor.
25 THE COURT: You can turn around.

- 1 Q. And did he indicate why he had shot the cab
2 driver?
3 A. He didn't say why. He didn't say why. He just
4 said he shot the cab driver.
5 Q. All right.
6 Now, you had indicated he had picked up the
7 cab at a location?
8 A. Yeah. No, in Newark somewhere, North Newark. He
9 didn't give me an exact location.
10 Q. And did he tell you where in North Newark he
11 was picked up?
12 A. No.
13 Q. Did he indicate to you where he had shot the
14 cabby?
15 A. No, he didn't tell me exactly where. He said
16 something about Ironbound, that's Ferry, somewhere by
17 Ferry, the Ironbound section.
18 Q. Also known as Down Neck?
19 A. Yeah, Down Neck.
20 Q. Did he indicate to you that he had taken
21 anything from the cabby?
22 A. Yeah, he said that he took a wallet, which
23 contained about a hundred and some change, which he
24 showed to me, and a lap top.
25 Q. All right.

- 1 Did you see the lap top computer that night?
2 A. Yes.
3 Q. Tell the jury where you saw it?
4 A. It was in the back seat of the car.
5 Q. All right.
6 Did you notice anything about the lap top?
7 Was there anything unusual about it?
8 A. It had like dried, dried like blood, dried blood.
9 Q. All right.
10 Did Mr. DaSilva tell you what happened to the
11 cabby after he shot him?
12 A. Once he shot him, he took his wallet, he jumped
13 in the cab and took off.
14 Q. What happened to the body of cab driver?
15 A. He pulled him out, he pulled him out and then he
16 just took off.
17 Q. All right.
18 Did he tell you where he left the body?
19 A. Where he got dropped off.
20 Q. Did he tell you where the cabby was seated at
21 the time he was shot in the vehicle, was he in the
22 driver's seat?
23 A. Yeah. He said like he charged him, that the cab
24 driver charged him 15 dollars, and he just said: Well,
25 here's your 15 dollars, and then he just fell.

- 1 Q. You are indicating he fell?
2 A. He fell right -- like the cab driver just fell
3 like this.
4 Q. You are indicating a motion to your right.
5 A. Yes.
6 Q. Now, you indicate you saw the computer. Is
7 that correct?
8 A. Yes.
9 Q. Did you get a chance to examine it at all or
10 did you see it?
11 A. Yeah, I had a chance to take a look at it, yeah.
12 Q. Now, with all this that you have just
13 mentioned to us, was that -- did that conversation take
14 place while you were in the car?
15 A. Yes.
16 Q. And was Alex Tixi present during this
17 conversation?
18 A. Yes. Yes.
19 Q. At some point, did you leave the car?
20 A. Yes, we left the car. You know, we went right
21 inside to Josephine's house. He brought the lap top
22 with him when he went.
23 Q. He still had the gun with him?
24 A. Yes.
25 Q. Now, you have been in the car before. is

- 1 that correct?
2 A. Yes.
3 Q. Is there a radio in that car?
4 A. No, sir.
5 Q. What's there in place of the radio?
6 A. He also mentioned about that, it's all right, that
7 he used gloves, which it was some black gloves.
8 Q. Where were the gloves?
9 A. On what was suppose to be the radio was a whole
10 bunch of clothes in there, the black gloves that he
11 suppose to use, and the rubber gloves, a whole bunch of
12 rubber gloves.
13 Q. Had you seen those rubber gloves in his car
14 before?
15 A. Yes.
16 Q. Now, who went into Josephine's house?
17 A. Me, Alex and Fernando.
18 Q. All right.
19 And how did you get in?
20 A. I knocked on Josephina's window, the window right
21 there, her bathroom used to be right there, so she
22 heard me, she opened the door, and we went in.
23 Q. Who was present in the apartment as you went
24 in?
25 A. As I went in, the only person that was awake, I

- 1 recall it was Josephine, there was also her nephew
2 named Kimmy, and I think her son Tito was there too.
3 But I think he was sleeping, I'm not sure. That's it.
4 Her son lives with her too, but I didn't see him that
5 night.
- 6 Q. All right.
7 Did you see Kimmy that night?
- 8 A. Yes.
- 9 Q. Was he awake or asleep?
- 10 A. No, he was sleeping.
- 11 Q. And did Josephina acted surprised or ask you
12 why you were there?
- 13 A. No. I used to go over there most of the time
14 every day, same thing at nighttime.
- 15 Q. All right.
16 Did Mr. DaSilva go into the apartment too?
- 17 A. Yes.
- 18 Q. And Alex?
- 19 A. Yes.
- 20 Q. And were there any further discussions about
21 what had happen with Mr. DaSilva in the apartment?
- 22 A. Well, Josephina saw the blood on his pants.
- 23 MR. SAMPSON: Objection, your Honor, as to
24 what another person saw.
25 THE COURT: Sustained.

- 1 Q. Did Josephina make any remarks?
- 2 A. Yes. She just asked him what happened.
- 3 Q. Don't tell us what somebody else said, that's
4 what's known as hearsay, and that's what the Judge has
5 made a ruling on. As you observed it --
- 6 A. Yeah.
- 7 Q. After Josephina looked at Mr. DaSilva.
- 8 A. Uh huh.
- 9 Q. Did she ask him a question?
- 10 A. Yes.
- 11 Q. Without telling us what she asked him, did he
12 reply to her?
- 13 A. Yes.
- 14 Q. What was his reply?
- 15 A. He said something went wrong, he got into a fight.
- 16 Q. Did you notice any bruises or marks on Mr.
17 DaSilva that night?
- 18 A. No, sir.
- 19 Q. Any signs of a violent struggle or fist
20 fight?
- 21 A. No, sir.
- 22 Q. All right.
23 This was as you just came in?
- 24 A. That's once we got into the room.
- 25 Q. All right.

- 1 Now, what happened after you came in and had
2 that brief discussion?
- 3 A. Well, I laid down in the bed -- he had money from
4 the one he took, so he said he wanted to smoke. So
5 Josephine had a little bit of marijuana.
- 6 Q. Who brought the marijuana?
- 7 A. Josephina had a little bit of marijuana.
- 8 Q. In the house?
- 9 A. Yes. Yes.
- 10 Q. And who smoked it?
- 11 A. We all did.
- 12 Q. You all took a hit?
- 13 A. Yes.
- 14 Q. Mr. DaSilva too?
- 15 A. Yes.
- 16 Q. All right.
- 17 Now, during that period of time, were there
18 any further discussions with Mr. DaSilva about what had
19 happened that night?
- 20 A. No. After that, no.
- 21 Q. All right.
- 22 Did you believe that he had killed somebody
23 that night?
- 24 MR. SAMPSON: Objection, your Honor.
- 25 THE COURT: I have previously ruled on the

- 1 same question, I'll overruled the objection.
- 2 Q. You can answer it.
- 3 A. All right. I didn't believe him. The guy
4 didn't -- we didn't look at him like, you know, we used
5 to always talk to him, you know, like he was nobody,
6 but so that's why I didn't believe him. But later on,
7 once I went to --
- 8 Q. So at that point you did not take his claim
9 seriously?
- 10 A. Yeah. Yeah.
- 11 Q. What happened to the computer, did he bring
12 it into the house?
- 13 A. Yes, he brought it into the house.
- 14 Q. What did he do with it? Did he show it to
15 you folks?
- 16 A. Yeah, he was looking at it. I think, I'm not
17 sure, that he cleaned it, he wiped off the blood. And
18 after that, I don't know, I don't know where he put it.
19 I don't know if it was on the dresser, under the bed,
20 I'm not sure.
- 21 Q. All right.
- 22 Did he stay there that night?
- 23 A. All right. After we smoked, I laid down, you know
24 somehow I fell asleep. What I recall is that, you
25 know, Josephina told me that he had left, they all

- 1 left.
2 Q. Well, where did you fall asleep?
3 A. In Josephina's bed.
4 Q. Where was Josephina?
5 A. Josephina was in the room with me.
6 Q. Did Alex leave at any point that you know of?
7 A. Well, when I was laying down and I fell asleep,
8 Alex was in the room sitting down and Fernando was
9 standing up next to a dresser.
10 Q. All right.
11 What was Fernando doing as he was by the
12 dresser? How did he look?
13 A. He was just nervous. He was just nervous, you
14 know.
15 Q. Were there any further conversations about
16 what had happened that night as he was there by the
17 dresser?
18 A. Not that I recall.
19 Q. How long did you stay at Josephina's place?
20 A. I stayed until the morning, it was something
21 probably either 11 o'clock, something, 11 o'clock in
22 the morning, I went to my mother's house.
23 Q. All right.
24 When you woke up, was Alex there?
25 A. No, Alex wasn't there, Fernando wasn't there.

- 1 Q. Did you see either of them leave or were you
2 asleep at the time?
3 A. Yeah, I was asleep at the time, yeah.
4 Q. All right.
5 After you woke up, where did you go?
6 A. I went to my mother's house, straight to my
7 mother's house.
8 Q. All right.
9 How did you get there?
10 A. Walked.
11 Q. How far is that?
12 A. Like I said, three blocks, the most.
13 Q. Now, when did you first learn that somebody
14 had actually been killed, a cab driver had been killed
15 in the early morning hours of November 4th?
16 A. My father is a cab driver.
17 Q. Your father is a cab driver?
18 A. Yes.
19 Q. Is it your father or your stepfather?
20 A. My stepfather, he's a cab driver from Classic so,
21 you know, Classic and Millennium, they are both
22 together. So, you know, they he already find out quick
23 that, you know, that somebody had been killed, somebody
24 from Millennium, a young guy had just been killed and
25 he told my mother.

- 1 Q. Now, you had mentioned a wallet?
2 A. Yes.
3 Q. Early in the evening?
4 A. Yes.
5 Q. Tell us about that wallet.
6 A. What I saw I think was his driving license.
7 Q. Well, first of all, what color was the
8 wallet?
9 A. Black, it was a black wallet.
10 Q. All right.
11 And how did you get to see the wallet?
12 A. Cause, you know, he took it out from his jacket,
13 he took it out from the jacket to show us.
14 Q. And did you notice anything about that
15 wallet?
16 A. Well, it had some money in it, it had a little
17 baby picture next to him, next to his picture. The guy
18 looked old, the guy looked like 30, 40, but I saw the
19 age, he was 19 years old.
20 Q. Did you see a year, date of birth?
21 A. He was 19 years old, so back then he was like 20
22 years old, so it was 1983.
23 Q. Did you see a name?
24 A. Yes, the last name -- the first name I didn't
25 remember, but the last name, which is weird, Chininin

- 1 something.
2 Q. That appeared weird to you?
3 A. Now, yeah, it was weird, you know, not too much
4 last names Chininin now, yeah.
5 Q. Now, what did you do after you learned from
6 your father -- you said Millennium and Classic were
7 together. What do you mean by that?
8 A. Like they all know each other, people from Classic
9 go to Millennium, people from Millennium go to Classic.
10 Q. Had you ever met Felix Chininin or heard of
11 him before that night?
12 A. Never.
13 Q. Did it -- after you learned from your father
14 that a cabby had been killed, did you go to the police?
15 A. No, sir.
16 Q. Did you call them up to report what you had
17 found out, seen, heard, just hours before?
18 A. No, sir.
19 Q. Why not, sir?
20 A. I didn't want to be involved. I didn't want to be
21 involved in no problems. I don't know too much about
22 laws, but just for me to be involved, to know all that,
23 I didn't know if I was going to get in trouble or not.
24 Q. Now, at some point the police found you
25 though, didn't they?

- 1 A. Yes.
2 Q. And who was it that came to see you?
3 A. Nicole Berrian and the Detective Vinnie, Vinnie, I
4 forgot his last name.
5 Q. Would it be Vitiello?
6 A. Yeah, Vitiello, yeah.
7 Q. And on November 20, 2002, did they meet with
8 you?
9 A. Yes.
10 Q. Where did they find you?
11 A. My house that I just move into.
12 Q. Where had you moved from?
13 A. From 16 Tappan, I moved into 195 Linden.
14 Q. All right.
15 And they came to your house?
16 A. Yes.
17 Q. And did they ask you to come along with them?
18 A. Yes.
19 Q. And did they tell you that they were going to
20 ask you some questions about a homicide?
21 A. Yes.
22 MR. MCTIGUE: S-9, your Honor.
23 I'm going to show you an exhibit which has
24 been marked S-9, Mr. Marquinez. It appears to be an
25 eight-page statement with a Miranda preamble attached

- 1 to it. Do you recognize this?
2 A. Yes.
3 Q. And the Miranda preamble is a statement of
4 your rights, your right to an attorney, your right to
5 remain silent, the right to have an attorney appointed
6 for you, the right not to answer any questions.
7 A. Yes.
8 Q. And were you read those rights?
9 A. Yes.
10 Q. And did you agree to waive them?
11 A. Yes.
12 Q. Did you put your initials on there?
13 A. Yes.
14 Q. Sign your name?
15 A. I signed it, yeah.
16 Q. And then on each of the pages appears to be
17 your name. Is that correct?
18 A. Yes.
19 Q. And you signed it "Carlos Marquinez" and then
20 there's a C. What does that mean?
21 A. Cevallos, C-E-V-A-L-L-O-S.
22 Q. Is that your last name?
23 A. Yes.
24 Q. So you shortened your name to Marquinez?
25 A. Carlos Marquinez, yes.

- 1 Q. Were you asked questions about what happened?
2 A. Yeah. Yeah, I was asked questions.
3 Q. And were you entirely truthful in giving this
4 statement?
5 A. Not entirely truthful. You know, I was very
6 nervous. I got picked up for questioning of a
7 homicide, you know, I was just, you know, I got
8 nervous, real nervous.
9 Q. All right.
10 And, in fact, did you give a slightly
11 different version of your role and Alex's role in this?
12 A. Yes.
13 MR. SAMPSON: Objection, your Honor,
14 "slightly different"?
15 MR. McTIGUE: Different.
16 THE COURT: Objection sustained.
17 Q. Did you give a different version?
18 A. Yes.
19 Q. What did you tell the police in this
20 statement?
21 A. The only thing that was, you know, what did I told
22 them in this statement?
23 Q. Yeah.
24 A. Everything.
25 Q. Well, what did you tell them about how you

- 1 met with Fernando the night?
2 A. Yeah, that I told them in the statement that I was
3 in Josephina's house with Alex and that Fernando
4 arrived like late, around five, six in the morning, you
5 know, and he just, same thing, he came in with blood on
6 his pants.
7 Q. But you changed the details as to the arrival
8 of Mr. DaSilva?
9 A. Yes, sir.
10 Q. Why did you do that?
11 A. I was just scared, you know. I also didn't want
12 to bring no problems to my house, you know. I mean, my
13 mother just got out of a coma, you know, I didn't want
14 my mother to find out anything about that, you know.
15 Q. Did you tell your mother or your stepdad
16 about anything that had happened that night?
17 A. I didn't tell her till like probably a month or
18 two after I got picked up.
19 Q. Now, do you mention Alex at all in that
20 statement?
21 A. Yes.
22 Q. You have Alex being there at all?
23 A. Yes.
24 Q. Please read where is Alex mentioned in this
25 statement. Well, that does not indicate that Alex was

1 present at Josephina's house, does it?
 2 MR. SAMPSON: Objection, leading.
 3 THE COURT: I'll allow the question.
 4 A. I don't think so.
 5 Q. Your answer?
 6 A. No, I don't see it in there.
 7 MR. SAMPSON: I'm sorry?
 8 Q. Repeat that, please.
 9 A. I don't see it in there.
 10 Q. Now, were you aware that Alex had spoken to
 11 the police before you gave this statement?
 12 A. Yes.
 13 Q. When had you met up with Alex?
 14 A. Later that day he got picked up.
 15 Q. Did he tell you what he had told the police?
 16 A. Yeah.
 17 Q. Did to say the same thing?
 18 A. Yes.
 19 Q. Or did you change details?
 20 A. I changed the details.
 21 Q. Why?
 22 A. I was scared. I was scared, you know. I don't
 23 know what I was into. Just from me knowing at that
 24 time and reporting to the police, you know, I was
 25 afraid, you know.

1 Q. All right.
 2 Did you continue to pay Mr. DaSilva to drive
 3 you after this?
 4 A. No.
 5 Q. Why is that?
 6 A. After that --
 7 MR. SAMPSON: Objection, your Honor,
 8 relevance. Can we be heard at sidebar, Judge?
 9 (The following takes place at sidebar)
 10 MR. SAMPSON: Your Honor, can I have a
 11 proffer as to where we are going with this? Did he
 12 continue to pay him? I don't know the relevance of
 13 this.
 14 MR. McTIGUE: Did he see him after that.
 15 MR. SAMPSON: That's different, Judge.
 16 THE COURT: So his answer is going to be no,
 17 that's what you expect his answer to be?
 18 MR. McTIGUE: Yeah.
 19 THE COURT: Okay.
 20 (The following takes place in open court)
 21 Q. Mr. Marquez, after the early morning hours
 22 of November 4, did you see Mr. DaSilva again?
 23 A. No, sir. After November 4, I didn't get to see
 24 him.
 25 Q. So I take it then he didn't pick you up any

- 1 more?
2 A. No, he got lost for a little bit.
3 Q. All right.
4 Did you have any conversations with him by
5 telephone or otherwise after this?
6 A. Yeah, he beeped me one time after that, just
7 asking how are things over there, you know, like if
8 they looking for him.
9 Q. Who is looking for him?
10 A. The police.
11 Q. Did he know that you had spoken to the police
12 at this point?
13 A. No. No, sir.
14 Q. Was he aware that you and Alex had given
15 statements when he called?
16 A. No, sir.
17 Q. At some point did you find out that he became
18 aware?
19 A. Yes.
20 Q. When was that?
21 A. That was after that, like I would probably say
22 after December. After December.
23 Q. All right.
24 Did you have another contact with him after
25 that first phone call that you mentioned?

- 1 A. I don't recall very good, but he beeped me a
2 couple of times after that.
3 Q. And did you get back to him? Did you call
4 him?
5 A. I think I did. I think I did spoke to him like
6 twice.
7 Q. And did you ask him where he was?
8 A. Yeah, I asked him where he was.
9 Q. And what did he reply?
10 A. He said he was far, but not too far.
11 Q. What did you -- did he explain what he meant
12 by that?
13 A. Like he was far, but not too far, like he was
14 still around.
15 Q. All right.
16 And when did that -- when did that
17 conversation take place?
18 A. When, exactly the day, I can't recall it. But I
19 think it was after I got picked up because he already
20 had had a warrant already for that, so that's how he
21 already know.
22 Q. Excuse me?
23 A. Like he had a warrant for that already.
24 Q. For what already?
25 A. For the murder.

- 1 more?
2 A. No, he got lost for a little bit.
3 Q. All right.
4 Did you have any conversations with him by
5 telephone or otherwise after this?
6 A. Yeah, he beeped me one time after that, just
7 asking how are things over there, you know, like if
8 they looking for him.
9 Q. Who is looking for him?
10 A. The police.
11 Q. Did he know that you had spoken to the police
12 at this point?
13 A. No. No, sir.
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15 statements when he called?
16 A. No, sir.
17 Q. At some point did you find out that he became
18 aware?
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22 after December. After December.
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25 that first phone call that you mentioned?

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2 couple of times after that.
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4 him?
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6 twice.
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8 A. Yeah, I asked him where he was.
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10 A. He said he was far, but not too far.
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12 by that?
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14 still around.
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17 conversation take place?
18 A. When, exactly the day, I can't recall it. But I
19 think it was after I got picked up because he already
20 had had a warrant already for that, so that's how he
21 already know.
22 Q. Excuse me?
23 A. Like he had a warrant for that already.
24 Q. For what already?
25 A. For the murder.

- 1 Q. All right.
2 A. So, yeah, he was aware.
3 Q. And what did he say to you about that
4 warrant?
5 MR. SAMPSON: Objection, your Honor.
6 THE COURT: Do you need a sidebar? I'm going
7 to allow it otherwise.
8 MR. SAMPSON: I'll withdraw it.
9 THE COURT: Go ahead.
10 Q. Did he say anything to you about the warrant?
11 A. He was just taking it easy, you know, like it's
12 all right, they ain't going to catch him, you know.
13 You know, like that. He didn't exactly know if I spoke
14 or not, I didn't tell him that.
15 Q. Did he ask you that?
16 A. No, he didn't ask me that.
17 Q. Did he say anything about Alex?
18 A. Alex, yeah.
19 Q. Excuse me?
20 A. Yeah. He said like about Alex, yeah.
21 Q. What did he say about Alex?
22 A. That, you know, cause like he gave him up, you
23 know.
24 Q. No, I don't know. You have to explain.
25 A. Like he was just saying that that was messed up

- 1 that he gave him up, like, you know, that's it.
2 Q. All right.
3 Now, until recently, was that the last time
4 you heard or saw --
5 A. Yes.
6 Q. -- Mr. DaSilva?
7 A. Yes.
8 Q. Now, at some point were you asked by the
9 police whether or not you could make an identification
10 of Fernando?
11 A. Yes.
12 MR. McTIGUE: 3-10.
13 And was that the day following the giving of
14 your statement?
15 A. Yes.
16 Q. When you gave that statement which has been
17 marked S-9, were you shown any pictures on that day?
18 A. I think she showed me different pictures.
19 Q. All right.
20 Were you able to make any identification?
21 A. Yeah.
22 Q. All right.
23 Was that on that date or, showing you S-10,
24 another date?
25 A. Yeah, they show me that picture.

- 1 Q. All right.
2 Do you recognize who that picture is?
3 A. Yes.
4 Q. Who is that?
5 A. That's Fernando.
6 Q. All right.
7 And there appears to be two pages of this?
8 A. Uh huh.
9 Q. There appears to be writing here?
10 A. Uh huh.
11 Q. Is that right? Who put that writing there?
12 A. I did.
13 Q. You wrote down what occurred?
14 A. Yes.
15 Q. Okay.
16 And that is your version of what was said by
17 Mr. DaSilva?
18 A. Yeah.
19 Q. Okay.
20 And this photograph appears to be signed by
21 Carlos Marquez. Correct?
22 A. Yes.
23 Q. And the date?
24 A. Yes.
25 Q. What's the date?

- 1 A. November 27th, 2002.
2 Q. And who wrote that on there?
3 A. I did.
4 Q. Now, did there come a time recently when you
5 saw Mr. DaSilva? Just answer that yes or no.
6 A. Excuse me?
7 Q. Did there come a time recently when you saw
8 Mr. DaSilva?
9 A. Yes.
10 Q. And was that in this courthouse building?
11 A. Yes.
12 Q. And had you come to court --
13 A. Yes.
14 Q. -- with some court officers on June 7th?
15 A. Yes.
16 Q. And you were here to be a witness in this
17 trial?
18 A. Yes.
19 Q. And were you with those two court officers?
20 A. Yes.
21 Q. At some point while you were with the
22 officers, did you come near Mr. DaSilva?
23 A. Yes.
24 Q. How close did you get to him, without telling
25 us where you or he may have been?

- 1 A. A little bit farther than you, like, say, from the
2 wall to you.
3 Q. Okay.
4 And were the court officers with you when
5 this occurred?
6 A. Yes.
7 Q. And did Mr. DaSilva say anything to you at
8 that time?
9 A. Yes.
10 Q. What did he say to you?
11 A. All right. He said why did I do it, that I should
12 have kept my mouth shut, that -- well, he cursed at me
13 like.
14 Q. What curse did he use?
15 A. Like "fucking," "you should have kept your fucking
16 mouth shut." And I should keep my mouth shut. That
17 there's somebody out there to judge me, that's going to
18 judge me.
19 Q. Did you take that as a threat?
20 A. Yes.
21 Q. And was he speaking in English or another
22 language?
23 A. He was speaking in Portuguese.
24 Q. All right.
25 Did you speak Portuguese?

- 1 A. I don't speak Portuguese, but Spanish, a Spanish
2 guy could understand Portuguese. It's similar, very
3 similar.
4 Q. And how did you take this?
5 A. I took it like a threat, you know, and there was
6 another guy next to him.
7 MR. SAMPSON: Objection your Honor.
8 Q. Was there another person next to Mr. DaSilva?
9 A. Yes.
10 Q. Without telling us what he said, did he also
11 join in the conversation?
12 A. Yes.
13 MR. SAMPSON: Objection, your Honor,
14 relevance to what someone said or did.
15 THE COURT: I will sustain the objection.
16 Q. And what did you understand Mr. DaSilva to be
17 communicating to you?
18 MR. SAMPSON: Objection, asked and answered,
19 your Honor.
20 THE COURT: I'll allow it.
21 A. That I better -- I should keep my mouth shut, you
22 know, cause, you know, I was his only way out of this.
23 You know he was facing a lot of time, something about
24 25 years. Yeah, I should keep my mouth shut. There's
25 somebody out there that's going to judge me.

- 1 Q. All right.
2 What did the court officers with you do at
3 that point? Do you know if they reported the matter to
4 the Court?
5 A. Yes.
6 Q. And was this activity brought to the
7 attention of the Prosecutor's Office?
8 A. Yes.
9 Q. And as a result, was anybody from the
10 Prosecutor's Office around in the area when this
11 occurred, or was it just --
12 A. No.
13 Q. -- Hudson County?
14 A. Yeah, just Hudson County. One of the sheriffs was
15 a Spanish guy, so he understood also what he said.
16 Q. And after the matter was brought to the
17 attention of Prosecutor's Office, were you called upon
18 to make a formal statement?
19 A. Yes.
20 MR. MCTIGUE: S-74, your Honor.
21 Were you brought downstairs and was a
22 statement taken from you by Investigator Berrian?
23 A. Yes.
24 Q. And I show you now a three-page statement
25 dated 6-7-04. Is that your statement?

- 1 A. Yes.
2 MR. MCTIGUE: I have no further questions,
3 Judge.
4 THE COURT: Cross examine.
5 CROSS EXAMINATION BY MR. SAMPSON:
6 Q. Mr. Marquez, is it fair to say that you
7 have spoken to members of the Prosecutor's Office on
8 several occasions between November the 2nd, I'm sorry,
9 November, 2002, and today? You have spoken to them a
10 lot of times; right?
11 A. Yeah.
12 Q. You have given sworn statements to them that
13 you signed?
14 A. Yes. Yes, one.
15 Q. You appeared before the grand jury?
16 A. The grand jury.
17 Q. In June of 2003; is that correct?
18 A. Yes.
19 Q. And when you were there, you put your hand on
20 the bible and swore to tell the truth. Right?
21 A. Yes.
22 Q. And when you gave the statement, you swore
23 that were you telling the truth. Correct?
24 A. Yes.
25 Q. It's fair to say that you have repeatedly

1 lied?
2 A. Uh huh.
3 Q. About what happened on November the 4th,
4 2002. Right?
5 A. Yes.
6 Q. And the reason that you lied was cause first
7 you said you were scared?
8 A. Yes.
9 Q. Of what might happen to you?
10 A. Exactly.
11 Q. Correct. And you have told so many untruths
12 that you can't even keep track of them all. Right?
13 A. Yeah, you could say that.
14 Q. Well, you can't even remember --
15 MR. McTIGUE: Judge, may the witness finish?
16 THE COURT: Let him finish his answer.
17 A. But, see, the untruth part is not the main thing,
18 you know.
19 Q. The truth --
20 MR. McTIGUE: Judge.
21 THE COURT: You can't interrupt his answer,
22 Mr. Sampson.
23 MR. SAMPSON: Sorry, your Honor.
24 THE COURT: Finish your answer.
25 THE WITNESS: The main thing I do, and the

1 main thing should be that he told me that he shot the
2 cab driver.
3 Q. Okay.
4 Now, you forgot to mention Alex Tixi when you
5 gave your initial statement. Correct?
6 A. Yes.
7 Q. No question that you and Alex Tixi were
8 together on November the 4th, 2002?
9 A. Yes.
10 Q. No question you and Alex Tixi were in the
11 city of Newark on 2002?
12 A. In the city of Newark?
13 Q. Yes. You don't remember being in Newark that
14 day?
15 A. No.
16 Q. There's no question you were handling the gun
17 on November the 4th, 2002. Right?
18 A. Handle the gun how?
19 Q. You had the gun in your possession on that
20 day, didn't you?
21 A. On that day?
22 Q. Yes.
23 A. That day?
24 Q. That morning.
25 A. I was in my house. He came to me with the gun,

1 and he had the gun.

2 Q. And you also had Mr. Chininin's wallet that
3 day. Correct?

4 A I did not touch nothing from him.

5 MR. MCTIGUE: Judge, can he finish?

6 A. I did not. I don't know if it was true or not,
7 even though I didn't believe it. I didn't want to
8 look. I didn't want to be part of it. I got enough
9 problems, you know, with my thing. Mine are little
10 problems. I did get scared, you know, when they came
11 to me cause, you know, I don't know too much about law.
12 I don't even know what good lawyer to get. I got
13 scared. I don't know what they could charge me with,
14 this is a homicide.

15 Q. Sir, my question is whether you handled the
16 contents of the wallet?

17 A. Wallet, no, sir.

18 Q. Didn't you just tell us a moment ago that you
19 were handling Mr. Chininin's license in which you read
20 the --

21 THE COURT: Just like he has to wait for you
22 to answer, you have to wait for him to finish the
23 question.

24 THE WITNESS: I'm sorry, your Honor.

25 Q. So now you are saying you never handled the

1 license?

2 A. I never touched it.

3 Q. So when you told us that you were looking at
4 the date of birth on there and saw a name, you weren't
5 handling the license?

6 A. No.

7 Q. All right.

8 Now, you say that you didn't want to get
9 involved in this. Right?

10 A. That's right.

11 Q. Because you were scared?

12 A. Yes.

13 Q. What is it that you were scared of?

14 A. Just for me knowing that, you know, like I'm
15 obstructing, not on this justice, but I'm obstructing,
16 you know, from the police catching a killer. And for
17 me, knowing what happened and not telling. I think I
18 could get in trouble with that, and this is a homicide,
19 like I said. This ain't no little, you know, no little
20 drug charges like the ones I got, this is a homicide.

21 Q. Oh, so you say the charges you have against
22 you are just little charges. Right?

23 A. Yes.

24 Q. And you have a matter pending in -- is it
25 Hudson County?

- 1 A. Yes.
2 Q. You have got a drug case over there?
3 A. Yes.
4 Q. You are charged in Hudson County with
5 possession of CDS?
6 A. Yes.
7 Q. Distribution of marijuana?
8 A. Yes.
9 Q. Distribution of heroin and cocaine?
10 A. Yes. What?
11 Q. Distribution of heroin and cocaine?
12 A. Cocaine.
13 Q. Just cocaine?
14 A. Just cocaine.
15 Q. Conspiracy?
16 A. Yes.
17 Q. Two counts of conspiracy?
18 A. Yes.
19 Q. Who is your co-conspirator in that case?
20 A. Alex Tixi.
21 Q. So you are charged with conspiring with Mr.
22 Tixi to distribute drugs?
23 A. Yes.
24 Q. And one of those is a school zone case.
25 Right?

- 1 A. Yes.
2 Q. And you know that are you facing mandatory
3 jail time on that. Right?
4 A. Yes.
5 Q. Now, you got arrested with Mr. Tixi --
6 A. Yes.
7 Q. -- on that charge?
8 A. Yes.
9 Q. And I take it at some point you made bail on
10 that charge?
11 A. Yes.
12 Q. And while you were out on bail, you caught
13 new charges?
14 A. Yes.
15 Q. Up in --
16 A. Somerset County.
17 Q. Somerset County.
18 And you are charged on June 9th, 2003, the
19 Town of Kearny, and the County of Hudson -- well, the
20 town of Bernards, you conspired with three other people
21 to commit the crime of armed robbery. Correct?
22 A. Yes, that's also pending. That is also a pending
23 charge.
24 Q. You know that's a second degree offense?
25 A. Yes.

1 Q. So you know are you facing up to 10 years on
 2 that offense. Correct?
 3 A. Yeah, you could say up to 10 years.
 4 Q. And you also know that that could run
 5 consecutive to the other charge that you have pending
 6 in Hudson County, that means back to back. Do you
 7 understand that; right?
 8 A. Consecutive, like what, like finish one time here
 9 and then --
 10 Q. Yes.
 11 A. I didn't know.
 12 Q. You didn't know that?
 13 A. No, sir.
 14 Q. Did you know that on count 2 you are charged
 15 that you did purposely attempt to enter a residence
 16 located in Bernards Drive with --
 17 MR. McTIGUE: Judge, may I be heard at
 18 sidebar?
 19 (The following takes place at sidebar)
 20 MR. McTIGUE: Judge, you can't get into the
 21 facts.
 22 THE COURT: That's right, Mr. Sampson.
 23 MR. SAMPSON: I asked this man if he knows
 24 that he's facing a charge of burglary while armed.
 25 THE COURT: No, you can go into the details

1 of the whole case, you can't do that.
 2 MR. SAMPSON: I want to ask him about the
 3 possession of the weapon.
 4 THE COURT: Just ask him about the possession
 5 of weapon, period.
 6 MR. SAMPSON: Fine, Judge.
 7 (The following takes place in open court)
 8 Q. And you understand, Mr. Marquinez, that one
 9 of the allegations against you up there in Somerset is
 10 that you did this while armed with a .38 caliber
 11 revolver, a gun?
 12 A. I did what? I did -- excuse me, can you repeat
 13 that?
 14 Q. One of the allegations against you up in
 15 Somerset County is that you committed the offense while
 16 armed with a Smith & Wesson .38 caliber revolver,
 17 handgun. Did you know that?
 18 A. Well, there was no -- well, the offense was
 19 just -- we was driving, we got pulled over, and they
 20 find a gun in the car.
 21 Q. There was a gun in the car?
 22 A. Yes. Not on my possession.
 23 Q. Were you charged with the gun?
 24 MR. McTIGUE: You just can't keep doing it,
 25 Mr. Sampson, you have to let him finish, and he has got

1 to let you finish.

2 A. Not on my possession, the guy that was in the
3 back.

4 MR. McTIGUE: Judge, that's the problem. You
5 are getting into the facts of the case at this point
6 which is inappropriate and Mr. Sampson was cautioned on
7 that, Judge.

8 THE COURT: Next question.

9 Q. You are aware of charges against you;
10 correct?

11 A. Yes.

12 Q. And clearly you don't want to go to jail.
13 Right?

14 A. You could say that.

15 Q. So you want to help yourself out. Correct?

16 A. Do I want to help myself out?

17 Q. Yes.

18 A. Being in jail, that's some help to me, so I'm glad
19 that I actually was arrested.

20 Q. You are glad that you were arrested?

21 A. Yes.

22 Q. Why was that?

23 A. So, you know, so I could open up my eyes and, you
24 know, to see, you know, that the street, the people I
25 hang out with, it's not worth it to be with, you know,

1 all the problems that I got so far is because of
2 people, you know.

3 Q. So other people's fault?

4 A. I'm not taking, you know, the blame out of myself.
5 I'm being responsible, you know, for my charges. You
6 know, like I'm taking it like a man. If I have to do
7 time, I have to do time. It's a lesson for me to
8 learn.

9 Q. Are you here today as a result of a subpoena?

10 A. A subpoena, what is that?

11 Q. Did you get a subpoena, a piece of paper that
12 tells you you have got to be here to testify?

13 MR. McTIGUE: Judge.

14 (The following takes place at sidebar)

15 THE COURT: Is there a process for
16 subpoenaing people who are in custody, Mr. Sampson?

17 MR. SAMPSON: As far as I know, that is why
18 can't he be subpoenaed?

19 THE COURT: Because what would that do?

20 MR. SAMPSON: Which would produce his
21 appearance. Is he here voluntarily? Why is he here?
22 Why can't I ask him?

23 THE COURT: Because I don't know if that's a
24 proper -- I shouldn't be making your objection, but I
25 have never had anybody produced in this courtroom from

1 state or county jail.

2 MR. MCTIGUE: It was by writ. He was ordered
3 by the Court to be here.

4 THE COURT: So I don't know that it's a fair
5 question.

6 MR. SAMPSON: I will withdraw it, Judge, so I
7 can get on with this.

8 (The following takes place in open court)

9 Q. In November of 2002, you became aware that
10 the police were looking for you to question you about
11 this incident. Correct?

12 A. Yes.

13 Q. You came in and you gave a statement on
14 November the 26th, 2002?

15 A. Yes.

16 Q. Have you had a chance to review that
17 statement before your testimony here today?

18 A. Yes.

19 Q. The Prosecutor's Office gave you a copy of
20 it?

21 A. No, sir.

22 Q. You don't have a copy of it?

23 A. No, sir.

24 Q. When is the last time you reviewed it?

25 A. It was yesterday, sir.

1 Q. Yesterday.

2 And before that, when did you review it?

3 A. No, sir.

4 Q. You didn't. You just testified earlier that
5 you were here in the building to testify.

6 A. Yes.

7 Q. Last week, was it?

8 A. Yes.

9 Q. And prior to you --prior to you coming into
10 court to testify.

11 A. Uh huh.

12 Q. Did you review the case with the prosecutor?

13 A. No, sir.

14 Q. You never spoke to his investigator?

15 A. No, sir. Well --

16 MR. MCTIGUE: Judge, I want to be heard at
17 sidebar?

18 THE COURT: Okay.

19 (The following takes place at sidebar)

20 MR. MCTIGUE: You know, that's disingenuous
21 by counsel. Counsel knows I didn't get a chance to
22 interview this man because of the actions of his
23 client. And to go down this path suggests things to
24 jurors that he knows are untrue, is inappropriate,
25 Judge.

1 MR. SAMPSON: Judge, what's the prosecutor
2 talking about, he took a statement from --

3 THE COURT: I'll allow the question.

4 MR. SAMPSON: Thank you, Judge.

5 THE COURT: But he will be allowed to do the
6 appropriate thing on redirect.

7 (The following takes place in open court)

8 Q. You had the opportunity to speak to several
9 members of the prosecutors office last week, didn't
10 you?

11 A. Yes.

12 Q. And that's when you also gave the statement
13 that we just talked about?

14 A. Yes.

15 Q. Last week right?

16 A. Yes.

17 Q. And while you were down here in the building
18 with Investigator Berrian, did you have an opportunity
19 to review your testimony?

20 A. No, sir.

21 Q. All right.

22 Now, is it fair to say that you came -- you
23 gave a statement to Detective Vitiello on November the
24 26th, 2002. Now, you knew at that point that Alex Tixi
25 had given a statement to the Prosecutor's Office?

1 A. Yes.

2 Q. Right?

3 A. Yes.

4 Q. So before you came down here, didn't you call
5 Josephina Garcia and tell her not to tell them what
6 really happened?

7 A. Not to tell them what really happened, no, sir.
8 No, sir.

9 Q. You did not call Josephina --

10 A. No, sir.

11 THE COURT: Wait until he finishes his
12 question.

13 A. No, sir, I didn't.

14 THE COURT: Wait until he fully finishes his
15 question. He never finished his question.

16 Q. You did not call Ms. Garcia and tell her that
17 she should tell the police that you were with her all
18 night two or three Sundays before that?

19 A. No, sir.

20 Q. Now, on November the 26th, you came down here
21 and gave this statement to the police. Correct?

22 A. Not here, the other police station.

23 Q. The police station?

24 A. Yes.

25 Q. In Newark?

- 1 A. Yes.
2 Q. They asked you certain questions. Correct?
3 A. Yes.
4 Q. Did they ask you where you -- your date of
5 birth?
6 A. Yes.
7 Q. And you give them that. Right?
8 A. Yes.
9 Q. You told them that you were born in Ecuador.
10 Is that correct?
11 A. Yes.
12 Q. And you have already testified that you speak
13 Spanish as well as English. Correct?
14 A. Yes.
15 Q. I take it that you can recognize an
16 Ecuadorian accent when you hear one?
17 A. Ecuadorian accent? Some of them, yes.
18 Q. Do your parents have Ecuadorian accents?
19 A. Yes.
20 Q. Now, in the statement to the police, you told
21 them that on the night in question, on page 2 of that
22 statement, you told them that you were at 148 Wilson
23 Avenue in Kearny. Correct?
24 A. Yes, sir.
25 Q. And you told them that's where you first

- 1 heard from Mr. DaSilva?
2 A. From Mr. DaSilva, yes.
3 Q. That was a lie?
4 A. Yes.
5 Q. Correct?
6 A. Yes.
7 Q. And when you told them that you were with
8 Josepina and her son Tito, you didn't mention Alex
9 Tixi being present. Correct?
10 A. Yes.
11 Q. Correct?
12 A. Yes.
13 Q. Today you say Alex was there with you all, he
14 was at your mother's house with you the whole day.
15 Correct?
16 A. Yes.
17 Q. And everything you said there in this
18 statement about Alex was untrue, correct, when you
19 said -- let me rephrase the question.
20 When you said that Alex wasn't there, that
21 was untrue?
22 A. Yes.
23 Q. In this statement, can you describe -- I'm
24 sorry, Mr. DaSilva coming to the door, knocking on the
25 door and answering the door. Correct?

- 1 A. Uh huh.
2 Q. That was not true, was it?
3 A. That was not true.
4 Q. In your statement, you say in the statement
5 of November the 26th, 2002, that Mr. DaSilva left the
6 lap top out in the car, is that correct, that's what
7 you told them in your statement?
8 Let me rephrase the question. Do you
9 remember telling the investigators that you had to go
10 out to the car to take a look at the lap top computer?
11 A. Yeah, I did. Now I recall that, I can't remember.
12 Q. That wasn't true, was it?
13 A. No, it wasn't true.
14 Q. And you described going out to the car to
15 take a look at the lap top and the wallet?
16 A. And the wallet.
17 Q. Correct?
18 A. Yes.
19 Q. That wasn't true?
20 A. That wasn't true.
21 Q. You also at that point described the incident
22 as, you say Mr. DaSilva told you about. Is that
23 correct?
24 A. Yes.
25 Q. Now, you said that Mr. DaSilva had caught the

- 1 cab in North Newark?
2 A. Yes.
3 Q. And you said there was a 15-dollar fair that
4 was going to be charged?
5 A. Yes.
6 Q. Sir, you have also testified that your father
7 is a cab driver. Correct?
8 A. Yes.
9 Q. And he drives for Classic Cab Company?
10 A. Now he drives for Millennium.
11 Q. He drives for Millennium?
12 A. Yes.
13 Q. So you're familiar with the fare structure of
14 how much it takes to take a cab from one part of Newark
15 to another?
16 A. A little bit, you could say.
17 Q. You didn't have a license back then. Right?
18 A. No, sir.
19 Q. So it's fair to say you sometimes had to take
20 a cab yourself. Correct?
21 A. Well, my father had a car, you know, and he was
22 driving for me. I always had somebody to drive for me.
23 Q. But it's fair to say that you were familiar
24 with cabs in the city of Newark and their fare
25 structure, how much they charge to get from one place

1 to another?

2 A. I'm not too familiar with it, but I'm a little bit
3 because my father works as a cab driver. Yes, I'm
4 familiar with how much they make, you know, a day.

5 Q. Now, you also said that you took a look at
6 this lap top computer?

7 A. Yes.

8 Q. You were asked back in November the 26th,
9 2002, whether you remember the make or model of the
10 computer.

11 A. Yes, I was asked.

12 Q. You said you had the opportunity to look at
13 that lap top computer?

14 A. Yes.

15 Q. But you weren't able to tell what make or
16 model it was. Correct?

17 A. No.

18 Q. And you said while you talked to Mr. DaSilva,
19 he described for you where the driver was shot. Is
20 that correct?

21 A. Yes.

22 Q. And you, in your demonstration for the
23 prosecutor, you described an area directly behind or
24 beneath --

25 A. Yes.

1 Q. -- the right ear. Is that correct?

2 A. Yes.

3 Q. And that's what you say Mr. DaSilva told you?

4 A. Yes.

5 Q. Now, you have also said that when you saw Mr.
6 DaSilva, the first time you saw him was now, today, for
7 the first time?

8 A. Yes.

9 Q. You say that when you saw Mr. DaSilva, he was
10 operating his car. Correct?

11 A. Yes.

12 Q. And you say today that he had blood on his
13 right leg?

14 A. Yes.

15 Q. Is that correct?

16 A. Yes.

17 Q. Now, when you gave your statement to the
18 police on November the 26th, 2002, you said the blood
19 was on the left leg.

20 MR. McTIGUE: Objection, Judge, that's
21 misreading the statement.

22 (The following takes place at sidebar)

23 MR. SAMPSON: Excuse me, your Honor. I don't
24 know what you just pointed to. I said today you said
25 it was on your right leg.

1 THE COURT: If you are going to use this, you
2 can use it exactly like it is.

3 MR. SAMPSON: Excuse me, Judge. Wait a
4 minute. I asked him if --

5 THE COURT: Unless he says it's some place
6 else.

7 MR. SAMPSON: I asked him if today he saw
8 blood on the right leg, that was my question.

9 THE COURT: No, we can read it back if you
10 want, but you said: Didn't you say in the statement
11 that it was on his left leg? I can see what it says.
12 And if are you going to use it, you are going to use it
13 exactly the way it is.

14 MR. SAMPSON: Fine.

15 (The following takes place in open court)

16 THE COURT: Objection sustained.

17 MR. McTIGUE: Thank you, Judge.

18 Q. Mr. Marquinez, when you testified, did you
19 tell the jury on what side you saw blood on Mr.
20 DaSilva?

21 A. Yes.

22 Q. And what did you say?

23 A. I said the right, the right side.

24 Q. Excuse me?

25 A. The right side.

1 Q. On his right side?

2 A. The right leg.

3 Q. Did you give a statement on November the
4 26th, 2002? Did you give a statement?

5 A. Yes.

6 Q. Is it fair to say that in the statement on
7 November 26th, 2002, you said that: I think it was on
8 his left leg, but I'm not sure?

9 A. I'm not sure.

10 Q. All right.

11 So in November you made mention of the left
12 leg, correct, November, 2002?

13 A. If that's what it says.

14 Q. And today you now say it's on the right leg?

15 A. Right, yeah.

16 Q. Is it fair to say, if you were sitting behind
17 the wheel of a car --

18 A. If he was sitting?

19 Q. If he was sitting behind the wheel of a car
20 and the door was closed.

21 A. Uh huh.

22 Q. You won't be able to see his left leg, would
23 you?

24 A. I wor't, yeah.

25 Q. Excuse me?

- 1 A. Well, it was not only on, you know, on the side,
2 it was on top, you know.
3 Q. Of which leg?
4 A. I say the right leg.
5 Q. And my question is, prior to this, you said
6 the blood was on the left leg. Correct?
7 A. But I also said I wasn't sure.
8 MR. McTIGUE: Thank you.
9 THE COURT: Mr. McTigue, thank you is not --
10 MR. McTIGUE: I understand, Judge. But I
11 also understood there was a ruling of court.
12 THE COURT: Please, Mr. McTigue, that's
13 enough.
14 Go ahead. Go ahead, Mr. Sampson.
15 Let's take a five-minute break, ladies and
16 gentlemen. Please stay in the juryroom.
17 (Recess)
18 (Jury brought out)
19 THE COURT: Okay, Mr. Sampson.
20 Q. You said that you saw blood on one of Mr.
21 DaSilva's leg?
22 A. Yes.
23 Q. You are not sure which leg that was?
24 A. No, sir.
25 Q. And in your statement, November the 26th, you

- 1 don't mention seeing blood on any other part of his
2 body, do you?
3 A. I think -- I think I probably did. I just said
4 probably on the lap top, and I think his jacket a
5 little bit.
6 Q. Are you sure of that?
7 A. Yeah, on the lap top, I'm sure.
8 Q. With regard to the jacket, did you tell the
9 police or Investigator Vitiello, or Investigator
10 Berrian, that on that night you saw blood on Mr.
11 DaSilva's jacket?
12 A. I can't say it, I'm not sure. I'm not sure.
13 Q. Well, you did talk about the jacket because
14 that's where you said you saw --
15 A. The wallet.
16 Q. The wallet, correct.
17 A. Yes.
18 Q. But it's fair to say that you never saw blood
19 on Mr. DaSilva's jacket that evening. Correct?
20 A. I'm not sure. I'm not sure.
21 Q. Now, in your statement to Investigator
22 Vitiello and Berrian, you described blood as gushing
23 from Mr. Chinin upon being shot. Correct?
24 A. Yes.
25 MR. McTIGUE: Judge, I will object to the

- 1 form of the question. If you are going to use the
2 statement, I think there's an appropriate way to do it.
3 Q. When you talked to the police on November the
4 26th, 2002, did you tell them that Mr. DaSilva told you
5 that blood was gushing from Mr. Chinini?
6 A. Yes.
7 Q. And what did you understand gushing to mean?
8 A. Like --
9 MR. McTIGUE: Judge, I'll object there, the
10 interpretation.
11 THE COURT: I will sustain the objection.
12 THE WITNESS: Like --
13 THE COURT: I sustained the objection, that
14 means you don't answer that question.
15 Q. Did you see blood on Mr. DaSilva's shirt?
16 A. No, sir.
17 Q. You had mentioned gloves being in the car.
18 Correct?
19 A. Yes.
20 Q. Now, you had known Mr. DaSilva for a while
21 prior to this incident. Is that correct?
22 A. Not for a while, I would say like three, the most,
23 four months.
24 Q. You said there were different types of
25 gloves --

- 1 A. Yes.
2 Q. -- in the car that day?
3 A. Yes.
4 Q. And you said the gloves were in a spot in the
5 dashboard where there should have been a radio?
6 A. Yes.
7 Q. What kind of gloves did you see in that space
8 that morning?
9 A. There were -- sorry, there were latex and there
10 was some -- the two black gloves that he said he used.
11 Q. Black gloves?
12 A. Yes.
13 Q. Black leather gloves? What were they made
14 of?
15 A. Leather, yeah.
16 Q. Did you see any work gloves in there?
17 A. Work gloves, like --
18 Q. Someone might wear to a construction site or
19 gardening, something like that?
20 A. No, sir.
21 Q. You didn't see any blood on those gloves.
22 Right?
23 A. No, sir, no, I didn't notice.
24 Q. You didn't see any blood inside the interior
25 of the car. Is that correct?

- 1 A. No, sir. No, sir.
2 Q. You didn't see any blood on Mr. DaSilva's
3 boots. Correct?
4 A. No, sir.
5 Q. Now, you said a number of these observations
6 that you say you made were while you were intoxicated,
7 you had been drinking. Correct?
8 A. Yes.
9 Q. And you said that you had consumed Corona
10 beer?
11 A. Yes.
12 Q. And you also said you had drinking 40 ounce
13 bottles of Corona beer?
14 A. Yes.
15 Q. And how many bottles did you, yourself, have?
16 A. I would say about three, at the most.
17 Q. And you also said that at some point that
18 evening you were smoking marijuana. Correct?
19 A. Yes.
20 Q. And you also said that evening Josephina was
21 smoking marijuana. Correct?
22 A. Yeah.
23 Q. And this was inside Josephine's house?
24 A. Yes, in her bedroom.
25 Q. I'm sorry?

- 1 A. In her bedroom we were smoking.
2 Q. How much marijuana did you smoke that
3 evening?
4 A. Well, it was only one thing, so I could say I took
5 a couple of pulls, but like it was between me and
6 everybody, so I don't know, I'm not sure. I can't
7 count the pulls.
8 Q. You said Josephina is the one who supplied
9 the marijuana. Is that correct?
10 A. Yes.
11 Q. Now, you said that you stayed at Josephina's
12 house until the next day?
13 A. Yes.
14 Q. What time did you leave?
15 A. It was like, like I say, around 11 o'clock. I'm
16 not sure. It was before 12, though.
17 Q. And when you went home, and you went from
18 there straight home?
19 A. Straight home, yes.
20 Q. Now, when you were being questioned by the
21 assistant prosecutor, did you tell them that you had
22 spoken to your father about the shooting of Mr.
23 Chininin?
24 A. I didn't speak to my father. My father had spoke
25 to my mother about that, you know, so when I got home,

- 1 you know, she was telling me: Carlos, guess what
2 happened? Some guy, a young kid has been shot, dead,
3 you know, in Newark.
4 Q. So you spoke to your mother?
5 A. Yeah.
6 Q. Right.
7 And according to your statement, it was your
8 mother who told you that Mr. Chininin was 19 years of
9 age. Is that correct?
10 A. Yes. Yes.
11 Q. Now, after you gave your statement on
12 November the 26th, you appeared down here at the grand
13 jury?
14 A. Yes.
15 Q. To testify in this particular case. Is that
16 correct?
17 A. Yes.
18 Q. Now, today, for instance, you say you knew
19 Alex for a period of about three years?
20 A. From now, yeah.
21 Q. You have known him about three years?
22 A. Yes.
23 Q. And you have been good friends, you said, for
24 about a year?
25 A. Like, yeah, talking to him, close.

- 1 Q. Do you remember being --
2 A. Excuse me, I'm sorry, like a year from November
3 4th.
4 Q. Before the grand jury, though, you told them
5 that you had known Alex for --
6 MR. MCTIGUE: Judge, I will object to the
7 form. Can we have a specific line?
8 A. Excuse me, for, like I said --
9 THE COURT: There's no question pending. Go
10 ahead.
11 Q. Do you remember being asked that question
12 before the grand jury?
13 A. Do I remember?
14 Q. How long you had been friends with Alex?
15 A. I think so, yes.
16 Q. Do you recall what you told them?
17 A. I think I told them about five years -- I mean, I
18 know him like, you know, me and him live almost in the
19 same town, so I do know him from the street, like,
20 yeah, you know, by like talking to him, hanging out,
21 yeah, only like a year.
22 Q. And with regard to Josephina, you were asked
23 about, before the grand jury, you were asked about your
24 relationship with her?
25 A. Yes.

1 Q. Is that correct?

2 A. Yes.

3 Q. And before the grand jury, did you tell them
4 that you had a boyfriend and girlfriend relationship?

5 A. Yes.

6 Q. And is that in fact true?

7 A. Yes.

8 Q. Did you ever find out that while you were
9 going out with Ms. Garcia, she had a relationship with
10 Mr. DaSilva?

11 A. Did I find out?

12 Q. Yes.

13 A. No, sir. Boyfriend and girlfriend relationship,
14 you mean?

15 THE COURT: I believe the witness is asking
16 for clarification.

17 THE WITNESS: Is that a boyfriend/girlfriend
18 relationship?

19 Q. Yes.

20 A. No, I did not know that.

21 Q. Before the members of the grand jury you were
22 asked about, again, this was on June 6th, 2003, you
23 were again asked about Alex Tixi. Do you remember
24 being asked questions about Alex?

25 A. Yeah, I think, yes.

1 Q. And do you remember being asked: At some
2 point were you together with Alex Tixi on the night of
3 November the 4th, 2002?

4 MR. McTIGUE: Judge --

5 Q. Do you remember being asked that question?

6 MR. McTIGUE: -- can I be heard at sidebar?
7 (The following takes place at sidebar)

8 MR. McTIGUE: Judge, the objection is if you
9 are going to use the grand jury transcript and make
10 reference to it, it should be to a specific question
11 and reference to give the witness the opportunity to
12 look at it.

13 MR. SAMPSON: Judge, I asked the witness if
14 he recalls being asked before the grand jury whether he
15 was with Alex Tixi that night. Now, if he says yes, I
16 can ask the next question. If he says no, then I will
17 show him the transcript.

18 MR. McTIGUE: I object to the manner in
19 which --

20 THE COURT: I don't see the problem with
21 asking him: Did you tell the grand jury you were with
22 Alex Tixi?

23 MR. McTIGUE: But the problem I always have
24 with this type of questioning is the follow-ups that
25 proceed there from, Judge.

1 THE COURT: Well, when you follow up, do so
2 appropriately and tell him what line and page and so
3 forth.

4 (The following takes place in open court)

5 Q. Do you remember being asked before the grand
6 jury whether you were with Alex Tixi that night?

7 A. Was I -- I don't remember.

8 Q. All right.

9 Let me show you the grand jury transcript,
10 page 55, line 6, sir. Take a look at that. Remember
11 being in the grand jury -- do you remember being in the
12 grand jury on June 6th?

13 A. Yes.

14 Q. Do you remember Mr. McTigue asking you
15 questions on that day?

16 A. Yes.

17 Q. And do you remember -- does this help refresh
18 your recollection as to what you were asked? Take a
19 look at line 6.

20 A. Yes.

21 Q. And the question you were asked is: At some
22 point were you together with Alex Tixi that night?

23 A. Yes.

24 Q. And what was your answer?

25 A. I said no.

1 Q. The next question, all right, do you remember
2 being asked the next question: At some point did you
3 get a call from Luis DaSilva?

4 A. Yes.

5 Q. Do you remember being asked that question?

6 A. Yes.

7 Q. What was your answer?

8 A. No, sir.

9 Q. Do you remember being asked: Did you get a
10 page?

11 A. Yes.

12 Q. Do you remember being asked that question?

13 A. Yes.

14 Q. What was your answer?

15 A. No.

16 Q. Do you remember being asked the question: At
17 any point did you drive his vehicle? Do you remember
18 being asked that question?

19 A. Yes.

20 Q. And what was your answer to that question?

21 A. Yes, I said I drove his vehicle.

22 Q. So you say that back before the grand jury
23 you said it was you driving his vehicle, correct,
24 that's what you --

25 MR. MCTIGUE: Objection, Judge.

- 1 THE COURT: Stick with the transcript, Mr.
2 Sampson.
3 Q. Sir, page 55 of the transcript, you were
4 asked a question: At any point did you drive his
5 vehicle?
6 A. Yes.
7 Q. What was your answer?
8 A. Yes.
9 Q. Why don't you read it so we are perfectly
10 clear?
11 A. I drove his vehicle, it wasn't that night, though.
12 Q. All right.
13 You drove his vehicle?
14 A. I drove his vehicle the day before.
15 Q. And what day would that have been?
16 A. I don't know. I don't remember.
17 Q. Now, is it fair to say, Mr. Marquinez, that
18 today you say that the story you told the grand jury
19 was completely untrue?
20 A. Yes.
21 Q. Let me rephrase that.
22 A. Not completely.
23 Q. But was untrue?
24 A. Some parts.
25 Q. And, again, the part about him bringing

- 1 the -- or you going out to the car was untrue?
2 A. Yes.
3 Q. Now, in your testimony you never mentioned a
4 cell phone, have you?
5 A. No, I never mentioned a cell phone.
6 Q. So that on the night of November the 4th, you
7 didn't see a cell phone?
8 A. No, sir.
9 Q. Were you ever told the contents of Mr. Tixi's
10 statement? Did you ever know what he said to the
11 investigators in this case?
12 A. The first time, yeah. The first time, the first
13 time he went, yeah.
14 Q. So you knew what Mr. Tixi had told the
15 investigators?
16 A. Yes.
17 Q. Were you ever asked to provide information
18 about your home phone number?
19 A. Excuse me?
20 Q. When you were talking to the police.
21 A. Uh huh.
22 Q. And the investigators.
23 A. Yes.
24 Q. Did they ever ask you about whether you had a
25 cell phone?

- 1 A. No, sir.
2 Q. Did they ever ask about the number at your
3 mom's house?
4 A. Yes.
5 Q. Did you give them that phone number?
6 A. Yes. I think they had it, yeah.
7 Q. Now, on November the 4th, 2002, did you have
8 a pager?
9 A. I always had a pager. Yeah, I think I did have a
10 pager.
11 Q. Did anyone ever ask you for the pager number
12 for your pager?
13 A. Nobody asked.
14 Q. The investigators ever ask you?
15 A. Yes.
16 Q. Did you provide them --
17 A. Yes.
18 Q. -- with the number of your pager?
19 A. Yes.
20 Q. Now, you say that on November the 4th, 2002,
21 you were in your mom's house. Right?
22 A. Yes.
23 Q. About five o'clock in the morning?
24 A. Yes.
25 Q. Right.

- 1 And you were there with Alex Tixi?
2 A. Yes.
3 Q. And you said that the two of you had been
4 together most of the day?
5 A. Yes.
6 Q. And most of the day you had been together
7 drinking beer, right, and playing video games?
8 A. Yeah, from night time.
9 Q. From night time. About what time is that?
10 A. Like I said, after nine.
11 Q. From about nine o'clock at night until about
12 five o'clock in the morning the two of you were
13 together?
14 A. Yes.
15 Q. Drinking beer and play'ng video games?
16 A. Yes.
17 Q. You were in your mother's house?
18 A. Yes.
19 Q. There were other people present?
20 A. Yes.
21 Q. Your mom was there?
22 A. My mother.
23 Q. Your stepsister and your stepdad and your
24 sister was there?
25 A. My sister was there.

- 1 A. No, sir.
2 Q. Did they ever ask about the number at your
3 mom's house?
4 A. Yes.
5 Q. Did you give them that phone number?
6 A. Yes. I think they had it, yeah.
7 Q. Now, on November the 4th, 2002, did you have
8 a pager?
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10 pager.
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12 for your pager?
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15 A. Yes.
16 Q. Did you provide them --
17 A. Yes.
18 Q. -- with the number of your pager?
19 A. Yes.
20 Q. Now, you say that on November the 4th, 2002,
21 you were in your mom's house. Right?
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- 1 And you were there with Alex Tixi?
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24 sister was there?
25 A. My sister was there.

- 1 A. No, sir.
2 Q. Did they ever ask about the number at your
3 mom's house?
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8 a pager?
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12 for your pager?
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15 A. Yes.
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17 A. Yes.
18 Q. -- with the number of your pager?
19 A. Yes.
20 Q. Now, you say that on November the 4th, 2002,
21 you were in your mom's house. Right?
22 A. Yes.
23 Q. About five o'clock in the morning?
24 A. Yes.
25 Q. Right.

- 1 And you were there with Alex Tixi?
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4 together most of the day?
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12 five o'clock in the morning the two of you were
13 together?
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15 Q. Drinking beer and playing video games?
16 A. Yes.
17 Q. You were in your mother's house?
18 A. Yes.
19 Q. There were other people present?
20 A. Yes.
21 Q. Your mom was there?
22 A. My mother.
23 Q. Your stepsister and your stepdad and your
24 sister was there?
25 A. My sister was there.

- 1 Q. Now, it's your testimony today that at about
2 five o'clock in the morning your mom told you that
3 someone was outside?
4 A. Yes.
5 Q. Now, we are talking about events that
6 happened back on November the 4th, 2002?
7 A. Yes.
8 Q. And you are testifying in June of 2004?
9 A. Uh huh.
10 Q. The last year and a half have you ever told
11 that story to the Prosecutor's Office?
12 A. From November to June?
13 Q. Yes.
14 A. No, sir.
15 Q. Today is the first time that you are telling
16 this story. Correct?
17 A. Yesterday.
18 Q. Yesterday is the first time?
19 A. Yes.
20 Q. And you are telling that story because the
21 prosecutor or his investigator were talking to you
22 about your testimony for today. Right?
23 A. Well --
24 Q. Let me just finish the question.
25 And that's how you came to be talking to the

- 1 prosecutor yesterday; right?
2 A. Um, yes, they came to me, you know, just talking
3 about tomorrow, that I'm going to have court. And I
4 told them: Listen, at this time, you know, I want to,
5 you know what, you know the truth. Now, before the day
6 from grand jury, you know, I also wanted to say that,
7 you know.
8 Q. My question is -- whether you wanted to or
9 not, you didn't say it to anyone. Correct?
10 A. Yes, in the grand jury, yes.
11 Q. And when you talked to the prosecutor
12 yesterday he told you to expect certain questions from
13 me, didn't he?
14 A. Excuse me?
15 Q. The prosecutor told you some of the questions
16 I might ask you about your testimony. Correct?
17 A. Not that I remember.
18 Q. Don't you remember the prosecutor asking you,
19 for instance --
20 A. No, he just asked me: Okay, just tell me what
21 happened.
22 Q. Can I finish?
23 A. I'm sorry.
24 MR. McTIGUE: Judge, can the witness -- the
25 difficulty --

1 THE COURT: No, you are stepping on each
2 other here, so please, each of you wait for the other
3 person to finish before you respond.

4 Q. Did the prosecutor ask you yesterday why in
5 the world Mr. DaSilva would come and tell you all this?
6 Do you remember being asked that question yesterday?

7 A. Yes.

8 Q. Okay.

9 And you were told at that point that certain
10 parts of your story don't make sense. Correct?

11 A. Uh huh, yes.

12 Q. Yes?

13 A. Yes.

14 Q. And so confronted with the fact that parts of
15 your statement don't make any sense, you decided that
16 you had to change it. Correct?

17 A. I been decided that before then.

18 Q. I'm sorry, I didn't understand that.

19 A. I decided before then, that's why I also, you know,
20 my lawyer was going to come with me and, you know, the
21 first day, the last week some day, Thursday, he was
22 going to come with me to speak to the prosecutors but,
23 you know.

24 Q. He was going to, but did you, before
25 yesterday, ever tell the prosecutor that the statement

1 that you gave on November the 26th was untrue?

2 A. Repeat that one more time, I'm sorry.

3 Q. Did you ever tell the prosecutor what you
4 said on November the 26th was untrue?

5 A. Yes.

6 Q. Before yesterday?

7 A. Yes. Before yesterday?

8 Q. Yes.

9 A. No.

10 Q. Did you ever tell, before yesterday, did you
11 ever tell the prosecutor that the story you told the
12 grand jury was untrue?

13 A. Did I ever tell the prosecutor -- can you repeat
14 that one more time, I'm sorry?

15 Q. Before yesterday.

16 A. Uh huh.

17 Q. Did you ever tell the prosecutor that your
18 testimony before the grand jury on June 6th, 2003, was
19 false?

20 A. Yes. I mean no.

21 Q. You never told them; right?

22 A. No.

23 Q. Now, this morning, while you were in the
24 holding cell --

25 A. Yes.

1 Q. Do you remember me --
2 A. Yes.
3 Q. -- and the prosecutor coming to speak to you?
4 A. Yes.
5 Q. You remember that?
6 A. Yes.
7 Q. And I had questions for you about the
8 statement that you gave yesterday. Correct?
9 A. Yes.
10 Q. And I asked you about the changes in your
11 statement. Correct?
12 A. Yes.
13 Q. And when I was talking to you, the assistant
14 prosecutor was with me; right?
15 A. Yes.
16 Q. And I told you that I represented Mr.
17 DaSilva. Right?
18 A. Yes.
19 Q. And one of the questions I asked you about
20 was in your statement you said Mr. DaSilva drove for
21 you. Correct?
22 A. Yes.
23 Q. You said that in your statement. Right?
24 A. Yes.
25 MR. McTIGUE: Judge.

1 THE COURT: Is there an objection?
2 MR. McTIGUE: Yes.
3 (The following takes place at sidebar)
4 MR. McTIGUE: It's not a statement, it's a
5 report by Investigator Iuliano. There's no statement
6 on that.
7 THE COURT: All right, sustained. Rephrase.
8 (The following takes place in open court)
9 Q. So when I asked you about what you told the
10 prosecutor yesterday. Right?
11 A. Yes.
12 Q. Cause you didn't write it down anywhere.
13 Right?
14 A. No, sir.
15 Q. They didn't type it up. Right?
16 A. No, sir.
17 Q. You didn't sign it. Right?
18 A. No, sir.
19 Q. So you told the prosecutor yesterday that you
20 were going to say something different --
21 A. Yes.
22 Q. -- today. Correct?
23 A. Yes.
24 Q. And you said you were going to say something
25 different from what you said November the 26th. 2002.

- 1 Right?
2 A. Yes.
3 Q. And you told them that you were going to say
4 something different than what you told the grand jury
5 June 6th, 2003. Correct?
6 A. Correct.
7 Q. And I asked you about your statement or,
8 sorry, about your telling the prosecutor yesterday that
9 Mr. DaSilva drove for you. Right?
10 A. Yes.
11 Q. Do you remember me asking you that question?
12 A. Yes.
13 Q. Do you remember telling me in the presence of
14 prosecutor that he drove for you because your license
15 was suspended. Right?
16 A. Yes.
17 Q. And didn't you specifically deny that Mr.
18 DaSilva had anything to do with drugs when you spoke to
19 me in the holding cell this morning?
20 A. That he had, what, nothing to do with the drug?
21 Q. I will rephrase the question.
22 Didn't you tell me this morning in the
23 presence of the prosecutor that Mr. DaSilva had nothing
24 to do with drugs? That's what you told me; right?
25 A. That he had nothing to do -- he was driving for me

- 1 to pick up.
2 Q. Sir, my question --
3 MR. McTIGUE: Judge, may he finish? You have
4 to let him finish.
5 MR. SAMPSON: It's not responsive to my
6 question.
7 THE COURT: He is telling you what he told
8 you. Let him answer the question.
9 A. I told you that he used to drive for me to pick up
10 and deliver drugs.
11 Q. Sir, didn't I ask you specifically, in the
12 presence of the prosecutor, whether that had anything
13 to do with drugs? Didn't I ask you that?
14 A. Whether he had anything to do with drugs?
15 Q. Yes.
16 A. Well, he was driving for me, that's all.
17 Q. And didn't you tell me this morning that it
18 had nothing whatsoever to do with drugs? That was your
19 answer, wasn't it?
20 A. That's what I told. That wasn't what I told you.
21 The thing I told you, he used to drive for me.
22 Q. And I asked you whether it had anything to do
23 with drugs, and you said no. Right?
24 A. You didn't ask me that.
25 Q. All right.

1 Sir, it's fair to say that you have a number
2 of charges pending against you. Correct?
3 A. Yes.
4 Q. Your testimony here today, you're giving
5 testimony in the hope of getting some consideration for
6 your testimony in these other counties. Right?
7 A. In the hope? No, sir.
8 Q. No?
9 A. No.
10 Q. You don't hope this is going to help you out
11 in Hudson or Somerset County?
12 A. I have faith in God, that's all I do. That is the
13 one that could save me.
14 Q. Well, did you have faith in God when were you
15 doing this conspiracy and burglary?
16 MR. MCTIGUE: Objection.
17 THE COURT: Objection sustained.
18 MR. MCTIGUE: I ask that it be stricken,
19 Judge.
20 THE COURT: Stricken from the record.
21 Q. So your testimony today is part of, what,
22 your spiritual rebirth?
23 MR. MCTIGUE: Judge, objection.
24 THE COURT: Come to sidebar.
25 (The following takes place at sidebar)

1 THE COURT: You did the same thing you did on
2 the question that was just objected to and I sustained
3 and stricken from the record. Do it again, you will be
4 fined. Go back.
5 MR. SAMPSON: Judge, the witness said --
6 THE COURT: I said go back.
7 MR. SAMPSON: Don't yell at me.
8 THE COURT: The jury into the juryroom,
9 please.
10 (The following takes place in open court)
11 THE COURT: We'll take lunch. You are
12 excused for one hour. Everyone remain in the courtroom
13 until the jurors are gone.
14 (The jury is excused)
15 THE COURT: Now, Mr. Sampson, you listen and
16 you listen close. You have the opportunity to disagree
17 with anything I say. You do not have the opportunity
18 to not follow my instructions in this courtroom. You
19 can disagree with them, but you absolutely have no
20 right not to follow them. So when I tell you you are
21 done and to sit down, you are done and you sit down.
22 You disagree, you go to the Appellate Division. You
23 understand that? You don't keep talking when I tell
24 you to stop talking. That's it, that's over.
25 MR. SAMPSON: May I ask a question, Judge?

1 THE COURT: You may have the opportunity now
2 to put anything on the record that you choose to put on
3 the record.

4 MR. SAMPSON: Judge, if we have a sidebar
5 discussion, I believe I should be given the opportunity
6 to at least put forth my opinion, my feelings on the
7 record with regard to any particular matter.

8 Now, this is the third or fourth time that,
9 in the presence of the jury, in a voice loud enough to
10 be heard, that you have done that to me.

11 THE COURT: That is --

12 MR. SAMPSON: The first time --

13 THE COURT: Hold it, Mr. Sampson. I cannot
14 let that go by, I'm sorry I'm interrupting, but that is
15 not true. That is not true, and I will not stand for
16 that. But go ahead now, continue your statement.

17 MR. SAMPSON: Well, the first time you did it
18 was with regard to telling me to be here at 9:30, that
19 we were going to start at 9:30 yesterday, and you said:
20 Well, you can be here nine o'clock, so you can get here
21 on time. The jury heard that.

22 THE COURT: I disagree with you, and you
23 mentioned nothing on the record about that.

24 MR. SAMPSON: Fine.

25 Judge, my only point is that I will be

1 respectful to the Court, but if you call us to sidebar,
2 I believe I should at least be able to put on the
3 record my position, and I think with regard to this
4 witness's last answer, that if he says something that
5 to me seems off, I don't know why I can't explore that.
6 If he says --

7 THE COURT: You can. There's a difference
8 between exploring something and making a statement like
9 you did that is inappropriate. And then after it is
10 objected to and sustained, make the same -- not the
11 same, but a similar statement that is inappropriate.

12 Now, that's objectionable, that doesn't need
13 argument. I didn't need to hear anything you had to
14 say after what you said on the record, and that's why I
15 sent you back without listening to any further
16 argument.

17 MR. SAMPSON: Fine, Judge.

18 THE COURT: Now, in the future, again, when I
19 say "stop, I have heard enough," even if I am wrong,
20 you have no right to disagree with that. You must
21 follow what I say and I expect that you will in the
22 future, or I will take appropriate action.

23 See you after lunch.

24 (Lunch recess)

25 (Jury brought out).

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2 to put anything on the record that you choose to put on
3 the record.

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5 discussion, I believe I should be given the opportunity
6 to at least put forth my opinion, my feelings on the
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19 say "stop, I have heard enough," even if I am wrong,
20 you have no right to disagree with that. You must
21 follow what I say and I expect that you will in the
22 future, or I will take appropriate action.

23 See you after lunch.

24 (Lunch recess)

25 (Jury brought out).

1 THE COURT: All right Mr. Sampson.

2 MR. SAMPSON: Thank you, your Honor.

3 Q. Mr. Marquinez, as you said on November the
4 4th, 2002, in the early morning hours, Mr. DaSilva came
5 to your house. Correct?

6 A. Yes.

7 Q. And at some point, at some point you were
8 advised by your mother that he was outside. Correct?

9 A. Yes.

10 Q. You also said that you didn't let him in the
11 house that morning. Correct?

12 A. Yes.

13 Q. And you didn't let him in the house because
14 you said you weren't friends like that. Is that what
15 you said?

16 A. Like, yeah, I didn't trust him that much to come
17 to my house.

18 Q. But you said that your mom came to you and to
19 Alexis and told you that somebody was outside blowing
20 the horn. Correct?

21 A. Yes.

22 Q. And she basically didn't want that kind of
23 racket going on outside her house. Correct?

24 A. Yes.

25 Q. Did she tell you who it was that was outside

1 blowing the horn?

2 A. No, sir.

3 Q. Did she describe the car that was outside
4 blowing the horn?

5 A. No, sir.

6 Q. During the time that you were -- that you and
7 Mr. DaSilva were associates, did your mother -- had
8 your mother ever met him?

9 A. No.

10 Q. Do you know if your mother ever spoke to the
11 Prosecutor's Office about the events of that day?

12 A. No, sir.

13 Q. Do you know if your mother has ever been in
14 Mr. DaSilva's car?

15 A. No, she never been into his car.

16 Q. But you did say that a lot of people had been
17 in that car?

18 A. Yes.

19 Q. But your mother was not amongst them?

20 A. No, just like friends, friends from the street.

21 Q. Has your mother ever seen you drive that car,
22 if you know?

23 A. No. No, sir.

24 Q. Because you had driven that car?

25 A. Yes.

1 Q. Before yesterday, when you spoke to members
2 of the Prosecutor's Office, did you ever tell anyone
3 that your mother had seen someone pick you up that
4 morning?

5 A. No, sir.

6 Q. Did you ever tell anyone else that Mr.
7 DaSilva had picked you up that morning?

8 A. No, sir, except my lawyer, that's all.

9 Q. You told your lawyer that?

10 A. Yes.

11 Q. And did you tell your lawyer that prior to
12 yesterday?

13 A. Prior to yesterday --

14 MR. MCTIGUE: Judge, I'm going to object at
15 this point. Are we getting into attorney/client
16 privilege?

17 MR. SAMPSON: He can waive the privilege,
18 your Honor, he just did.

19 I'll withdraw the question, Judge.

20 In any event, you never told anyone in law
21 enforcement before yesterday that Mr. DaSilva picked
22 you up at your house. Correct?

23 A. Correct.

24 Q. Now, it's your testimony today that when Mr.
25 DaSilva picked you up, Carlos was with you. Correct?

1 A. Alex.

2 Q. Alex, I'm sorry, thank you. Alex was with
3 you when you got picked up?

4 A. Yes, that's what I said today, yes.

5 Q. Now, you were aware when you gave your
6 initial statement that Alex had spoken to the police.
7 Correct?

8 A. Yes.

9 Q. When you spoke to the police yourself, you
10 never told them that Alex had been wrong in his
11 statements. Right?

12 A. That Alex has what?

13 MR. MCTIGUE: Judge, I will object to the
14 form of the question.

15 THE COURT: I'll allow the question.

16 MR. SAMPSON: Thank you.

17 THE COURT: Well, come to sidebar.

18 (The following takes place at sidebar)

19 THE COURT: What's the nature of your
20 objection?

21 MR. MCTIGUE: It's not a question of being
22 right or wrong, it's who the jury finds credible. To
23 characterize Alex as being different.

24 THE COURT: Different.

25 (The following takes place in open court)

- 1 Q. Did you ever tell -- before yesterday, did
2 you ever tell anyone that you believed parts of Alex's
3 statement to be wrong or inaccurate?
4 A. Did I say that his statement was wrong? Yes.
5 Q. You did tell them that?
6 A. Yes.
7 Q. And before yesterday, when did you tell them
8 that?
9 A. That was the day which I gave my statement.
10 Q. Well, it's fair to say, sir, that you never
11 drove to Elizabeth with Mr. DaSilva and Alex. Right?
12 A. Not that I remember, sir.
13 Q. So if he had said that to the police, to your
14 way of thinking, it would be inaccurate?
15 A. Yes.
16 Q. And you never got a page or beeper call from
17 Mr. DaSilva that evening. Correct?
18 A. That same evening?
19 Q. That evening. That morning.
20 A. I don't remember. No, I don't think so.
21 Q. You don't remember. All right.
22 But when you say now that when Mr. DaSilva
23 appeared at your home early that morning, it was
24 completely unexpected to you; correct?
25 A. No, it was not unexpected.

- 1 Q. Did you think he was going to show up that
2 morning?
3 A. No, I didn't think he was going to show up, but I
4 mean, he show up many times very late.
5 Q. Now, on that morning, November the 4th, 2002,
6 you said you had only known him for about two to three
7 months?
8 A. Yeah.
9 Q. And at that time -- well, when you gave your
10 statement on November the 26th, you told them that you
11 knew Mr. DaSilva was married. Correct?
12 A. Yes.
13 Q. And you also told them that you knew he lived
14 with his mom. Correct?
15 A. I think I said that he was living with his
16 brother. His brother.
17 Q. Okay.
18 Did you tell them about his wife as well?
19 A. Yeah. I think so, yeah.
20 Q. And you also told them that you knew where he
21 lived. Correct?
22 A. Yes.
23 Q. And you also told them that you had been to
24 his house?
25 A. Yes.

- 1 Q. Correct?
2 And you also told them on the one occasion
3 that you had been to his house, no one was home?
4 A. Yes.
5 Q. And when you say no one was home, he lived on
6 the second floor; is that correct?
7 A. Yes.
8 Q. But you have never been in his house?
9 A. Yeah, inside his house, yes.
10 Q. You have been inside his house?
11 A. Yes.
12 Q. When you went there in the past -- you said
13 that no one was home?
14 A. Yes.
15 Q. So you have been there on more than one
16 occasion?
17 A. I would say about twice.
18 Q. And did you know who lived downstairs from
19 Mr. DaSilva at the time?
20 A. At the point I did not know who lived downstairs.
21 Q. Now, you testified that at some point you had
22 the opportunity to see a weapon. Correct?
23 A. Yes.
24 Q. Are you familiar with guns?
25 A. Am I familiar with guns?

- 1 Q. Yes.
2 A. I have seen them in magazines.
3 Q. You have seen them in magazines?
4 A. Yeah, I seen like two probably.
5 Q. You also said this particular handgun, S-64,
6 you have seen this gun before. Correct?
7 A. Yes.
8 Q. Now, you said that you were able to identify
9 that handgun?
10 A. Yes.
11 Q. And how were you able to identify that weapon
12 to distinguish it from other guns?
13 A. The look, you know.
14 Q. The look?
15 A. The color, the color and the NPD.
16 Q. The NPD?
17 A. The Smith & Wesson, that too.
18 Q. Is there something unique about this gun that
19 allowed you to identify it?
20 A. The NPD.
21 Q. The NPD.
22 You mean those little letters on the side of
23 the gun?
24 A. Yes.
25 Q. How did you know what NPD meant -- well, let

- 1 me ask you, yeah, how did you know what the NPD meant?
2 A. Because he's the one that told me like: You see
3 this? I'm like: Yeah, you know. And he's like: Do
4 you know what it means? And I'm like: I don't know
5 what it means. He's like: Newark Police Department.
6 Q. That was the first time you have ever seen a
7 weapon --
8 A. Yes.
9 Q. -- with those letters on it?
10 A. Yes.
11 Q. Now, you gave a statement --
12 MR. MCTIGUE: Mr. Sampson.
13 MR. SAMPSON: I'm finished, thank you.
14 Q. On November the 26th, right, do you remember
15 that statement?
16 A. Uh huh.
17 Q. And in that statement you talked about the
18 gun with the letters "NPD" on it; correct?
19 A. Yes.
20 Q. So you said that you had seen this gun months
21 earlier?
22 A. Not months, I said weeks.
23 Q. Do you know exactly when you saw it?
24 A. No, I can't tell you that. It was almost two
25 years ago.

- 1 Q. But in your statement do you remember saying:
2 That's why I didn't trust him cause I thought he was a
3 cop?
4 A. A cop, yes.
5 Q. So you thought Mr. DaSilva was a cop?
6 A. Yes.
7 Q. And you were concerned he was a cop; right?
8 A. Yes.
9 Q. Yet, today, you say that during the course of
10 your time together, you allowed him to drive you to
11 various exchanges involving drugs. Correct?
12 A. Yes.
13 Q. And you did that even believing, as you did,
14 that he was a cop?
15 A. I wasn't believing, but, you know I just, you
16 know, I just didn't have trust. A lot of people was
17 like: Yo, he look like a cop. He looked like a cop.
18 Q. Well, is it fair to say -- do I need to show
19 you your statement where you said: I thought he was a
20 cop?
21 A. You could say that I -- yeah.
22 MR. MCTIGUE: Objection.
23 THE COURT: Hold it, there's an objection.
24 MR. MCTIGUE: Is counsel alleging an
25 inconsistency.

- 1 THE COURT: There's no inconsistencies that I
2 heard.
3 Q. Sir, you did think -- you say you thought he
4 was a cop. Correct?
5 A. Yeah, you could say that.
6 Q. And my question is, believing that, you still
7 continued to deal with him. Is that correct?
8 A. Yes.
9 Q. Now, it is fair to say that you never drove
10 with Mr. DaSilva to Elizabeth on the night of November
11 the 4th, 2002. Right?
12 A. No, sir.
13 Q. And you and Carlos -- I'm sorry, you and Alex
14 were never over near the Budweiser plant on the morning
15 of November the 2nd, 2002. Correct?
16 A. No, sir.
17 Q. Did you ever tell that to the police back in
18 November, 2002?
19 A. Yeah. Yeah.
20 Q. All right.
21 And I take it at the same time you never
22 picked up Mr. DaSilva at Penn Station in Newark.
23 Correct?
24 A. That's right, yeah, I didn't pick him up.
25 Q. And it's fair to say that in the weeks after,

- 1 or the days after the killing of Mr. Chininin, did you
2 see stories about it on television?
3 A. I don't remember, but I think they spoke about it,
4 yes, they did.
5 Q. So you saw stories on television?
6 A. Yes.
7 Q. Do you read the newspaper?
8 A. Yes.
9 Q. So in the days and weeks after this event,
10 you read the newspapers?
11 A. Yes.
12 Q. Correct?
13 A. Yes.
14 Q. And you also said that immediately after this
15 event, your mom talked to you about it. Correct?
16 A. Yeah, once I got home, yeah.
17 Q. And your dad, your stepdad works for the cab
18 company?
19 A. Yes.
20 Q. Capital -- what's the name of the company?
21 A. Classic.
22 Q. Classic.
23 And he was talking to you about it; correct?
24 A. He wasn't -- well, he was talking like once, I
25 think, after he came home, yeah, he started talking

- 1 about it, yeah.
2 Q. Now, when did you become aware that Alex
3 lived in the same house as Mr. Chininin's aunt and
4 uncle?
5 A. That was like two, three days after.
6 Q. You became aware Alex lived in the same house
7 as his aunt and uncle?
8 A. Yeah.
9 Q. Do you know Mr. Chininin?
10 A. No.
11 Q. Had you ever met him --
12 A. Never seen him.
13 Q. -- before November the 4th, 2002?
14 A. I never seen him.
15 Q. You never seen him?
16 A. Nope.
17 Q. Now, in the grand jury transcript -- I'm
18 sorry, before the grand jury, you kept referring to him
19 as Felix. Correct?
20 A. Right.
21 Q. As a matter of fact, do you recall being
22 asked by the prosecutor why you kept referring to him
23 as Felix?
24 A. No.
25 Q. How did you become aware that his name was

- 1 Felix.
2 MR. MCTIGUE: Judge, are we going to have a
3 reference to the question in the grand jury?
4 THE COURT: I don't need one yet.
5 A. I was picked up on November 26th, and that's when
6 they gave me his whole full name, Felix Chininin.
7 Q. I'm sorry, so you were given the name?
8 A. Yeah.
9 Q. By investigators in this case?
10 A. Yes. That's when they told me when they first
11 begin the homicide of Felix Chininin.
12 Q. So as a matter of fact, when the police began
13 to question you on November the 26th, they told you
14 that they were there investigating the death of Felix
15 Chininin?
16 A. Yes.
17 Q. And they told you that even before they had
18 you sign the Miranda statement that -- you know the
19 statement, that you got the right to remain silent and
20 all that?
21 A. Yes.
22 Q. Yes?
23 A. Yes.
24 Q. So that you were aware of what matter was
25 being investigated when you spoke to the police.

1 Correct?

2 A. Yes.

3 Q. And when you spoke to the police, you had
4 already spoken to Alex about that?

5 A. Yes.

6 Q. And he had told you what to expect from the
7 police. Correct?

8 A. Yes. Yes.

9 Q. And you know when the police came to speak to
10 you that you, sir, were a suspect in the death of Mr.
11 Chininin, didn't you?

12 A. Not a suspect, you know, they just came for
13 questioning.

14 Q. Well, you had -- you knew that at that point
15 Mr. Tixi had told them about you driving Mr. DaSilva
16 around immediately after the death of Mr. Chininin.
17 Correct?

18 A. Was I aware? He said something that we went,
19 yeah, that we went to pick him up or something like
20 that, I can't remember.

21 Q. So after the fact they had you, Alex had you
22 driving Mr. DaSilva around. Right?

23 A. Alex had me?

24 Q. Alex had you driving to pick up --

25 MR. MCTIGUE: Judge, I will object at this

1 point. He has gone over it, and quite frankly I
2 think --

3 THE COURT: I'll allow the question.

4 Q. So when you spoke to the police on that
5 morning, on November the 26th, you were aware that Alex
6 had put you in the middle of this. Correct?

7 A. Yes.

8 Q. And when you found that out, were you upset
9 with Alex about telling things that you didn't believe
10 to be true?

11 A. I wasn't upset, I was just afraid, you know, that
12 like -- just from me knowing and not reporting to the
13 police I was going to get in trouble.

14 Q. Now, you have described for the jury an
15 exchange you had with Mr. DaSilva just last week.
16 Correct?

17 A. Yeah.

18 Q. Now, is it fair to say -- well, first of all,
19 that was the first time you seen Mr. DaSilva since
20 November the 4th, 2002. Correct?

21 A. Right.

22 Q. And based on your testimony today, it's fair
23 to say that you and Alex said a number of things about
24 him that weren't true. Is that fair?

25 MR. MCTIGUE: Judge, objection. This witness

1 can testify to what he said.

2 MR. SAMPSON: All right, I will rephrase the
3 question, Judge.

4 Q. It's fair to say that you had said a number
5 of things about Mr. DaSilva that weren't true, correct,
6 in your statements of November the 26th, and before the
7 grand jury; correct?

8 MR. McTIGUE: Object to the form of the
9 question, Judge.

10 THE COURT: Two questions.

11 Q. You had said a number of things that were
12 untrue about Mr. DaSilva in your statement on November
13 the 26th. Correct?

14 MR. McTIGUE: Objection, Judge, that's not
15 the testimony.

16 THE COURT: Sidebar.

17 (The following takes place at sidebar)

18 THE COURT: Why is that not the testimony?

19 MR. McTIGUE: Because he has said repeatedly
20 that he was.

21 THE COURT: The witness is being truthful
22 what was told. What about the other stuff?

23 MR. McTIGUE: Well, specify my objection is
24 that it's too broad brush, Judge. It takes on a number
25 of things that I think should be clarified.

1 THE COURT: I'll allow the question.

2 MR. SAMPSON: Thank you.

3 (The following takes place in open court)

4 Q. Mr. Marquinez, as we have gone through at
5 length, there are a number of things in that statement
6 of November the 26th that aren't accurate. Correct?

7 A. Correct.

8 Q. And as we have discussed at length, there are
9 things in your testimony before the grand jury of June
10 6th, 2003, that weren't accurate. Correct?

11 A. Yes, correct.

12 Q. So would it be unreasonable for Mr. DaSilva
13 to be upset with you for saying things that weren't
14 accurate?

15 MR. McTIGUE: Objection.

16 THE COURT: Sustained.

17 Q. Now, when you had this conversation with Mr.
18 DaSilva, you know, a few days ago, you were in the
19 presence of two sheriff's officers. Is that correct?

20 A. Yes, Hudson County Sheriff.

21 Q. And they were at all times between you and
22 Mr. DaSilva. Correct?

23 A. Uh huh, yes.

24 Q. You weren't afraid at that time that he was
25 going to do anything to you, were you?

- 1 A. I was afraid I was going to be put into the same
2 cell.
3 Q. Well, that didn't happen; right?
4 A. No, sir.
5 Q. Now, just finally, Mr. Marquinez, at some
6 point during this whole process, you identified photos
7 of Mr. DaSilva. Correct?
8 A. Yes.
9 Q. You know him pretty well. You saw him on a
10 frequent basis, so there's no problem of you picking
11 out a photo of him. Is that correct?
12 A. Yes.
13 Q. But in the process you wrote out by hand a
14 statement?
15 A. Yes.
16 Q. Correct?
17 Now, is it fair to say that you don't have
18 any direct personal knowledge of what happened on
19 November the 4th, 2002; right? You weren't there.
20 A. Exactly.
21 Q. You didn't see anything. Correct?
22 A. I didn't see anything, right.
23 Q. And most of the testimony that you have given
24 today was already reflected in the newspaper articles.
25 Right?

- 1 MR. McTIGUE: Objection, Judge.
2 THE COURT: Objection sustained.
3 Q. In terms of your own personal knowledge, when
4 you wrote this statement, it was your belief that Mr.
5 DaSilva had been picked up in a cab in North Newark.
6 Right?
7 A. Yes.
8 Q. Now, he didn't say anything to you about
9 hailing a cab down at the five-point section, the five
10 corners on Ferry Street in Newark. Correct?
11 A. No.
12 Q. So it was your understanding that he got --
13 he had gotten a cab up in North Newark?
14 A. North Newark.
15 Q. And you said that at some point he showed you
16 either 100 or \$120?
17 A. Yes, about.
18 Q. About.
19 You don't know what the amount was. Correct?
20 A. No, sir. No, sir.
21 Q. Can you tell me what denominations you recall
22 seeing?
23 A. Denominations?
24 Q. Yeah, money, like tens, twenties, hundred
25 dollars, fifties?

- 1 A. No, I didn't recall that.
2 Q. Did you handle the money at all?
3 A. No, sir.
4 Q. In terms of Mr. Chininin's license, you said
5 you saw it. Correct?
6 A. Yes, it was inside the wallet. It was inside the
7 wallet like, you know, in the clear plastic thing.
8 Q. And how long exactly were you looking at the
9 license?
10 A. I just took a quick look, you know, who he was.
11 But I saw the age, he was about 19, 1983, so that's
12 about it, a quick look.
13 Q. That's all you recall was the date of birth?
14 A. There was a little baby picture right next to his.
15 Q. But the driver's license, itself, did you
16 ever handle it?
17 A. No, sir.
18 Q. And it never came out of the wallet?
19 A. No, sir.
20 Q. How about the money, where was it when you
21 were looking at it?
22 A. It was in the wallet.
23 Q. Did he count it for you?
24 A. No, he didn't count it.
25 Q. Was there any blood on the wallet?

- 1 A. No, sir.
2 Q. Did you see blood on the money?
3 A. No, sir.
4 Q. And finally, you have never testified that
5 you ever seen or that you ever saw a cell phone.
6 Correct?
7 A. Correct.
8 Q. There was no cell phone there?
9 A. No.
10 Q. And in terms of the electronic devises, do
11 you know if it was a DVD player or a computer?
12 A. Yeah, it was a DVD player, a lap top.
13 Q. A lap top?
14 A. Yeah, it was like a DVD player.
15 Q. Did he ever turn it on for you?
16 A. Yes.
17 Q. He did?
18 A. Yeah, that was inside the house.
19 MR. SAMPSON: Thank you.
20 THE COURT: Mr. McTigue.
21 REDIRECT EXAMINATION BY MR. MCTIGUE:
22 Q. Mr. Marquinez, at some point were you called
23 upon to show the police where Fernando lived?
24 A. Yes.
25 Q. Were you able to show them the exact house?

- 1 A. Yes.
2 Q. On what street was that on?
3 A. That was, I recall, Brill Street.
4 Q. B-R-I-L-L?
5 A. Yes.
6 Q. Now, on the night of November 4, when you saw
7 the gun that's been marked S-64, did Fernando take that
8 gun back with you?
9 A. Uh huh.
10 Q. He didn't give it to you, did he?
11 A. No.
12 Q. He didn't give it to Mr. Tixi?
13 A. No.
14 Q. He kept it himself?
15 A. Yes. He always kept the gun, he never lends it to
16 nobody.
17 Q. That was his gun?
18 A. Yes.
19 Q. Now, you have been questioned by Mr. Sampson
20 about different things you said.
21 A. Yes.
22 Q. Why did you tell the police different
23 versions of the story?
24 A. Well, like I said, I was afraid, I mean, I don't
25 know what I could have been into, you know, just from

- 1 me, like I said like, I'm obstructing not only justice
2 but, you know, to catch, you know, a killer. You know,
3 I'm hiding.
4 MR. SAMPSON: Objection, your Honor.
5 THE COURT: Objection to that particular
6 phrase?
7 MR. SAMPSON: The answer is nonresponsive.
8 THE COURT: Just listen to the question and
9 answer the question.
10 THE WITNESS: You know, like I'm obstructing
11 the police to catch him.
12 Q. Is that what your fear was?
13 A. Yeah.
14 Q. You had some idea what Alex Tixi had said to
15 the police before?
16 A. Yeah.
17 Q. Did you know exactly what he said?
18 A. No.
19 Q. Did he show you a copy of his statement?
20 A. No.
21 Q. Did you make any efforts to try and parrot or
22 copy exactly what he said?
23 A. No, sir.
24 Q. Why is that?
25 A. I mean, I just had to listen, you know, what did

- 1 he say.
2 Q. Did you know all the details of what he said?
3 A. No.
4 Q. Did the police tell you all the details of
5 what he said before they questioned you?
6 A. No, sir.
7 Q. Did the police give you any of the details
8 from Josephina Garcia's statement before they
9 questioned you?
10 A. No details of anything, they just asked me
11 directly, you know, all the questions that are in the
12 statement, that's it.
13 Q. All right.
14 Were you able to give the police an exact
15 date as to when Fernando told you this gun was stolen?
16 A. No, sir. No, sir. No, I didn't give an exact
17 date.
18 Q. But you did -- he did tell you certain
19 details about that; is that correct?
20 A. Yes. Yes.
21 Q. And what details were those?
22 A. About the NPD, what it stands for, that he took it
23 from the first floor of this house, a cop used to live
24 there. But it was in the closet that he broke into,
25 and he came to me with the same thing very late, like

- 1 around 4 or 5 o'clock in the morning the night when he
2 showed me the first time the gun.
3 Q. Now, I think you have been asked questions
4 about your father being a cab driver for Classic Cab?
5 A. Yes.
6 Q. And you have taken cabs in Newark too?
7 A. I actually never take a cab. I mean, my father
8 drive. If I got to go somewhere, my father drives me.
9 If not, I get a ride or, you know, my father has a car
10 so, you know, if I have to go somewhere important,
11 somewhere far. I don't go nowhere too far, so either
12 the bus or my father drive me, that's it.
13 Q. Okay.
14 Now, have you seen Alex Tixi recently?
15 A. No, sir.
16 Q. Did you discuss with him your testimony here
17 today?
18 A. No, sir, I haven't seen him. I haven't spoke to
19 him since I have been in jail for about six. But even
20 more than that, since last year, like probably about
21 September, I would say September of last year.
22 Q. Are you afraid of Luis DaSilva?
23 A. Yeah.
24 Q. Are you afraid of him as you speak here
25 today?

- 1 A. Yeah.
2 Q. Based on what you know about him?
3 A. Yeah.
4 Q. Is it based upon what he said to you the
5 other day?
6 A. Yeah.
7 MR. McTIGUE: No further questions.
8 THE COURT: Mr. Sampson, any recross?
9 RECROSS EXAMINATION BY MR. SAMPSON:
10 Q. Sir, in your testimony, you used the word
11 "obstructing." Right?
12 A. Yes.
13 Q. Obstruction of justice?
14 A. Yes.
15 Q. That's when you told Josephina not to talk to
16 the police, isn't it?
17 MR. McTIGUE: Objection, Judge, calls for a
18 legal conclusion.
19 THE COURT: To the extent that he used those
20 terms himself, I will allow the question.
21 Q. That's what you did when you told Josephina
22 not to speak to the police?
23 A. I didn't tell Josephina that.
24 Q. You didn't tell her --
25 A. No.

- 1 Q. -- to tell the police that Sunday, two or
2 three days earlier when they spoke to her, that you
3 were with her all night?
4 A. I think I did speak to her about that, yeah.
5 Q. You did speak to her about that?
6 A. Yeah.
7 Q. Have you been charged with obstruction of
8 justice for doing that?
9 A. Yes.
10 Q. That charge is pending against you?
11 A. I don't think so, sir.
12 Q. I'm confused, Mr. Marquinez. I just asked
13 you is there such a charge pending against you right
14 now.
15 A. No.
16 Q. What happened to it?
17 A. I don't know, I guess they dismissed it against
18 me.
19 MR. SAMPSON: Thank you, Mr. Marquinez.
20 THE COURT: Anything else?
21 MR. McTIGUE: Nothing further, Judge.
22 THE COURT: Very good.
23 MR. McTIGUE: One question, Judge, I'm sorry.
24 REDIRECT EXAMINATION BY MR. McTIGUE:
25 Q. You have indicated you were charged in

1 matters in other counties. Is that correct?

2 A. Yes.

3 Q. Have you made any deals with the Essex County
4 Prosecutor's Office?

5 A. No, sir.

6 Q. To give your testimony here on some
7 understanding that you might get a break in those
8 cases?

9 A. No, sir.

10 Q. Has your attorney communicated with us in any
11 way with regard to that?

12 A. No. He just told me to cooperate, that's all. He
13 didn't tell me no deals or nothing like that.

14 MR. McTIGUE: Nothing further.

15 RECROSS EXAMINATION BY MR. SAMPSON:

16 Q. Excuse me. That charge we talked about in
17 Hudson County.

18 A. Yes.

19 Q. The drug case. Now, that goes back to
20 November the 11th, 2002. Right?

21 A. Yeah.

22 Q. It was about a week after this. Is that case
23 still open?

24 A. Yes.

25 Q. And your testimony here today, aren't you

1 hoping to help yourself out by cooperating with the
2 authorities in Essex County in the hope that they will
3 communicate with the authorities in Hudson and Somerset
4 to give you a break?

5 A. No, sir, you know, like I said, I just have faith
6 in God, that's all. I'm just doing everything right
7 from now on, and I think what I'm doing today is right.

8 MR. SAMPSON: Thank you, Mr. Marquinez.

9 THE WITNESS: You're welcome.

10 MR. McTIGUE: Nothing further, Judge.

11 (Witness excused)

12 THE COURT: Ladies and gentlemen, we'll take
13 a mid-afternoon break at this time, ten minutes. You
14 can leave the courtroom, if you so choose, or if you
15 choose, you can remain on the floor. Please come back
16 in approximately ten minutes.

17 (Recess)

18 (Jury brought into courtroom)

19 THE COURT: Call your next witness.

20 MR. McTIGUE: Yes. Please call Officer Jesus
21 Paz to the stand, your Honor.

22 J E S U S P A Z, Sworn.

23 MR. McTIGUE: Thank you, Judge.

24 DIRECT EXAMINATION BY MR. McTIGUE:

25 Q. Good afternoon, Officer Paz.

- 1 A. Good afternoon.
2 Q. I take it you are a Newark Police officer?
3 A. Yes, that's correct.
4 Q. How long have you been a Newark police
5 officer?
6 A. Approximately five years with the Newark Police
7 Department.
8 Q. So I take it then back in the year of 2000,
9 more particularly from September of 2002, you would
10 have been a Newark Police officer?
11 A. Yes, that's correct.
12 Q. Do you see anyone you know in the courtroom
13 today?
14 A. Yes, I do.
15 Q. Would you indicate who you know?
16 A. Mr. Luis DaSilva sitting right next to the defense
17 lawyer, I believe.
18 Q. Just what's he wearing?
19 A. He's wearing a blue shirt and a black tie.
20 MR. MCTIGUE: Indicating the defendant,
21 Judge.
22 THE COURT: Yes.
23 Q. Officer Paz, back in September of the year
24 2002, or thereabouts, where were you residing?
25 A. 27 Brill Street in Newark.

- 1 Q. What type of house is that?
2 A. That's the first floor apartment.
3 Q. All right.
4 Is that a multi-family dwelling.
5 A. Two-family home, yes.
6 Q. And how is it that you know Mr. DaSilva?
7 A. Mr. DaSilva was a tenant in the second floor.
8 Q. And do you know if he lived alone there or
9 with others?
10 A. He lived with his wife Tattiana Barbosa, and their
11 baby.
12 Q. Now, as a Newark police officer, I take it
13 you carry a sidearm?
14 A. Yes, that's correct.
15 Q. All right.
16 Do you carry that sidearm even when you're
17 off duty?
18 A. Yes, that's correct.
19 Q. Now, at some point did you lose a sidearm or
20 did it --
21 A. Yes, yes, that was the date, sir, between
22 September 18th of 2002, and September 25th of 2002.
23 Q. How is it that you focus on those dates?
24 A. Because my last day of work was September 18th. I
25 got off at 12 midnight, and that following day I was

- 1 going to Brazil, I was flying to Brazil, taking a trip
2 outside the country.
3 Q. On vacation?
4 A. Yes.
5 Q. Do you generally travel with your firearm?
6 A. No, we are not allowed to travel with our
7 firearms.
8 Q. All right. What did you do with the firearm
9 you had at that time?
10 A. The firearm was secured in my walk-in closet, top
11 shelf, underneath the clothing, a pair of jeans.
12 Q. All right.
13 I'm going to show you an exhibit that has
14 been marked S-64. It's been cleared by the officers.
15 Do you recognize that and will you look at it, Officer?
16 A. Yes, this was my first weapon issued to me in the
17 academy, number 1701.
18 Q. And you recall that number?
19 A. Yes.
20 Q. All right.
21 How did you get a gun from the Newark Police
22 Department? Do you purchase the gun? Is the gun
23 issued to you through the police department?
24 A. Through the -- you are issued the gun through the
25 police department after training, through training in

- 1 the academy.
2 Q. All right.
3 And when you had left your gun in your closet
4 while you were on vacation, was that in accord with
5 standard policy and resolutions?
6 A. Yes, it was safe and secure, yes.
7 Q. Now, was Luis DaSilva a friend of yours at
8 that time?
9 A. No, he wasn't. He was just a tenant.
10 Q. Do you know him socially?
11 A. No. I have seen him after I got off of work just
12 sitting on the steps of the house, but never
13 socialized.
14 Q. All right.
15 Had he ever been in your house, to your
16 knowledge?
17 A. Never.
18 Q. Now, when you came home from vacation, when
19 was that?
20 A. That was September 25th, of 2002, I got home and I
21 was preparing to go to work, getting my things
22 together, when I found that my weapon was missing from
23 the house, from the closet where I --
24 Q. And did you conduct a search for it?
25 A. Yes.

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2 outside the country.
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20 Q. All right.
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22 Department? Do you purchase the gun? Is the gun
23 issued to you through the police department?
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17 academy, number 1701.
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22 Department? Do you purchase the gun? Is the gun
23 issued to you through the police department?
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25 police department after training, through training in

- 1 the academy.
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4 while you were on vacation, was that in accord with
5 standard policy and resolution?
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8 that time?
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12 sitting on the steps of the house, but never
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- 18 Q. Now, when you came home from vacation, when
19 was that?
- 20 A. That was September 25th, of 2002, I got home and I
21 was preparing to go to work, getting my things
22 together, when I found that my weapon was missing from
23 the house, from the closet where I --
- 24 Q. And did you conduct a search for it?
- 25 A. Yes.

- 1 Q. Were you able to find it?
 2 A. The house, the car, everything, everywhere. No, I
 3 wasn't.
 4 Q. Upon returning home, did you see any signs of
 5 obvious entry or forced entry?
 6 A. No signs. That was actually after I realized it
 7 was gone, that was the first thing I looked for and
 8 there was no signs.
 9 Q. And what did you do upon discovering the gun
 10 was missing?
 11 A. I notified my superior, supervisor in the
 12 department Michael Mann.
 13 Q. And was this matter investigated?
 14 A. Yes, it was.
 15 Q. All right.
 16 Was an official report made of the fact that
 17 your gun was missing?
 18 A. That's correct.
 19 Q. When did you next learn of the whereabouts of
 20 the gun?
 21 A. It was probably sometime later that we come to
 22 find out that a crime was committed with it through the
 23 investigations -- through an investigation.
 24 Q. All right.
 25 MR. MCTIGUE: I have no further questions,

- 1 Judge.
 2 THE COURT: Cross examine.
 3 CROSS EXAMINATION BY MR. SAMPSON:
 4 Q. Officer Paz, how long did you own the
 5 premises at 27 Brill Street?
 6 A. Okay, I didn't own the premises there, I just
 7 resided there in the first floor apartment.
 8 Q. So in September, 2002, you resided on the
 9 first floor. Correct?
 10 A. That's correct.
 11 Q. And Mr. DaSilva and his family resided on the
 12 second floor?
 13 A. That's correct.
 14 Q. You talked about his wife Tattiana Barbosa.
 15 You saw her, correct, from time to time?
 16 A. That's correct.
 17 Q. And they had a baby together, you said?
 18 A. That's correct.
 19 Q. Did you also see his mother reside there, an
 20 older woman reside there?
 21 A. I believe the mother also resided there with them.
 22 Q. And he also had two younger brothers, if you
 23 recall?
 24 A. Yes, I recall that, yes.
 25 Q. Now, you have already indicated that you

- 1 didn't own the property. Correct?
2 A. That's correct.
3 Q. There came a time when that property was
4 being sold, if you know?
5 A. I don't recall, no.
6 Q. Do you still reside at that address?
7 A. No, I don't reside there.
8 Q. As far as you know, the landlord sold the
9 property. Correct?
10 A. That's correct.
11 Q. And he would have sold it back in the time
12 around November, 2002, somewhere thereabouts?
13 A. No. No.
14 Q. No?
15 A. No.
16 Q. Do you know when it was sold?
17 A. No, I don't really know.
18 Q. Okay.
19 Now, September 25th, 2002, you filed a report
20 with the Newark Police Department?
21 A. That's correct.
22 Q. With regard to this weapon. Correct?
23 A. Correct.
24 Q. And when you filed it -- as a police officer,
25 you're familiar with the various forms in the Newark

- 1 Police Department that they use?
2 A. Yes, correct.
3 Q. And you're familiar with what's called an
4 incident report?
5 A. Yes.
6 Q. And it's the basic form used by the Newark
7 Police to file the report?
8 A. That's correct.
9 Q. Sir, in this particular case you filed a
10 report. Correct?
11 A. Correct.
12 Q. Now, when you filed the report, you filed a
13 report that talked about an incident regarding lost
14 property. Correct?
15 A. That's correct.
16 Q. At that point you didn't file a burglary
17 report. Correct?
18 A. That's correct.
19 Q. And you said at the time that you conducted
20 a, when you came back and you found out the weapon
21 wasn't there, you conducted a search. Correct?
22 A. That's correct.
23 Q. And you searched, according to your report,
24 you searched your home. Correct?
25 A. Correct.

- 1 Q. You searched your car. Correct?
2 A. Correct.
3 Q. And you searched, I guess, your place of
4 work. Would that have been your locker?
5 A. That's correct.
6 Q. So when the weapon turned up missing, you
7 weren't exactly sure what had happened, is that fair to
8 say?
9 A. It's fair to say.
10 Q. And as an experienced or trained police
11 officer, you weren't able to find any evidence that
12 your home had been broken into. Correct?
13 A. That's correct.
14 MR. SAMPSON: Thank you, sir.
15 Oh, you have already indicated that you
16 never, you never had any social dealings with Mr.
17 DaSilva?
18 A. That's correct.
19 MR. SAMPSON: Thank you, sir. I have no
20 other more questions.
21 THE COURT: Mr. McTigue.
22 REDIRECT EXAMINATION BY MR. MCTIGUE:
23 Q. Where did you last leave your gun, Officer?
24 A. Ninety-five percent, I'm 95 percent sure the
25 weapon was secured.

- 1 Q. Where?
2 A. In a closet.
3 Q. Did you ever give Luis DaSilva permission to
4 hold your gun?
5 A. Never.
6 MR. SAMPSON: Objection, your Honor.
7 THE COURT: I'll allow it.
8 Q. Did you ever let him use your gun?
9 A. Never. Never.
10 Q. Did you ever tell him it's fine for you to
11 carry around?
12 A. Never.
13 Q. Did you ever give Luis DaSilva permission to
14 be in West Orange, New Jersey with your gun?
15 MR. SAMPSON: Objection, your Honor.
16 Sidebar, please. Judge, your Honor, this is beyond the
17 scope.
18 THE COURT: Objection sustained.
19 Q. At any time after you discovered your gun
20 missing, did you discuss this matter with Luis DaSilva?
21 A. No, I never seen him again after the incident.
22 Q. All right.
23 Now, you say you never saw Luis DaSilva again
24 after the incident. Which incident is this?
25 MR. SAMPSON: Objection, your Honor.

- 1 Q. You searched your car. Correct?
2 A. Correct.
3 Q. And you searched, I guess, your place of
4 work. Would that have been your locker?
5 A. That's correct.
6 Q. So when the weapon turned up missing, you
7 weren't exactly sure what had happened, is that fair to
8 say?
9 A. It's fair to say.
10 Q. And as an experienced or trained police
11 officer, you weren't able to find any evidence that
12 your home had been broken into. Correct?
13 A. That's correct.
14 MR. SAMPSON: Thank you, sir.
15 Oh, you have already indicated that you
16 never, you never had any social dealings with Mr.
17 DaSilva?
18 A. That's correct.
19 MR. SAMPSON: Thank you, sir. I have no
20 other more questions.
21 THE COURT: Mr. McTigue.
22 REDIRECT EXAMINATION BY MR. MCTIGUE:
23 Q. Where did you last leave your gun, Officer?
24 A. Ninety-five percent, I'm 95 percent sure the
25 weapon was secured.

- 1 Q. Where?
2 A. In a closet.
3 Q. Did you ever give Luis DaSilva permission to
4 hold your gun?
5 A. Never.
6 MR. SAMPSON: Objection, your Honor.
7 THE COURT: I'll allow it.
8 Q. Did you ever let him use your gun?
9 A. Never. Never.
10 Q. Did you ever tell him it's fine for you to
11 carry around?
12 A. Never.
13 Q. Did you ever give Luis DaSilva permission to
14 be in West Orange, New Jersey with your gun?
15 MR. SAMPSON: Objection, your Honor.
16 Sidebar, please. Judge, your Honor, this is beyond the
17 scope.
18 THE COURT: Objection sustained.
19 Q. At any time after you discovered your gun
20 missing, did you discuss this matter with Luis DaSilva?
21 A. No, I never seen him again after the incident.
22 Q. All right.
23 Now, you say you never saw Luis DaSilva again
24 after the incident. Which incident is this?
25 MR. SAMPSON: Objection, your Honor.

- 1 THE COURT: No, I'll allow the answer.
2 Q. Go ahead.
3 A. Since the weapon was missing, that was the last
4 time.
5 Q. All right.
6 Now, did Mr. DaSilva's wife, baby and mother
7 continue to stay at the Brill Street address?
8 A. That's correct.
9 Q. Did you ever see him there again?
10 A. No, never again.
11 Q. How long did you reside at the Brill Street
12 address?
13 A. Approximately a year and a half, maybe two years.
14 Q. All right.
15 And when would you have moved out, do you
16 recall the approximate date?
17 A. No, I didn't recall the approximate date, but it
18 had to be --
19 Q. Month, year?
20 A. Less than seven months. Seven months.
21 Q. Can you give us an approximate date when you
22 weren't living there any more?
23 A. February. February of this year I wasn't living
24 there no more.
25 Q. All right. February of 2004?

- 1 A. Two thousand four, that's correct.
2 Q. While you were there, after November 4, did
3 you ever see Luis DaSilva come there again?
4 A. Never again.
5 Q. At some point do you know if Tattiana Barbosa
6 and others who lived there on the second floor left the
7 building?
8 A. Yes, they have.
9 Q. When did they move, if you recall?
10 A. I believe it was either November; November,
11 December of 2003.
12 Q. All right.
13 A. Maybe earlier, I don't recall correctly.
14 Q. But at some point they too left the building?
15 A. They too left the building.
16 Q. And this was -- all right, nothing further,
17 Judge.
18 RECROSS EXAMINATION BY MR. SAMPSON:
19 THE COURT: Anything else?
20 Q. Sir, you already indicated you didn't
21 specialize with Mr. DaSilva?
22 A. That's correct.
23 Q. During this period of time, your time of
24 employment varies as to times you would get home from
25 work?

- 1 A. No, I get home right after work five, ten minutes.
2 Q. Can I just ask, sir, what shift you were
3 working back then?
4 A. The afternoon shift, 4 to 12.
5 Q. So you wouldn't have gotten home until
6 roughly midnight or later?
7 A. Five minutes after midnight.
8 Q. All right.
9 So you got home a relatively late hour?
10 A. I wouldn't say a late hour, because three, four
11 blocks from the precinct, it won't take me more than
12 five, ten minutes to get home.
13 Q. But it is fair to say, did you ever do
14 overtime?
15 A. Negative, no.
16 Q. But it still would have been after midnight
17 when you got home?
18 A. My shift ends at 12 midnight.
19 Q. And can you tell me how long you lived in the
20 same house with Mr. DaSilva?
21 A. Approximately a year.
22 Q. About a year?
23 A. About a year.
24 Q. And can you give us some idea of how often
25 you saw him?

- 1 A. Not often at all.
2 Q. Not often at all.
3 Thank you, no more questions.
4 THE COURT: Anything else?
5 MR. McTIGUE: No, thank you, officer.
6 THE COURT: You may step down. Thank you.
7 (Witness excused)
8 THE COURT: Next witness.
9 MR. McTIGUE: May we have a sidebar, Judge?
10 (The following takes place at sidebar)
11 MR. McTIGUE: I have Investigator Williams
12 downstairs, he's going to be a while.
13 THE COURT: We got a while to go.
14 MR. SAMPSON: I didn't hear what you said.
15 MR. McTIGUE: Fernard Williams.
16 THE COURT: Okay.
17 MR. McTIGUE: Okay.
18 THE COURT: When you say a while, what do you
19 mean by a while? We can't just be stopping at three
20 o'clock.
21 MR. McTIGUE: Oh, no, I understand. Let me
22 just see if he's outside. It may take me two minutes
23 to get him up, Judge.
24 (The following takes place in open court)
25 MR. McTIGUE: Judge, the State calls as its

- 1 next witness, Investigator Fernard Williams.
2 FERNARD WILLIAMS, Sworn.
3 MR. McTIGUE: Thank you, Judge.
4 DIRECT EXAMINATION BY MR. McTIGUE:
5 Q. Investigator Williams, by whom are you
6 employed and in what capacity?
7 A. Essex County Prosecutor's Office Crime Scene Unit.
8 Q. And for how long have you been a member of
9 Essex County Prosecutor's Office?
10 A. Approximately nine years.
11 Q. And for how long have you been assigned to
12 the Crime Scene?
13 A. Approximately six.
14 Q. All right.
15 Could you explain what your duties are with
16 the Crime Scene Unit of the Prosecutor's Office?
17 A. To document and collect any physical evidence at a
18 crime scene.
19 Q. All right.
20 And what types of cases do you respond to?
21 A. Basically homicides and suspicious deaths.
22 Q. Now, Investigator Williams, incident to your
23 duties with the Prosecutor's Office, did you respond to
24 a crime scene involving the death of a victim, Felix
25 Chininin on November 4th, 2002?

- 1 A. Yes, I did.
2 Q. And did you prepare a report or series of
3 reports in conjunction with your activities?
4 A. Yes, I did.
5 Q. All right.
6 Showing you first what appear to be an
7 exhibit which has been marked S-20, which appears to be
8 a report covering actions taken on Monday, November
9 4th, 2002, I ask you to take a look at that and tell me
10 if you recognize that.
11 A. Yes, this is my report.
12 Q. All right.
13 And did you get a call to respond to a crime
14 scene?
15 A. Yes, I did.
16 Q. And approximately what time did you receive
17 that call?
18 A. Approximately 6:30 in the morning.
19 Q. All right.
20 How did you -- how do you get assigned to go
21 to a crime scene? Could you explain the process.
22 A. Well, you are on call for the day and your
23 lieutenant will call you out if a job comes in.
24 Q. All right.
25 And did you get such a call?

- 1 A. Yes, I did.
2 Q. All right.
3 And what area did you respond to?
4 A. Thomas Street in Newark.
5 Q. All right.
6 And upon arriving there, what were your
7 observations?
8 A I noticed a few items left in the street, a puddle
9 of blood and some physical debris left in the street.
10 Q. All right.
11 Now, had other officers been there before
12 you?
13 A. Yes, they had.
14 Q. What officers are you aware of?
15 A. Newark Police Department detective named -- right
16 now I have to refer to my report.
17 Q. Do you need to go so to refresh your
18 recollection?
19 A. Yes.
20 MR. McTIGUE: With the Court's permission?
21 THE COURT: Go ahead.
22 A. The pronunciation of the detective's name is
23 Gregoire and Greimel.
24 Q. All right.
25 Was the scene secured?

- 1 A. Yes, it was.
2 Q. Could you explain what that term means
3 "securing a scene"?
4 A. That means it's usually marked off with crime
5 scene tape or yellow tape, and the officers make sure
6 nobody crosses in that area.
7 Q. All right.
8 Was the body of the decedent present at the
9 time you arrived?
10 A. No.
11 Q. Do you know what had happened with that body?
12 A. At the time, no, but I believe it went to the area
13 hospital and then from there to the ME's office.
14 Q. All right.
15 Now, upon arrival, what did you do after you
16 made your initial observations?
17 A. I photographed the scene all over and I did
18 closeup of all the evidence to be collected, and then I
19 started measuring and prepared a thumbnail sketch to
20 make a sketch later of the scene, of how the scene
21 looked when I arrived there.
22 Q. And you indicated you took photographs?
23 A. Yes, I did.
24 MR. McTIGUE: Your Honor, Exhibits S-24A
25 through J.

1 Investigator, I want you to take a look at
2 the exhibits which have been marked S-24A through J.
3 Have you had an opportunity to see these and review
4 them prior to your testimony today?

5 A. Yes, I have.

6 Q. What are those exhibits?

7 A. These are photographs of the scene on Thomas
8 Street, yes, just of Thomas Street in Newark.

9 Q. And do those photographs fairly and
10 accurately depict the area as you saw it upon your
11 arrival?

12 A. Yes, it does.

13 MR. McTIGUE: Judge, I would move them into
14 evidence at this point.

15 THE COURT: Mr. Sampson?

16 MR. SAMPSON: I have no objection, your
17 Honor.

18 THE COURT: Twenty-four A through J in
19 evidence.

20 MR. McTIGUE: Judge, you have your pointer
21 hidden. Thank you.

22 Investigator, showing you first S-24A, what
23 does that photograph show? And you can use the pointer
24 if you need to do so.

25 A. Okay. This is the scene angle across the street

1 from the scene, the main body of blood is located here
2 with the evidence of the shoes here and here.

3 Q. All right.

4 And the street we're actually looking at is
5 what street?

6 A. This is Thomas Street.

7 Q. All right.

8 Showing you S-24B, what does that depict?

9 A. It's the same shot at a forward angle just again,
10 the shoe, shoes and the blood is on that side of the
11 car.

12 Q. Now, there appears to be yellow tape there.
13 How did that get there, if you know?

14 A. The responding officers, probably the first unit
15 taped that off.

16 Q. All right.

17 And was that the scene as you observed it
18 taped off?

19 A. Yes, it is.

20 Q. Showing you S-24C, what does that depict?

21 A. It's the same, again. the same shot at a different
22 angle. This is the rear of the vehicle. Again, the
23 shoes, the shoe, the sidewalk. It's the opposite of
24 this photograph.

25 Q. All right. So it shows the street from a

- 1 different directional viewpoint?
2 A. Yes.
3 Q. Showing you now S-24D for identification,
4 what does that depict?
5 A. This is after the overall shots of the scene as
6 they are taken, and also after the closeup is taken.
7 Then I come back and take the same series of
8 photographs with the evidence markers. I placed these
9 myself. It's 1 through 5 here.
10 Q. Now, does your report indicate what those
11 markers actually show?
12 A. Yes.
13 Q. And what do they show?
14 A. Number one is a brown shoe, right; two, is a brown
15 shoe, left, as in foot, right foot, left foot; three is
16 an ink pen; ten, it was a 10-cent coin laying in the
17 blood itself, which is number 4; and 5 is two U.S.
18 quarters, also laying in the blood.
19 Q. Showing you now S-24E, does that just show a
20 little bit, again, a different directional view?
21 A. Yes.
22 Q. Showing where the markers are with
23 relationship to the curb line and the building?
24 A. That's correct.
25 Q. Showing you S-24F.

- 1 A. Which is a closeup of --
2 Q. Let's put up S-24E. One would be
3 corresponding to the marker?
4 A. Yes, that is correct.
5 Q. Showing you S-24G.
6 A. That is a closeup of the evidence marker 2.
7 Q. S-24H?
8 A. That's a closeup of evidence marker 3.
9 Q. S-24I?
10 A. It's a closeup of the blood. It's a closeup of
11 number 4, which is located on the curb line.
12 Q. And S-24J?
13 A. That's the two U.S. quarters, which is number 5,
14 which is just past the curb line. This is the curb.
15 Q. Thank you.
16 Now, at some point, Investigator, after
17 preparing, taking the photographs and making notes of
18 the crime scene, did you come to -- were you assigned
19 to go to another crime scene related to this same
20 incident?
21 A. Well, as I was processing the scene on Thomas
22 Street, I was informed that there was another scene, I
23 believe on Virginia Street in Elizabeth, New Jersey.
24 Yes, Virginia Street in Elizabeth, New Jersey, and
25 that's Union County.

1 Q. And did you respond to that area?

2 A. Yes, I did.

3 Q. Who did you meet there?

4 A. At this time it was Detectives Vitiello and
5 Palermo of the Newark Police Department Homicide Unit.

6 Q. And upon arriving there, what did you
7 observe?

8 A. I believe it was a Lincoln parked on the curb on
9 Virginia Street -- excuse me, parked next to the curb,
10 slightly onto the curb, the doors open, and it was
11 empty.

12 Q. And did you take photographs of that vehicle
13 also?

14 A. Yes, I did.

15 Q. And was it ultimately determined that that
16 was a car that had been driven by Felix Chininin?

17 A. Yeah, that is correct.

18 MR. McTIGUE: Judge, I'm going to display
19 these to Mr. Sampson.

20 All right, Investigator Williams, I'm going
21 to show you a series of exhibits which has been marked
22 S-25A through I. Have you had a chance to look these,
23 Officer, before testifying today?

24 A. Yes, I have.

25 Q. Could you tell us what is depicted in this

1 series of photographs?

2 A. This is the scene that I encountered on Virginia
3 Street in Elizabeth.

4 Q. All right.

5 And does that include the car?

6 A. Yes, it does.

7 Q. That's determined to be operated by Felix
8 Chininin at the time of his death?

9 A. Yes, it was.

10 Q. And did you take interior -- both photographs
11 of the location of the vehicle and interior shots?

12 A. Yes, I did.

13 Q. And do those photographs fairly and
14 accurately depict the vehicle as you found it that
15 morning?

16 A. Yes.

17 MR. McTIGUE: Move these into evidence, your
18 Honor.

19 THE COURT: Any objection?

20 MR. SAMPSON: No objection.

21 THE COURT: Four S-25A through I in evidence.
22 (Items marked in evidence)

23 MR. McTIGUE: Thank you, Judge.

24 Now, upon arriving, you indicated that you
25 had met other detectives?

- 1 A. That's correct.
2 Q. Were representatives of the Elizabeth Police
3 Department there also?
4 A. Yes, they were.
5 Q. To your knowledge, had anyone entered the car
6 other than opening the doors?
7 A. No, not to my knowledge.
8 Q. All right.
9 The trunk appeared to be popped. Do you know
10 who did that?
11 A. No, I don't.
12 Q. Is the vehicle as you found it?
13 A. Yes.
14 Q. Showing you first S-25A in evidence, what is
15 that?
16 A. That's the vehicle which was located and was told
17 to be the victim's automobile.
18 Q. And the street here that appears in the
19 foreground is what street?
20 A. Virginia Street.
21 Q. How far is Virginia Street away from Thomas
22 Street?
23 A. A few miles, probably. Approximately five miles,
24 maybe.
25 Q. Okay.

- 1 And showing you now S-25B in evidence, is
2 that another vehicle, view of the vehicle?
3 A. Yes, taken from a different angle.
4 Q. Showing its location with regard to the curb
5 side?
6 A. Yes.
7 Q. And I believe you testified that you
8 photographed the interior?
9 A. That's correct.
10 Q. Showing you now S-25C in evidence, what does
11 that depict?
12 A. The front seat area of the driver's side.
13 Q. All right. You can use the pointer?
14 A. This is the driver's compartment, the front seat,
15 and this is the interior as I found it. It appear to
16 be blood-sustained.
17 Q. Showing you S-25D.
18 A. It's the front passenger side and, again, it's
19 taken from the right side of the vehicle through to the
20 left side, and it's just showing -- depicting the blood
21 as we found it.
22 Q. Does it also show other objects that were
23 present?
24 A. Yes, it shows objects in the car at the time. I
25 did inventory them at this time.

- 1 Q. And what are those objects?
2 A. We have CD cases, and also cassette tapes, and
3 numerous paperwork.
4 Q. Now, did you also conduct a search of the car
5 at that time for any items such as ballistics evidence?
6 A. At that time, no, not at the scene.
7 Q. All right.
8 At some point did you have cause to attend an
9 autopsy?
10 A. Yes. After finishing both locations, I proceeded
11 to the ME's office located on Norfolk Street in Newark.
12 Q. And what function did you serve there?
13 A. I photographed, observed and photographed the
14 autopsy of the victim.
15 Q. All right.
16 And did you receive any property into your
17 receipt? Did you take any property in at that point?
18 A. No, I did not receive any property. All property
19 that was taken from the autopsy was handed over to the
20 homicide detectives.
21 Q. Would that have been Investigator Vitiello?
22 A. That's correct.
23 MR. McTIGUE: Now, can I have one moment,
24 Judge?
25 After the autopsy, did your involvement in

- 1 this crime scene investigation continue?
2 A. Yes.
3 Q. And what did it consist of?
4 A. After the autopsy, I went down to the crime scene.
5 By this time the Lincoln was towed to our Crime Scene
6 garage, which is located at 35 Austin Street. At this
7 time I did again photograph the vehicle, outside and
8 inside, and I also finger dusted for fingerprint, a
9 latent fingerprint on the vehicle and searched the car
10 inside.
11 Q. Now, was this done with the consent of the
12 owner Mr. Sergio Eras at the time?
13 A. At the time, no, I don't believe so. At the time
14 we just do it as part of our investigation.
15 Q. Okay. All right.
16 Showing you a photograph now S-45E, you can
17 use the pointer, if you would, please. What does that
18 photograph depict? You can stand up, if you want.
19 A. This is a projectile found in the driver's
20 compartment, the driver's floor compartment.
21 Q. Of the Lincoln Town Car?
22 A. The Lincoln Town Car, yes.
23 Q. Would you just circle that projectile if you
24 have a marker there.
25 (Witness complies)

1 MR. MCTIGUE: Excuse me, your Honor, may I
2 have a five-minute recess? I want to go through these
3 exhibits in order.

4 THE COURT: Let's take 5 minutes, ladies and
5 gentlemen.

6 (Recess)

7 (Jury brought into courtroom)

8 THE COURT: Okay, Mr. McTigue.

9 MR. MCTIGUE: Thank you, Judge.

10 Q. Investigator, you had indicated that upon a
11 further search of the Lincoln Town Car, as depicted in
12 S-25E in evidence, a slug was recovered?

13 A. Yes, a projectile, yes.

14 Q. Now, was the back of the vehicle also search?

15 A. The entire vehicle was searched.

16 Q. Showing you S-25F, can you tell us what that
17 depicts?

18 A. That's the back seat on the left side of the
19 vehicle, and also shows blood stains in it, looks like
20 a calender that was in the back seat.

21 Q. There's a pooling of blood here in the center
22 portion?

23 A. That's right.

24 Q. Showing you S-25G in evidence, is that a
25 different view of the back?

1 A. Yes. That's from the right door and, again, it
2 shows the same blood, and it also shoes the blood view
3 from the right side and a clear plastic bag.

4 Q. And underneath there, there appears to be
5 something. Is that a mat?

6 A. Yes, blood on the mat.

7 Q. Now, there's a plastic bag. Was that plastic
8 bag lifted up?

9 A. Yes.

10 Q. Did you photograph what was found underneath
11 that plastic bag?

12 A. Yes, I did.

13 Q. Showing you S-25H in evidence, what is that?
14 What does that depict?

15 A. The entire shot of the back seat, of the area
16 after removing the bag, there's a spent shell casing in
17 the back seat.

18 Q. So looking at S-25G, can you point to the
19 area where the shell casing would have been found?

20 A. Approximately right here.

21 Q. All right. In the corner?

22 A. Yes.

23 Q. Okay.

24 Of the passenger's side rear?

25 A. That's correct.

- 1 Q. And the slug found on the floor of the front?
2 A. That is the driver's side. The left side is the
3 driver's side, front.
4 Q. Is that a hand brake up there or a foot
5 brake?
6 A. Parking brake.
7 Q. With a handle for release?
8 A. It's a release of the hood, the engine, hood.
9 Q. And just showing you S-25I in evidence, what
10 does that depict?
11 A. That was back at the scene and that is the shot of
12 a CD case, an empty CD case, outside of the vehicle.
13 Q. All right.
14 Would you just circle that, please?
15 A. (Witness complies)
16 Q. Now, you did collect certain physical items
17 of evidence. Is that correct?
18 A. From the vehicle, yes.
19 Q. Being a couple of brown shoes, an ink pen, a
20 10-cent coin lying in a large pool of blood, and two
21 25-cent pieces. Right?
22 A. That was from Thomas Street, yes.
23 Q. I show you an exhibit which has been marked
24 S-27P. Do you recognize that?
25 A. Yes, that was the item evidence marker number 2.

- 1 Q. All right.
2 Is that your writing?
3 A. Yes.
4 Q. Is that your writing inside?
5 A. Yes, that is.
6 Q. Is this property which was initially taken by
7 you noted and then turned over to Investigator Vitiello
8 of Homicide?
9 A. That is correct.
10 Q. That is the shoe?
11 A. That is correct.
12 Q. Looking at S-28 for identification, this
13 appears to be another shoe and does this bag contain
14 your writing?
15 A. Yes, it does.
16 Q. And what does this indicate?
17 A. That is the other shoe, which is the right shoe,
18 found at the scene on Thomas Street.
19 Q. And depicted in the photographs?
20 A. Yes, it's marker 1.
21 Q. Showing you S-29, it appears to be an
22 envelope marked with a Bic pen. Does that contain an
23 envelope containing your writing?
24 A. Yes, it does.
25 Q. And this is the Bic pen recovered at the

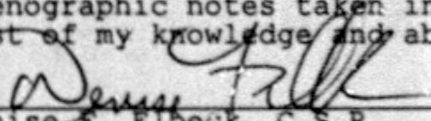
1 scene?
2 A. Yes, it is.
3 Q. As depicted in the photograph, yes?
4 A. Yes.
5 Q. Showing you an exhibit which has been marked
6 S-30, which appears to be an envelope, a small manila
7 envelope bearing your writing?
8 A. That's correct.
9 Q. And what is that?
10 A. It's a U.S. dime.
11 Q. Is that the 10-cent piece found at the scene
12 and set forth in the photograph depicted in the
13 photograph?
14 A. Yes, it is.
15 Q. And S-31?
16 A. It's two U.S. quarters also found at the scene.
17 Q. Okay.
18 And depicted in the photographic exhibit?
19 A. Yes.
20 MR. McTIGUE: Judge, may I be heard at
21 sidebar?
22 (The following takes place at sidebar)
23 MR. McTIGUE: I would like to conclude at
24 this point, this being logical, Judge, and bring him
25 back tomorrow and finish up.

1 THE COURT: Okay.
2 Objection?
3 MR. SAMPSON: No.
4 THE COURT: Okay.
5 (The following takes place in open court)
6 THE COURT: Ladies and gentlemen, this seems
7 a logical point at which to break. We are going to end
8 the testimony at this point at this time, and we'll see
9 you back here tomorrow morning at 9 o'clock. Tomorrow,
10 9 o'clock tomorrow. Do not discuss the case, avoid any
11 media.
12 (Jury excused)
13 MR. SAMPSON: Just in terms of scheduling,
14 Judge. I just left Judge Giles on my last break, he
15 had asked, if it's possible, if I could stop down there
16 tomorrow morning and do a pretrial memo. So if you
17 would be kind enough to call him and tell him that we
18 are starting at nine, and if we get a morning break I
19 can have enough time to go down and fill that out, I'd
20 appreciate it.
21 THE COURT: At the break time?
22 MR. SAMPSON: Yes. But if you could tell him
23 so he's not trying to snatch me at 9 o'clock.
24 THE COURT: I wish you had told me that I
25 would have brought the jury in at 9:30.

MR. SAMPSON: Judge, I will do it on the
break. Thank you.
(Matter 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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