

A-2039-0674

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
ESSEX COUNTY, IND. NO: 03-06-2254
A# 2011-0

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

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

FILED
APPELLATE DIVISION
SEP 14 2007
Clerk

Place: Essex County Courthouse
50 Market Street
Newark, New Jersey
Date: June 17, 2004
Pages: 1 - 147

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

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		I N D E X			
Witnesses		Direct	Cross	Redirect	Recross
1	For the State				
2	STEHEN KELLY	12	27		
3	JOHN LOIACONO	30	36	41, 44	42, 46
4	VINCENT VITIELLO	54	74	101	112
5	NICOLE BERRIAN	15			
6					
7					
8					
9					
10					
		E V I D E N C E			
11	Exhibits		Ident.	Evid.	
12	S-85A, Motel Card		23		
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Colloquy

1 THE COURT: You want to see me yes, sir?

2 MR. SAMPSON: Judge, I understand we have

3 some witnesses from out of state. I was just

4 wondering, Judge, if we could have a proffer as to

5 their testimony.

6 MR. McTIGUE: Judge, a report was provided in

7 discovery regarding the apprehension of Luis DaSilva.

8 I marked it S-89. Detective Stephen Kelly will testify

9 that on a certain date he was contacted by a police

10 officer Oliveira of Franklin Township Police.

11 At that time, Detective Kelly was assigned to

12 the Bronx Homicide Squad and was interested in -- he

13 got information from Detective Oliveira about a person

14 possibly involved in the homicide of a cab driver. He

15 responded to the location in the city of Newark and

16 Detective Oliveira and another person, based on

17 information provided, they responded to the house of

18 Michel Pereira. Delzuita Pereira, the mother of Michel

19 Pereira, was present at the time. They had discussions

20 with a person by the name of Marcello, who they had

21 seen on TV. Upon further questions, Ms. Pereira called

22 Mr. Andrade, who responded to the scene. He gave

23 information about taking Marcello, who was the subject

24 of interest at the time to a motel on Washington

25 Street in Belleville. The detective and Officer

1 Oliveira went to Washington Street in Belleville. They
2 went first to one hotel at the 94 portion of Washington
3 Street looking for Marcello, to see if Marcello had
4 checked in. They were unsuccessful at the first
5 location. They went to a second location in the
6 Belleville Motor Lodge. Initially they made the same
7 inquiries. They gave a description of Marcello,
8 without success. Detective Kelly then looked at the
9 register, saw the name Andrade that went to that room
10 number. There they saw the defendant, who I will not
11 put in, Judge, because it involves other crimes
12 evidence which I believe is inappropriate, where they
13 went in. They also saw drug paraphernalia, which is
14 the subject of a Belleville complaint against the
15 defendant. He was ID'd. He was taken to Belleville
16 Police Headquarters. He was processed. It turned out
17 that he was not the person who they were looking for in
18 the New York job; however, at that point the Essex
19 County warrant did come up and it was executed upon
20 him.

21 MR. SAMPSON: Your Honor, it's my
22 understanding that Mr. DaSilva was arrested by members
23 of Belleville Police Department.

24 MR. McTIGUE: Who responded with Detective
25 Kelly, once they determined they had a likely suspect

1 in the room at the Belleville Motor Lodge.
2 MR. SAMPSON: Judge, in light of fact that
3 Mr. DaSilva was arrested by members of Belleville
4 Police Department, I respectfully submit that all of
5 this testimony about the Bronx Homicide detectives
6 coming with information is unduly prejudicial to the
7 defendant. There's the possibility of confusion, and
8 since this information can be otherwise elicited by the
9 State with regard to the arrest of Mr. DaSilva, we
10 would object to the testimony of these officers, again,
11 on the grounds that it creates the possibility of
12 confusion. And it is also unduly prejudicial to the
13 defendant in terms of matters arising from the State of
14 New York, homicides of Bronx cabbies, or something to
15 that effect. And we believe that this information,
16 being otherwise available to the State, should proceed
17 in another matter.

18 THE COURT: No one from Belleville --

19 MR. McTIGUE: Excuse me, Judge?

20 THE COURT: No one from Belleville Police
21 went to interview the people at Michel's house?

22 MR. McTIGUE: That's correct, Judge. This
23 testimony is generally corroborative, and there is no
24 other testimony in the case. I will allow the
25 testimony. It is not overly prejudicial to the

Colloquy

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2 went first to one hotel at the 94 portion of Washington
3 Street looking for Marcello, to see if Marcello had
4 checked in. They were unsuccessful at the first
5 location. They went to a second location in the
6 Belleville Motor Lodge. Initially they made the same
7 inquiries. They gave a description of Marcello,
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23 testimony is generally corroborative, and there is no
24 other testimony in the case. I will allow the
25 testimony. It is not overly prejudicial to the

1 defendant because it will come out that he is not the
2 suspect in any New York --
3 MR. McTIGUE: Absolutely, Judge. I intend to
4 stress that.
5 THE COURT: Make sure that's clear. You want
6 an instruction on top of that, Mr. Sampson?
7 MR. SAMPSON: Well, the problem is, Judge, in
8 light of Mr. Michel Pereira's testimony yesterday about
9 seeing this matter on television, again, I think it
10 compound that situation. But, yes, Judge, we would
11 seek an instruction.
12 THE COURT: Prepare whatever instruction you
13 want me to give and give it to Mr. McTigue and we'll
14 see if it's okay.
15 MR. SAMPSON: We are going to do that now,
16 Judge.
17 THE COURT: You want to do it now?
18 (Brief discussion off the record)
19 MR. SAMPSON: Judge, we have some agreement
20 as to the language. You probably can't read my
21 handwriting, I will read it.
22 THE COURT: Just read it, I will print it.
23 MR. SAMPSON: You will hear.
24 THE COURT: You will hear.
25 MR. SAMPSON: You will hear testimony.

1 THE COURT: You want me to do it before the
2 testimony?
3 MR. McTIGUE: You want to do it before or
4 after or during?
5 MR. SAMPSON: You can do it before, Judge.
6 THE COURT: Go ahead. You will hear
7 testimony.
8 MR. SAMPSON: From members of NYPD.
9 MR. McTIGUE: From a member.
10 MR. SAMPSON: From a member of the NYPD Bronx
11 Homicide Unit concerning the arrest of the defendant on
12 these charges. This testimony --
13 THE COURT: Hold it a second. This
14 testimony.
15 MR. SAMPSON: Is for the limited purpose of
16 describing for you the circumstance and manner in which
17 the defendant was apprehended.
18 MR. McTIGUE: Judge, I would ask that you add
19 to that: You may also consider this testimony to the
20 extent you -- in conjunction with the other evidence
21 you have heard during the course of this trial.
22 THE COURT: I will leave it the way he asked
23 me.
24 All right, bring out the jury.
25 MR. McTIGUE: All right, Judge, because Mr.

1 Sampson is concerned about this, I'm going to proffer
2 to the Court at this point an Exhibit, S-89 for
3 identification, and direct the Court's attention to
4 paragraph 3 of that report of Detective Stephen Kelly.
5 And within that paragraph, towards about four or five
6 lines up from the bottom, there is an indication that a
7 show on Most Wanted Criminals was viewed, and there was
8 some bragging about a murdered cab driver.

9 I'm not going to go into that, Judge, to the
10 extent that we have had testimony from Michel Pereira
11 and not Delzuita Pereira, that has come into the case
12 at this point. Even so, Judge, it would be hearsay.
13 It would be an admission made to one person and then
14 relayed to another. I'm not going into it. With the
15 Court's permission and with Mr. Sampson's consent, I am
16 going to take some liberty about leading around that,
17 even though I have cautioned the officer.

18 THE COURT: Very well?

19 MR. McTIGUE: Judge, also while you have that
20 in front of you, also paragraph 1 of that same
21 document, Judge, there's information that Officer
22 Oliveira was advised he had a civilian informant who
23 knew the whereabouts of the subject wanted in the
24 Bronx, New York, for a murder which occurred
25 approximately 20 to 30 days ago.

1 MR. SAMPSON: Judge, I take it that --

2 MR. McTIGUE: I'm not going to go into any of
3 that, Judge.

4 MR. SAMPSON: Including the Brazilian
5 passport of Thiago Barbosa Rodriguez?

6 MR. McTIGUE: I'm not going to say that was
7 stolen, but he also had information about a passport
8 being taken.

9 THE COURT: Bring out the jury.

10 MR. McTIGUE: I'm sorry, Judge, at the end of
11 the day we had entered into a stipulation that an
12 Exhibit S-85 was admitted, was acknowledged admitted
13 into evidence as a business record kept in the usual
14 course by the Belleville Motor Lodge. The detective
15 will make reference to one portion of this exhibit
16 today, and I think there's no harm in displaying that
17 to the jury at this juncture. So I move it into
18 evidence, and I ask the Court to instruct the jury as
19 to the stipulation. It seems to be an appropriate
20 time, Judge, as you are giving the other instruction.

21 THE COURT: I am trying to read my writing
22 from yesterday. There's a sign-in sheet and
23 registration card from the hotel. The stipulation is
24 that the S-85 is a sign-in sheet and registration card
25 from the hotel.

1 MR. McTIGUE: Belleville Motor Lodge.

2 Belleville Motor Lodge kept in the --

3 THE COURT: Belleville Motor Lodge kept in
4 the regular course of business.

5 MR. SAMPSON: Judge, if I could ask, with
6 regard to the passport, the terms of information
7 received by this officer, are we going to limit that to
8 the fact that he received information concerning a
9 passport or are we going to limit it to that language,
10 Judge, or are we going to permit the witness --

11 MR. McTIGUE: Judge, I'm not going to say he
12 stole it. All right? I'm going to say that there was
13 information about a passport that was missing.

14 THE COURT: Can I bring out the jury? Yes?

15 MR. McTIGUE: Yes, finally.

16 (Jury brought out)

17 THE COURT: Good morning, ladies and
18 gentlemen.

19 THE JURY: Good morning.

20 THE COURT: A couple of things before we
21 begin. First of all, there's been a stipulation
22 between the parties. Yesterday there was an item
23 marked for identification, S-85, which is a sign-in
24 sheet and a registration card from a hotel, the
25 Belleville Motor Lodge. And the stipulation from the

1 parties is that these are business records of that
2 Belleville Motor Lodge hotel kept in the regular course
3 of business. They entered into a stipulation so that
4 we don't have to bring a witness to say these are
5 the records.

6 Initially there's a witness who is about to
7 testify in the case, and he's a member of New York City
8 Police Department. You will hear testimony from this
9 member of New York City Police Department Bronx
10 Homicide Unit concerning the arrest of the defendant on
11 these charges. This testimony is for the limited
12 purpose of describing for you the circumstance and
13 manner in which the defendant was apprehended.

14 Okay, so you can call that witness.

15 MR. McTIGUE: Thank you, your Honor.

16 Your Honor, the State calls at this time
17 Detective Stephen M. Kelly.

18 MR. SAMPSON: Your Honor, while the witness
19 is coming in. Can we be heard at sidebar one minute?

20 (The following takes place at sidebar)

21 MR. SAMPSON: Judge, in the report here,
22 paragraph 2, he mentions the name Geracione Andrade.
23 I'm just wondering if the prosecutor is going to bring
24 that out. And if so, if there's any tie between that
25 name and the defendant.

- 1 Q. All right. Pointing your attention to the
2 exhibit now marked S-85, the sign-in sheet, this is the
3 sheet you examined?
4 A. Yes, it is.
5 Q. And what did you determine upon looking at
6 that sheet?
7 A. After reading through the names, I observed the
8 name Andrade registered under room number 30.
9 Q. Based upon that, what actions did you take?
10 A. Upon seeing that name, we immediately called the
11 Belleville Police Department.
12 Q. For what purpose, sir?
13 A. To advise them of what the situation is, and if
14 there's a possible person inside the motel room that's
15 wanted in connection with a homicide.
16 Q. And did members of Belleville Police
17 Department respond in response to your request for aid?
18 A. Yes, they did.
19 Q. Was this before or after you went to the
20 room?
21 A. No, they responded before we went to the room.
22 Q. At some point did you go to the room?
23 A. Yes.
24 Q. And what room number was that?
25 A. Three zero, 30.

- 1 Q. And that is the number reflected on the
2 sheet?
3 A. Yes, it is.
4 Q. All right.
5 I'm going to ask you if you would just -- and
6 are their entry numbers on the left hand corner of the
7 exhibit marked S-85?
8 A. Yes, there are.
9 Q. And on what line does it appear for Andrade?
10 A. Line number 8.
11 Q. I ask you to just put a small X and your
12 initials beside the numeral 8.
13 Now, when the members of the Belleville
14 Police Department responded, what occurred?
15 A. Okay. They responded, and I advised them of the
16 situation and what the reason was that we were there.
17 After we discussed what was going on, we proceeded to
18 room number 30 where the Belleville Police Department
19 knocked on the door.
20 Q. Did anyone respond to the knock?
21 A. Yes.
22 Q. Who responded?
23 A. A male fitting the description of Marcello
24 appeared at the door.
25 Q. And what occurred at that point?

- 1 A. Okay. The officers identified themselves as
2 Belleville police officers and --
3 Q. Now, at a certain point was entry made?
4 A. Yes.
5 Q. And at a certain point was the defendant
6 placed under arrest by Belleville police officers.
7 A. Yes.
8 Q. After that arrest, was the defendant then
9 transported to Belleville Police Headquarters?
10 A. Yes.
11 Q. Now, this operation had been motivated by
12 your belief that Luis DaSilva was a person wanted in
13 connection with a New York homicide case. Is that
14 correct?
15 A. Yes.
16 Q. That turned out not to be the fact, though;
17 isn't that right?
18 A. Yes.
19 Q. Is it correct that once at Belleville,
20 certain identification procedures were undertaken?
21 A. Yes.
22 Q. And the defendant's fingerprints were taken?
23 A. Yes.
24 Q. And other identification procedures were
25 undertaken by members of Belleville Police Department?

- 1 A. Yes.
2 Q. And at that time was it indicated, was it
3 clear to you that the person taken into custody, Louis
4 DaSilva, was not in fact the person connected with the
5 investigation in New York?
6 A. That's correct.
7 Q. And no charges of any sort were ever lodged
8 against him in connection with that investigation being
9 conducted by you?
10 A. No.
11 Q. Was it in fact, however, determined that
12 Louis DaSilva was wanted in Essex County for a
13 different murder?
14 A. Yes.
15 Q. And was that warrant executed upon him at
16 that time?
17 A. Yes.
18 MR. McTIGUE: No further questions.
19 THE COURT: Cross examine.
20 CROSS EXAMINATION BY MR. SAMPSON:
21 Q. Sir, your involvement in this particular case
22 began on May the 4th, 2003. Correct?
23 A. Yes.
24 Q. That's the date upon which you received
25 information?

- 1 A. Yes.
2 Q. And the arrest of Mr. DaSilva took place
3 later on that same day. Correct?
4 A. Correct.
5 Q. You indicated the based upon that
6 information, ultimately, you went to the Belleville
7 Motor Lodge. Is that correct?
8 A. Yes.
9 Q. You were present during the arrest of Mr.
10 DaSilva. Is that correct?
11 A. Correct.
12 Q. As I understand it, members of police knocked
13 on the door and identified themselves as members of the
14 Belleville Police Department. Is that correct?
15 A. Yes.
16 Q. This man answered the door. Is that correct?
17 A. Yes.
18 Q. You asked him -- he was asked his name.
19 Correct?
20 A. Yes.
21 Q. And he told you that he was Luis DaSilva.
22 Correct?
23 A. I believe he told the Belleville police officers
24 that he was Luis DaSilva.
25 Q. That was the only name he gave at the time.

- 1 Correct?
2 A. I don't know, you would have to ask the Belleville
3 police officers that question.
4 Q. There was no resistance on his part at that
5 time. Correct?
6 A. Correct.
7 Q. He didn't try to escape from you?
8 A. No.
9 Q. And as Mr. McTigue already asked you, as it
10 turned out, he had nothing to do with the matters that
11 you were concerned with in New York. Correct?
12 A. Correct.
13 Q. And no charges were ever filed against him
14 with regard to any matter pending in the city of New
15 York. Correct?
16 A. Correct.
17 MR. SAMPSON: Thank you, sir.
18 THE COURT: Anything else?
19 MR. McTIGUE: No, sir.
20 THE COURT: You may step down. Thank you.
21 (Witness excused)
22 THE COURT: Next witness.
23 MR. McTIGUE: Judge, may I be heard at
24 sidebar, please?
25 (The following takes place at sidebar)

- 1 MR. McTIGUE: I don't see my investigator.
2 Excuse me, one second.
3 Judge, the witness from Belleville just
4 arrived, I will need 5 minutes or so.
5 (The following takes place in open court)
6 THE COURT: All right, ladies and gentlemen,
7 about five minutes. Please go in the juryroom. We'll
8 be back with you shortly.
9 (Recess)
10 THE COURT: Next witness, Mr. McTigue.
11 MR. McTIGUE: Thank you, your Honor.
12 The State calls as its next witness
13 Belleville Police Officer Loiacono.
14 J O H N L O I A C O N O, Sworn.
15 THE COURT: Go ahead.
16 DIRECT EXAMINATION BY MR. McTIGUE:
17 Q. Good morning, Officer Loiacono. Did I
18 pronouns it correctly?
19 A. Yes.
20 Q. I take it by your uniform you are employed by
21 the Belleville Police Department?
22 A. Yes, I am.
23 Q. How long have you been with the Belleville
24 Police Department, and what's your general assignment?
25 A. Approximately 10 years, and I'm assigned now to

- 1 the Street Crimes Unit.
2 Q. I take it then you were employed by the
3 Belleville Police Department in the year 2003, more
4 particularly May, of 2003?
5 A. Yes.
6 Q. Was it in the same capacity or different
7 capacity?
8 A. Different capacity, I was in Patrol at that time.
9 Q. All right.
10 Officer Loiacono, on May 4, 2003, did you and
11 other members, to your knowledge, of the Belleville
12 Police Department respond to the Belleville Motor Inn
13 on a call to assist a New York City police officer?
14 A. Yes. It was myself, my partner Officer Auriemma,
15 and now Detective Auriemma, and Sergeant Baumgartner
16 responded.
17 Q. Did you prepare a record concerning your
18 activities at that time?
19 A. I did an arrest record and an arrest card.
20 MR. McTIGUE: S-9, your Honor.
21 Q. Do you recognize that exhibit, sir?
22 A. Yes.
23 Q. That first page is that of your subject, and
24 the second is that of your partners?
25 A. Yes.

- 1 Q. I believe you stated, and correct me if I'm
2 wrong, that on that date a call was received by the
3 Belleville Police Department from a New York City
4 police officer requesting assistance in making an
5 arrest?
6 A. Yes.
7 Q. Did you and the other officers you just named
8 actually respond to the Belleville Motor Lodge?
9 A. Yes, we did.
10 Q. And upon going there, did you go to room 30
11 of that motel?
12 A. We did.
13 Q. And did you make entry into that apartment or
14 that room?
15 A. Yes.
16 Q. And was there a person taken into custody?
17 A. Yes.
18 Q. And do you see that person in court today?
19 A. Yes, the gentleman right there.
20 Q. I ask you describe what he's wearing.
21 A. The gray or green suit, black hair, ponytail,
22 goatee.
23 MR. McTIGUE: Indicating the defendant, your
24 Honor.
25 THE COURT: For the record.

- 1 Q. Is his physical appearance today the same as
2 when you participated in his arrest?
3 A. No, it's different.
4 Q. Could you describe what the differences are?
5 A. He had short hair and his hair was dyed.
6 Q. Do you recall what color hair?
7 A. I believe it was like an orange, it was dyed
8 orange, I guess it was bleach, but was bleached like an
9 orange instead of blonde.
10 Q. All right.
11 Now, during the course of the arrest, the
12 person that you identified as the defendant, was
13 certain property taken into custody?
14 A. Yes, his personal property, whatever he had in the
15 room.
16 Q. Okay.
17 And S-71, your Honor, and S-87.
18 Do you recall the general nature of the
19 personal property that was taken?
20 A. It was clothes and there was credit cards, a
21 license, social security card, and a passport.
22 Q. All right.
23 Showing you S -- do you recall the country of
24 origin of that passport?
25 A. Brazil.

- 1 Q. Showing you S-87, do you recognize that?
2 A. Yes.
3 Q. What do you recognize that to be?
4 A. The passport that was in his possession.
5 Q. Is that in a different name?
6 A. Yeah, different name and different photograph from
7 the passport.
8 Q. And the name contained on that?
9 A. I guess it's G up there, it says Thiago Barbosa.
10 Q. In addition you indicated a license was
11 taken.
12 A. Yes.
13 Q. And going into a plastic bag which has been
14 marked S-71, there appears to be three visa credit
15 cards, a social security card, and a driver's license
16 with a photo.
17 A. Yes.
18 Q. And are these the items taken?
19 A. Yes.
20 Q. That are reflected in your report?
21 A. Yes.
22 Q. And the driver's license is in the name of
23 Michael Santiago of 374 Park Street, Orange?
24 A. Yes.
25 Q. The social security card is under Michael

- 1 Santiago Figueroa?
2 A. Yes.
3 Q. A silver color Visa card is under the name
4 Carlos R. Nunes, N-U-N-E-S; a second blue color Fleet
5 Visa under Carlos R. Nunes, and Independent Visa under
6 the name Michael Santiago?
7 A. Yes.
8 Q. Now, after taking the person you have
9 identified as the defendant into custody, was he taken
10 to the Belleville Police Department?
11 A. Yes, he was.
12 Q. And was he processed there?
13 A. Yes.
14 Q. Please correct me if I'm wrong, processing
15 involves an identification procedure?
16 A. Yes.
17 Q. And was that done for this gentleman?
18 A. It was.
19 Q. Did it involve the taking of fingerprints?
20 A. Yes.
21 Q. And comparing those fingerprints to any
22 person known to be wanted for various offenses?
23 A. Yes.
24 Q. And it is correct, is it not, that he was
25 found not to be connected with the New York offense for

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9 identified as the defendant into custody, was he taken
10 to the Belleville Police Department?
11 A. Yes, he was.
12 Q. And was he processed there?
13 A. Yes.
14 Q. Please correct me if I'm wrong, processing
15 involves an identification procedure?
16 A. Yes.
17 Q. And was that done for this gentleman?
18 A. It was.
19 Q. Did it involve the taking of fingerprints?
20 A. Yes.
21 Q. And comparing those fingerprints to any
22 person known to be wanted for various offenses?
23 A. Yes.
24 Q. And it is correct, is it not, that he was
25 found not to be connected with the New York offense for

- 1 which you were originally called?
2 A. Yes, that's true.
3 Q. However, based on your check of the warrant
4 records, it was determined that he was wanted in Essex
5 County on a homicide charge?
6 A. Yes, he was.
7 Q. Were the Newark Police notified of that?
8 A. I believe it was the Sheriff's Department.
9 Q. The Sheriff's?
10 A. The Sheriff's Department had the actual warrant
11 for his arrest.
12 Q. Okay.
13 And during the identification process, did
14 you notice any significant marks or tattoos on his body
15 which would be taken or made a record of?
16 A. Yes, he had tattoos on his body.
17 Q. Does your report indicate exactly what type
18 of tattoos and where they were?
19 A. Yes. He had on the left calf, he had tribal
20 tattoos.
21 MR. McTIGUE: No further questions, Judge.
22 THE COURT: Cross examine.
23 CROSS EXAMINATION BY MR. SAMPSON:
24 Q. Sir, you have been with the Belleville Police
25 Department at this point about 10 years, you said?

- 1 A. Yes.
2 Q. Ordinarily when an officer from another
3 jurisdiction comes into your town, do they normally
4 notify your department that they are conducting an
5 investigation there?
6 A. Yes.
7 Q. And in this particular case, you received a
8 call, once the NYPD was already at the Belleville Motor
9 Lodge. Is that correct?
10 A. I don't know. The call name into headquarters, we
11 responded there, and they were out front waiting for
12 us.
13 Q. Based upon that information, you accompanied
14 them to a room within the Belleville Motor Lodge. Is
15 that correct?
16 A. Yes, we did.
17 Q. And when you got to that room, you knocked on
18 the door. Correct?
19 A. I didn't knock on the door, New York City did.
20 But we were there escorting them as accompanying them
21 for their investigation.
22 Q. But you observed someone knocking on the door
23 to the room?
24 A. Yes.
25 Q. The door was opened by someone in the room?

- 1 which you were originally called?
2 A. Yes, that's true.
3 Q. However, based on your check of the warrant
4 records, it was determined that he was wanted in Essex
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20 But we were there escorting them as accompanying them
21 for their investigation.
22 Q. But you observed someone knocking on the door
23 to the room?
24 A. Yes.
25 Q. The door was opened by someone in the room?

- 1 A. Yes.
2 Q. And with regard to the other items that you
3 recovered -- you said you recovered a passport and some
4 credit cards?
5 A. Yes.
6 Q. To your knowledge, were any of these items
7 reported stolen to the police prior to your arresting
8 Mr. DaSilva?
9 A. I don't recall.
10 Q. After these items came into your possession,
11 did you investigate to see who Michael Santiago was?
12 A. Yeah. There was a check done, a computer check
13 NCIC.
14 MR. McTIGUE: Judge, may I be heard at
15 sidebar?
16 (The following takes place at sidebar)
17 MR. McTIGUE: Do you know what he's going to
18 say on this, cause I don't?
19 MR. SAMPSON: I'll withdraw the question,
20 Judge. I will rephrase the question.
21 (The following takes place in open court)
22 Q. Sir, again just with regard to these
23 objects, the license and the credit cards, to your
24 knowledge, they were never reported stolen. Correct?
25 A. No.

- 1 Q. Thank you, sir.
2 A. Okay.
3 REDIRECT EXAMINATION BY MR. McTIGUE:
4 Q. You did an inventory of personal property as
5 indicated by Mr. Sampson?
6 A. Yes.
7 Q. And were items of luggage taken?
8 A. Yes.
9 MR. McTIGUE: May I see that exhibit, please?
10 Thank you.
11 Two exhibits have been mark for
12 identification, S-91 appears to be a black --
13 A. Carrying bag.
14 Q. Carrying suitcase with handles and a strap.
15 Do you recognize this?
16 A. Yes.
17 Q. And did you do the inventory of the property
18 in here?
19 A. Yes. It's all listed on the arrest record.
20 Q. Okay.
21 And showing you now S-92, do you recognize
22 this?
23 A. Yes.
24 Q. What do you recognize this to be?
25 A. Green backpack type bag, carrying bag.

- 1 A. Yes.
2 Q. And with regard to the other items that you
3 recovered -- you said you recovered a passport and some
4 credit cards?
5 A. Yes.
6 Q. To your knowledge, were any of these items
7 reported stolen to the police prior to your arresting
8 Mr. DaSilva?
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18 in here?
19 A. Yes. It's all listed on the arrest record.
20 Q. Okay.
21 And showing you now S-92, do you recognize
22 this?
23 A. Yes.
24 Q. What do you recognize this to be?
25 A. Green backpack type bag, carrying bag.

1 Q. And ultimately all the evidence that we are
2 referring to here, S-91, S-92, the exhibits in S-71 and
3 S-87, were all turned over to the Essex County
4 Prosecutor's Office or the Newark Police Department?

5 A. Yes.

6 Q. Would you indicate what your inventory shows
7 that was in those bags?

8 A. There was a black leather wallet. He had a black
9 leather jacket, a gray case with toiletries, three
10 pairs of jeans, five underwears, three pairs of shoes,
11 photo album, electric razor, seven pairs of socks,
12 basketball collectors cards, the green backpack,
13 silver-colored watch, black leather carrying bag, five
14 long-sleeve sweaters, six short-sleeve shirts,
15 gold-colored rope chain with a bracelet, a pair of
16 shorts, one green tank top, and a gold-colored charm.
17 He also had five dollars and fifty or sixty-six cents
18 in his possession.

19 MR. McTIGUE: Nothing further, Judge.

20 THE COURT: Anything else?

21 MR. SAMPSON: No, your Honor.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you.

24 MR. SAMPSON: Oh, I'm sorry, Officer.

25 RECESS EXAMINATION BY MR. SAMPSON:

1 Q. You said there was a photo album that you
2 that you recovered?

3 A. Yeah, it was a photo album.

4 Q. Did you go through it?

5 A. No. It was just a photo album, I believe it was
6 empty, I don't a really recall.

7 MR. SAMPSON: Thank you. No further
8 questions.

9 THE COURT: Anything else?

10 MR. McTIGUE: No, sir.

11 THE COURT: You may step down.

12 (Witness excused)

13 MR. McTIGUE: Judge, my witness is involved
14 in a judicial function. He's going to be delayed for a
15 short while. I don't know if I can ask the Court to
16 take a break at this point.

17 THE COURT: Let's take a break, 15 minutes,
18 ladies and gentlemen. You can leave if you want to.
19 But if you leave, leave the floor and report back to me
20 as soon as you know, Mr. McTigue.

21 MR. McTIGUE: Thank you, sir.

22 (Recess)

23 MR. McTIGUE: Judge, may I be heard at
24 sidebar with counsel very briefly?

25 Judge, I apologize. In the flurry of things,

1 there's some additional property I want to get into.
2 Officer Loiacono, I want to recall him for that
3 purpose. He has testified to items recovered and I
4 have more to put in.
5 THE COURT: All right.
6 MR. McTIGUE: Thank you.
7 (The following takes place in open court)
8 THE COURT: Mr. McTigue.
9 MR. McTIGUE: Yes, Judge. With the Court's
10 permission, I'm going to recall Officer Loiacono at
11 this point.
12 MR. SAMPSON: No objection, your Honor.
13 J O H N L O I A C O N O, having previously
14 been duly sworn, testifies as follows.
15 MR. McTIGUE: Thank you, Judge.
16 REDIRECT EXAMINATION BY MR. McTIGUE:
17 Q. Officer, I am just reminding you, you are
18 still under oath.
19 A. Yes.
20 Q. During your testimony earlier you indicated
21 certain items of property had been recovered by you
22 from the defendant?
23 A. Yes.
24 Q. And among those were a photo album, a black
25 leather coat, and a sealed plastic bag with personal

1 effects.
2 A. Yes.
3 Q. Showing you first the exhibit marked S-71.
4 This appears to be a prisoner property bag. Do you
5 recognize that?
6 A. Yes.
7 Q. And does that bear your signature?
8 A. Yes.
9 Q. Does that indicate the contents therein,
10 including a wallet and various personal items of
11 jewelry and money?
12 A. Yes.
13 Q. And a watch?
14 A. Yes.
15 MR. McTIGUE: S-70, your Honor.
16 Showing you S-70, a black leather coat.
17 A. Yes.
18 Q. Do you recognize that as being recovered?
19 A. Yes.
20 Q. Showing you S-69.
21 A. Yes.
22 Q. Do you recognize that as the photo album
23 recovered, referred to earlier in your testimony?
24 A. Yes.
25 Q. Was there also a gray Clinique bag containing

1 personal toiletries recovered?
2 A. Yes.
3 Q. Showing you S-68.
4 A. Yes.
5 MR. MCTIGUE: No further questions, Judge.
6 THE COURT: Mr. Sampson.
7 RE-CROSS EXAMINATION BY MR. SAMPSON:
8 Q. Officer, the items you were just asked about,
9 these are all items that were recovered from Mr.
10 DaSilva at the time of his arrest. Is that correct?
11 A. Yes.
12 Q. This black wallet, was that recovered from
13 him at the time of his arrest?
14 A. Yes.
15 Q. During the course of his arrest and
16 processing, you had the opportunity to go through this.
17 Is that correct?
18 A. Yes.
19 Q. There was nothing in here that related to the
20 victim, Mr. Chinini, was there?
21 A. No, I don't believe so.
22 Q. Now, at the time of his arrest, Mr. DaSilva
23 was wearing that wedding band. Is that correct?
24 A. I believe so. I don't remember if he was wearing
25 it, I don't recall.

1 Q. And at the time you did seize from him this
2 watch. Correct?
3 A. Yes.
4 Q. You also seized from him this particular gold
5 chain, two gold chains. Is that correct?
6 A. I believe one is a chain and the other one is a
7 bracelet.
8 Q. You recovered from him a set of rosary beads.
9 Is that correct?
10 A. Yes.
11 Q. And some coins as well?
12 A. Yes.
13 Q. These items were all recovered from Mr.
14 DaSilva at the time of his arrest and placed into
15 inventory. Is that correct?
16 A. Yes.
17 Q. Now, do you recall me asking you on cross
18 examination about a photo album that you recovered from
19 the scene?
20 A. Yes.
21 Q. And when I asked you that, you indicated to
22 me that you thought it was empty. Is that correct?
23 A. Yes. I stated that I didn't recall, it might have
24 been empty, I don't recall.
25 Q. Let me show you this photo album that the

1 Q. If I could just, as I asked you earlier and
2 you indicated to me at the time you thought that it was
3 empty, could you just take a look at it, please.

4 MR. McTIGUE: I ask that it not be displayed
5 in the jury at this time in accord with your ruling,
6 Judge.

7 Q. Is it fair to say, sir, that it is not empty.
8 Correct?

9 A. Yes.

10 Q. And it's fair to say, based upon your
11 observations, that those are a number of pictures of
12 this defendant?

13 MR. McTIGUE: Objection, Judge.

14 THE COURT: Objection sustained.

15 MR. SAMPSON: Judge, can we be heard at
16 sidebar, please?

17 THE COURT: No. Next question.

18 Q. In addition to the photo album that you have
19 before you, other items of clothing were recovered from
20 this defendant. Is that correct?

21 A. Yes.

22 Q. Including the black leather jacket that was
23 displayed. Is that correct?

24 A. Yes.

25 Q. Did you have any reason to believe that any

1 of these items did not belong to Mr. DaSilva?

2 MR. McTIGUE: Objection to the form of the
3 question, Judge, foundation.

4 THE COURT: I'm going to allow that question.
5 Go ahead, you can answer it.

6 A. No. I had no recollection at all if they were
7 his. I would assume they were his.

8 MR. SAMPSON: Thank you.

9 THE COURT: Anything else, Mr. McTigue?

10 MR. McTIGUE: No, Judge. You may step done.
11 (Witness excused)

12 THE COURT: Call your next witness.

13 MR. McTIGUE: Judge, the next witness is
14 Detective Vitiello. He has just arrived. I'm going to
15 ask the Court's indulgence at this point and -- I'm
16 sorry. He was working until very late this morning.

17 THE COURT: You are asking for another break?

18 MR. McTIGUE: Yes, I'm sorry. I have to.

19 THE COURT: Okay.

20 Go into the juryroom, ladies and gentlemen.
21 (Recess)

22 THE COURT: Call your witness.

23 MR. McTIGUE: Yes. I call Detective Vincent
24 Vitiello to the stand.

25 V I N C E N T V I T I E L L O, Sworn.

- 1 THE COURT: Okay.
2 MR. McTIGUE: Thank you, your Honor.
3 DIRECT EXAMINATION BY MR. McTIGUE:
4 Q. Good morning, Detective.
5 A. Good morning.
6 Q. Detective, by whom are you employed, and in
7 what capacity?
8 A. Newark Police Department. I'm currently assigned
9 as a detective in the Homicide Squad.
10 Q. And how long have you been a Newark police
11 officer?
12 A. In September, I will start my 15th year.
13 Q. And how long have you been assigned to the
14 Homicide Squad?
15 A. I'm in my seventh year between Robbery/Homicide.
16 Q. So I take it then back in the year 2002, more
17 particularly November 4, that was your assignment?
18 A. Yes.
19 Q. In the investigation of a homicide, do Newark
20 detectives work with the Prosecutor's investigators?
21 A. Yes, we work as partners on the case.
22 Q. In the course of your official duties, did
23 you participate in the investigation and shooting death
24 of a livery cab driver by the name of Felix Chininin?
25 A. Yes.

- 1 Q. Is that a shooting death which occurred on
2 November 4, 2002, in the city of Newark?
3 A. Yes.
4 Q. When did you first become aware of that case?
5 A. I was on an on-call status, and I was notified at
6 approximately -- in the early morning hours on that
7 date.
8 Q. Did you execute a series of reports with
9 regard to your participation in the investigation?
10 A. Yes.
11 Q. And did you also prepare certain property and
12 evidence sheets reflecting evidence recovered by you?
13 A. Yes.
14 MR. McTIGUE: S-94, S-95, Judge. I have
15 shown them to defense counsel, they have been provided
16 in discovery, Judge.
17 Showing you a multi-page exhibit, S-94, would
18 you take a look at that and tell me if you recognize
19 what that is?
20 A. Yes.
21 Q. What do you recognize those documents to be?
22 A. These are my reports, my preliminary and my
23 supplemental investigation regarding the incident.
24 Q. All right.
25 Showing you now S-95 for identification, do

- 1 on the outside. Do you recognize that writing?
2 A. Yes.
3 Q. Who put that writing there?
4 A. I did.
5 Q. And it appears to bear a CC number.
6 A. Yes.
7 Q. That corresponds to the CC number assigned to
8 the investigation into the death of Felix Chininin.
9 A. Yes.
10 Q. Is that an item that you recovered?
11 A. Yes, it is.
12 Q. What is that item?
13 A. This is the victim's gray hooded sweatshirt. It's
14 a little stiff from the blood dried on it.
15 Q. All right. Replace it, please.
16 THE COURT: What S number is that?
17 MR. McTIGUE: That's S-40 for identification.
18 A. Yes.
19 Q. Showing you an exhibit which has been marked
20 S-41, what appears to be a brown paper bag bearing
21 certain writing. Do you recognize that writing?
22 A. Yes. It's my writing. It has the CC number on
23 the top also.
24 Q. And what is that?
25 A. This is the victim's pair of gray underwear. You

- 1 want me to remove it?
2 Q. No. If you can just look in and tell me if
3 you recognize it.
4 A. Yes.
5 Q. Showing you now S-42. Again, is that
6 evidence obtained by you at the Office of Medical
7 Examiner?
8 A. Yes.
9 Q. That's a pair of white socks belonging to the
10 decedent?
11 A. Correct.
12 Q. Showing you S-43 at this time.
13 A. That's a pair of jeans with a belt belonging to
14 the decedent that I recovered at the Medical Examiner's
15 Office.
16 Q. Does the exhibit bear your CC number?
17 A. Yes, it does, right there.
18 Q. Now, during the course of the autopsy, was a
19 shaved scalp hair sample obtained from the victim?
20 A. Yes.
21 Q. Was that also taken into custody by you?
22 A. Yes.
23 Q. Likewise was a DNA card containing fluids
24 from the decedent's body taken?
25 A. Yes.

- 1 Q. Showing you an exhibit which is a plastic bag
2 containing two samples. Does that contain -- marked
3 S-44, the shaved scalp hair from the victim?
4 A. Yes.
5 Q. And S-45, the DNA card.
6 A. Yes.
7 Q. Is that listed on this?
8 A. Yes, it is.
9 Q. This envelope?
10 A. Yes, it is.
11 Q. Does it contain the matching CC number?
12 A. Yes.
13 Q. While you were at the Medical Examiner's
14 Office, did you also obtain a certain ballistics item?
15 A. Yes.
16 Q. I show you an exhibit which has now been
17 marked S-46 for identification. Opening that, there
18 appears to be writing on the outside. Do you recognize
19 that writing?
20 A. I recognize what it says, but that's not my
21 writing. I submitted it in, in this bag right here.
22 Q. And the bag that you submitted it in, does it
23 bear your name?
24 A. Yes.
25 Q. What does it indicate?

- 1 A. Minute gray metal fragment recovered from brain of
2 victim.
3 Q. Does it bear the corresponding CC number?
4 A. Yes, it does.
5 Q. And looking at the exhibit.
6 A. Yes.
7 Q. Do you recognize that to be the fragment?
8 A. Yes.
9 Q. All right.
10 During the course of your investigation, did
11 you also obtain other ballistics evidence?
12 A. Yes.
13 Q. More particularly, did you obtain a shell
14 casing and a spent bullet from a gray Lincoln Town Car?
15 A. Yes.
16 Q. Showing you an exhibit now which has been
17 marked S-38A, it appears to be an envelope with a
18 property sheet attached to it.
19 A. Yes.
20 Q. Do you recognize that?
21 A. Yes. Yes, this sheet is, we call it a ballistics
22 form, that I submitted requesting that the item -- I
23 submitted it into the property room requesting that it
24 go from the property room to the ballistics lab so they
25 can do a further examination and comparison.

1 you mean?

2 Q. Well, when you get evidence, you try to
3 follow a trail wherever it leads. Correct?

4 A. We follow the trail wherever the investigation
5 leads, yes.

6 Q. Okay.

7 Now, in this particular case, on the morning
8 of November the 4th, 2002, you were called to a crime
9 scene in the area of Thomas Street in the city of
10 Newark. Correct?

11 A. Yes.

12 Q. And when you arrived there, Mr. Chininin had
13 already been removed from the scene?

14 A. Yes.

15 Q. But you did note there was a large pool of
16 blood in the area and in clothing and other items in
17 the street where he had lain. Correct?

18 A. Yes.

19 Q. Now, while you were there, you received some
20 information that in fact there was another scene that
21 had to be investigated. Is that right?

22 A. Yes.

23 Q. And that was you learned that a cab had been
24 recovered over on Virginia Street in Elizabeth.
25 Correct?

1 A. Yes.

2 Q. When you go to Virginia Street in Elizabeth,
3 you actually saw the cab at that location?

4 A. Yes.

5 Q. And when you looked inside the cab, there was
6 a large amount of blood spread out through the interior
7 of the car. Correct?

8 A. Yes.

9 Q. I hate to be graphic, sir, but there was
10 also -- was there also brain matter on the back seat?

11 A. It appeared to be, yes.

12 Q. A very bloody scene?

13 A. Yes.

14 Q. Now, while you were at that location, you
15 conducted what's called a canvass of the people who
16 lived in the neighborhood. Is that right?

17 A. Yes.

18 Q. And by canvassing, it means you went out and
19 talked to people who lived in the neighborhood.
20 Correct?

21 A. Yes.

22 Q. And according to your report, you spoke to at
23 least 19 people who resided in the area of 1327
24 Virginia Street. Correct?

25 A. Yes.

- 1 Q. And you asked all of them what they had seen
2 or heard during those early morning hours. Correct?
3 A. Yes.
4 Q. Now, of all of the 19 people that you
5 interviewed, not one of them ever saw, not one of them
6 ever told you they saw Luis DaSilva at the scene.
7 Right?
8 A. Yes.
9 Q. And based upon your report, not one of them
10 ever told you that they saw a Mitsubishi Montero at
11 that scene on that morning. Correct?
12 A. Correct.
13 Q. Now, one of the other things you did in the
14 course of your investigation was, I understand that a
15 member of the Elizabeth Police responded to the scene
16 with a K-9 unit.
17 A. Actually it was the Essex County Sheriff's
18 Department that responded with a K-9 unit.
19 Q. And I understand that dog was allowed to pick
20 up the scent from the vehicle. Correct?
21 A. He was given an opportunity to pick up the scent,
22 yes.
23 Q. And according to your report, is it true that
24 he followed the scent eastbound of Virginia Street and
25 then northbound of Sheridan Street?

- 1 A. That's what I was advised of by his handler, yes.
2 Q. And somewhere along the line he lost the
3 scent in a garden apartment on Sheridan Avenue. Is
4 that what you were advised?
5 A. Yes.
6 Q. And in going along that route, there was no
7 one who told you that they saw Mr. DaSilva in that area
8 that morning. Correct?
9 A. Correct.
10 Q. Your investigation of this matter continued
11 past that morning. Correct?
12 A. Yes.
13 Q. And part of your investigation led you back
14 to the Millennium Cab Company in Newark. Is that
15 right?
16 A. Yes.
17 Q. And you went to Millennium Cab Company and
18 you spoke to a number of people who owned or worked at
19 that business?
20 A. Yes.
21 Q. And you spoke to the dispatcher who was
22 working that evening. Is that correct?
23 A. Yes.
24 Q. That was an individual by the name of Jaimie
25 Solano?

- 1 Q. And you asked all of them what they had seen
2 or heard during those early morning hours. Correct?
3 A. Yes.
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5 interviewed, not one of them ever saw, not one of them
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14 to the Millennium Cab Company in Newark. Is that
15 right?
16 A. Yes.
17 Q. And you went to Millennium Cab Company and
18 you spoke to a number of people who owned or worked at
19 that business?
20 A. Yes.
21 Q. And you spoke to the dispatcher who was
22 working that evening. Is that correct?
23 A. Yes.
24 Q. That was an individual by the name of Jaimie
25 Solano?

1 A. Correct.
2 Q. Now, is it true that when you spoke to Mr.
3 Solano, that you spoke to him the next day or do you
4 recall the date in which you spoke to Mr. Solano?
5 A. I'm not exactly sure if it was that -- I think it
6 was that very same morning, later in the morning.
7 Q. So the very next morning you spoke to Mr.
8 Solano and you spoke to him about the movements of
9 Felix Chininin on that particular morning. Correct?
10 A. Yes, it was later that same morning, not the next
11 morning.
12 Q. Okay.
13 Now, did Mr. Solano tell you on that date
14 that the last pickup --
15 MR. McTIGUE: Judge, may I be heard at
16 sidebar?
17 (The following takes place at sidebar)
18 MR. McTIGUE: Judge, Mr. Solano has
19 testified, I don't know, is counsel eliciting hearsay
20 at this point?
21 THE COURT: What's the question?
22 MR. SAMPSON: I want to ask him what
23 information he was advised by Mr. Solano with regard to
24 the movements of Mr. Chininin that morning. It's in
25 his report, Judge.

1 THE COURT: You can ask him what Mr. Solano
2 told you, yes.
3 MR. SAMPSON: Yes.
4 THE COURT: Mr. Solano already testified.
5 MR. SAMPSON: Corroborative.
6 THE COURT: Ask the question.
7 (The following takes place in open court)
8 Q. Now, sir, on that morning when you spoke to
9 Mr. Solano, he advised you that the last assignment for
10 Mr. Chininin that morning was at 330 Woodside Avenue.
11 Is that correct?
12 A. Yes.
13 Q. And you have already testified, 330 Woodside
14 Avenue, and he told you that the destination was Niagra
15 Street in the city of Newark. Is that correct?
16 A. Yes.
17 Q. Now, beyond that, Mr. Solano then told you
18 that as far as he knew, Mr. Chininin had radiced back
19 to dispatch telling him he had completed that
20 assignment. Correct?
21 A. Yes.
22 Q. And he also used the phrase "clear" and
23 that's in your report. Right?
24 A. Yes.
25 Q. That he said clear, which meant that he was

- 1 free for and ready for the next pickup. Correct?
2 A. Yes.
3 Q. Now, as part of your investigation, you went
4 to the premises at 330 Woodside Avenue. Correct?
5 A. Yes.
6 Q. And the prosecutor asked you earlier about
7 speaking to a Mrs. Kathleen Armstrong?
8 A. Yes.
9 Q. You describe her as an elderly white lady.
10 Correct?
11 A. Yes.
12 Q. And she said she was the only person who
13 lived at that location?
14 A. Yes.
15 Q. Sir, in speaking to Mr. Solano, isn't it true
16 that he told you whoever called him spoke to him in
17 Spanish. Correct?
18 A. Yes.
19 Q. And he said Spanish. Right?
20 A. Yes.
21 Q. Not Portuguese, but Spanish?
22 A. I believe he said Spanish, yes.
23 Q. All right.
24 And in the course of speaking to people down
25 at Millennium Cab, you also became aware that Mr.

- 1 Chininin had a cell phone?
2 A. Yes.
3 Q. Now, that cell phone was not recovered in the
4 cab. Correct?
5 A. Correct.
6 Q. As a part of your investigation, did you ever
7 go on to determine the telephone number associated with
8 Mr. Chininin's cell phone?
9 A. Yes.
10 Q. And you also were aware that Mr. Chininin had
11 recently purchased a lap top computer or a DVD?
12 A. Yes.
13 Q. And you conducted an investigation to
14 determine the serial number associated with that DVD or
15 lap top computer; right?
16 A. Yes.
17 Q. But you were never able to determine the
18 exact serial number?
19 A. Correct.
20 Q. According to your report, you put out a
21 tele-type alarm on that date regarding the homicide as
22 well as the missing computer. Is that correct?
23 A. Yes.
24 Q. What's a tele-type alarm?
25 A. It's a message that goes out through the NCIC

- 1 A. Yes.
2 Q. Now, at the time you did your canvas, had you
3 identified any suspect?
4 A. No.
5 Q. Were you in a position to ask anybody about
6 the name Luis DaSilva.
7 A. No.
8 Q. Did you have a photograph to show them?
9 A. No.
10 Q. At the time you conducted your investigation
11 to canvas there, were you aware of any involvement by a
12 black Mitsubishi automobile?
13 A. No.
14 Q. That was all information which was developed
15 at a later time?
16 A. Yes.
17 Q. And is it fair to say that the people you
18 interviewed, they simply indicated they had not seen
19 anything unusual?
20 MR. SAMPSON: Yes.
21 MR. McTIGUE: Objection, leading, your Honor.
22 THE COURT: Objection sustained.
23 Q. What was the nature of the questions you were
24 asking these people based on the limited information
25 you had at your availability at that time?

- 1 A. Basically the questions were: Did you see
2 anybody, the person who parked that vehicle there,
3 anybody exit the vehicle? Nobody seen anybody exit the
4 vehicle. When they seen the vehicle, it was already
5 parked there, abandoned there. They never saw nobody
6 driving or exiting that vehicle.
7 Q. All right.
8 And what time did you arrive at the Elizabeth
9 address?
10 A. Somewhere, I would think, probably in the area of
11 between 8 and 9 a.m.
12 Q. This was some hours after the actual
13 occurrence?
14 A. Yes.
15 Q. Certainly not around, you weren't there at
16 three or four in the morning?
17 A. No.
18 Q. Now, you indicated at some point, both on
19 direct and cross examination, that you executed a
20 search warrant at 23 Brill Street. Right?
21 MR. SAMPSON: Objection, your Honor, the
22 wrong address.
23 MR. McTIGUE: Sorry, Judge.
24 Q. 27 Brill Street?
25 A. Yes.

- 1 Q. And did you meet a lady there by the name of
2 Tattiana Barbosa?
3 A. Yes.
4 Q. Did you determine what her relationship, if
5 any, was to Luis DaSilva?
6 A. Girlfriend, I believe a co-parent.
7 Q. Of the child that you observed there that
8 night?
9 A. Yes.
10 Q. Now, you indicated that from your
11 observation, that she appeared to be packing?
12 A. Yes.
13 Q. What led you to that? What did you see?
14 A. Boxes all over the place, everything packed, plus
15 she also told us that she was moving. She was moving,
16 and eventually she was planning on moving back to her
17 country of Brazil.
18 Q. Now, the was on December 4?
19 A. No, I believe that was on November 29th.
20 Q. November 29th.
21 So that would have been sometime after the
22 actual homicide occurred. Is that correct?
23 A. Yes, 25 days after the homicide.
24 Q. Now, did you make efforts to determine the
25 location of Tattiana Barbosa's -- the father of her

- 1 child?
2 A. Yes.
3 Q. Was she able to provide you with any specific
4 information where he might be?
5 MR. SAMPSON: Objection, your Honor.
6 THE COURT: That's a yes or no answer. You
7 can answer.
8 A. Yes.
9 Q. And based on the information she gave you,
10 were you able to take any steps to try to locate him?
11 A. She advised us that he worked in Baltimore,
12 Maryland. We contacted Baltimore Police Department.
13 Nothing ever panned out from the information she
14 provided.
15 Q. It was she who actually made the first
16 mention of Baltimore?
17 A. Yes.
18 Q. At that time did you determine if there was
19 an automobile present at the home?
20 A. Yes.
21 Q. And what did you find?
22 A. We were advised that the vehicle had been
23 impounded prior to that date.
24 Q. Who advised you of that?
25 A. Tattiana Barbosa.

- 1 Q. And did she indicate that that vehicle that
2 was in impound was a Mitsubishi, three-door.
3 A. Yes.
4 Q. Did she indicate to you where it had been
5 impounded?
6 A. Yes.
7 Q. And where is that?
8 A. I believe either Orange or West Orange, I'm not
9 exactly sure.
10 Q. And after --
11 A. I think it was Orange.
12 Q. Do you need to review your report?
13 A. I believe it was Orange.
14 Q. Now, at the time you executed the search
15 warrant, Tattiana Barbosa indicated her relationship as
16 you described to Luis DaSilva. Is that correct?
17 A. Yes.
18 Q. You indicated there was another elderly
19 person there?
20 A. Yes.
21 Q. And --
22 A. I don't believe she was that elderly, but maybe
23 about your age, sir.
24 Q. Thanks. I set myself up for that.
25 This person, I take it, was older than you?

- 1 A. Yes.
2 Q. Did you determine what if any relationship
3 she had with Luis DaSilva?
4 A. I'm not sure if she was his mother or his
5 mother-in-law, I don't remember exactly.
6 Q. Now, when you went there, was Tattiana
7 Barbosa able to speak English? Were you able to
8 communicate with her?
9 A. Yes.
10 Q. Did you make it clear what your purpose was
11 in coming there?
12 A. Yes.
13 Q. What did you tell her?
14 MR. SAMPSON: Objection, your Honor.
15 THE COURT: What did he tell her?
16 MR. SAMPSON: Yes. Sidebar, Judge.
17 (The following takes place at sidebar)
18 MR. SAMPSON: Judge, this is beyond the scope
19 of whatever cross examination I did. I asked whether
20 or not this witness was present. I don't know what the
21 relevance is, but any conversation between this officer
22 and Tattiana Barbosa is irrelevant. He has already
23 established that he was there pursuant to warrant.
24 THE COURT: What's the proposed answer?
25 MR. McTIGUE: That he was there on a homicide

- 1 investigation and had a warrant.
2 THE COURT: I'll allow it.
3 (The following takes place in open court)
4 Q. Did you tell her why you were there?
5 A. Yes.
6 Q. Did you inform her there was a homicide
7 warrant outstanding for Luis DaSilva?
8 A. Yes.
9 Q. Was that communicated to the other person,
10 the elderly person in the house?
11 A. Yes.
12 Q. Now, when you spoke with Mr. Solano and you
13 received a location, 330 Woodside, was he able to
14 indicate to you whether the person, the exact identity
15 of the person who was picked up there?
16 A. Yes.
17 Q. He wasn't able to tell you exactly who told
18 him to go to 330 Woodside?
19 A. No, just a call came in requesting a cab at 330
20 Woodside.
21 Q. Just primarily the location?
22 A. Yes.
23 Q. And you went to the location and spoke to a
24 person who lived at that address?
25 A. Yes.

- 1 Q. And that was Ms. Armstrong?
2 A. Yes.
3 Q. And she indicated it was not her who made the
4 call?
5 A. Yes.
6 Q. What type of area is that?
7 A. Residential.
8 Q. Business?
9 A. Residential.
10 Q. And were you able to determine whether
11 somebody had made a call from Ms. Armstrong's phone or
12 whether somebody had just requested a cab for 330
13 Woodside.
14 MR. SAMPSON: Objection, compound question.
15 THE COURT: I'll allow it.
16 A. I believe that somebody just used the premises,
17 the address as a landmark and didn't make the call from
18 inside her house.
19 Q. The people that you questioned in the canvas,
20 were they from a particular address?
21 A. Yes.
22 Q. You may refer to your report if you need to,
23 with the Court's permission.
24 A. Yes. The car was found like in front of a
25 mini-apartment complex and there was, you know, a good

1 number of apartments there. And we did a door-to-door
2 inquiry of the apartments, I believe it was on Virginia
3 Street. If I could just refer back to my
4 preliminary -- in the area of 1327, 1345 Virginia
5 Street, 1335, all in that area there.

6 Q. And these were apartments within the
7 building?

8 A. Yes.

9 Q. Did the people who lived in those apartments
10 necessarily have windows that faced out onto Virginia
11 Street, or were there other apartments?

12 A. Not all the apartments had windows that faced out
13 on Virginia Street.

14 Q. So please correct me if I'm wrong, this is a
15 group of people that just lived in the general
16 vicinity?

17 A. Yes, where the car was recovered.

18 Q. Were they chosen because of any particular
19 vantage point they may have had from their apartment or
20 just the fact that they were near?

21 A. No, it's just a common investigative practice to
22 do a door-to-door inquiry. You never know, somebody
23 may be coming home at that time and looking out the
24 window, or maybe asleep in the bed and not see nothing,
25 but it's just a common practice we do.

1 Q. But there was nothing in particular that lead
2 you to chose those people other than mere proximity?

3 A. Absolutely, yes.

4 Q. Now, you indicated that you didn't have any
5 information about a black Mitsubishi, no one mentioned
6 seeing a black Mitsubishi in the area of your canvas?

7 A. Correct.

8 Q. That canvas was limited to Virginia Street.
9 Correct?

10 A. Yes.

11 Q. However, you did bring out a K9 unit; is that
12 correct?

13 A. Yes.

14 Q. And you indicated that dog followed a certain
15 path. Is that right?

16 A. Yes. According to his handler, supposedly, yes.

17 Q. What was that path? Did it take him up the
18 street or around any corners?

19 A. Up the street and it's Elizabeth, I'm really not
20 too familiar with the area, but I believe in the area
21 of Sheridan Street.

22 Q. Would that have been an intersecting street
23 with Virginia Street?

24 A. I believe so, yes.

25 Q. Would that be around the corner, parallel?

- 1 A. Around the corner.
2 Q. Would that area where the dog lost the scent
3 been out of the area where you had conducted your
4 canvas?
5 A. Yeah, we didn't do door-to-door that far away,
6 yes.
7 Q. So the area where the K-9 unit was last able
8 to detect what appeared to be a scent picked up by the
9 limousine was some distance away and out of sight of
10 the area of your canvas?
11 A. Yes.
12 MR. McTIGUE: I have no further questions,
13 Judge.
14 THE COURT: Mr. Sampson, anything else?
15 RE-CROSS EXAMINATION BY MR. SAMPSON:
16 Q. Sir, you received the information from Mr.
17 Tixit and Mr. Tixi -- on the 26th or 27th of November.
18 Is that correct?
19 A. I believe it was the 25th and the 26th.
20 Q. And on the 27th, you executed a search
21 warrant?
22 A. No. On the 27th, we obtained arrest warrants. On
23 the 29th, we executed a search warrant.
24 Q. But when you got to the apartment on Brill
25 Street, the contents were already packed and in the

- 1 process of being packed?
2 A. Yes.
3 Q. And just so that we're clear, Detective,
4 Millennium Taxi told you --
5 MR. McTIGUE: Judge, I will object to
6 Millennium Taxi showing --
7 Q. Jaimie Solano, the dispatcher from Millennium
8 Taxi told you that that cab had gone from 330 Woodside
9 to Niagra Street in Newark. Correct?
10 A. That's the way the call was received, yes.
11 Q. And he also told you that Mr. Chininin had
12 called back in and had told him that he was "clear."
13 Correct?
14 A. Yes.
15 Q. Meaning he had arrived on Niagra Street,
16 discharged his passenger?
17 MR. McTIGUE: Judge, I will object.
18 THE COURT: The objection is sustained.
19 Q. What does clear mean?
20 MR. McTIGUE: Objection, Judge, unless he
21 establishes some foundation for it.
22 Q. Did you have a conversation with Jaimie
23 Solano, the dispatcher?
24 A. Yes.
25 Q. Did you talk to him about the practices down

- 1 at Millennium Taxi?
2 A. Yes.
3 Q. Did he tell you that there were procedures
4 that Millennium Taxi has for contacting its drivers?
5 A. Yes.
6 Q. Did he tell you, or during the course of your
7 conversation, did Mr. Solano use the word "clear"?
8 A. Yes.
9 Q. Does the word "clear" appear in your report?
10 A. Yes, it does.
11 Q. Does the word "clear" appear in your report
12 in quotation marks?
13 A. Yes.
14 Q. Is does that indicate that that's a word that
15 Mr. Solano used?
16 A. Yes.
17 Q. What did Mr. -- did Mr. Solano tell you what
18 he meant when he used the word "clear"?
19 A. Yes.
20 Q. What did he mean?
21 A. He told me that he understood it as the assignment
22 being completed.
23 MR. SAMPSON: Thank you, sir. No more
24 questions.
25 THE COURT: Anything else, Mr. McTigue?

- 1 MR. McTIGUE: No, sir.
2 THE COURT: You may step down.
3 (Witness excused)
4 THE COURT: Call your next witness.
5 MR. McTIGUE: I call Investigator Nicole
6 Berrian to the stand.
7 N I C O L E B E R R I A N, Sworn.
8 MR. McTIGUE: Thank you, Judge.
9 DIRECT EXAMINATION BY MR. McTIGUE:
10 Q. Good afternoon, Investigator.
11 A. Good afternoon.
12 Q. Investigator Berrian, I take it you are
13 employed as an investigator of the Essex County
14 Prosecutor's Office?
15 A. Yes.
16 Q. How long have you been an investigator with
17 the Essex County Prosecutor's Office?
18 A. Since 1991.
19 Q. And what is your current assignment?
20 A. The Homicide Squad.
21 Q. And for how long have you been assigned to
22 the Homicide Squad?
23 A. Almost six years.
24 Q. Okay.
25 And what is the nature of your duties with

- 1 the Homicide Squad?
- 2 A. I investigate homicides, suspicious deaths, and
3 police shootings that occur in the county of Essex.
- 4 Q. Now, in the course of your official duties,
5 did you participate in the investigation of a
6 shooting death of Felix Chininin, which occurred on
7 November 4, in the year 2002?
- 8 A. Yes.
- 9 Q. And in connection with that investigation,
10 did you prepare a number of reports?
- 11 A. Yes, I did.
- 12 Q. And do those reports document your efforts in
13 the investigation of this case?
- 14 A. Yes.
- 15 Q. Investigator, I'm going to show you a series
16 of exhibits which has been premarked for
17 identification. First appears to be S-13, a
18 preliminary report. Do you recognize that?
- 19 A. Yes.
- 20 Q. Is that report prepared by you?
- 21 A. Yes, it is.
- 22 Q. And S-14, that appears again to bear your
23 signature. Is that an administrative report prepared
24 by you?
- 25 A. Yes.

- 1 Q. Showing you S-15 which appears to be a
2 continuation report over your signature. Is that
3 yours?
- 4 A. Yes.
- 5 Q. Showing you S-16, appears to be another
6 continuation report. Do you recognize that?
- 7 A. Yes, I do.
- 8 Q. S-17 appears to be another continuation
9 report.
- 10 A. That's correct.
- 11 Q. As does S-18.
- 12 A. That's correct.
- 13 Q. And S-19 appears to be a report prepared by
14 another investigator.
- 15 A. That's correct.
- 16 Q. Now, Investigator Berrian, can you indicate
17 to the jury how is it that the Essex County
18 Prosecutor's Office works with local officials in the
19 investigation of a homicide?
- 20 A. The Essex County Prosecutor's Office is the chief
21 law enforcement office within the county. When a
22 homicide occurs in the county of Essex, there's a
23 system, or there's an on-call investigator who works on
24 a 24-hour basis. That person, the on-call
25 investigator, is paged and notified of the homicide, or

1 suspicious death, or police shooting that occurs at
2 whatever town. In turn, a municipal detective is
3 assigned to work in conjunction with the prosecutor's
4 investigator on the case.

5 Q. All right.

6 From the point of view (the Essex County
7 Prosecutor's Office, is the Prosecutor's Office in
8 charge of that investigation?

9 A. Yes.

10 Q. And in this case, did you work with the local
11 municipal detective?

12 A. Yes, I did.

13 Q. And the name of that person?

14 A. Vincent Vitiello.

15 Q. Now, I take it that you were on call at the
16 time that this event occurred?

17 A. Yes, I was.

18 Q. All right.

19 And how were you notified?

20 A. By pager.

21 Q. All right.

22 And what information did you receive?

23 A. I received a page from the Essex County Sheriff's
24 Department. They usually conduct notifications. I was
25 paged and told to contact Sergeant Illidio Ferreira from

1 the Newark Police Department regarding a death the
2 occurred in the city of Newark.

3 Q. And at some point as a result of these
4 conversations, did you become aware that there was a
5 homicide crime scene located at Thomas Street in the
6 city of Newark?

7 A. Yes.

8 Q. Do you recall approximately what time you
9 received that notification?

10 A. At 4:58 a.m. I received the notification after
11 being briefed by Sergeant Ferreira, then I responded to
12 the location.

13 Q. And what location was it that you responded
14 to?

15 A. Thomas Street.

16 Q. And upon arriving there, what if anything did
17 you observe?

18 A. The area is an industrial area, and in an
19 industrial section of Newark. I wasn't quite certain
20 what I had. It looked like there could have been,
21 because there were big trucks in the area, I didn't
22 know what I had, but I could see a pool of blood, some
23 coins and some shoes, male shoes, that were displaced.

24 Q. All right.

25 Given what you observed immediately upon

- 1 suspicious death, or police shooting that occurs at
2 whatever town. In turn, a municipal detective is
3 assigned to work in conjunction with the prosecutor's
4 investigator on the case.
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19 industrial section of Newark. I wasn't quite certain
20 what I had. It looked like there could have been,
21 because there were big trucks in the area, I didn't
22 know what I had, but I could see a pool of blood, some
23 coins and some shoes, male shoes, that were displaced.
- 24 Q. All right.
- 25 Given what you observed immediately upon

- 1 A. Yes, I did.
2 Q. And it appears to be a restaurant with a
3 marquis Copa Cabana. At the time that you arrived, in
4 the photo the door appears to be shuttered. Is that
5 correct?
6 A. Yes.
7 Q. Was that -- when you arrived early that
8 morning, what was the condition of this place?
9 A. It was the same, it was closed.
10 Q. Showing you S-24B, do you recognize that?
11 A. Yes.
12 Q. Is that another view of Thomas Street?
13 A. Yes.
14 Q. Do you know which direction it looks?
15 A. I don't know if its north, south, east or west,
16 I'm not very good with that.
17 Q. Does it accurately show one view of the
18 street?
19 A. Yes.
20 Q. And does that show the nature of the area as
21 you saw it?
22 A. Yes. It shows -- it's an industrial area with the
23 big trucks on the side, you can see. And there's also,
24 I think, another driveway with big trucks on that side.
25 Q. All right.

- 1 Now, you had indicated you had seen trucks in
2 the area?
3 A. Yes.
4 Q. Does that photograph show the area where you
5 saw the trucks?
6 A. Pretty much here. There's a truck down at the
7 corner, but there's also trucks that wanted to come in
8 and go to a driveway, but we had the area cordoned off
9 so they couldn't.
10 Q. So they wanted to cross the yellow tape. Is
11 that right?
12 A. Yes, and go into this driveway.
13 Q. Which driveway?
14 A. There's an industrial area over here.
15 Q. You are indicating a right -- an area to the
16 right of photograph that doesn't actually appear in the
17 photograph?
18 A. Right, an industrial area.
19 Q. Showing you now S-24C, is that another view?
20 A. Yes. There's the driveway I was talking about.
21 Q. I'm sorry, which driveway are you talking
22 about?
23 A. Over here. That was the driveway from the other
24 side of the street. They wanted to come this way and
25 go inside, but we wouldn't let them, initially.

- 1 Q. Now, as you were driving to the location on
2 Thomas Street, I take it you drove to the adjacent
3 neighborhood to get there?
4 A. That's correct.
5 Q. Was there traffic on the street? Were there
6 people on the street?
7 A. No, it was early in the morning. Not really, it
8 wasn't really heavy traffic.
9 Q. What about people in the area, general
10 vicinity?
11 A. I really didn't see any people out too much that I
12 can remember.
13 Q. Now, you indicated that you responded to a
14 location in Elizabeth after receiving certain
15 information from the Elizabeth Police Department. Is
16 that correct?
17 A. That's correct.
18 Q. I'm going to show you now a photo which has
19 been marked S-25A in evidence. Do you recognize what's
20 in that photo, Investigator?
21 A. Yes. That's the Millennium taxi cab that I saw
22 when I arrived on Virginia Street.
23 Q. Is that how you saw it?
24 A. Yes.
25 Q. It appears the doors and the trunk are open.

- 1 Do you know how those came to be open, did you learn?
2 A. Yes. I guess residents of the building called
3 because they weren't able to get out of the driveway,
4 so they called the Elizabeth Police Department.
5 Q. Just to point out, what driveway are you
6 talking about?
7 A. This one, the rear driveway where the rear of the
8 car is situated. The residents weren't able to exit
9 the driveway, so they called the Elizabeth Police
10 Department. When the Elizabeth Police arrived, they
11 saw the car the trunk was closed, as was the driver's
12 side door. The officer looked into the window and saw
13 blood and he used his pen and opened the trunk to make
14 sure a body wasn't in the trunk.
15 Q. Now, the apartments here, are you aware if
16 Detective Vitiello conducted a canvas?
17 A. We both did. We all did. An extensive canvas was
18 conducted of the building.
19 Q. The building, are they depicted in the
20 photographs?
21 A. Yes.
22 Q. Which buildings?
23 A. Both of them.
24 Q. These two buildings here were the area of your
25 canvas?

- 1 A. We also canvassed pretty much that whole block,
2 across the street as well.
- 3 Q. Were you able to determine whether any person
4 or persons had seen anything unusual?
- 5 A. No one had seen anything unusual.
- 6 Q. Now, at the time this canvas was conducted,
7 was that what you were asking people, if she saw
8 something unusual?
- 9 A. Pretty much. Well, some things happened before
10 that.
- 11 Q. All right. That being?
- 12 A. Once I arrived at the scene, and I viewed the taxi
13 cab, I looked inside, and I also saw what appeared to
14 be blood, brain matter in the rear of the car. We were
15 told that the registered owner of the vehicle was there
16 and that person, I was able to talk to him with the
17 assistance of an Elizabeth police officer who spoke
18 Spanish. At that point the owner of the car showed me
19 a license for the person who should have been driving
20 the car, and that license also had the picture of the
21 person who should have been driving the car.
- 22 Q. And that person's name was?
- 23 A. Felix Chininin.
- 24 Q. Now, you had indicated that you spoke to the
25 owner of the vehicle?

- 1 A. Yes.
- 2 Q. Do you recall the name of that person?
- 3 A. I believe it was Sergio Eras.
- 4 Q. And he was not an English-speaking person?
- 5 A. No, sir, he was not.
- 6 Q. And you required the services of the local
7 police interpreter to speak with him?
- 8 A. Yes.
- 9 Q. In examining the car, itself, was there any
10 name or logo on it?
- 11 A. It had Millennium on it, and also a number. I
12 think two numbers.
- 13 Q. All right.
- 14 Now, after receiving that information, what
15 if anything did you do?
- 16 A. Well, I also had a picture, a Polaroid from the
17 Thomas Street location of the decedent while he was
18 still in the location -- at the location, rather.
- 19 Q. Where did you get that Polaroid?
- 20 A. The responding officers Greimel, and I forget the
21 other officer's name, they had taken a Polaroid photo
22 of him and they gave it to me. So when I looked at the
23 picture of my decedent, and I looked at the live
24 picture when he was alive, I knew that that was my
25 victim.