

A-2039-0674

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
ESSEX COUNTY, IND. NO: 02-06-2254
A# 2039-06

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

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

FILED
APPELLATE DIVISION
SEP 14 2007
Sal M. Chockos
CLERK

Place: Essex County Courthouse
50 Market Street
Newark, New Jersey
Date: June 18, 2004
Pages: 1 - 101

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
For the State				
NICOLE BERRIAN	5	28	78, 96, 99	85, 98

E V I D E N C E

Exhibits	Ident.	Evid.
D-1, Subscriber Information	60	

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Colloquy

THE COURT: All right, gentlemen. I had an opportunity last night to go over the charges in the indictment and the standard charges, made a few selections of alternate language that there are in a couple of them. In addition to that, we discussed what additional charges we were going to give.

We are going to give charges with regard to a witness who has open charges, prior contradictory statements of a witness, prior conviction of a witness, expert testimony, identity, police photos, oral statement of defendant, flight, and depending on the defendant's choice as to whether or not to testify, the charge in that regard.

Anything else that you want to add?

MR. McTIGUE: Nothing beyond the standard charges, Judge, that we had discussed.

MR. SAMPSON: Your Honor, at this point, your Honor, the only other charge I -- I'm going to hold my comments until after.

THE COURT: All right.

And I mentioned to you that with regard to the terroristic threat and the tampering, that we have to say something to the jury so they understand that it's just the incident, in the indictment, that they are looking at to find him --

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1 MR. McTIGUE: One of the thoughts I had,
2 Judge, is how to couple that charge with perhaps an
3 instruction on the threat to Mr. Marquinez, and I had
4 struggled with that a little last night. But to be
5 honest with you, I don't have a final solution.

6 THE COURT: All right. I will wait to see
7 what language you come up with.

8 MR. McTIGUE: Yes.

9 THE COURT: Anything else on the charge?
10 Mr. Sampson?

11 MR. SAMPSON: Not at this point.

12 THE COURT: Mr. Sampson, has your client made
13 a decision yet as to whether he's going to testify?

14 MR. SAMPSON: Judge, at this point, no.

15 THE COURT: We're getting close. At least I
16 hope we are.

17 MR. McTIGUE: Yes, Judge, we are.

18 (Jury brought out)

19 THE COURT: All right, recall the witness.

20 MR. McTIGUE: Yes, your Honor. The State
21 recalls Investigator Berrian to the stand.

22 MR. McTIGUE: You can be seated,
23 Investigator.

24 N I C O L E B E R R I A N, having previously
25 been duly sworn, testifies as follows.

Berrian-direct

1 THE COURT: Go ahead.

2 MR. McTIGUE: Thank you, Judge.

3 DIRECT EXAMINATION BY MR. McTIGUE:

4 Q. Investigator Berrian, I will just remind you,
5 you are still under oath.

6 You have before you the exhibits S-13 through
7 S-19 comprising your reports that were put before you
8 yesterday.

9 A. Yes.

10 Q. Thank you.

11 All right, Investigator, when we broke off
12 testimony yesterday, I believe you had been giving
13 testimony regarding a cell phone in the name of William
14 Asonsa?

15 A. Yes.

16 Q. And is it correct that you obtained certain
17 information from cell phone providers regarding that
18 telephone?

19 A. Yes.

20 Q. And what was the information that you got
21 with regard to that phone?

22 A. I was able to determine his address, his name, his
23 phone number.

24 Q. All right.

25 Were you also able to obtain information

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2 Judge, is how to couple that charge with perhaps an
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21 with regard to that phone?

22 A. I was able to determine his address, his name, his
23 phone number.

24 Q. All right.

25 Were you also able to obtain information

- 1 pertaining to the serial numbers of that telephone?
2 A. Yes.
3 MR. McTIGUE: S-96A, Judge.
4 Investigator, I'm going to show you S-96A.
5 it's a multi-page exhibit pertaining to documents
6 obtained from AT&T Wireless. Is that correct?
7 A. Yes.
8 Q. I'm showing you the third page. Does that
9 information provide details of the phone registered to
10 William Asonsa, if I say it correctly?
11 A. Yes.
12 Q. As I understand it, that phone was in Mr.
13 Asonsa's name, but you indicated that Felix Chininin
14 actually used it?
15 A. Yes, Felix Chininin didn't have proper credit, so
16 his uncle actually obtain the phone for him in his
17 name.
18 Q. Do they contain various serial numbers and
19 identifying numbers for that phone?
20 A. Yes. Most importantly, the mechanical serial
21 number, MSN.
22 Q. That number, R300LX. Okay.
23 And there was you a cell phone recovered as a
24 result of a search warrant at the location of Brill
25 Street. Is that correct?

- 1 A. That's correct.
2 Q. And that was the residence of Louis DaSilva?
3 A. That's correct.
4 Q. And did you have the opportunity to compare
5 the identification numbers of both phones?
6 A. Yes.
7 Q. Were they the same?
8 A. No, they were not.
9 Q. Are they different make, model and serial
10 number?
11 A. Yes. One is an AT&T Wireless, Mr. Chininin's was,
12 and the one recovered at the Brill Street location was
13 a Motorola telephone.
14 Q. As set forth in the Newark Police property
15 records which have been marked --
16 A. Yes.
17 Q. Thank you. It's indicated an MNS number
18 there.
19 A. Yes.
20 Q. And that number for the Motorola recovered
21 at Louis DaSilva's home on Brill Street?
22 A. 828CBC2222.
23 Q. All right.
24 One question. Up to this point, you had
25 indicated, I believe, no wallet or any identification

- 1 of Felix Chininin had been recovered. Is that correct.
2 A. That's correct.
3 Q. Were any cash proceeds from his fares that he
4 may have had that evening recovered?
5 A. He had no proceeds. The only thing that we saw at
6 the scene was 50 cents at the Thomas Street location
7 that was on the ground.
8 Q. And did you also obtain the medical records
9 of Felix Chininin from University Hospital?
10 A. Yes, I did.
11 MR. McTIGUE: S-98, Judge. It has been
12 provided in discovery, your Honor.
13 Showing you S-98 for identification, do you
14 recognize what that is?
15 A. Yes.
16 Q. What is that, Investigator?
17 A. These are the medical records that I subpoenaed
18 from University Hospital and obtained an order for.
19 Q. All right.
20 And as I understand the testimony, that Felix
21 Chininin was taken from the scene to University
22 Hospital?
23 A. That's correct.
24 Q. All right.
25 And among the forms that you obtained from

- 1 the hospital, is there also an inventory of personal
2 property that was noted when he arrived at the
3 hospital?
4 A. Yes.
5 Q. And what does that inventory indicate?
6 A. It indicates that he had no cash, a watch. He had
7 a yellow metal ring that was placed in a safe. No pin,
8 earring, chain. No bracelet, wallet, credit cards,
9 purse, handbag, money or change.
10 Q. So no money, no fare proceeds, wallet were
11 found on his person when he arrived at the hospital?
12 A. No, sir.
13 Q. Now, you had also indicated that he also made
14 certain inquiries of people at Millennium Cab. Is that
15 correct?
16 A. Yes.
17 Q. And did you obtain certain phone numbers from
18 Millennium Cab?
19 A. Yes, I did.
20 Q. And were they the subject of further
21 investigation?
22 A. Two in particular were.
23 Q. Those numbers being?
24 A. One was 973-482-3000. And I'm in the certain of
25 the second number.

- 1 Q. Now, beyond that, I take it at some point
2 Alex Tixi was re-interviewed?
3 A. Yes, he was.
4 Q. And that would have been on December 19th?
5 A. That's correct.
6 Q. Now, at various points during the course of
7 your investigation, did you also go to locations other
8 than the city of Newark in an attempt to locate Mr.
9 DaSilva?
10 A. Yes, sir.
11 Q. And specifically on February 6th, or excuse
12 me, March 6th of the year 2003, were locations visited?
13 A. Yes.
14 Q. Which locations were those?
15 A. Gilbert Place and Chestnut Street in West Orange,
16 New Jersey.
17 Q. And that was based on -- was that based on
18 information you had developed during the course of your
19 investigation?
20 A. Yes.
21 Q. Was there an additional attempt on March
22 27th, 2003?
23 A. That was in the city of Newark, yes.
24 Q. And that location?
25 A. 36 Hawkins Street.

- 1 Q. All right.
2 Now, did you contact any family members of
3 Mr. DaSilva, other than Ms. Barbosa, in an attempt to
4 locate him and apprehend him?
5 A. Yes. I contacted Mr. DaSilva's father, and his
6 mother actually lived with Tattiana Barbosa, so I
7 contacted his mom as well and a brother.
8 Q. Do you know if he had relatives who lived
9 outside the state?
10 A. Yes. Through the FBI, they actually contacted a
11 brother who resides in Delaware.
12 Q. Now, at a certain point did you become aware
13 that a weapon was recovered?
14 A. Yes.
15 Q. When was that?
16 A. On March 28th, 2003.
17 Q. What information did you get?
18 A. I was contacted by my Newark counterpart who
19 indicated that a weapon had been recovered in West
20 Orange, New Jersey.
21 Q. All right.
22 A. By the West Orange Police Department.
23 Q. And what did you do in response to that?
24 A. I responded to that location.
25 Q. Now, did you have the opportunity to

- 1 obtain a copy of the photograph?
2 A. Yes.
3 Q. I show you a document which has been marked
4 S-9 for identification. Do you recognize that?
5 A. Yes, I do.
6 Q. What does that show?
7 A. This is the picture of Luis DaSilva at the
8 Belleville Police Department on May 4th.
9 Q. Did you have an opportunity to see Mr.
10 DaSilva shortly after his arrest?
11 A. The following day.
12 Q. Does that photograph fairly and accurately
13 depict the way he looked on the day you saw him?
14 A. Yes, it does.
15 Q. Just going back, you had indicated that you
16 responded to 23 Brill Street with a search warrant and
17 you had spoken to Tattiana Barbosa. Is that correct?
18 A. 27 Brill Street.
19 Q. 27 Brill Street, excuse me.
20 At that time did you speak to her about a
21 certain automobile?
22 A. Yes, I did. Well, I did not at that location, but
23 I did speak to her that day about an automobile.
24 Q. What location was that?
25 A. At the Newark Police Department Homicide Squad.

- 1 Q. Was that before the execution of the search
2 warrant?
3 A. Yes.
4 Q. And what was the nature of your conversation
5 with her at that time?
6 A. I wanted to know about Mr. DaSilva's whereabouts
7 and also about any motor vehicles that he or she may
8 drive.
9 Q. Did you determine if there was a vehicle that
10 she had?
11 A. Yes.
12 Q. What was that?
13 A. It was a Mitsubishi Montero.
14 Q. In whose name was it registered?
15 A. Her name, Tattiana Barbosa.
16 Q. Did she indicate to you where the vehicle was
17 at that time?
18 A. She wasn't certain where the vehicle was, but she
19 presented me with a phone number.
20 Q. And whose phone number was that, if you know?
21 A. It was a phone number of the police department,
22 the West Orange Police Department, I'm sorry.
23 Q. And using that information, did you make
24 inquiry as to where that vehicle was?
25 A. Yes, I did.

- 1 Q. And where did you find out it was?
2 A. A tow yard in Orange, New Jersey.
3 Q. Did you take steps to secure it?
4 A. Yes, I did, and I had it towed to my Crime Scene
5 Unit for examination.
6 Q. And ultimately that was searched, pursuant to
7 another search warrant obtained by you?
8 A. That's correct.
9 MR. McTIGUE: Nothing further, Judge.
10 THE COURT: Cross examine.
11 CROSS EXAMINATION BY MR. SAMPSON:
12 Q. Investigator Berrian, I would just like to
13 ask you a few questions about the investigation that
14 you conducted. Okay?
15 A. Yes.
16 Q. Now, you have been with the Prosecutor's
17 Office since 1991 as an investigator?
18 A. Yes.
19 Q. And you are currently assigned to the
20 Homicide Squad. Is that correct?
21 A. Yes.
22 Q. You have received considerable training in
23 various investigative techniques, is that fair to say?
24 A. Yes.
25 Q. And you received ongoing, updated training as

- 1 time goes by. Correct?
2 A. Yes.
3 Q. You are also an attorney. Is that correct?
4 A. Yes.
5 Q. And in this particular case, you were the
6 primary investigator for the Essex County Prosecutor's
7 Office. Correct?
8 A. Yes.
9 Q. And as I understand it, you work closely with
10 members of the Newark Police Department and other
11 agencies. Is that fair to say?
12 A. Yes.
13 Q. And in this particular case, you worked with
14 members of the Newark Police Robbery/Homicide Squad?
15 A. Yes.
16 Q. Particularly Detective Vincent Vitiello. Is
17 that right?
18 A. That's correct.
19 Q. Now, you indicated earlier on examination by
20 the prosecutor that part of the responsibilities
21 include investigating homicides, police shootings, and
22 other type situations. Is that correct?
23 A. Suspicious deaths, yes.
24 Q. Yes.
25 And as you did in this scene, part of that

- 1 knew he was with Carlos, and through him I was also
2 able to get Josephina. So I was able to put the story
3 together and find out pretty much what happened.
4 Q. Well, we are talking about much later. But
5 now we are talking about, you talked to Mr. Tixi on
6 November 25th?
7 A. Right.
8 Q. He was the first person you spoke to.
9 Correct?
10 A. Yes.
11 Q. You hadn't spoken to Carlos. Correct?
12 A. Right.
13 Q. Had not spoken to Josephina. Correct?
14 A. That's correct.
15 Q. And at that point you got the story about Mr.
16 Marquinez getting a page. Correct?
17 A. That's correct.
18 Q. What number did Mr. Marquinez get the page
19 on?
20 A. I don't know. I don't even know if we asked him
21 what cell phone number -- I mean, excuse me, what pager
22 number.
23 Q. All right.
24 So you got information you didn't follow up
25 on?

- 1 MR. McTIGUE: Objection, Judge.
2 Q. You didn't --
3 MR. McTIGUE: Objection.
4 THE COURT: I'll allow the question.
5 Q. You didn't follow up on the information about
6 Mr. Marquinez getting a paper from Mr. DaSilva. Right?
7 A. Yes, I did. I went and found Mr. Marquinez and I
8 interviewed him about that.
9 Q. And?
10 A. And we obtained a statement from him regarding how
11 he was contacted by Mr. DaSilva.
12 Q. Now, you told us that you know about
13 communications data warrants. Correct?
14 A. I know enough, I think. I'm no expert in the
15 communications data warrant, but I know how they work.
16 Q. And you know the same procedure would apply
17 for pagers. Is that correct?
18 A. That's correct.
19 Q. So that in this case you could get Mr.
20 Marquinez, you had Mr. Marquinez, so you could get his
21 pager number. Correct?
22 A. That's correct.
23 Q. Did you ever get his pager number to confirm
24 that on November the 4th, 2002, he got a page in the
25 early morning hours?

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21 pager number. Correct?
22 A. That's correct.
23 Q. Did you ever get his pager number to confirm
24 that on November the 4th, 2002, he got a page in the
25 early morning hours?

- 1 A. No, I didn't. I didn't feel that that was
2 necessary.
- 3 Q. Now, when you later heard that Mr. Marquez
4 placed a call, at some point later you determined that
5 there was allegedly a phone call from Mr. Marquez's
6 mother's house to another location in the early morning
7 hours?
- 8 A. What, I'm sorry?
- 9 Q. Did you ever hear from Mr. Marquez that he
10 placed a call to Mr. DaSilva in the early morning hours
11 of November the 4th?
- 12 A. I don't recall him saying that he made a phone
13 call at that time to Mr. DaSilva.
- 14 Q. So going back to November the 25th, you had
15 an interview with Alex Tixi. Correct?
- 16 A. Yes.
- 17 Q. The next day, based upon that, you had an
18 interview with Carlos Marquez. Correct?
- 19 A. That's correct.
- 20 Q. And based upon those two interviews, you
21 sought and obtained a warrant for Mr. DaSilva.
22 Correct?
- 23 A. That's correct.
- 24 Q. And based upon that information you went and
25 got a search warrant for Mr. DaSilva's house at 27

- 1 Brill Street?
- 2 A. Not on that information. I was looking for him,
3 and then I applied and obtained a subsequent search
4 warrant for that house.
- 5 Q. Can I ask, did you ever get a search warrant
6 for the home of Carlos Marquez?
- 7 A. No.
- 8 Q. Did you ever get a search warrant for the
9 home of Alex Tixi?
- 10 A. No.
- 11 Q. Now, both of those young men at that time had
12 told you that they were in the presence of Mr. DaSilva
13 on the morning of November the 4th. Correct?
- 14 A. That's correct.
- 15 Q. Both of them told you that there was -- that
16 at some point Mr. DaSilva was also in the presence of
17 Josephina Garcia?
- 18 A. That's correct.
- 19 Q. In her home?
- 20 A. That's correct.
- 21 Q. Did you ever get a search warrant to search
22 Ms. Garcia's home?
- 23 A. I didn't feel the need to search any of their
24 homes, I was looking for Luis DaSilva, he was the one I
25 was looking for as the shooter.

- 1 Q. I'm sorry. And he was the one that you were
2 looking for based on the information you got from
3 Carlos and Alex. Correct?
4 A. And also Josephina.
5 Q. Well, you already had the warrant for Mr.
6 DaSilva before you --
7 MR. McTIGUE: Judge, okay, it's
8 argumentative.
9 THE COURT: I will sustain the objection.
10 Ask it a different way.
11 Q. Did you get the warrant for Mr. DaSilva
12 before you interviewed Josephina?
13 A. Yes. She just added to it and made me want to
14 find him.
15 Q. So when you got the warrant and he became a
16 suspect, you had not yet talked to Josephina Garcia.
17 Correct?
18 A. I didn't speak to Josephina until after the
19 warrant, that's correct.
20 Q. As a matter of fact, at that point you still
21 had questions about whether Mr. Tixi and Mr. Marquinez
22 were being forthright with you?
23 A. Yes.
24 Q. As a matter of fact, right after they gave
25 the statements, you had them arrested for obstruction

- 1 of justice, both of them. Correct?
2 A. I didn't have them arrested, I did it, I charged
3 them both.
4 Q. At the time you conducted a search of Mr.
5 DaSilva, you obtained a search warrant for Mr.
6 DaSilva's house, correct, 27 Brill Street?
7 A. Yes.
8 Q. And that's when you spoke to Tattiana
9 Barbosa?
10 A. Yes.
11 Q. During the course of that search, you did
12 not -- you recovered certain items from the property.
13 Correct?
14 A. That's correct.
15 Q. You recovered clothing?
16 A. Yes.
17 Q. Pants?
18 A. Clothing.
19 Q. I understand you recovered a couple of pairs
20 of boots from that location?
21 A. I don't have the list in front of me. I do know
22 we recovered articles of clothing, and boots, I'm not
23 sure if they were one or two.
24 Q. Did you ever recover any gloves from that
25 location?

- 1 Q. I'm sorry. And he was the one that you were
2 looking for based on the information you got from
3 Carlos and Alex. Correct?
4 A. And also Josephina.
5 Q. Well, you already had the warrant for Mr.
6 DaSilva before you --
7 MR. McTIGUE: Judge, okay, it's
8 argumentative.
9 THE COURT: I will sustain the objection.
10 Ask it a different way.
11 Q. Did you get the warrant for Mr. DaSilva
12 before you interviewed Josephina?
13 A. Yes. She just added to it and made me want to
14 find him.
15 Q. So when you got the warrant and he became a
16 suspect, you had not yet talked to Josephina Garcia.
17 Correct?
18 A. I didn't speak to Josephina until after the
19 warrant, that's correct.
20 Q. As a matter of fact, at that point you still
21 had questions about whether Mr. Tixi and Mr. Marquinez
22 were being forthright with you?
23 A. Yes.
24 Q. As a matter of fact, right after they gave
25 the statements, you had them arrested for obstruction

- 1 of justice, both of them. Correct?
2 A. I didn't have them arrested, I did it, I charged
3 them both.
4 Q. At the time you conducted a search of Mr.
5 DaSilva, you obtained a search warrant for Mr.
6 DaSilva's house, correct, 27 Brill Street?
7 A. Yes.
8 Q. And that's when you spoke to Tattiana
9 Barbosa?
10 A. Yes.
11 Q. During the course of that search, you did
12 not -- you recovered certain items from the property.
13 Correct?
14 A. That's correct.
15 Q. You recovered clothing?
16 A. Yes.
17 Q. Pants?
18 A. Clothing.
19 Q. I understand you recovered a couple of pairs
20 of boots from that location?
21 A. I don't have the list in front of me. I do know
22 we recovered articles of clothing, and boots, I'm not
23 sure if they were one or two.
24 Q. Did you ever recover any gloves from that
25 location?

- 1 A. I don't remember recovering gloves.
2 MR. SAMPSON: May I have just a moment,
3 please, your Honor?
4 Ma'am, you indicated that you had taken the
5 statements from Carlos and Alex on November the 25th
6 and November the 26th of 2002?
7 A. Yes.
8 MR. McTIGUE: Can we have specific dates,
9 Judge.
10 THE COURT: You just heard the dates and she
11 answered yes. Go ahead.
12 Q. Now, I take it that at some later point you
13 conducted a second interview of Mr. Tixi. Is that
14 correct?
15 A. Yes.
16 Q. Now, that would have been in December of
17 2002?
18 A. May I just refer to my report for the date?
19 Q. Sure.
20 A. December 19th, 2002.
21 Q. Now, this matter, the present trial, has been
22 scheduled for some time. Correct? You became aware
23 that it was coming to trial a month, two months ago?
24 A. Yes.
25 Q. All right.

- 1 And you have already indicated as an
2 investigator, part of your duties are to help prepare
3 the case for trial. Correct?
4 A. Yes.
5 Q. Now, prior to the case coming to trial, is it
6 customary for attorneys or investigators to speak to
7 the witnesses that are going to testify?
8 A. Absolutely.
9 Q. And in this particular case, did you speak to
10 Mr. Tixi, and Mr. Marquinez, and Josephina Garcia?
11 A. Actually, I had trial investigators who subpoenaed
12 this case for me. I'm working active homicides, and I
13 have other cases. So they were enlisted to help me
14 subpoena. I believe they were -- when they were
15 subpoenaed, I don't think that I actually sat in on the
16 interviews of any of them. I was in and out because I
17 have a case load.
18 Q. Could I just ask you about that. In Essex
19 County, each case is given a specific number. Correct?
20 A. That's correct.
21 Q. And in this one I see in some of your reports
22 it's 96-02?
23 A. Yes.
24 Q. Can you tell us what that means?
25 A. It's the 96th homicide that occurred in the year

1 2002, so the H number, that's how we identify the H
2 number, 96-02.

3 Q. So you had, at this time you had a particular
4 case load?

5 A. During the trial preparation, you said while I was
6 preparing for this trial.

7 Q. Okay.

8 And in the course of that preparation, did
9 Carlos Marquez ever come to you and tell you that
10 what he told you back in November, 2002 wasn't true?

11 A. I haven't -- I didn't interview him for trial
12 prep. I wasn't that investigator who interviewed him
13 for trial prep, as I have stated. I have spoken to him
14 during the course of this trial.

15 Q. When did you speak to him?

16 A. When he threatened him.

17 Q. Did you speak to him before that?

18 A. Not that I can remember. Maybe hello. I don't
19 think I sat down on an interview with him.

20 Q. Where would you say hello to him?

21 A. I think it occurred here, that was the same day,
22 the day that he was threatened.

23 Q. Okay.

24 And on that day did he tell you that the
25 statement he gave back on November the 26th, 2002, was

1 not true?

2 A. He didn't talk to me about that case. He talked
3 to me about him threatening him in the cell block, or
4 around the area of the cell block.

5 MR. SAMPSON: Sidebar, please, Judge.

6 (The following takes place at sidebar)

7 MR. SAMPSON: Your Honor, again, I renew my
8 motion for a mistrial. I have not asked the witness
9 about where this took place, and she has repeatedly
10 said this. I would expect an investigator to know
11 that's inappropriate. I would expect an attorney to
12 know it's inappropriate. I think it prejudices the
13 defendant. The question was, did you have a
14 conversation, not threatening him, not that it took
15 place in the cell block.

16 MR. McTIGUE: She did not indicate in the
17 cell just, in the cell block area, and she quickly said
18 the cell block --

19 MR. SAMPSON: Judge, she said cell block
20 three times.

21 THE COURT: No, she said it one time, and
22 then she said in the vicinity of the second time,
23 obviously picking up on her mistake. While it's
24 inappropriate for her to have said it, and I will give
25 an instruction, it does not rise to something that

1 THE COURT: Objection sustained. You need a
2 sidebar.
3 MR. SAMPSON: No, your Honor.
4 Q. You do know the vehicle had been involved in
5 an accident. Correct?
6 A. That's correct.
7 Q. And you know that it was seized at the scene
8 of the accident. Correct?
9 A. I believe so.
10 Q. And you know that Mr. DaSilva wasn't driving
11 the car at the time it was seized. Correct?
12 MR. McTIGUE: Objection, Judge.
13 (The following takes place at sidebar)
14 THE COURT: Again, you know these are based
15 on other reports?
16 MR. McTIGUE: Again, this is based on other
17 reports that she doesn't have any knowledge of.
18 MR. SAMPSON: She knows facts in this case.
19 He asked the question, Judge, I wrote it down.
20 THE COURT: Is there a dispute as to whether
21 or not DaSilva was at the scene of the accident with
22 this car?
23 MR. SAMPSON: No, Judge, the car was stolen.
24 THE COURT: Then what's the difference, Mr.
25 McTigue? Let's get done.

1 MR. McTIGUE: The difference is, Judge, that
2 Mr. Sampson asked an improper question under the rules
3 of evidence. I don't want surprises.
4 THE COURT: I understand you may be
5 technically right, but if there's no dispute as to a
6 matter, let us get done.
7 MR. McTIGUE: I know, Judge, but just for the
8 record, I'm tired of being technically right.
9 MR. SAMPSON: Well, are you not technically
10 right, I don't buy that.
11 MR. McTIGUE: I'm tired of being technically
12 right and then hearing the next series of questions
13 which either violate your rulings or sneak in the back
14 door.
15 MR. SAMPSON: Judge, have I violated a ruling
16 today or snuck in the back door?
17 THE COURT: Can we stop this please,
18 gentlemen. It's already after 4 o'clock. Let's get
19 this over with.
20 (The following takes place in open court)
21 Q. Ma'am, you indicated that you know the
22 vehicle was recovered in West Orange. Right?
23 A. Yes. I believe it was recovered in Orange,
24 actually.
25 Q. Okay.

1 license?
2 A. Yes.
3 Q. And it has the name of Felix L. Chininin
4 Jaramillo?
5 A. Yes.
6 Q. Is that actually the full name of Felix
7 Chininin?
8 A. Yes.
9 Q. And does it indicate where the license was
10 found and when?
11 MR. SAMPSON: Objection, hearsay, your Honor.
12 THE COURT: Objection sustained.
13 Q. Does it indicate a general location as
14 opposed to a town or area?
15 MR. SAMPSON: Objection. Hearsay, your
16 Honor.
17 THE COURT: Objection sustained.
18 Q. All right.
19 Nothing further, Judge.
20 RE-CROSS EXAMINATION BY MR. SAMPSON:
21 Q. According to the postmark, however, you know
22 what date it was posted?
23 A. I just read it, I don't know, 15th of July, 2003,
24 I believe, 2 or 3. Three. Excuse me, July 30th, 2003,
25 from Philadelphia. You said post marked.

1 Philadelphia, Pennsylvania.
2 Q. When you received that, is the driver's
3 license within the envelope?
4 A. Yes.
5 Q. Thank you.
6 When you received this, were any tests
7 performed with regard to that driver's license,
8 fingerprints or anything else, to identify?
9 A. There was no need, sir. I spoke to the person
10 from the return address. I contacted this individual
11 and asked him how they came in possession of the
12 driver's license.
13 MR. SAMPSON: Thank you.
14 REDIRECT EXAMINATION BY MR. McTIGUE:
15 Q. Were you able to indicate if recovery was
16 made in Philadelphia?
17 A. No, it was not.
18 Q. Do you know the location where the license
19 was recovered?
20 MR. SAMPSON: Objection, your Honor, hearsay.
21 THE COURT: Sustained.
22 MR. McTIGUE: Nothing further, Judge.
23 THE COURT: Anything else, Mr. Sampson?
24 MR. SAMPSON: No, Your Honor.
25 THE COURT: You may step down.

1 THE WITNESS: Thank you.
2 (Witness excused)
3 THE COURT: Come to sidebar.
4 (The following takes place at sidebar)
5 THE COURT: Are you done?
6 MR. McTIGUE: With the testimony, yes.
7 Judge, there are exhibits to move. Do you
8 want to do that this afternoon?
9 THE COURT: You will rest now?
10 MR. McTIGUE: Subject to the moving of
11 exhibits.
12 THE COURT: Yes.
13 Time to make your decision, Mr. Sampson.
14 MR. SAMPSON: I still need to talk to him,
15 Judge, after the last witness.
16 THE COURT: All right. We'll give you some
17 time to talk to him. I will send the jury home.
18 (The following takes place in open court)
19 THE COURT: All right, ladies and gentlemen,
20 I'm going to adjourn for the evening. We're going to
21 bring you back Monday at 1:30. Monday at 1:30, and it
22 looks like -- well, be back Monday at 1:30 and
23 hopefully we'll finish then. But that's a hope. See
24 you Monday at 1:30. Do not discuss the case, avoid any
25 media on this case.

1 (Jury excused)
2 THE COURT: First of all, Mr. McTigue, do you
3 rest?
4 MR. McTIGUE: Yes, Judge, subject to moving
5 the evidence.
6 THE COURT: Mr. Sampson, can I voir dire the
7 defendant?
8 MR. SAMPSON: Yes, Your Honor.
9 THE COURT: Mr. DaSilva, you understand that
10 you have the right to testify in this case?
11 THE DEFENDANT: I do, your Honor.
12 THE COURT: And you have discussed that with
13 Mr. Sampson?
14 THE DEFENDANT: I would actually need a
15 little bit more time if I could, over the weekend, if
16 you could give us that time.
17 THE COURT: All right, fine.
18 THE DEFENDANT: Thank you, your Honor.
19 THE COURT: All right, go over the evidence
20 with Mr. Sampson.
21 (Court adjourned)

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1 THE WITNESS: Thank you.
2 (Witness excused)
3 THE COURT: Come to sidebar.
4 (The following takes place at sidebar)
5 THE COURT: Are you done?
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24 you Monday at 1:30. Do not discuss the case, avoid any
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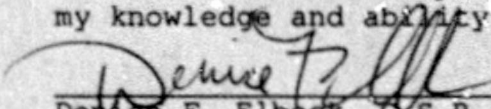
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13 Mr. Sampson?
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15 little bit more time if I could, over the weekend, if
16 you could give us that time.
17 THE COURT: All right, fine.
18 THE DEFENDANT: Thank you, your Honor.
19 THE COURT: All right, go over the evidence
20 with Mr. Sampson.
21 (Court adjourned)
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CERTIFICATION

I, Denise F. Elbeck, C.S.R., C.M., 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 to the best of my knowledge and ability.


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

September 7, 2007
 Date

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- 1 A. No.
2 Q. Acting on information you obtained from Mr.
3 Tixi and Mr. Marquinez, were you able on November 27th
4 to obtain such a photo?
5 A. Yes, I was.
6 Q. I take it that on November 27th, an arrest
7 warrant was issued?
8 A. Yes, it was.
9 Q. And that was for the person of Luis DaSilva?
10 A. Yes.
11 Q. Now, were you able to determine the address
12 in which Luis DaSilva lived?
13 A. Yes.
14 Q. And that address being?
15 A. 27 Brill Street was the last known address.
16 Q. All right.
17 Did you respond to that location in an effort
18 to find Mr. DaSilva?
19 A. Yes, I did.
20 Q. And on what date was that?
21 A. November 29th, 2002.
22 Q. All right.
23 And when you arrived there, were you able to
24 see Mr. DaSilva?
25 A. No, he wasn't there.

- 1 Q. Was anyone else at his home?
2 A. Yes.
3 Q. Who was it that you spoke to or saw on that
4 date?
5 A. I spoke with a woman named Tattiana Barbosa, she
6 claimed to be the defendant's wife or girlfriend.
7 Q. Did you inform her of the fact that Mr.
8 DaSilva had a warrant open for him for homicide?
9 A. Yes, I did.
10 Q. Was she able to provide you with any
11 information as to his whereabouts at that time?
12 A. At that time, no, she did not.
13 Q. Did she indicate where she thought he might
14 be?
15 A. Yes.
16 Q. And that being?
17 A. Baltimore, Maryland.
18 Q. All right.
19 Was there anything unusual about the
20 condition of the premises when you arrived there?
21 A. Yes.
22 Q. What was that, that you observed?
23 A. The entire apartment was packed up. There were
24 boxes everywhere, and Ms. Barbosa indicated her intent
25 to move back to Brazil with her family.

- 1 Q. Now, based on that information, did you
2 obtain a search warrant for the Brill Street location?
3 A. Yes, I did.
4 Q. And that warrant was executed the same day?
5 A. Yes.
6 Q. Did you make any efforts to contact other law
7 enforcement agencies based on the information you had
8 received?
9 A. Yes. I contacted several law enforcement
10 agencies. One was, I contacted the Baltimore Police
11 Department in an effort to locate Mr. DaSilva there.
12 Q. Did you provide the Baltimore Police
13 authorities with any information concerning Mr.
14 DaSilva?
15 A. Yes. I provided them with a copy of the criminal
16 warrant, his photograph, and other information about
17 him.
18 Q. Based on information received by you up to
19 this point, did you have the opportunity to interview
20 or participate in an interview with Josephina Garcia?
21 A. Yes, I did.
22 Q. That would have been on December 2?
23 A. Yes.
24 Q. Now, after that interview with Ms. Garcia,
25 did you receive a further contact, particularly on

- 1 December 9th of 2002, with regard to Mr. DaSilva? Just
2 answer that yes or no.
3 A. Yes.
4 Q. And was that a telephone call regarding a
5 possible surrender of Mr. DaSilva?
6 A. Yes.
7 Q. Was the person placing that call an attorney?
8 A. Yes.
9 MR. SAMPSON: Objection, your Honor, sidebar,
10 please.
11 (The following takes place at sidebar)
12 MR. SAMPSON: Your Honor, I would object to
13 this as the issue of attorney/client prejudice.
14 MR. McTIGUE: I'm not going any further.
15 THE COURT: Okay.
16 (The following takes place in open court)
17 Q. Did Luis DaSilva -- were any arrangements
18 made at that time for Mr. DaSilva to surrender?
19 MR. SAMPSON: Objection.
20 (The following takes place at sidebar)
21 MR. SAMPSON: The prosecutor just said he
22 wasn't going any further with that.
23 THE COURT: The question was whether any
24 arrangements were made.
25 THE COURT: First of all, if an attorney is

1 talking to someone else, you know the attorney/client
2 privilege is only what the attorney says to his
3 clients, and the knowledge, because there's prejudice.
4 There's no refusal to divulge -- the attorney is going
5 to talk to someone else, there's a no attorney/client
6 prejudice. Get out what you are trying to get out here
7 without further objection.

8 MR. McTIGUE: Judge, simply that a
9 conversation went no further and that the attorney was
10 aware, basically.

11 MR. SAMPSON: No.

12 MR. McTIGUE: I am deliberately not
13 mentioning Mr. Bergrin, he was the subject of a motion
14 before Judge Cronin. I am not mentioning him as the
15 attorney.

16 THE COURT: All right.

17 (The following takes place in open court)

18 Q. Investigator, were any arrangements at that
19 time made with that attorney for the actual surrender
20 of Mr. DaSilva?

21 A. No, sir.

22 Q. Based on the conversation with the attorney,
23 was the attorney aware of the nature of the charges
24 presently pending against Mr. DaSilva?

25 A. Yes.

1 Q. Investigator, based on all the information
2 available to you at that time, did you take further
3 steps with regard to the apprehension efforts of Mr.
4 DaSilva?

5 A. Yes, I did.

6 Q. What steps were those?

7 A. I expanded my jurisdictional search for Mr.
8 DaSilva by contacting several federal and state
9 agencies to help me.

10 Q. What agencies were contacted by you?

11 A. Interpol, Port Authority Police Department,
12 Immigration and Naturalization Service, the FBI, the
13 United States Custom Service. I employed the Essex
14 County Sheriff's Department Crimes Stoppers Program.

15 Q. What type of program is that?

16 A. It's a program where a reward is offered for
17 information leading to the apprehension and prosecution
18 of an individual.

19 Q. Did you also take steps to provide
20 information to the public at large about the status of
21 Mr. DaSilva?

22 A. Yes, I did. I ran several articles in English,
23 Brazilian, Portuguese, Spanish newspapers. I printed
24 wanted posteriors. I contacted Univision channel 41
25 television station, and America's Most Wanted.

- 1 A. I'm not certain of the exact time they received
2 the call.
- 3 Q. But it's fair to say that when you were
4 conducting your investigation, a particular focus would
5 have been placed on the timeframe between 3:40 a.m. and
6 about 5:20 a.m. in the morning?
- 7 A. Yes.
- 8 Q. Okay?
- 9 A. Well, yes.
- 10 Q. All right.
- 11 And you went to the crime scene on Thomas
12 Street in Newark. Correct?
- 13 A. Yes.
- 14 Q. You know that the scene had been secured and
15 photos were being taken at your direction. Correct?
- 16 A. Yes.
- 17 Q. And from there you went to the location in
18 Elizabeth over on Virginia Street?
- 19 A. Yes.
- 20 Q. And you were aware that that crime scene had
21 also been secured by a member of Elizabeth Police
22 Department and other agencies. Correct?
- 23 A. Yes.
- 24 Q. The area was marked off with the yellow tape,
25 the yellow police tape to secure it?

- 1 A. Yes, it was cordoned off.
- 2 Q. And you also said that prior to your arrival,
3 no one had entered that vehicle. Correct?
- 4 A. To my knowledge no one entered the vehicle.
- 5 Q. And the police were very careful to maintain
6 control of that so that in entering the vehicle, I
7 think you described them as using a pen or ink pen to
8 open the door?
- 9 A. Trunk.
- 10 Q. The trunk?
- 11 A. That's what he said to me, yes.
- 12 Q. Didn't you also say that the doors to the
13 vehicle were also open upon your arrival?
- 14 A. The driver's side door was open, I believe. I
15 can't remember if the passenger side was open as well.
- 16 Q. But they used a similar technique to pry to
17 preserve evidence, fingerprints, or otherwise.
18 Correct?
- 19 A. Yes.
- 20 Q. And you also said that you had the
21 opportunity to view the vehicle. Correct?
- 22 A. Yes.
- 23 Q. And you viewed the interior of the vehicle.
24 Right?
- 25 A. Yes.

1 Q. During the course of your -- and you
2 investigated this case, your participation in this case
3 began from November the 4th, 2002. Correct?

4 A. Yes.

5 Q. And based upon your job as an investigator,
6 your involvement with this case continues up to the
7 present time. Correct?

8 A. That's correct.

9 Q. And it's fair to say that at no point were
10 you ever able to uncover any blood evidence that
11 connected Luis DaSilva to the death of Mr. Chininin.
12 Correct?

13 A. There was no indication that he was hurt, only Mr.
14 Chininin was shot in the head.

15 Q. All right.

16 And none of Mr. Chininin's blood was ever
17 recovered on the person or property of Mr. DaSilva.
18 Correct?

19 A. Not to my knowledge. We were unable to recover
20 any blood. But some time had passed before we were
21 able to find and even identify Mr. DaSilva.

22 Q. Well, is it fair to say that blood evidence
23 doesn't evaporate if there were, for instance, blood
24 within this Mitsubishi Montero, it would persist for
25 some period of time. Correct?

1 A. Yes, in a car.

2 Q. Yes.

3 And so that you -- the death occurred
4 November the 4th, 2002, and with Mrs. DaSilva's
5 permission, you obtained, or you were able to search
6 the Mitsubishi Montero. Correct?

7 A. Ms. Barbosa's permission, and by court order I was
8 able to search that vehicle.

9 Q. All right.

10 And a search of that vehicle did not reveal
11 any of Mr. Chininin's blood within it. Correct?

12 A. No.

13 Q. With regard to the hair and fiber evidence
14 that you collected from the taxi, itself, you weren't
15 able to connect any of that to Luis DaSilva. Correct?

16 A. I knew that it was the decedent's hair and blood
17 in the car. This investigation showed me that there
18 was only one person who was hurt or killed.

19 Q. But, ma'am, hair from a perpetrator could be
20 present at the crime scene. Correct?

21 A. That's correct.

22 Q. And that's why you vacuumed or had your crime
23 scene investigator vacuum the interior portion of the
24 car. Correct?

25 A. That's correct. But I'm not certain where that

1 hair was recovered. That hair could have been
2 recovered from a part of his skull that was in the car,
3 or the brain matter. So I'm not really certain if I
4 associated that with anyone other than the victim.

5 Q. Is it fair to say, ma'am, that based on your
6 professional experience as an investigator, you did the
7 very best job you could with regard to collecting
8 physical evidence at all of the crime scenes. Correct?

9 A. I tried my best, yes.

10 Q. And at that point then, that was in the early
11 part of November, there was no physical evidence tying
12 Mr. DaSilva to the crime scene. Correct?

13 A. I developed evidence from people connecting Mr.
14 DaSilva to the crime scene.

15 Q. Ma'am, my question was whether or not, in
16 early November, 2002, you developed any physical
17 evidence, hair, blood, fiber, DNA, which connected Luis
18 DaSilva to that taxi?

19 A. At that point, no.

20 Q. Thank you.

21 Now, while you were at the scene, while you
22 were on the Virginia Street location, you had the K-9
23 Unit come over. Correct?

24 A. Yes.

25 Q. And the purpose for having them come over was

1 to try to track the last person or persons who had
2 driven the taxi. Correct?

3 A. That's correct.

4 Q. And employing the K-9 Unit, you were able to
5 track the person or persons last operating the vehicle
6 for some distance. Correct?

7 A. Yes.

8 Q. And at some point the dog lost the scent or
9 the trail. Correct?

10 A. That's correct.

11 Q. Based on your experience in investigations,
12 would you have been able to tell whether the dog was
13 tracking one, two or three persons?

14 A. I'm not a K-9 operator, I have to go -- he's the
15 expert. He says that he lost the scent, he lost the
16 scent.

17 Q. But he never, that is his handler, who ever
18 was handling Brunson, the K-9 dog, never indicated to
19 you whether Brunson was tracking one, two, three, four
20 people?

21 A. He had a scent, he went to the driver's side, he
22 went to the driver's side. What he does is brings him
23 to the driver's side, he sniffed that area, he had that
24 scent, so it's one scent, he sniffed the area.

25 Q. Okay.

- 1 And while you were in the vicinity of
2 Virginia Street, you went about canvassing people who
3 live in that vicinity. Correct?
4 A. Yes.
5 Q. Did you say that Virginia Street was a
6 residential or an industrial area?
7 A. Residential.
8 Q. And the reason that -- or the means by which
9 the Elizabeth Police were at the scene that morning was
10 that someone was trying to exit the driveway at that
11 location. Correct?
12 A. That's my understanding.
13 Q. And the taxi was blocking the driveway.
14 Correct?
15 A. Yes.
16 Q. And so the person called the police to
17 complain about it?
18 A. Person or persons, yes.
19 Q. So it's fair to say that in the early morning
20 hours, at least someone was up at that location?
21 A. At that time when they wanted to get out the
22 driveway, they were up, yes.
23 Q. Okay.
24 And that would have been in the time of about
25 5 o'clock in the morning. Correct?

- 1 A. It was after 5.
2 Q. When you went there to interview the people
3 who lived in that Virginia Street location, what was
4 your purpose for going there?
5 A. I'm sorry?
6 Q. Why did you go to Virginia Street and
7 interview the people who lived there?
8 A. I didn't go there with the intent on interviewing
9 people, I went there with the intent on viewing the cab
10 the taxi cab. Once there, I met the registered owner
11 who had a photograph of the victim who was alive. I
12 had a picture when he was dead, then I knew that that
13 was my victim's cab. So I wanted to know if the people
14 in the area had scene someone leaving the taxi cab, or
15 pretty much if anyone saw someone running or leaving
16 that taxi cab there, or parking it in that fashion.
17 Q. So you were looking for people there to give
18 you information about the last driver of the cab.
19 Correct?
20 A. That's correct.
21 Q. And what you would have wanted to obtain was,
22 since they wouldn't have a name, they would have
23 been -- you would have been interested in height,
24 weight, hair color, any of that kind of thing?
25 A. Clothing description, yes.

- 1 Q. But you weren't able to develop any
2 information along those lines. Correct?
3 A. No, sir.
4 Q. Based upon your interview with -- well,
5 people from Millennium Cab came to that location over
6 on Virginia Street?
7 A. Yes.
8 Q. And you were able to get certain information
9 about the driver of the vehicle, that's how you got the
10 name Felix Chininir. Is that correct?
11 A. Yes.
12 Q. And at that scene, you were informed that he
13 would have had certain property on him at the time of
14 his death. Correct?
15 A. Yes.
16 Q. All right. You knew that naturally a man
17 would have a wallet on him?
18 MR. McTIGUE: Objection, Judge, to the
19 conclusion.
20 THE COURT: Sustained.
21 Q. All right.
22 Well, being a cab driver then, a man working
23 for fares, you would have assumed he would have had
24 money on him. Correct?
25 A. That's correct.

- 1 Q. And based on your conversation with the
2 employees, or owners and employees of Millennium Cab,
3 you became aware that he would have had a cell phone on
4 him. Correct?
5 A. Yes.
6 Q. And based upon later conversations with the
7 employees or owners of Millennium Cab, you were aware
8 that just prior to his death, Mr. Chininin had on him a
9 lab top computer or a DVD player. Correct?
10 A. In the vehicle, yes.
11 Q. Now, at that scene, you became aware that
12 there was a cell phone for Mr. Chininin, and you
13 obtained his cell phone number. Correct?
14 A. I don't believe I received his number at that
15 scene, I believe I received his cell phone number later
16 on when one of the investigators from my office
17 interviewed Mr. Solano.
18 Q. And at that point you became aware that he
19 had a particular cell phone number?
20 A. That's correct.
21 Q. Now, as an investigator, you are familiar
22 with the operation of what we call cell phones.
23 Correct?
24 A. As a lay person, you are familiar with the
25 operation of a cell phone.

1 Q. But you weren't able to develop any
2 information along those lines. Correct?

3 A. No, sir.

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5 people from Millennium Cab came to that location over
6 on Virginia Street?

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9 about the driver of the vehicle, that's how you got the
10 name Felix Chininin. Is that correct?

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7 employees or owners of Millennium Cab, you were aware
8 that just prior to his death, Mr. Chininin had on him a
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15 scene, I believe I received his cell phone number later
16 on when one of the investigators from my office
17 interviewed Mr. Solano.

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19 had a particular cell phone number?

20 A. That's correct.

21 Q. Now, as an investigator, you are familiar
22 with the operation of what we call cell phones.
23 Correct?

24 A. As a lay person, you are familiar with the
25 operation of a cell phone.

- 1 Q. But in order to perform your duties as an
2 investigator, you are familiar with the means of
3 obtaining a communications data warrant. Is that
4 correct?
5 A. Yes.
6 Q. And when you're going to obtain a
7 communications data warrant, you provide the Court with
8 certain necessary information to get what -- or to
9 obtain the warrant. Correct?
10 A. That's correct.
11 Q. All right.
12 You prepared an affidavit with regard to your
13 application for the warrant, communications data
14 warrant?
15 A. Yes.
16 MR. McTIGUE: Judge, can we have an
17 indication of which communications data warrant counsel
18 is referring to?
19 Q. Well, you applied for several. Correct?
20 A. Three.
21 Q. And it's fair to say that in each of those,
22 certain of the information is the same in each
23 application. Correct?
24 A. Yes.
25 Q. All right.

- 1 A. The facts.
2 Q. The facts.
3 And in all three of those warrants, you
4 talked about the mobile identification numbers for a
5 cell phone?
6 A. I'm sure I did, yes.
7 Q. Okay.
8 And there's also an electronic serial number.
9 Correct?
10 A. Yes.
11 Q. All right.
12 And in that application, in all three of
13 those, you said that a combination of the two provide
14 cellular phone service with a means of billing the
15 cellular phone subscriber, right, that's how we get our
16 phone bills?
17 MR. McTIGUE: Judge, may I be heard at
18 sidebar?
19 (The following takes place at sidebar)
20 MR. McTIGUE: Judge, the investigator hasn't
21 been qualified as an expert in cellular technology, and
22 asking questions how things work or other things of
23 that nature, if he wants to pick a line of questioning,
24 that's okay. But asking her how things work I think is
25 beyond the scope of her expertise.

1 MR. SAMPSON: Judge, I would like to ask the
2 witness how she connected her investigation in this
3 particular case, her investigation in this case under
4 certain information this is not extremely complex, and
5 I don't intend to elicit detailed information on the
6 operation of cell phones.

7 THE COURT: All right, go ahead.
8 (The following takes place in open court)

9 Q. Investigator Berrian, in the course of your
10 employment as an investigator, you have had occasion to
11 obtain communication data warrants. Correct?

12 A. Yes.

13 Q. And during the course of your investigation,
14 you have had an opportunity to speak to various members
15 of various mobile phone companies, cellular phone
16 companies. Correct?

17 A. Yes.

18 Q. And it's fair to say you have developed a
19 certain understanding of the procedures necessary to
20 obtain the communications data warrant. Correct?

21 A. Yes.

22 Q. And just in general, you have an
23 understanding of how the -- how cell phones work.
24 Correct?

25 A. Yes.

1 Q. So you are able to tell us the information
2 that you used to apply for a communications data
3 warrant. Correct?

4 A. Probable cause is what I used to apply for the
5 data warrant.

6 Q. All right.

7 And what in this particular case -- you had a
8 cell phone number for Mr. Chininin. Correct?

9 A. Yes.

10 Q. And by going to various steps, you are able
11 to find out, first, who the cell -- the company is that
12 provides him service. Correct?

13 A. Yes.

14 Q. And by obtaining that information, you are
15 able to determine the phone calls that are based and
16 received by a particular cell phone. Is that correct?

17 A. Yes.

18 Q. And in this particular case, that's what you
19 wanted to do with Mr. Chininin. Correct?

20 A. That's correct.

21 Q. And you had particular concern about the
22 calls that were placed on his phone call -- on his cell
23 phone in the early morning of November the 4th, 2002?

24 A. That's correct.

25 Q. And you had particular emphasis on the

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2 witness how she connected her investigation in this
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16 received by a particular cell phone. Is that correct?

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18 Q. And in this particular case, that's what you
19 wanted to do with Mr. Chininin. Correct?

20 A. That's correct.

21 Q. And you had particular concern about the
22 calls that were placed on his phone call -- on his cell
23 phone in the early morning of November the 4th, 2002?

24 A. That's correct.

25 Q. And you had particular emphasis on the

1 timeframe just around his death, correct, between, for
2 instance, 33 a.m. and 5 a.m. on November the 4th, 2002?
3 A. Yes.
4 Q. If you know, ma'am, on my cell phone I turn
5 it on, there's a locator signal?
6 MR. McTIGUE: Judge.
7 MR. SAMPSON: I'll rephrase the question.
8 Q. On a cell phone, some of them are equipped
9 with locator signals. Is that correct?
10 MR. McTIGUE: Judge, I'm going to object at
11 this point.
12 THE COURT: If she knows, she can answer.
13 A. I don't know.
14 Q. You know what the cell phone tower looks
15 like?
16 A. A cell site, yes.
17 Q. And you know when you use your cell phone,
18 the signal goes to a particular tower?
19 A. Yes.
20 Q. And you know that by that, the phone company
21 is able to locate you physically?
22 MR. McTIGUE: Judge.
23 THE COURT: Sidebar.
24 (The following takes place at sidebar)
25 THE COURT: I don't know where you are going,

1 Mr. Sampson, but what you just did was testify, and I'm
2 going to strike that.
3 MR. SAMPSON: Judge, I have the affidavit of
4 Investigator Berrian where she says this exact thing in
5 her certification.
6 THE COURT: She says it in her certification?
7 MR. SAMPSON: This is what I am asking her
8 about.
9 THE COURT: Hang on. I heard you, now I'm
10 asking him about it.
11 MR. McTIGUE: Your Honor, if he would phrase
12 his question to a particular language instead of taking
13 a position that you are just generally asking
14 scientific questions, that would be one thing. I
15 wouldn't have any objection to anything that's
16 contained in the document, Judge.
17 THE COURT: All right. If it's in the
18 document, you can ask about it.
19 MR. McTIGUE: Show her the document.
20 (The following takes place in open court)
21 Q. Investigator Berrian, when you made
22 application for the communications data warrant, you
23 had to prepare an affidavit for the Court's review.
24 Correct?
25 A. Yes.

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2 instance, 33 a.m. and 5 a.m. on November the 4th, 2002?
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23 had to prepare an affidavit for the Court's review.
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25 A. Yes.

- 1 Q. In the affidavit that you prepared -- in the
2 three affidavits that you prepared, did you advise the
3 Court by obtaining cell site activity and cell
4 locations, it may provide evidence of the persons who
5 were in possession of Mr. Chininin's cell phone?
6 A. That particular -- I know I asked for his cell
7 phone, Mr. Chininin's cell phone.
8 Q. And the procedures and technology applied to
9 Mr. Chininin's phone, as well as the other cell phones
10 that you investigated in this case. Is that correct?
11 A. I didn't investigate any other cell phones. The
12 communication's data warrant for the other two were for
13 land lines at Millennium Cab Company.
14 Q. Okay.
15 So in this particular case, after Mr.
16 Chininin's death, you were never able to determine that
17 his phone had been used again. Correct?
18 A. I was able to determine that there were incoming
19 calls that were never answered after --, I assume after
20 his death.
21 Q. So you were able to determine that people at
22 Millennium Cab were trying to reach Mr. Chininin on his
23 cell phone. Yes?
24 A. I was told they were trying to reach him, yes.
25 Q. Beyond that, you were able to review the

- 1 billing records to make that determination. Right?
2 A. Yes.
3 Q. And you are aware then that no further calls
4 were ever placed by or placed on that particular cell
5 phone. Correct?
6 MR. McTIGUE: Objection to the form, I
7 believe in reference time, Judge.
8 MR. JAMPSON: I'm sorry.
9 THE COURT: I'll allow the question.
10 A. Can you repeat the question?
11 Q. You were able to determine that after
12 approximately 3:30 in the morning, no further calls
13 were placed on Mr. Chininin's cell phone. Correct?
14 A. Mr. Sampson, may I see the phone records so that I
15 can answer the question appropriately?
16 Q. I show you what's been marked -- Judge, I
17 don't know if it has been marked.
18 MR. McTIGUE: It has been.
19 MR. SAMPSON: S-86A, I believe.
20 Can you tell me now, ma'am, what time the
21 last call was placed by Mr. Chininin?
22 A. Three forty-six a.m. and 45 seconds when he
23 checked his voice mail.
24 Q. And no further calls were placed by him after
25 that. Correct?

- 1 Q. In the affidavit that you prepared -- in the
2 three affidavits that you prepared, did you advise the
3 Court by obtaining cell site activity and cell
4 locations, it may provide evidence of the persons who
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15 can answer the question appropriately?
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17 don't know if it has been marked.
18 MR. McTIGUE: It has been.
19 MR. SAMPSON: S-96A, I believe.
20 Can you tell me now, ma'am, what time the
21 last call was placed by Mr. Chininin?
22 A. Three forty-six a.m. and 45 seconds when he
23 checked his voice mail.
24 Q. And no further calls were placed by him after
25 that. Correct?

- 1 A. No, sir.
2 Q. All right.
3 Now, ma'am, is it fair to say that after
4 that, after that morning, you continued an
5 investigation and spoke to various employees of the
6 Millennium Cab Company?
7 A. Yes.
8 Q. At some point, ma'am, you advised us that you
9 spoke to a Gloria Nieve of Millennium Cab Company?
10 A. Yes.
11 Q. And she told you that she was a dispatcher at
12 Millennium Cab. Correct?
13 A. Yes.
14 Q. And at some point she told you that she had
15 received an anonymous telephone call. Is that correct?
16 A. That's correct.
17 Q. And in your interview with Ms. Nieves, you
18 were able to obtain all of the phone numbers employed
19 by Millennium Cab Company. Correct?
20 A. I believe I obtained all of the phone numbers from
21 the owner Ana Goya, but I obtained the phone number
22 where she received the anonymous call from her.
23 Q. Okay.
24 And do you recall the number upon which she
25 received this call?

- 1 A. I think it was the 3000 number.
2 Q. 973-482-3000?
3 A. I believe that's the number she received it on.
4 Q. Now, Ms. Nieves told you that she had a
5 conversation with this individual. Correct?
6 A. That's correct.
7 Q. And she told you that the conversation she
8 had with this individual was in Spanish. Correct?
9 A. That's correct.
10 Q. Not Portuguese, but in Spanish. Correct?
11 A. That's correct.
12 Q. And the woman refused to identify herself.
13 Is that correct?
14 A. That's correct.
15 Q. And she provided you -- provided Ms.
16 Nieves --
17 MR. McTIGUE: Judge, I will object at this
18 point. It's eliciting hearsay and the witness has
19 testified, unless there's an inconsistency.
20 MR. SAMPSON: Judge, I just was going to ask
21 a general question.
22 THE COURT: What witness hasn't testified?
23 MR. McTIGUE: No, the witness has testified.
24 THE COURT: I thought you said the witness
25 hasn't testified.

1 MR. McTIGUE: No, the witness has testified,
2 and we are just eliciting double hearsay at this point.

3 MR. SAMPSON: Judge, I wasn't asking the
4 contents, I just want to confirm the phone call and
5 what she did after it.

6 THE COURT: Why do you do that? We have
7 already talked about the phone call. Confirm what she
8 did afterward.

9 Q. You received certain information from Ms.
10 Nieves about this phone call. Correct?

11 A. Yes.

12 Q. And when the person called -- well, at
13 Millennium Cab, there is a caller I.D. Correct?

14 A. Yes.

15 Q. And you are aware in this case the number
16 came up as registered private. Correct?

17 A. That's correct.

18 Q. Now, based on your conversation with Ms.
19 Nieves and the information that was received, you were
20 interested in determining who had placed that phone
21 call. Correct?

22 A. That's correct.

23 Q. And I assume you went back -- or you did
24 obtain the phone call records for Millennium Cab?

25 A. That's correct.

1 Q. And you received the record of calls placed
2 to their number on that particular evening. Correct?

3 A. That's correct.

4 Q. And you were able to determine that the phone
5 calls, conversation that Ms. Nieves had, was somewhat
6 longer than the former call for a cab. Correct?

7 MR. McTIGUE: Objection, Judge. It refers to
8 prior testimony that's been given.

9 THE COURT: I'll allow the question. Go
10 ahead.

11 Q. The conversation between Ms. Nieves and this
12 anonymous caller, it went on for a number of minutes.
13 Correct?

14 A. I was never able to determine the length of the
15 call or the length of the call made by the anonymous
16 caller.

17 Q. Ma'am, did you obtain the phone records of
18 phone number 973-482-3000, belonging to Millennium Cab
19 Company?

20 A. Yes.

21 Q. And you were able to determine from
22 conversation with Ms. Nieves the approximate time and
23 duration of that phone call?

24 A. The approximate time she indicated was 10 p.m. I
25 was never able to match that with the phone records.

1 MR. McTIGUE: No, the witness has testified,
2 and we are just eliciting double hearsay at this point.

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17 A. That's correct.

18 Q. Now, based on your conversation with Ms.
19 Nieves and the information that was received, you were
20 interested in determining who had placed that phone
21 call. Correct?

22 A. That's correct.

23 Q. And I assume you went back -- or you did
24 obtain the phone call records for Millennium Cab?

25 A. That's correct.

1 Q. And you received the record of calls placed
2 to their number on that particular evening. Correct?

3 A. That's correct.

4 Q. And you were able to determine that the phone
5 calls, conversation that Ms. Nieves had, was somewhat
6 longer than the former call for a cab. Correct?

7 MR. McTIGUE: Objection, Judge. It refers to
8 prior testimony that's been given.

9 THE COURT: I'll allow the question. Go
10 ahead.

11 Q. The conversation between Ms. Nieves and this
12 anonymous caller, it went on for a number of minutes.
13 Correct?

14 A. I was never able to determine the length of the
15 call or the length of the call made by the anonymous
16 caller.

17 Q. Ma'am, did you obtain the phone records of
18 phone number 973-482-3000, belonging to Millennium Cab
19 Company?

20 A. Yes.

21 Q. And you were able to determine from
22 conversation with Ms. Nieves the approximate time and
23 duration of that phone call?

24 A. The approximate time she indicated was 10 p.m. I
25 was never able to match that with the phone records.

1 Q. And why was that?

2 A. Because when you conduct or receive information
3 from a communications data warrant, time is an
4 imperfect system, local to local land line calls aren't
5 calls captured. Toll calls are. So it could have been
6 from a land line. There's no indication of a phone
7 call at 10 p.m., so I was never able to determine the
8 identity of the 911 caller, the phone number from which
9 that phone came in.

10 Q. So she told you that the time of that phone
11 call was 10 p.m. Correct?

12 A. That's correct.

13 Q. Based upon that, though, you would have been
14 able to approximate the time the call was received?

15 MR. McTIGUE: Objection, judge.

16 THE COURT: I'm sorry, repeat the question.

17 Q. You were able to approximate the time the
18 phone call was received by Millennium Cab?

19 THE COURT: She knows what? The objection is
20 sustained.

21 MR. McTIGUE: Thank you, sir.

22 Q. You said the call was received at
23 approximately 10 o'clock?

24 MR. McTIGUE: Objection, Judge.

25 MR. McTIGUE: That's reported TO her.

1 THE COURT: That's what her testimony was.
2 Go ahead.

3 Q. The call by Ms. Nieves was received somewhere
4 in the area of 10 o'clock?

5 A. That's correct, sir.

6 Q. Ma'am, let me show you the what's been marked
7 exhibit -- I can't read it.

8 THE COURT: S-96A.

9 MR. SAMPSON: I can't read it.

10 MR. McTIGUE: One oh one, Judge.

11 MR. SAMPSON: Thank you.

12 Q. S-103.

13 A. Yes.

14 Q. Now, that reflects the date of November the
15 7th, 2003?

16 A. Yes.

17 Q. Now, the next to last phone call on that page
18 was received at what time?

19 A. 2146.

20 Q. That's approximately 9:46 p.m.?

21 A. Yes.

22 Q. And can you tell the duration of that phone
23 call?

24 A. Yes, 8 minutes.

25 Q. Eight minutes and 34 seconds?

- 1 A. That's correct.
- 2 Q. And you were able to determine the number for
- 3 which that phone call was placed. Is that correct?
- 4 A. That's correct.
- 5 Q. Okay.
- 6 And based upon that information, what if
- 7 anything did you do?
- 8 A. I discounted it because the call that I was told,
- 9 the call came in at 10 p.m. I did in fact receive
- 10 subscriber information on that phone, but because the
- 11 call came in at 10 a.m., I looked at it, it's not
- 12 there. It's an imperfect system. It was probably a
- 13 land line that made that call as opposed to a cell
- 14 phone, so it wasn't captured, and therefore it's not in
- 15 the records. So therefore that's why I concluded that
- 16 I was never able to identify my 911 caller.
- 17 Q. Ms. Nieves was clear that the phone call she
- 18 received was received at approximately 10 p.m.
- 19 Correct?
- 20 A. Yes.
- 21 Q. All right.
- 22 And she gave you the number on which it was
- 23 received?
- 24 A. Correct.
- 25 Q. That's correct, sir.

- 1 And that was 973-482-3000. Correct?
- 2 A. That's correct.
- 3 Q. And she told you that there was a
- 4 conversation of some duration at that time. Correct?
- 5 A. That's correct.
- 6 Q. Now, ma'am, if you will look at the document
- 7 I have just showed you, it lists in sequential order
- 8 the phone calls that were received at that number.
- 9 Correct?
- 10 A. Yes.
- 11 Q. Now, the call I have asked you to highlight
- 12 lasted for approximately 8 minutes and 34 seconds.
- 13 Correct?
- 14 A. Yes.
- 15 Q. Is it fair to say that most, if not all of
- 16 the other phone calls on that list last a matter of
- 17 seconds? Is that fair to say?
- 18 A. Yes, that's fair to say.
- 19 Q. So that on that date, in that approximate
- 20 time, this was the only phone call of over five
- 21 minutes?
- 22 A. That was captured by the tape edit. That's not
- 23 the only phone call I can commit to saying because
- 24 through my experience and what I have learned is that
- 25 not every phone call is captured specifically. If it's

- 1 A. That's correct.
- 2 Q. And you were able to determine the number for
- 3 which that phone call was placed. Is that correct?
- 4 A. That's correct.
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- 7 anything did you do?
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- 9 the call came in at 10 p.m. I did in fact receive
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- 12 there. It's an imperfect system. It was probably a
- 13 land line that made that call as opposed to a cell
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- 18 received was received at approximately 10 p.m.
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- 23 received?
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- 20 time, this was the only phone call of over five
- 21 minutes?
- 22 A. That was captured by the tape edit. That's not
- 23 the only phone call I can commit to saying because
- 24 through my experience and what I have learned is that
- 25 not every phone call is captured specifically. If it's

1 a line to -- land to line local call, it's like when
2 you get your phone bill, you don't see anything? When
3 you call your neighbor, you are not going to see that
4 call on your bill.

5 Q. So even though you did, you discounted it,
6 you did go to the extent of investigating the number
7 from which that call was placed?

8 A. I subpoenaed the subscriber information, but I had
9 other corroborative evidence, so I moved on.

10 Q. So if I could, ma'am, may I have this marked,
11 please. Your Honor I guess this would be D-1.

12 (Item marked for identification)

13 Q. Ma'am, let me show you what will be marked
14 D-1 for identification. Do you recognize that
15 document?

16 A. Yes. This is the subscriber information that I
17 received when I subpoenaed T Mobile to find out who the
18 subscriber was to that 862 number that you were
19 referring to that was placed at 2146 to Millennium Cab
20 Company.

21 Q. So based upon your investigation, T Mobile
22 advised you of the name, account number, date, date of
23 birth, social security number, and address of the
24 person from whom or whose house that call was placed?

25 A. Whose cell phone.

1 Q. Whose cell phone.

2 Did you ever interview -- what was the name
3 that you got for that number?

4 A. Maria Guitierrez.

5 Q. Did you ever interview Ms. Guitierrez?

6 A. No, because by that time I had already found Alex
7 Tixi and Carlos Marquez, and my investigation
8 continued to move, so I didn't need the anonymous
9 caller, I had the people.

10 Q. So you didn't investigate the source of
11 anonymous information that lead you to Alex Tixi.
12 Correct?

13 A. I had them.

14 Q. The person who called, based on your
15 investigation, was at least accurate about Alex Tixi
16 having the name El Chato?

17 A. Yes.

18 Q. And you tracked that person down, you tracked
19 Alx Tixi down based upon the information that you
20 received from this cell phone. Correct?

21 A. Yes.

22 Q. But you never went back to speak to that
23 person to find out the source of her knowledge?

24 MR. McTIGUE: Objection, Judge.

25 THE COURT: Objection is sustained.

1 Q. You never interviewed Marie Guitierrez?

2 A. There was no need, sir.

3 Q. Having obtained that information, did you go
4 back and speak to Mr. Chininin's father?

5 MR. McTIGUE: May we have a reference to what
6 information?

7 Q. After you received this information from Ms.
8 Nieves about this phone call, you spoke then to
9 Chininin, Sr. Correct?

10 A. Yes.

11 Q. Now, at that point he indicated to you --

12 MR. McTIGUE: Judge, I will object, he's
13 eliciting hearsay.

14 THE COURT: What did you do as a result of
15 that?

16 MR. SAMPSON: Judge, sidebar, please.

17 THE COURT: Sure.

18 (The following takes place at sidebar)

19 MR. SAMPSON: Judge, during the course of the
20 investigation, the investigator determined information
21 that Mr. Chininin, his father knew of one of the
22 individuals in this case. It seems to be relevant and
23 important. It's not hearsay. Did he tell you that he
24 knew -- that he knew Alex Tixi, knew of Alex Tixi?

25 THE COURT: Well, certainly it's still

1 hearsay, but certainly it is relevant.

2 MR. McTIGUE: It's an investigation. Judge,
3 she hears a lot of things.

4 MR. SAMPSON: Why can't I explore it?

5 MR. McTIGUE: There's no hearsay exception
6 for investigation. The same reason I can't ask certain
7 things and didn't, through the course of my examination.

8 MR. SAMPSON: It goes to identification of
9 Mr. Tixi. This was a person --

10 THE COURT: What else are you going to ask?
11 Are you going to ask anything else about that
12 conversation?

13 MR. SAMPSON: Were you able to determine that
14 Mr. Tixi lived in the same house as Mr. Chininin's aunt
15 or father?

16 THE COURT: She already testified to that.
17 I'm going to allow it. Don't start.

18 MR. SAMPSON: Fine, I'm not.

19 THE COURT: Do a whole scale hearsay, but
20 this is a relevant thing. I'm not going to make you
21 bring in Mr. -- what's his name, for that little bit of
22 information.

23 (The following takes place in open court)

24 Q. Investigator Berrian, after speaking to
25 Gloria Nieves, you spoke to Mr. Chininin, Sr.

- 1 Correct?
- 2 A. Not directly. I had an interpreter because Mr.
3 Chininin speaks Spanish. I don't communicate well with
4 him, so another investigator helped translate for me.
- 5 Q. Through your interpreter, you were able to
6 speak to Mr. Chininin, Sr.?
- 7 A. Yes.
- 8 Q. And he told you that he knew of Alex Tixi,
9 correct, El Chato?
- 10 A. He didn't know him by that, Tixi, he knew him as
11 El Chato. And he said his real name was Alex, and he
12 had received the information also from Nieves.
- 13 Q. And did he also tell you that Mr. Tixi lived
14 in the same house as his sister and brother-in-law?
- 15 A. Yes.
- 16 Q. And did he also -- and that's how you got the
17 information that Felix Chininin, Jr.'s cell phone was
18 in the name of Mr. William Asonsa?
- 19 A. I had already found out the name, but I didn't
20 know what Mr. Asonsa's association was to the Chininin,
21 so I needed to talk to Mr. Chininin to find out who was
22 William Asonsa.
- 23 Q. And Mr. Chininin was also able to give you a
24 physical description of Mr. Tixi. Correct?
- 25 A. Somewhat.

- 1 Q. And he also was able to tell you that Mr.
2 Tixi was Ecuadorian. Correct?
- 3 A. Yes.
- 4 Q. So you knew certain things about him.
5 Correct?
- 6 A. That's correct.
- 7 Q. And based upon that information, you were
8 able to locate Mr. Tixi, Alex Tixi?
- 9 A. Yes.
- 10 Q. And based upon that, you went and interviewed
11 Mr. Tixi. Right?
- 12 A. Yes.
- 13 Q. And you did that with Detective Vitiello?
- 14 A. Yes.
- 15 Q. And is it fair to say that when you first
16 spoke to Mr. Tixi, he denied any knowledge of any of
17 these events? The first time he spoke to you, he
18 denied knowing anything. Correct?
- 19 A. I think so.
- 20 Q. It was only later that he began to tell you
21 about the events down at Penn Station picking up Mr.
22 DaSilva at Penn Station?
- 23 A. That all occurred in the same day. There was an
24 interview, and then if he wasn't hard to press, you
25 interview him a little bit more.

- 1 Correct?
- 2 A. Not directly. I had an interpreter because Mr.
- 3 Chininin speaks Spanish. I don't communicate well with
- 4 him, so another investigator helped translate for me.
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- 6 speak to Mr. Chininin, Sr.?
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- 9 correct, El Chato?
- 10 A. He didn't know him by that, Tixi, he knew him as
- 11 El Chato. And he said his real name was Alex, and he
- 12 had received the information also from Nieves.
- 13 Q. And did he also tell you that Mr. Tixi lived
- 14 in the same house as his sister and brother-in-law?
- 15 A. Yes.
- 16 Q. And did he also -- and that's how you got the
- 17 information that Felix Chininin, Jr.'s cell phone was
- 18 in the name of Mr. William Asonsa?
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- 2 Tixi was Ecuadorian. Correct?
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- 5 Correct?
- 6 A. That's correct.
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- 8 able to locate Mr. Tixi, Alex Tixi?
- 9 A. Yes.
- 10 Q. And based upon that, you went and interviewed
- 11 Mr. Tixi. Right?
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- 14 A. Yes.
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- 16 spoke to Mr. Tixi, he denied any knowledge of any of
- 17 these events? The first time he spoke to you, he
- 18 denied knowing anything. Correct?
- 19 A. I think so.
- 20 Q. It was only later that he began to tell you
- 21 about the events down at Penn Station picking up Mr.
- 22 DaSilva at Penn Station?
- 23 A. That all occurred in the same day. There was an
- 24 interview, and then if he wasn't hard to press, you
- 25 interview him a little bit more.

1 Q. Now, when you interview an individual -- you
2 are assigned to the Homicide Unit. Right?

3 A. That's correct.

4 Q. So when you are doing an investigation, these
5 are always extremely serious matters. Correct?

6 A. Yes.

7 Q. When you do an interview, do you simply take
8 down the information that is given to you, or do you
9 probe and question witnesses about their statements?

10 A. I don't know that I quite understand what you're
11 asking me.

12 Q. If I told you during the course of an
13 investigation, you know, the moon was made of blue
14 cheese, would you come back and ask me how did I know,
15 or what makes me think so, or would you just take it at
16 face value?

17 A. I take nothing at face value.

18 Q. So when Alex Tixi told you that he picked up
19 Mr. DaSilva in front of the Penn Station at 8 o'clock
20 on a Monday morning and he was covered -- he had blood
21 on him, did you question him about that?

22 A. Yes, I did, a statement was taken from him.

23 Q. And when you spoke to Alex that morning and
24 he told you that Mr. DaSilva had this computer wrapped
25 in a tee shirt, and there was blood on him, did you ask

1 him how is a man walking around in front of Penn
2 Station at 8 o'clock, on a Monday morning, with
3 hundreds, if not thousands of people out there?

4 MR. McTIGUE: Judge, is that a question or a
5 statement?

6 THE COURT: It sounds like a combination of
7 both, but go ahead.

8 Q. Did you ask him about that?

9 A. He never said it was a computer. What he did tell
10 me was that it was wrapped there, and you take bits and
11 pieces of what people say and you develop, there are
12 common threads in everybody's story. Two people can
13 stand and watch a car X. One person will say that the
14 car is blue, and another one will say it's green, and I
15 will look at it and say it's red. So I judge that
16 person, and I knew certain things, and based on my
17 investigation of what I had learned, I knew certain
18 parts were true and certain parts were not. But for
19 the most part, I knew he had information regarding Luis
20 Fernando DaSilva killing Luis Felix Chinin, correct.

21 Q. But you didn't know what parts were correct?

22 A. I knew enough.

23 Q. Really, did you know that he was present in
24 Elizabeth that morning?

25 A. I knew eventually he went to Elizabeth, and I also

- 1 Q. Do you deem it your job to try to get a
2 person to say a certain thing, or do you take down what
3 they tell you?
4 A. I take down exactly what they tell me.
5 Q. Based on your experience as an investigator,
6 is it appropriate for an investigator to try and sway
7 what's being told to them?
8 A. No. I'm not going to sway anything, I'm going to
9 take what they tell me and I'm going to document it the
10 same way that they tell me.
11 Q. Now, you had indicated that at various times
12 your focus, after gathering information, was upon Mr.
13 DaSilva. Is that correct?
14 A. That's correct.
15 Q. That's based upon interviews you had done?
16 A. Yes.
17 Q. Physical evidence that was recovered?
18 A. Yes.
19 Q. And generally all the facts known to you?
20 A. That's correct.
21 Q. Now, during the course of your investigation,
22 however, did you pursue other leads?
23 A. Yes, I did.
24 Q. And more particularly, do you recall
25 receiving information on or about November 19th, from

- 1 the Union County Police Department?
2 A. Yes.
3 Q. And what was the nature of the information
4 you got there?
5 MR. SAMPSON: Objection, your Honor.
6 (The following takes place at sidebar)
7 MR. SAMPSON: Judge, this is clearly beyond
8 the scope of cross examination. He's about to go into
9 a whole other case that involves the murder in another
10 jurisdiction and has nothing at to do with this
11 defendant. I don't see what the relevance is and how.
12 MR. McTIGUE: Number one, it's not beyond
13 cross because Mr. Sampson went to the trouble in some
14 of his questions to indicate the investigator was
15 focussed solely on Mr. DaSilva. To the extent that it
16 is, Judge, I will ask to reopen for this limited
17 purpose just to indicate that it was not a murder case,
18 it turned out to be, and it has turned out not to be a
19 murder case. Mr. Sampson knows that.
20 MR. SAMPSON: Judge, if he's going to elicit
21 information that somebody shot a cabby in a whole other
22 jurisdiction, it has nothing to do with this case.
23 MR. McTIGUE: It's not another jurisdiction,
24 it's in the city of Newark.
25 MR. SAMPSON: A shooting took place in

1 another jurisdiction, Judge, it has no relevance to
2 this case.

3 THE COURT: No. But the following of leads
4 does have relevance.

5 MR. SAMPSON: Every lead, Judge? It has
6 nothing to do with this case, and nothing to do with
7 this defendant.

8 THE COURT: Well, if it has to do with this
9 case. If you are suggesting that, in cross
10 examination, that that search was no follow-up, which
11 is what you have done in certain respects, isn't it a
12 fact he's entitled to counter that?

13 MR. SAMPSON: Well, pertaining to this case,
14 not leads pertaining to a whole other county, and it
15 has nothing at all to do with this defendant.

16 THE COURT: Now they know it has nothing to
17 do with him, but not at the time. I assume that's
18 correct.

19 MR. McTIGUE: Yes, Judge. November 19th to
20 November 21 is the timeframe.

21 THE COURT: Look, you can ask her if she
22 followed other leads, but there's no need to go into
23 the details of what the other crimes were.

24 MR. McTIGUE: It involved a person who had
25 been bragging to his girlfriend that he had shot and

1 killed a Newark cab driver.

2 MR. SAMPSON: What does that have to do with
3 this case, Judge?

4 MR. McTIGUE: Because at the time that the
5 matter was under investigation, it attempts to show
6 that there was not a rush to judgment here.

7 THE COURT: Fine. But why do we have to go
8 into the details of it?

9 MR. McTIGUE: A similar case, may I say?

10 THE COURT: Yes.

11 MR. McTIGUE: Thank you.

12 (The following takes place in open court)

13 Q. Investigator, early on in your investigation
14 on November 19th, 2002, did you receive certain
15 information from a police department in Union County?

16 A. Yes.

17 Q. And that information related to a similar
18 type of offense that was being investigated?

19 A. That's correct.

20 Q. And as a result of that information, did you
21 or other members of Essex County Prosecutor's Office
22 take any action with regard to a Juan Carlos Torres?

23 MR. SAMPSON: Objection, your Honor, the
24 Court already ruled on this.

25 MR. McTIGUE: I believe I'm within the

1 another jurisdiction, Judge, it has no relevance to
2 this case.

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21 or other members of Essex County Prosecutor's Office
22 take any action with regard to a Juan Carlos Torres?

23 MR. SAMPSON: Objection, your Honor, the
24 Court already ruled on this.

25 MR. McTIGUE: I believe I'm within the

- 1 Court's ruling.
2 THE COURT: He hasn't violated the Court's
3 ruling.
4 Q. Two men by the name of Juan Carlos Torres and
5 Miguel Ortiz?
6 A. Yes.
7 Q. And was information provided to you or to the
8 people on the prosecutor's staff by a young female by
9 the name of Ashley Hall?
10 A. That's correct.
11 Q. And that pertained to conduct --
12 MR. SAMPSON: Objection, your Honor.
13 THE COURT: Let's not have any details.
14 MR. McTIGUE: Judge --
15 THE COURT: Go ahead.
16 MR. McTIGUE: I think I'm within your ruling.
17 THE COURT: Go ahead.
18 Q. And was that of interest to you based on the
19 name of the case that you were going through at that
20 time; namely, the death of Felix Chininin?
21 A. Yes.
22 Q. And did you undertake a further investigation
23 of that matter?
24 A. Yes, I did.
25 Q. And was that in conjunction with the

- 1 investigation into the death of Felix Chininin?
2 A. Was done at the same time, yes.
3 Q. And did that culminate in an arrest? Just
4 indicate yes or no.
5 A. Yes.
6 Q. Was that for an offense different than the
7 one you were investigating?
8 A. Yes.
9 Q. Are these people, however, Mr. Torres and Mr.
10 Ortiz, at least considered by you at the time you were
11 conducting your investigation?
12 A. Yes. Yes.
13 Q. And based upon the evidence which became
14 known to you during the course of your investigation,
15 were they ruled out as possible suspects in this case?
16 A. Yes, they were.
17 MR. McTIGUE: I have no further questions
18 Judge.
19 THE COURT: Anything else, Mr. Sampson?
20 RE-CROSS EXAMINATION BY MR. SAMPSON:
21 Q. Ma'am, you indicated as an investigator, it's
22 not your job to sway a witness to try to get him or her
23 to give any answer. Is that correct?
24 A. That's correct.
25 Q. Now, you also said you take down whatever

1 they say for purposes of an investigation. Is that
2 correct?

3 A. No. In the context that I was being asked, he
4 pointed to the statement. So when I'm taking a
5 question-and-answer statement, I take down what they
6 say, I don't add words or put in my own words.

7 Q. In this particular case, well, let's tell the
8 ladies and gentlemen the jury, there's an interview
9 process, right? There's a process you employ in
10 obtaining the statement. Right?

11 A. Yes.

12 Q. Now, if you walk into a police station and
13 give an interview, you don't just start --

14 MR. McTIGUE: Judge, I'm going to object to
15 the general. If Mr. Sampson wants specifically at this
16 stage of the examination, wants to particularize it to
17 this case.

18 THE COURT: I will sustain the objection.

19 Q. Ma'am, generally, when an individual walks in
20 to give a statement, or in this particular case, isn't
21 there -- don't you have a conversation with the witness
22 before you start writing down what he or she has to
23 say?

24 A. There's an interview, yes.

25 Q. All right.

1 So in this particular case you interviewed
2 Alex Tixi before he gave the sworn statement. Correct?

3 A. Yes.

4 Q. And when you interviewed Mr. Tixi, he told
5 you a story that you didn't buy. Correct?

6 A. Not really.

7 Q. Well, didn't you turn him over to another
8 detective to interview him and who told him that he
9 didn't believe the story?

10 A. I didn't.

11 MR. McTIGUE: Judge, objection.

12 THE COURT: I'm going to allow it.

13 Go ahead, answer the question.

14 A. I don't know what you mean by turned him over to
15 another detective.

16 Q. Was there an interview by a Detective Rasheed
17 Sabur in this particular case before he gave the
18 statement?

19 A. Yes.

20 Q. Detective Sabur told him he knew he was
21 lying. Right?

22 A. That's correct.

23 Q. All right.

24 Did you write down what Mr. Tixi said the
25 first time when he was talking to Detective Sabur?

- 1 A. I wasn't with him. I just said I wasn't with him,
2 I turned him over to him. I wasn't with him when he
3 interviewed.
- 4 Q. Well, when you were interviewing -- when you
5 interview him, did you write down what he had to say?
- 6 A. I don't know at this stage that I wrote it down.
- 7 Q. All right.
- 8 A. I know that I wrote down and took a formal written
9 statement from him.
- 10 Q. If you wrote down what Mr. Tixi said when you
11 interviewed him, there would have been a physical
12 record here today. Correct?
- 13 A. It would be incorporated into my report, yes.
- 14 Q. And you didn't incorporate it in your report,
15 what he said in your first interview, did you?
- 16 A. I included in my report that he was interviewed.
- 17 Q. And did you put down all the lies that he
18 told you when you were interviewing him?
- 19 MR. McTIGUE: Judge, objection.
- 20 THE COURT: Objection sustained.
- 21 Q. Did you put down the denials the Mr. Tixi
22 gave you when you first interviewed him?
- 23 A. I indicated that he was interviewed, and then I
24 indicated that he provided a formal written statement
25 which was summarized in my report.

- 1 Q. Did you set down the details of his initial
2 denial?
- 3 A. There was no need to set that down. I set down
4 the fact that I was interviewed, and then a subsequent
5 interview occurred, and then a formal written
6 statement, and then an additional formal written
7 statement.
- 8 Q. So if he gave a statement that were untrue --
9 I'll withdraw the question.
- 10 Now, you said to Mr. McTigue that there were
11 certain physical evidence prior to the arrest of Mr.
12 DaSilva. What physical evidence are you referring to?
- 13 A. There was no physical evidence with respect to
14 hair, fibers. I had a name prior to the arrest of Mr.
15 DaSilva.
- 16 Q. So there was no physical evidence tying Mr.
17 DaSilva to this offense. Correct?
- 18 A. No, sir, there was not.
- 19 Q. You also said that during the course of your
20 investigation, you found no credentials or
21 identification on Mr. Chininin at the time of his
22 death. Correct?
- 23 A. There was nothing on him, no.
- 24 Q. You do know that ultimately as the course of
25 investigation, you know, months later, his license was

- 1 found. Correct?
2 A. Yes.
3 Q. And that was found down in South Jersey
4 somewhere. Correct?
5 A. Yes.
6 Q. And that was well after the arrest of Mr.
7 DaSilva. Is that correct?
8 A. I don't know the time sequence, but his license
9 was in fact mailed to me and I did in fact talk to the
10 person who mailed it to me.
11 Q. And Mr. DaSilva was arrested when?
12 A. May 5th or 4th.
13 Q. And you received that license sometime in
14 June of that year?
15 A. I didn't expect him to keep it on him.
16 Q. Expect who?
17 A. Mr. DaSilva to have Mr. Chininin's license on him
18 when he was arrested, so I'm sure he got rid of it. He
19 could have been down the shore and dropped it on the
20 boardwalk, and that's why the man mailed it to me from
21 down there.
22 Q. You have no basis for speculation, do you?
23 A. I have no basis.
24 Q. Did you ever place Mr. DaSilva at the shore?
25 A. I don't have to place him at the shore, the

- 1 license was found down at the shore.
2 MR. McTIGUE: Judge, I think we're getting
3 argumentative at this point, and Mr. Sampson is talking
4 over the witness.
5 THE COURT: Mr. Sampson, let's have another
6 question.
7 Q. You have no basis -- this is sheer
8 speculation on your part, isn't it?
9 A. Speculation as to what aspect of what?
10 Q. Speculation as to how the license got into
11 your possession?
12 A. No, I know how it got there. It was found on the
13 boardwalk and was mailed to me.
14 Q. And when was it found on the boardwalk?
15 A. I'm not certain. I am sure I have it listed in a
16 report or something. When the man mailed it to me he
17 was on vacation. I went through the whole thing of how
18 I interviewed him, he told me where he found it, and he
19 mailed it to me. He mailed it to Mr. Chininin,
20 actually, who in turn mailed it to me.
21 MR. SAMPSON: May I have one moment, please,
22 your Honor?
23 THE COURT: Sure.
24 Q. Now, you indicated with regard to the arrest
25 of a Juan Carlos Torres --

1 THE COURT: Mr. Sampson, I have to take a
2 break.

3 We'll take five minutes, ladies and
4 gentlemen.

5 (Recess)

6 THE COURT: Okay, Mr. Sampson.

7 Q. Investigator Berrian, can we go back to the
8 issue of physical evidence one second.

9 MR. McTIGUE: Judge, I'll object at this
10 point.

11 THE COURT: Let's hear the question.

12 Q. In this particular case, you indicated that
13 in terms of physical evidence, the vehicle, the
14 Mitsubishi Montero in this case, was recovered?

15 A. Yes.

16 Q. What information did you have about the
17 recovery of the Mitsubishi Montero?

18 A. What exactly do you mean what information did I
19 have?

20 MR. McTIGUE: Judge, may I be heard at
21 sidebar?

22 (The following takes place at sidebar)

23 MR. McTIGUE: The information you got other
24 than the information you got from Ms. Barbosa. There's
25 other information that counsel has that has no business

1 in this case involving possible other crimes.

2 MR. SAMPSON: Judge, I'm asking her about the
3 recovery of a vehicle. We know how the vehicle was
4 recovered and where it was recovered, I'm asking her
5 how the vehicle was recovered in terms of physical
6 evidence.

7 THE COURT: I don't think she understood what
8 it is that you are eliciting, so why don't you try
9 telling me what you are trying to elicit.

10 MR. SAMPSON: I'm asking her where she got
11 the vehicle so it can be searched. Where was the
12 vehicle recovered.

13 THE COURT: Did we go over that already?

14 MR. SAMPSON: No.

15 THE COURT: From West Orange.

16 MR. SAMPSON: That was him.

17 THE COURT: Okay, go ahead.

18 (The following takes place in open court)

19 Q. Investigator, what information did you
20 receive from West Orange with regard to the recovery of
21 the vehicle?

22 A. I believe that it had been in an accident.

23 Q. As a matter of fact, do you know that the
24 vehicle had been stolen and involved in an accident?

25 MR. McTIGUE: Objection, Judge.

1 THE COURT: All right, counsel. First of
2 all, Mr. DaSilva, your attorney indicates that you are
3 going to testify in the case. Is that right?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: All right.

6 Returning to the charge in the felony murder
7 charge, the phrase "attempt" is used. I don't think
8 attempt is much of an issue in this case, and I define
9 attempt later in the charge. I am not going to define
10 in the felony murder charge too unless there's some
11 specific request that I do that.

12 In the terroristic threat charge, several
13 things with regard to the terroristic charge and the
14 tampering charge. I want to say that the subject of
15 the charge as indicted in, I guess that would be Counts
16 6 and 7, are the alleged actions of the defendant
17 towards Alexis Tixi on 12-14-02 and not the alleged
18 actions of defendant towards Carlos Marquez on June
19 7th, '04. I'm going to say that after or before I read
20 the law on those two charges? No opinion? I will do
21 it after.

22 MR. SAMSPON: After, please.

23 THE COURT: After, okay, good.

24 And also in that regard and I will do it
25 right after I make that statement with regard to the

1 that the defendant had a tendency to commit any of the
2 crimes for which he has been indicted or that he acted
3 in conformity with that tendency. Okay?

4 MR. McTIGUE: Judge, two things.

5 I believe the date of the threat to Carlos
6 Marquinez was June 7th, the first date we were
7 scheduled for.

8 THE COURT: All right. Would you say that
9 again, something Marquinez, what were you about to say.

10 MR. McTIGUE: The date of threat.

11 THE COURT: June 7, 04'.

12 MR. McTIGUE: I think you had said June 4.

13 THE COURT: I said -- at least I have June 7
14 written down.

15 MR. McTIGUE: Second, Judge, with regard to
16 the date of alleged threats and witness tampering to
17 Alexis Tixi, the indictment does read November 14th.
18 That was the testimony given and also as indicated in
19 the statement at this point, I will amend that
20 indictment in conformity with the evidence.

21 THE COURT: All right.

22 MR. SAMSPON: Judge, I would object to
23 amending the indictment to conform to the evidence.
24 The evidence might want to conform with the indictment.
25 I think that it's reversed.

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2 crimes for which he has been indicted or that he acted
3 in conformity with that tendency. Okay?

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6 Marquinez was June 7th, the first date we were
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9 again, something Marquinez, what were you about to say.

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19 the statement at this point, I will amend that
20 indictment in conformity with the evidence.

21 THE COURT: All right.

22 MR. SAMSPON: Judge, I would object to
23 amending the indictment to conform to the evidence.
24 The evidence might want to conform with the indictment.
25 I think that it's reversed.

1 itself, not the note which your Honor ruled was
2 hearsay, absent the testimony of a witness.

3 THE COURT: All right. You haven't moved
4 that?

5 MR. McTIGUE: No. But I will be. I'm just
6 notifying the Court and counsel to something I don't
7 think we had discussed on the record before this.

8 THE COURT: Okay, are we ready?

9 MR. McTIGUE: Yes.

10 THE COURT: Bring out the jury. Just with
11 regard to S-104, the one we just talked about. He's
12 not producing the note, he's taking the note out of
13 envelope?

14 MR. SAMSPON: Just the envelope and the
15 license.

16 THE COURT: Okay.

17 All right, bring out the jury.

18 (Jury brought out)

19 THE COURT: All right, Mr. McTigue.

20 MR. McTIGUE: Yes, Judge.

21 Judge, at this time the State would move
22 before the Court to admit certain items which has been
23 marked as exhibits into evidence.

24 THE COURT: Go ahead.

25 MR. McTIGUE: They are as follows: S-4, which

1 is a photo of Carlo Marquinez identified by Alex Tixi;
2 S-7, which is a photo of Luis DaSilva identified by
3 Alex Tixi; S-8A and B, photos of a vehicle identified
4 by Alex Tixi; S-10, which is a photograph of Luis
5 DaSilva identified by Carlos Marquinez; S-12A, B, C and
6 D, which are respectively photographs identified by
7 Josephina Garcia, A being a photograph of Alex Tixi, B
8 a photograph of Carlos Marquinez, C a photograph of
9 Luis DaSilva, D being a photograph of a vehicle. S-24A
10 through K have already been admitted into evidence,
11 those being crime scene photos from the Thomas Street
12 in Newark location. S-25A through I have likewise been
13 admitted into evidence, those being photographs taken
14 on Virginia Street in the city of Elizabeth. S-26 are
15 photographs taken at the Regional Medical Examiner's
16 Office. State has admitted those into evidence, A
17 through F. S-27A through F are photographs of a
18 Mitsubishi automobile from various points of view. S-28
19 through S-51 are various items of property which were
20 obtain by the Essex County Prosecutor's Office.

21 THE COURT: Through 51?

22 MR. McTIGUE: Through 51.

23 THE COURT: Okay.

24 MR. McTIGUE: S-56, a Motorola cell phone.

25 S-57 through and including S-63, objects taken from a

1 Mitsubishi automobile. S-64, a Smith and Wesson .9 mm
2 automatic handgun and ammunition clip. S-70, a black
3 leather coat. S-71, a sealed plastic bag from the
4 Belleville Police Department containing personal
5 effects of Luis DaSilva. S-73, appearing to be
6 dispatch records of Millennium Cab Company. S-80A and
7 B, photographs of Luis DaSilva, a photograph of a
8 handgun initialed by Nicholas Castro Garcia.

9 MR. SAMSPON: I'm sorry, can the prosecutor
10 repeat that, please?

11 MR. McTIGUE: S-80A and B, photographs
12 initialed by Nicholas Castro Garcia. S-83 being a
13 graphic display bearing the identification of the
14 defendant Luis DaSilva by Michel Pereira. S-85A and
15 S-85B being records from the Belleville Motor Lodge,
16 371 Washington Avenue Belleville, New Jersey. S-86
17 being a graphic display, including a photo identifying
18 the defendant Luis DzSilva signed and initialed by
19 Geracione Andrade. S-97 has been admitted into
20 evidence, your Honor, being a search by the Essex
21 County Clerk's Office as to a permit to carry a handgun
22 in the name of Luis F DaSilva. S-98 has been admitted
23 into evidence, your Honor, as being records from
24 University Hospital in Newark, New Jersey, pertaining
25 to the decedent Felix Chininin. S-99 has been admitted

1 reporter?

2 A. Luis Fernandc DaSilva.

3 Q. And, Mr. DaSilva, how old are you today?

4 A. Twenty-three.

5 Q. And where were you born?

6 A. San Paulo, Brazil.

7 Q. Did you attend school in Brazil?

8 A. Yes, I did.

9 Q. How far did you go in school?

10 A. Up to 8th grade.

11 Q. Have you received any further education since
12 that point?

13 A. As soon as I arrived in America, I got my GED.

14 Q. Can you tell me what language you speak?

15 A. Portuguese, Spanish and English.

16 Q. When you came to America, did you speak
17 English?

18 A. No, I didn't.

19 Q. You learned that since you have been here?

20 A. Yes. Also Spanish.

21 Q. Back in November of 2002, where did you live?

22 A. 27 Brill Street, Newark, New Jersey.

23 Q. And who did you live with?

24 A. My wife, my son, my mother and my two younger
25 brothers.

1 allowed testimony, or do you just mean that somebody
2 testified?

3 MR. SAMSPON: There was testimony, Judge.

4 THE COURT: That the defendant --

5 MR. SAMSPON: During this period of time, and
6 at the time the prosecutor was allowed to ask him
7 whether or not he saw Mr. DaSilva during that period of
8 time, and they decided that this guy disappeared and
9 now he's explaining to him why he would not have been
10 around during that period of time because Officer Paz
11 worked up into midnight and he would leave early in the
12 morning on weekends.

13 THE COURT: To the extent that this testimony
14 is going to say that he wasn't in the State of New
15 Jersey on the date of this incident because it's a
16 Monday, we're not going to allow it.

17 MR. SAMSPON: Excuse me, Judge. The facts
18 are that Mr. Chininin was shot on a Sunday night. He
19 said that he would have left early on a Monday morning
20 does not rise to the level of an alibi. That's not an
21 alibi. I'm not putting in an alibi. He said he's
22 leaving early Monday morning. The State alleges that
23 this occurred late on Sunday night, there's no conflict
24 there.

25 MR. McTIGUE: Yes, there is, Judge. This

1 DaSilva's whereabouts in the early morning hours of
2 November 4, 2002.

3 THE COURT: Mr. Sampson.

4 MR. SAMSPON: Judge, I'm aware of what
5 constitutes an alibi defense, and we are not putting
6 this in as an alibi defense.

7 The State has alleged various things. One,
8 that this incident occurred sometime between roughly
9 2:56 a.m. and about 3:30 in the morning. Judge, he
10 said that he left the state and was working roughly
11 hours from -- roughly five o'clock, four or five
12 o'clock in the morning, Judge, it is not an alibi.

13 The State has also been allowed to put --
14 Offer Jesus Paz on the stand to suggest that this
15 defendant was no longer seen during a specific period
16 of time. He said they didn't see the defendant after
17 the threat of this gun.

18 Now, Judge, all this indicates is that
19 Officer Paz was working up until midnight. This man
20 was going up until the early morning hours of the night
21 so, Judge, there is no alibi here. He's not saying "I
22 couldn't have done this" he's saying that at that
23 morning I normally went to Maryland early on a Monday
24 morning, but it does not cover the period of time of
25 the alleged murder. So it does not rise to the level

1 DaSilva's whereabouts in the early morning hours of
2 November 4, 2002.

3 THE COURT: Mr. Sampson.

4 MR. SAMSPON: Judge, I'm aware of what
5 constitutes an alibi defense, and we are not putting
6 this in as an alibi defense.

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8 that this incident occurred sometime between roughly
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20 was going up until the early morning hours of the night
21 so, Judge, there is no alibi here. He's not saying "I
22 couldn't have done this" he's saying that at that
23 morning I normally went to Maryland early on a Monday
24 morning, but it does not cover the period of time of
25 the alleged murder. So it does not rise to the level

1 of an alibi. And I would not stand here and say this
2 in open court and then turn around and try to argue
3 something different even in closing.

4 The timeframe is 2:56 to 3:30 a.m. He is
5 saying that 5 o'clock Monday morning he went to
6 Maryland. That is not an alibi. First of all, he said
7 4 o'clock; and second of all, the police report
8 indicating the time it occurred is at 3:50 a.m.

9 MR. McTIGUE: Judge, beyond that, Mr.
10 Sampson's restatement of the facts is the most
11 disingenuous bit of information I have heard in a long
12 time. Number one, Officer Paz testified his gun was
13 taken in September when he was on vacation in Brazil
14 between the 18th and the 25th. So the fact that he did
15 or didn't see him has nothing to do with any sort of
16 alibi testimony, Judge. It's over periods of -- over
17 a period of time. It does not go to the defendant's
18 exact whereabouts, it just goes to the fact that he was
19 not seen by Officer Paz beyond that, Judge, there has
20 been a sufficient amount of testimony from three
21 witnesses as to the defendant's whereabouts in the
22 hours after 4 o'clock in the morning, mainly being at
23 Josephina Garcia's house in the company of Carlos
24 Marquinez and Alexis. This is an alibi, Judge. It's
25 an improper alibi and it should not be admitted.

1 responsible, we are arguing that he could not have been
2 responsible because he was elsewhere. If you could
3 just invert those two clauses, Judge.

4 THE COURT: Could you repeat what you want me
5 to say again?

6 MR. SAMSPON: Judge, can I look at it? Could
7 I just look at it for a moment?

8 THE COURT: If you can read my writing.

9 MR. SAMSPON: No, I can't.

10 THE COURT: The defense is not arguing by the
11 testimony you have heard about the defendant leaving
12 for Baltimore that defendant is not responsible for
13 this shooting of Mr. Chininin because he could not have
14 been physically present at the time the crime was
15 committed.

16 MR. SAMSPON: How about, Judge, if we just
17 say that the defendant is not arguing that the
18 defendant could not have been physically present.

19 MR. McTIGUE: I like yours, Judge, fewer
20 double negatives.

21 MR. SAMSPON: Is not arguing that the
22 defendant was not present.

23 THE COURT: All right, I'm going to charge it
24 the way I just wrote it, I'm not going to spend any
25 more time.

1 MR. MCTIGUE: Judge, we had a conversation
2 briefly in chambers during the break. I'm going to
3 make one last request for the record at this time. Are
4 there any exhibits, defenses, witnesses, any
5 information under the rules of discovery, Rule 3:13-3
6 and Rule 312 that the State is yet to receive?

7 MR. SAMSPON: No, your Honor. And I would
8 indicate to the Court that the jury is not here, so we
9 can say this. Mr. DaSilva has been now in custody for
10 nearly a year, Judge, so any paperwork to that effect
11 is way beyond his ability to produce, if it ever
12 existed. But no, Judge. we have no such documentation.

13 THE COURT: Bring out the jury.

14 (Jury brought out)

15 THE COURT: All right ladies and gentlemen of
16 the jury, I instruct you as follows.

17 The defense is not arguing by the testimony
18 you have heard about the defendant leaving for
19 Baltimore that the defendant is not responsible for the
20 shooting of Mr. Chininin because he could not have
21 physically been present at the time the crime was
22 committed.

23 Continue.

24 Q. Did there come a time during a period of time
25 when you met an individual by the name of Carlos

1 Marquinez?

2 A. Yes.

3 Q. When did you meet him?

4 A. I believe it was the summer of 2002.

5 Q. And do you recall where you met him?

6 A. In Frank B. Rogers, Harrison, New Jersey.

7 Q. What's Frank B. Rogers?

8 A. The main boulevard in Harrison, Kearny.

9 Q. And how did you meet him?

10 A. Through a mutual friend.

11 Q. And what was the nature of that relationship
12 with him?

13 A. Just hanging out.

14 Q. What do you mean by hanging out?

15 A. Like I said, Frank B. Rogers was the main
16 boulevard in Harrison. And coming from work, a couple
17 of times, I used to see this mutual friend in Harrison.
18 A lot of girls on that avenue I used to just spend a
19 couple of hours over there after work watching the
20 movement, and that's where I met Carlos.

21 Q. And can you tell us when you met Alex Tixi?

22 A. Approximately the same time, the same place.

23 Q. So that in November, 2002, could you estimate
24 how long you knew Mr. Marquinez?

25 A. I would say about three, four months, tops.

1 Q. And in November, 2002, how long did you know
2 Alex Tixi?

3 A. Same time.

4 Q. Did you ever meet a woman by the name of
5 Josephina Garcia?

6 A. Yes, I did.

7 Q. And how did you meet her?

8 A. Through Carlos.

9 Q. And what was your relationship with Josephina
10 Garcia?

11 A. We established a friendship afterwards. I met her
12 at a birthday party in her house. It was her nephew's
13 birthday party.

14 Q. Can you estimate for the jury in November,
15 2002, how frequently you saw Carlos Marquinez?

16 A. I believe once, twice a week.

17 Q. And how about Alex?

18 A. Same thing.

19 Q. And how about Josephina?

20 A. Once a week, if that.

21 Q. Did you ever see them any place other than
22 Frank B. Rogers Boulevard?

23 A. Yeah.

24 Q. Had you ever been to Alex's house?

25 A. Never.

1 Q. And in November, 2002, how long did you know
2 Alex Tixi?

3 A. Same time.

4 Q. Did you ever meet a woman by the name of
5 Josephina Garcia?

6 A. Yes, I did.

7 Q. And how did you meet her?

8 A. Through Carlos.

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10 Garcia?

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12 at a birthday party in her house. It was her nephew's
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19 Q. And how about Josephina?

20 A. Once a week, if that.

21 Q. Did you ever see them any place other than
22 Frank B. Rogers Boulevard?

23 A. Yeah.

24 Q. Had you ever been to Alex's house?

25 A. Never.

1 Q. Did you know where Alex lived?

2 A. I knew he was somewhere close by, but I didn't
3 know the location, itself.

4 Q. How about Carlos, had you ever been to Carlos
5 Marquinez's house?

6 A. No.

7 Q. Had you ever met his family?

8 A. Never.

9 Q. Had Carlos or Alex ever been to your house?

10 A. Yes, they have.

11 Q. How many times would you say Carlos has been
12 to your house?

13 A. Say a couple of times.

14 Q. Did he ever meet your family?

15 A. He met my wife.

16 Q. Can you tell the ladies and gentlemen of the
17 jury the circumstances under which he met your wife?

18 A. Well, I was having a little get-together in the
19 backyard, a little barbecue, and he was invited, him
20 and his girlfriend. Only he appeared.

21 Q. Did you have any conversations with Mr.
22 Marquinez on that occasion about your living
23 arrangements?

24 A. Never.

25 Q. Did you ever talk to him about who lived in

1 Q. Did you know where Alex lived?

2 A. I knew he was somewhere close by, but I didn't
3 know the location, itself.

4 Q. How about Carlos, had you ever been to Carlos
5 Marquinez's house?

6 A. No.

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12 to your house?

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14 Q. Did he ever meet your family?

15 A. He met my wife.

16 Q. Can you tell the ladies and gentlemen of the
17 jury the circumstances under which he met your wife?

18 A. Well, I was having a little get-together in the
19 backyard, a little barbecue, and he was invited, him
20 and his girlfriend. Only he appeared.

21 Q. Did you have any conversations with Mr.
22 Marquinez on that occasion about your living
23 arrangements?

24 A. Never.

25 Q. Did you ever talk to him about who lived in

1 Q. Did you know where Alex lived?

2 A. I knew he was somewhere close by, but I didn't
3 know the location, itself.

4 Q. How about Carlos, had you ever been to Carlos
5 Marquinez's house?

6 A. No.

7 Q. Had you ever met his family?

8 A. Never.

9 Q. Had Carlos or Alex ever been to your house?

10 A. Yes, they have.

11 Q. How many times would you say Carlos has been
12 to your house?

13 A. Say a couple of times.

14 Q. Did he ever meet your family?

15 A. He met my wife.

16 Q. Can you tell the ladies and gentlemen of the
17 jury the circumstances under which he met your wife?

18 A. Well, I was having a little get-together in the
19 backyard, a little barbecue, and he was invited, him
20 and his girlfriend. Only he appeared.

21 Q. Did you have any conversations with Mr.
22 Marquinez on that occasion about your living
23 arrangements?

24 A. Never.

25 Q. Did you ever talk to him about who lived in

1 the building with you?

2 A. I think that was the same party, we was consuming
3 beers in the backyard and he went to the front yard and
4 I warned him that a police officer lived in there, in
5 order for him not going in the front yard with a beer.

6 Q. Now, during that period of time, did you have
7 a driver's license?

8 A. In November?

9 Q. November, 2002, did you have a driver's
10 license?

11 A. No, I didn't.

12 Q. Did you ever have a driver's license?

13 A. Yes, I did.

14 Q. When did you no longer have a driver's
15 license?

16 A. I would say a couple of months before that, before
17 November, so it would be the end of the spring, to be
18 more exact.

19 Q. And how is it that you lost your license?

20 A. DWI in Newark.

21 Q. Again, going back to your employment, was a
22 driver's license necessary for your work?

23 A. For my job, yes, I had to drive around from job
24 site to job site.

25 Q. Well, when you lost your license, what did

1 you do?

2 A. Unfortunately, I managed to get myself an illegal
3 driver's license.

4 Q. And what name did you get the license in?

5 A. Michael Santiago.

6 Q. Now, did you continue to drive in the fall of
7 2002?

8 A. Yes, I did.

9 Q. Did you ever drive Carlos Marquinez in your
10 vehicle?

11 A. Maybe whenever we went out back to -- nothing more
12 than that.

13 Q. Did you ever drive for him for any business,
14 his business purposes?

15 A. Never.

16 Q. And what kind of vehicle did you have back in
17 the fall of 2002?

18 A. I had a Montero, Mitsubishi truck.

19 Q. And was that vehicle in your name?

20 A. No, it wasn't.

21 Q. Whose name was it in?

22 A. My wife's.

23 Q. And your wife's name?

24 A. Tattiana Barbosa.

25 Q. Was she working at that period of time?

1 A. No, she wasn't.

2 Q. Prior to that, what kind of work had she
3 done?

4 MR. McTIGUE: Objection, Judge, relevance.

5 THE COURT: Objection sustained.

6 Q. In any event, when you were driving for him,
7 drove Mr. Marquinez, where did you drive him?

8 MR. McTIGUE: Objection, Judge, can we get a
9 timeframe on this?

10 THE COURT: Timeframe.

11 Q. In the fall of 2002, where did you drive Mr.
12 Marquinez?

13 A. I drove us back and forth to a pool hall, probably
14 a party we went to, we were friends.

15 Q. Did you ever loan Carlos your car?

16 A. No.

17 Q. When you were driving with Carlos, was Alex
18 ever present?

19 A. A few times, yes, he was.

20 Q. Now, in the fall of 2002, did you ever drive
21 Carlos Marquinez as part of any drug conspiracy?

22 A. No.

23 Q. In the fall of 2002, September, October,
24 November, did you know an individual by the name of
25 Felix Chininin?

1 A. No.

2 Q. You now know who that is; correct?

3 A. Yes, I do.

4 Q. And during that period of time, the fall of
5 2002, did you ever have Mr. Chininin's cell phone
6 number?

7 A. No.

8 Q. Did you ever have reason to call him?

9 A. No.

10 Q. Did you ever have occasion to ride in his
11 taxi?

12 A. No, I own a car.

13 Q. Do you know where Felix Chininin lived during
14 that period of time?

15 A. No.

16 Q. Did you know an individual by the name of
17 Wellington Asonsa?

18 A. No.

19 Q. Did you know that person as Felix Chininin's
20 uncle?

21 A. No.

22 Q. I might have asked you before, had you ever
23 been to Alex Tixi's house?

24 A. No, I haven't.

25 Q. On November 4th, 2002, in the early morning

1 hours, did you have occasion to call a taxi at
2 Millennium Cab Company?

3 A. No.

4 Q. Did you ever take a Millennium cab on
5 November the 4th, 2002, from up at Woodside Avenue down
6 to Niagra Street in the city of Newark?

7 A. No.

8 Q. During that period of time in November, 2002,
9 did you own a cell phone?

10 A. I believe I did.

11 Q. You know that at some point that month, in
12 November, your home was searched. Correct?

13 A. Yes.

14 Q. Do you know that a cell phone was recovered?

15 A. Yes.

16 Q. Do you know whose cell phone that was?

17 A. Mine.

18 Q. Did that cell phone work?

19 A. No, it didn't.

20 Q. What happened to it?

21 A. I had maybe a couple of weeks before I had an
22 accident at a job site and that cell phone fell from
23 the third floor.

24 Q. On November the 4th, 2002, in the early
25 morning hours, November the 4th, 2002, do you recall

1 where you were?

2 MR. McTIGUE: Judge --

3 MR. SAMSPON: I will rephrase the question,
4 Judge.

5 MR. McTIGUE: I would like to be heard at
6 sidebar at this point, Judge.

7 (The following takes place at sidebar)

8 MR. SAMSPON: Judge, the question was a
9 mistake, I apologize. I will withdraw it. I wasn't
10 trying to revisit that issue again, I meant to reask
11 him another question.

12 MR. McTIGUE: Judge, regardless of intent,
13 and I have stuck my foot in my mouth a good number of
14 times in my lifetime, it keeps hammering an issue that
15 counsel --

16 MR. SAMSPON: Judge, I meant to ask him a
17 question about being at the taxi is what I meant to ask
18 him.

19 (The following takes place in open court)

20 Q. Mr. DaSilva, on November the 4th, 2002, did
21 you loan anyone your vehicle?

22 A. No, I didn't.

23 Q. Did you let Carlos Marquinez or Alex Tixi
24 borrow that vehicle on that particular day?

25 A. No.

1 Q. You are sure of that?

2 A. One hundred percent.

3 Q. On that particular morning, November the 4th,
4 2002, did you ever enter Josephina Garcia's house?

5 A. No, I didn't.

6 Q. At any point on November the 4th, 2002, did
7 you have a conversation with Alex Tixi or Carlos
8 Marquinez in which you stated that you had just robbed
9 and shot a taxi driver?

10 A. No.

11 Q. And on the early morning hours of November
12 the 4th, 2002, or any point after that, did you have in
13 your possession a lap top computer that belonged to
14 Felix Chininin?

15 A. No.

16 Q. At some point you became aware that you
17 were -- at some point you become aware that you were a
18 suspect in this case?

19 A. Yes.

20 Q. Do you know when that happened? I'm sorry,
21 let me rephrase that. When did you become aware that
22 you were suspect?

23 A. Coming back from work late November.

24 Q. And how did you become aware of that fact?

25 A. My wife and my mother told me that the police had

1 come by looking for me.

2 Q. Did they tell you why?

3 A. They told me, you know, what I was being accused
4 of and why they was looking for me.

5 Q. And when you heard that information, did you
6 immediately turn yourself in to the police?

7 A. No, I didn't.

8 Q. Why not?

9 A. Because I knew as a foreigner facing those types
10 of charges, that would be something serious, sitting in
11 jail for a long time and bail would be extremely high.
12 It was something I was not planning. I had a new born
13 son at the time, still in the middle of work, it was
14 not my intentions.

15 Q. What did you do?

16 A. I continued to work for another week or so, and I
17 stayed on the run trying to figure out exactly what was
18 going on.

19 Q. During the course of the trial, you heard
20 testimony about this Mitsubishi Montero?

21 A. Yes.

22 Q. Did your family own such a vehicle?

23 A. My wife did.

24 Q. When is the last time you saw that vehicle?

25 A. I believe it was late November.

1 Q. And where is the last time you saw that
2 vehicle?

3 A. I was at a restaurant in Orange, West Orange to be
4 exact. That's when the car was stolen. I was inside a
5 bar and my jacket with the keys were taken.

6 Q. Did you report that to the police?

7 A. Yes, I did.

8 Q. Did you fill out a report?

9 A. Yes.

10 Q. Do you know if that vehicle was recovered?

11 A. It was, I believe, the same night.

12 Q. And do you know under what circumstances the
13 car was recovered?

14 A. The car was in an accident and the driver was
15 apprehended at the spot.

16 Q. Was he inside the vehicle?

17 A. Yes, he was.

18 MR. McTIGUE: Objection, Judge, is there any
19 personal knowledge for this?

20 MR. SAMSPON: I'll withdraw. I'll rephrase.

21 THE COURT: Objection sustained.

22 Q. Did you become aware of the source of the
23 allegations against you?

24 MR. McTIGUE: Objection, Judge.

25 THE COURT: That's a yes or no answer, but

1 what comes after that --

2 MR. SAMSPON: Carlos Marquez and Alex Tixi
3 is his answer.

4 MR. McTIGUE: Okay.

5 Q. At some point, Mr. DaSilva, you became aware
6 that there were charges against you?

7 A. Yes.

8 Q. Did you ever find out the source of those
9 charges against you?

10 A. I believe I did.

11 Q. Did you know that Carlos --

12 MR. McTIGUE: Judge, I will object to the
13 leading nature.

14 MR. SAMSPON: I'm trying to --

15 MR. McTIGUE: Just ask him. There's a way to
16 ask, Judge.

17 Q. Did you know if Carlos had given a statement
18 against you?

19 A. Not in the late November, no. Sometime afterwards
20 I did.

21 Q. Did you know that Alex had given a statement
22 against you?

23 A. Approximately the same time I found out about
24 Carlos, I also found out about Alex.

25 Q. At any point did you place a call to Alex

1 what comes after that --

2 MR. SAMSPON: Carlos Marquez and Alex Tixi
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4 MR. McTIGUE: Okay.

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18 against you?

19 A. Not in the late November, no. Sometime afterwards
20 I did.

21 Q. Did you know that Alex had given a statement
22 against you?

23 A. Approximately the same time I found out about
24 Carlos, I also found out about Alex.

25 Q. At any point did you place a call to Alex

1 Tixi to threaten him?

2 A. No.

3 Q. Did you ever speak to Alex after November of
4 2002?

5 A. No.

6 Q. Did you speak to Alex in December of 2002?

7 A. No.

8 Q. With regard to Mr. Marquinez, after November,
9 2002, when is the next time that you saw him?

10 A. I believe it was in this courtroom.

11 Q. When was that?

12 A. Two weeks ago.

13 Q. Was that about the time that he was
14 testifying?

15 A. Yes, I think so.

16 Q. Did you have a conversation with him at that
17 time?

18 A. Briefly, we exchanged a few words.

19 Q. What did you say to him? What did you say to
20 him on that occasion when you saw him?

21 A. That it was wrong what he was doing.

22 Q. Were you as calm then as you are today?

23 A. Definitely not. I don't believe anyone in my
24 position --

25 MR. McTIGUE: Objection what he believes.

1 Judge.

2 THE COURT: Hold it. I will sustain the
3 objection.

4 Q. When you saw Mr. Marquinez on that day, how
5 did you feel?

6 A. Mad.

7 Q. Did you threaten him?

8 A. I cursed at him.

9 Q. Did you mention anything about him being
10 judged?

11 A. Yes, I did.

12 Q. What did you say?

13 A. He will be judged.

14 Q. Was that intended as a threat?

15 A. Not as a threat.

16 MR. McTIGUE: Judge, objection. It's the
17 perception of the person receiving it.

18 THE COURT: The objection is sustained.

19 (The following takes place at sidebar)

20 MR. McTIGUE: As asked, Judge, I think it
21 elicits something that's inappropriate.

22 MR. SAMSPON: That is his state of mind, what
23 his intent was when he made the statement.

24 MR. McTIGUE: That's different than this
25 state of mind.

1 Judge.

2 THE COURT: Hold it. I will sustain the
3 objection.

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5 did you feel?

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21 elicits something that's inappropriate.

22 MR. SAMSPON: That is his state of mind, what
23 his intent was when he made the statement.

24 MR. McTIGUE: That's different than this
25 state of mind.

1 THE COURT: You can ask him about his intent,
2 that has to be proved by the State.

3 (The following takes place in open court)

4 Q. Mr. DaSilva, when you spoke to Mr. Marquinez
5 on that occasion, what was your intent? Why did you do
6 it?

7 A. To express my feelings.

8 Q. Express your feelings about what?

9 A. How mad I was at what he was doing.

10 Q. Did you ever try to assault him on that
11 occasion?

12 A. Never physically.

13 MR. McTIGUE: Objection, Judge.

14 THE COURT: I'm going to sustain the
15 objection.

16 MR. McTIGUE: Well, Judge, I want to be
17 heard.

18 THE COURT: All right. Go ahead.

19 (The following takes place at sidebar)

20 MR. McTIGUE: Judge, counsel is trying to
21 guild the lily under circumstances that he knows are
22 inappropriate. There's a reason why there couldn't
23 have been any assaultive conduct there, and it had the
24 shape of iron bars.

25 MR. SAMSPON: Judge, that part goes to the

1 Q. You didn't tell the truth. Correct?

2 A. Correct.

3 Q. Now, where is your passport?

4 A. In my mother's possession.

5 Q. And you saw your mother in late November.
6 Isn't that correct?

7 A. Yes.

8 Q. You saw your mother into December. Isn't
9 that right?

10 A. Yes.

11 Q. And how do you know Thiago Barbosa?

12 A. Through a mutual friend.

13 Q. Did he give you permission to take his
14 passport?

15 A. No.

16 Q. For persons foreign born, there are certain
17 things that are important to them. Isn't that correct?

18 A. Yes.

19 Q. A passport is one of them. Isn't it?

20 A. Correct.

21 Q. Especially if you are doing day labor and you
22 may need identification. Correct?

23 A. Correct.

24 Q. Your name Carlos Nunez?

25 A. No.

1 A. Yes.

2 Q. You sent your family to Brazil, your wife and
3 young child; is that correct?

4 A. We are from Brazil.

5 Q. Yes. But you weren't living in Brazil at the
6 time a charge of murder was lodged against you, were
7 you?

8 A. No.

9 Q. You were living in Newark?

10 A. Yes.

11 Q. And when the police came and saw your wife in
12 late November, you already knew that there was a murder
13 charge against you, didn't you?

14 A. No, I didn't.

15 Q. You had taken steps to get rid of your car;
16 isn't that right?

17 A. That's not right.

18 MR. SAMSPON: Your Honor, can we have a
19 timeframe, please?

20 MR. McTIGUE: Late November.

21 A. No.

22 Q. You had reported it stolen?

23 A. Yes.

24 Q. And in reporting it stolen, you told the
25 police that your license was in the glove compartment.

1 Isn't that correct?

2 A. That's correct.

3 Q. Not in your jacket?

4 A. No.

5 Q. When did you get the license in the name of
6 Michael Santiago?

7 A. I believe it was 2001, the beginning of 2002.

8 Q. Well, which is it, you got a spread of a
9 couple of years there?

10 A. It was only one year, to be more exact, a couple
11 of months, I would say it was the beginning of 2002.

12 Q. Beginning of 2002?

13 A. Yes.

14 Q. Well, before you ever reported your car and
15 the license stolen; is that correct?

16 A. My license was suspended by then already.

17 Q. Yet you continued to drive that car?

18 A. With a different driving license.

19 Q. But you continued to drive that car?

20 A. I needed to drive the car, I needed to work.

21 Q. But you also found time in between work to
22 hang out at Frank B. Rogers, Bloomfield; isn't that
23 correct?

24 MR. SAMPSON: Objection, your Honor, its
25 argumentative.

1 THE COURT: Sustained.

2 Q. You didn't work exclusive out of state, did
3 you, sir?

4 A. No.

5 Q. You worked down at the shore?

6 A. Yes.

7 Q. Especially in the summer months you would be
8 down at the beach; right?

9 A. I'm a bartender, yes.

10 Q. So you weren't down in Baltimore on a steady
11 basis, were you?

12 A. No.

13 Q. Just occasionally?

14 A. Just for that specific time, construction was
15 running slow around the Jersey area, I do remodeling,
16 add-ons.

17 Q. And in November, construction was slow?

18 A. No. I was doing a hotel site, I was doing a
19 median frame.

20 Q. You don't have anything indicating the name
21 of that site, do you?

22 A. No. At the present time it was just a frame.

23 Q. But you don't have anything indicating the
24 name of that motel?

25 A. No.

1 THE COURT: Sustained.

2 Q. You didn't work exclusive out of state, did
3 you, sir?

4 A. No.

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19 median frame.

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21 of that site, do you?

22 A. No. At the present time it was just a frame.

23 Q. But you don't have anything indicating the
24 name of that motel?

25 A. No.

1 Q. You don't have an address of that hotel?

2 A. I know it was an ocean boulevard.

3 Q. Have you any pay stubs?

4 A. Construction is 95 percent cash business.

5 Q. It's a union business too, isn't it?

6 A. Also, again, I'm a foreigner.

7 Q. Foreigners can get pay stubs, can't they?

8 A. They can.

9 Q. And when you are a foreigner, very often you
10 have to produce identification to your employer; isn't
11 that correct?

12 A. Yes.

13 Q. Because there are laws, are there not,
14 dealing with how an employer deals with non-citizens
15 and reporting requirements?

16 A. Yes. But not everybody abides with the law.

17 Q. That's true, sir.

18 Now, you indicate that you were up in West
19 Orange at a restaurant. Is that correct?

20 A. Yes.

21 Q. And do you recall the name of that
22 restaurant?

23 A. I think it was Los Tabaticos.

24 Q. Were you there with a group of friends you
25 had from West Orange?

- 1 A. One or two from Livingston.
- 2 Q. What about Nicholas Castro Garcia?
- 3 A. He wasn't there.
- 4 Q. Well, where did he live?
- 5 A. At that present time?
- 6 Q. Yes.
- 7 A. I don't know.
- 8 Q. Well, where did you know him to live?
- 9 A. Around Scotland Avenue, Scotland Road.
- 10 Q. Was he a close friend of yours?
- 11 A. Not a close, but he was a friend.
- 12 Q. He knew where your father lived; is that
- 13 correct?
- 14 A. Excuse me?
- 15 Q. He knew where your father lived?
- 16 A. Did he?
- 17 Q. I'm asking you.
- 18 A. I don't know.
- 19 Q. You have a brother down in Maryland?
- 20 A. Delaware.
- 21 Q. And at the time where in Delaware?
- 22 A. Close to Wilmington.
- 23 Q. Now, where were you living in November of
- 24 2002?
- 25 A. 27 Brill Street, Newark, New Jersey.

1 Q. That's where your wife was?

2 A. Yes.

3 Q. That's where your child was?

4 A. Yes.

5 Q. That's the place you considered home; isn't
6 that right?

7 A. Yes.

8 Q. You weren't living at 302 Pencater Lane
9 (phonetic), were you, in Delaware or Maryland?

10 A. No, I wasn't.

11 Q. But that's what you told the police in West
12 Orange; isn't that right?

13 A. That's a steady address I used to refer to, that's
14 my brother's address.

15 Q. Was it Delaware or Maryland?

16 A. I think Delaware is a municipality of Maryland.

17 Q. Now, you stated you were on the run. How
18 long were you on the run for?

19 A. Four or five months.

20 Q. During that period of time, you became aware
21 the police were looking for you. Is that correct?

22 A. Yes.

23 Q. And about this time you sent your wife and
24 child to Brazil; isn't that correct?

25 A. Yes.

1 Q. When did they leave for Brazil?

2 A. March.

3 Q. Where did you live around that time in March?

4 A. I didn't have a steady place.

5 Q. Well, what places did he live at?

6 A. Friends' places, hotels.

7 Q. What friends?

8 A. I had a couple of friends.

9 Q. A couple of friends have names, sir?

10 A. Near the end of March, beginning of May, I was
11 staying at Michel Pereira's house.

12 Q. Now, you became aware that your picture was
13 in the newspaper?

14 A. No.

15 Q. That your photo had been shown on television?

16 A. No.

17 Q. Well, Michele Pereira asked you to get out of
18 his house; isn't that correct?

19 A. No.

20 Q. Well, at a certain point, you met with a man
21 called Geracione Andrade; isn't that right?

22 A. Yes.

23 Q. You were told to get out of Michel Pereira's
24 house. He was there to get you out; isn't that
25 correct?

1 Q. Where?

2 A. Lincoln.

3 Q. Is that near?

4 A. A couple of blocks.

5 Q. And were you living there with your wife at
6 that time?

7 A. No.

8 Q. When was that?

9 A. I would say as soon as I came to America I stayed
10 in my father's house for a couple of months.

11 Q. What time was that in?

12 A. Ninety-nine, Christmas of '99.

13 Q. What town?

14 A. West Orange. Three, four months later I left, so I
15 would say the beginning of 2000 I was living on
16 Lincoln.

17 Q. And you met him casually were?

18 A. We met through another friend that used to work
19 with me at Bella Italia restaurant.

20 Q. Did you ever work yourself with him or you
21 just knew him through mutual friends s at work?

22 A. Through mutual friends, I never worked with him.

23 Q. And I take it you never had any serious
24 arguments or disagreements with him?

25 A. Never.

1 Q. Any fights?

2 A. No.

3 Q. At a certain point, however, you did sell him
4 a gun; isn't that right?

5 A. That's not correct.

6 Q. Well, there was a gun taken from a closet of
7 Officer Paz's apartment. That was the same premises
8 where you lived at the time, wasn't it?

9 A. I lived upstairs from him, yes.

10 Q. Same building?

11 A. Yes.

12 Q. And you weren't in Baltimore all the time
13 continuously during this entire period in question,
14 were you?

15 A. Late October throughout November, yes.

16 Q. But not every day?

17 A. Not every day. I was there during the week and I
18 would come home Saturday and Sunday. Monday morning I
19 would leave to work again..

20 Q. How long did it take you to go down there?

21 A. Two and a half, three hours.

22 Q. And you would drive what vehicle?

23 A. The company vehicle used to keep me up. My wife
24 kept the vehicle at the house.

25 Q. What company was that?

1 A. He subcontracts work.

2 Q. I understand. The name?

3 A. There was no name.

4 Q. No name?

5 A. No. He just had a crew of workers.

6 Q. The name of the person you worked for who
7 gave you the car?

8 A. Who give me the car?

9 Q. Yeah, the person who entrusted you with the
10 automobile to go back and forth?

11 A. I didn't drive, he used to pick me up.

12 Q. All right.

13 Who picked you up?

14 A. Aguinaldo.

15 Q. Does Aguinaldo have a last name?

16 A. Not that I know.

17 Q. Does he have an address?

18 A. Has been a long time. I don't see him he. Used
19 to live in Newark. I have been locked up for 16
20 months.

21 Q. And during that period of time, were you ever
22 able, during those 16 long months, to come up with the
23 name of a person who gave you a car, who would drive
24 you back and forth between Baltimore and Newark at a
25 time critical, at least to your point of view?

1 MR. SAMSPON: Objection, argumentative.
2 Compound question, your Honor.

3 THE COURT: Shorten it up, Mr. McTigue.

4 Q. Did you ever find out who that man was?

5 A. Yes.

6 Q. Who was it?

7 A. It was a friend of the family. My wife knew his
8 wife. We just knew each other through first names.

9 Q. Address?

10 A. Newark. Hawkins Street, to be exact. I don't
11 remember the house.

12 Q. Excuse me?

13 A. Hawkins Street. I don't --

14 Q. Well, your mother lived at Hawkins Street for
15 a while; isn't that correct?

16 A. Yes.

17 Q. And the police went there looking for you?

18 A. Yes.

19 Q. And your mother told you about that; isn't
20 that right?

21 A. Yes.

22 Q. And the police looked for you in West Orange
23 at two different locations; is that correct?

24 A. Did they?

25 Q. Is that correct?

1 A. Not of my understanding.

2 Q. Now, with regard to Josephina, you had no
3 problems with her, did you?

4 A. No.

5 Q. No disputes, no arguments?

6 A. No.

7 Q. And certainly no disputes with Alex or
8 Carlos?

9 A. No.

10 Q. They would ride in your car, though; right?

11 A. Whenever we was going out, yeah.

12 Q. Well, how frequently would they be in your
13 car?

14 A. Once a week, twice, the most.

15 Q. During the period of October and November,
16 how often would they be in your car?

17 A. If once a week.

18 Q. Excuse me?

19 A. If once a week, October, not November.

20 Q. Why not November?

21 A. Because I was steady working, and I had a new born
22 son. The little two days that I had, I was spending
23 with my family, which was late Saturday and Sunday.

24 Q. The family that's now in Brazil?

25 A. Yes.

1 Q. Now, that car, the Mitsubishi, has a
2 compartment in the front under the radio; isn't that
3 right?

4 A. It's not a compartment, it's an empty hole.

5 Q. An empty hole?

6 A. Yes, that's what you call it.

7 Q. What the weather was like back then?

8 MR. SAMSON: May we have a timeframe, your
9 Honor?

10 MR. McTIGUE: November, late November.

11 A. Chilly.

12 Q. Do you wear gloves for work in construction?

13 A. Yes.

14 Q. Do you carry them around with you frequently?

15 A. Yeah.

16 Q. You carry other types of gloves with you?

17 A. Yeah.

18 Q. What type?

19 A. Rubber gloves.

20 Q. For what purpose, sir?

21 A. Tile setting.

22 Q. And Carlos saw those in your vehicle; is that
23 correct?

24 A. I guess he did. I believe I was present when he
25 gave the testimony, I heard that.

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2 compartment in the front under the radio; isn't that
3 right?

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22 Q. And Carlos saw those in your vehicle; is that
23 correct?

24 A. I guess he did. I believe I was present when he
25 gave the testimony, I heard that.

1 Q. But, see, you don't use the car to go back
2 and forth between Baltimore, do you?

3 A. No.

4 Q. That's your wife's car?

5 A. We used the car as the family car.

6 Q. In your wife's name; is that right?

7 A. Yeah.

8 Q. And that's not a car you used for going down
9 to the construction sites in Baltimore, the unknown man
10 from Newark who drove you down there, that was the
11 company car, so-called; is that correct?

12 A. Yeah, that's correct. I worked construction
13 before that.

14 Q. Now, when you last saw Carlos Marquez, it
15 was in this courthouse; is that correct?

16 A. Yes.

17 Q. And you threatened him?

18 A. I cursed at him.

19 Q. And you threatened him? You were at court,
20 you heard the testimony of Officer Garcia, did you know
21 Officer Garcia spoke Spanish before you started to make
22 your threats to Carlos Marquez?

23 A. It didn't matter, I wasn't saying anything.

24 Q. And you threatened Alex Tixi; isn't that
25 correct?

1 wife; isn't that correct?

2 A. With my wife, that's correct.

3 Q. Took her down to the police station and asked
4 her some questions, asked her for a consent to search
5 the car?

6 A. That's correct.

7 Q. Except the car wasn't available; is that
8 correct?

9 A. That's correct.

10 Q. It had been reported stolen a few days
11 beforehand. Is that correct?

12 A. Yeah.

13 Q. And you were not around at this time?

14 A. No.

15 Q. You were down in Baltimore?

16 A. Yeah.

17 Q. Your wife call you? Your mother call you?

18 A. No. I couldn't get in touch with them.

19 Q. Well, could they get in touch with you?

20 A. I didn't have a cell phone, a month prior to that
21 my cell phone broke.

22 Q. Well, you were down in Baltimore where you
23 customarily went. You're a young man with a new baby,
24 wife, family, family you spent a lot of time with about
25 this time, you didn't leave a contact number, you

1 A. No to elude, I'm young, it's fashion.

2 Q. Well, this is how you looked when the police
3 finally caught up with you, isn't it?

4 A. Yeah.

5 Q. And you did that while you were in Michel
6 Pereira's house; isn't that right?

7 A. Yes.

8 Q. That's when you adopted that look.

9 A. I had it already before. I recently had my hair a
10 little bit shorter and I redid it.

11 Q. And you died your hair while you were at
12 Michel Pereira's house?

13 A. Yes. Yes.

14 Q. And this was at a time when you knew the
15 police were looking for you?

16 A. Yeah.

17 Q. Were you aware that the airports had been
18 notified of you, to be on the look out for you?

19 A. No.

20 Q. Were you aware that Interpol, United States
21 Customs and Immigration had been notified?

22 A. No.

23 Q. Did you see any wanted posters of yourself?

24 A. No.

25 Q. Now, as I understand your testimony, three

1 people who you knew reasonably well, had no dispute
2 with, only knew them as casual friends, decided to
3 implicate you in a murder and a robbery; is that
4 correct?

5 A. Yes.

6 Q. And another casual friend of yours, a person
7 with whom you had no dispute, hadn't seen in the
8 longest period of time, only knew totally
9 coincidentally through moving in a couple of blocks
10 from him, decided to tell the police he bought a gun
11 from you?

12 A. Is that a question?

13 Q. Yes. Can you answer it?

14 A. Can you repeat the question?

15 Q. Nicholas Castro Garcia, he had no motive to
16 lie about you, he had been found with a gun, he had
17 been arrested. Is that correct?

18 A. That's correct.

19 Q. You hadn't seen him in quite sometime. When
20 you did see him, it was only once in a blue moon; is
21 that correct?

22 A. That's correct.

23 Q. Did you ever speak with Josephina Garcia
24 after you learned she had given a statement placing you
25 in her apartment?

1 A. No.

2 Q. How about Carlos Marquinez, other than the
3 time that you met him in this courtroom?

4 A. No.

5 Q. You spoke with Alex Tixi?

6 A. No, I didn't.

7 Q. You knew Alex's phone number?

8 A. How could I?

9 Q. You knew Carlos's number?

10 A. No.

11 Q. You knew Carlos's pager?

12 A. No. I knew he had a pager, I never paged him. I
13 only used to see him on the avenue.

14 Q. Would you ever call, as you picked them up to
15 drive them around, or were all your meetings chance
16 encounters on the boulevard?

17 A. Yeah.

18 Q. And where would you ride when you would ride
19 with both these men in your car?

20 A. Who said that they was riding with me?

21 Q. They had driven in your car; is that correct?

22 A. We went from point A to point B, either a pool
23 hall or a dance party.

24 Q. How many times?

25 A. A few times. Just a period of a couple of months.

1 Q. Immediately prior to the shooting death of
2 Felix Chininin?

3 A. I don't know how you can put immediately, being
4 that I met them through the summer and the shooting
5 happened in the beginning of fall, right, November?

6 Q. And did they continue to ride in your car for
7 period of time?

8 A. A few times until December, I guess it's getting
9 kind of cold, November is getting kind of cold.
10 There's nobody on the boulevard no more, so we mainly
11 seen each other going to parties.

12 Q. And how frequently would you attend parties
13 with them?

14 A. Once in a blue moon.

15 Q. Well, would you be a little bit more specific
16 around the time November, December, when it got cold?

17 A. Once a month. After November, I haven't seen them
18 again.

19 Q. You didn't see them after the shooting of
20 Felix Chininin?

21 A. No.

22 Q. Now, one second, Judge.

23 Mr. DaSilva, you have had an opportunity to
24 hear all the testimony in court; is that correct?

25 A. That's correct.

1 Q. Now, did you find out -- when did you find
2 out that Nicholas Castro Garcia had been arrested?

3 A. I was already arrested myself.

4 Q. And you recall no conversations with Mr.
5 Garcia about a handgun?

6 A. No.

7 Q. You ever recall having a discussion with Mr.
8 Marquez about a handgun?

9 A. No.

10 Q. Ever tell him anything about Officer Paz?

11 A. That he resided in my place.

12 Q. Did you ever tell him when he was on
13 vacation?

14 A. No.

15 Q. Now, Mr. Marquez had been over to your
16 house two or three times; isn't that right?

17 A. Yeah.

18 Q. When was that, do you recall those dates?

19 A. I guess throughout the period that I knew him,
20 late summer.

21 Q. What year?

22 A. Two thousand two.

23 Q. And he had just come over to your house
24 casually?

25 A. Once in a while, probably from the -- we probably

1 set up from this place, I got to go home, take a shower
2 first, and he will wait while I get ready.

3 Q. But I take it Officer Paz wasn't the topic of
4 your discussions?

5 A. Definitely not.

6 Q. Wasn't of interest?

7 A. No.

8 MR. McTIGUE: Nothing further, Judge.

9 THE COURT: Anything else, Mr. Sampson?

10 MR. SAMSPON: No, Your Honor.

11 THE COURT: You may step down.

12 (Witness excused)

13 THE COURT: Anything else, Mr. Sampson?

14 MR. SAMSPON: Sidebar for a moment, please,
15 Judge?

16 (The following takes place at sidebar)

17 MR. SAMSPON: I have a couple of exhibits,
18 Judge, I want to move in, and then we have that
19 stipulation with regard to Carlos Marquinez. But other
20 than that.

21 THE COURT: What do you have to put in as
22 exhibits?

23 MR. SAMSPON: It would be some of reports,
24 not reports, phone records of Officer -- that Officer
25 Berrian obtained with regard to the return of a

1 and the graphic exhibits, I am depositing with the
2 Court now, the physical exhibits, with the Court's
3 permission.

4 THE COURT: Like the gun?

5 MR. McTIGUE: Like the gun, like the
6 blood-stained clothing, like a number of small objects,
7 including a passport, things of that nature. I will
8 keep, with your permission, and absent any objection,
9 and we'll inventory them tomorrow morning before we
10 start.

11 THE COURT: If you want to an inventory
12 before we start, please be here at 8:30 to do that.

13 Mr. Sampson.

14 MR. SAMSPON: I'm sorry, Judge?

15 THE COURT: Be here at 8:30 tomorrow morning.
16 Okay? All right.

17 Now, Mr. Sampson, what is the marking of
18 exhibit that you wish to introduce?

19 MR. SAMSPON: Judge, if I could just have a
20 moment.

21 Judge, could we just back up for just one
22 moment? All right. Can I just ask in terms of marking
23 S-39, S-40, S-41, 42 and S-43.

24 THE COURT: What's the question?

25 MR. SAMSPON: My client was asking me a

1 MR. McTIGUE: Yes, Judge, there are. And I
2 will proffer the exhibits to the Court so you can
3 understand what I'm talking about. Judge, that's an
4 exhibit --

5 THE COURT: What phone is this?

6 MR. SAMSPON: That belongs to Millennium
7 Taxi, your Honor. It was testified to by Investigator
8 Berrian.

9 THE COURT: Is this the one where there's the
10 long phone calls compared to the short phone calls?

11 MR. SAMSPON: Yes.

12 THE COURT: All right, I got it. What's your
13 objection, Mr. McTigue?

14 MR. McTIGUE: That, in addition to the phone
15 calls that counsel refers to, there's a mass of other
16 phone calls. How about one page of it that contains --

17 MR. SAMSPON: Judge, I believe on what's
18 under what's usually called the doctrine of
19 completeness, Judge, you can see if you go through all
20 these pages, all these calls are 20 seconds, 30
21 seconds, and this one is eight.

22 THE COURT: Do you dispute that?

23 MR. McTIGUE: No.

24 THE COURT: That will go in -- what number
25 was that again, S-103 in evidence?

1 MR. SAMSPON: And, finally, Judge, with
2 regard to the phone record the cell phone record of
3 Felix Chiniin, there was testimony by Investigator
4 Berrian.

5 THE COURT: Which one is that? Was that
6 S-102?

7 MR. McTIGUE: S-102 is the log coming in for
8 973-274-0006, Judge.

9 THE COURT: What number is that?

10 MR. SAMPSON: Judge, I'm not moving that.

11 THE COURT: Is there another one, Mr.
12 Sampson?

13 MR. SAMSPON: No.

14 THE COURT: That's it. Okay. Anything else
15 before we adjourn for the evening?

16 MR. SAMSPON: Your Honor, I will have the
17 marking, the exhibit number by the morning.

18 THE COURT: Just be here at 8:30 so we can
19 clean up whatever we need to clean up before the jury
20 gets here and we are ready to go promptly at 9 o'clock.

21 MR. McTIGUE: Yes, your Honor.

22 (Matter adjourned)

23 * * * *

24

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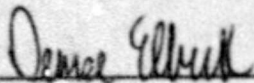
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CERTIFICATION

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