

A-2039-0619

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
ESSEX COUNTY, IND. NO: 03-06-2254
A# 203A-04

STATE OF NEW JERSEY, :

vs. :

LUIS F. DaSILVA
Defendant.

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

FILED
APPELLATE DIVISION
SEP 14 2007
J. M. Chockens
CLERK

Place: Essex County Courthouse
50 Market Street
Newark, New Jersey

Date: June 22, 2004
Pages: 1 - 122

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

NC

I N D E X

1		
2	Summations	Page
3	By Mr. Sampson	6
4	By Mr. McTigue	26
5	Court's Charge	59
6	Jury Question	114
7	Verdict	117
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Colloquy

1 THE COURT: All right, gentlemen, with regard
 2 to the flight charge, I'm using the second of the two
 3 options and inserting a portion. I will read the first
 4 paragraph, which includes the insertion with regard to
 5 the defendant's explanation. There has been some
 6 testimony in the case from which you may infer that the
 7 defendant fled shortly after the commission of the
 8 crime.

9 While the defendant admits he was "on the
 10 run" from the authorities sometime after late November
 11 of 2002, he suggests that his actions, and even shortly
 12 after the shooting, were for travel to work in
 13 Baltimore. Okay.

14 Now, with regard to the 404(b).
 15 MR. MCTIGUE: Judge, I take it you will read
 16 the rest?

17 THE COURT: I will read the rest of it. I
 18 just wanted to give you the language from the fill-in.
 19 With regard to 404(b), I had originally -- I
 20 guess I have to change the introductory paragraph, the
 21 introductory paragraph reads: "With regard to the
 22 testimony you heard regarding the alleged threat by
 23 defendant to Carlos Marquinez on June 4, '04, I charge
 24 you as follows." So I should change it to: "With
 25 regard to the testimony you heard regarding the alleged

Colloquy

4

1 threat made by defendant to Carlos Marquinez on June 4,
2 '04, as well as the testimony you heard about a social
3 security card, credit cards and a driver's license in
4 defendant's possession with names other than his, as
5 well as testimony regarding a theft of the passport, I
6 charge you as follows."
7 MR. SAMPSON: Judge, may I have the first,
8 where are you starting the charge?
9 THE COURT: The 404(b) charge?
10 MR. SAMPSON: Yeah.
11 THE COURT: This is it introductory
12 paragraph, that's all I'm talking about right now.
13 MR. SAMPSON: Could you just give me the
14 first sentence, please?
15 THE COURT: "With regard to the testimony you
16 heard regarding the alleged threat made by defendant to
17 Carlos Marquinez on June 4, '04, as well as the
18 testimony you heard about a social security card,
19 credit cards and a driver's license in defendant's
20 possession with names other than his, as well as
21 testimony regarding a theft of the passport, I charge
22 you as follows."
23 MR. McTIGUE: Social security card.
24 THE COURT: I said social security card.
25 MR. McTIGUE: Judge, just on the date.

Colloquy

5

1 THE COURT: The actual date of the threat is
2 wrong?
3 MR. McTIGUE: Yeah. My recollection, I will
4 show exhibit S-75 to counsel. It's the report.
5 THE COURT: June 7th.
6 MR. McTIGUE: June 7th would be the Monday.
7 THE COURT: For some reason I have June 4th
8 in high head. I don't know how June 4th got in there.
9 The actual body of the 404(b) charge is
10 evidence of other crimes, wrongs or acts is not
11 admissible to prove the disposition of a person in
12 order to show that he acted in conformity therewith.
13 That evidence may be admitted for other purposes, such
14 as to prove consciousness of guilt when such a matter
15 is relevant to a material matter in dispute.
16 In this case, the evidence regarding the
17 alleged threat made by the defendant, as well as, and I
18 will have to add, as well as the testimony with regard
19 to social security credit cards, driver's license and
20 theft of passport, if you believe that testimony and if
21 you find it relevant, cannot be considered except as to
22 the issue of consciousness of guilt. You may not
23 consider that evidence as proof that the defendant had
24 a tendency to commit any of the crimes for which he has
25 been indicted or that he acted in conformity with that

1 tendency.
2 MR. McTIGUE: Yes.
3 THE COURT: Now, let me add that language and
4 type it in.
5 Now, is there anything else?
6 MR. SAMPSON: Judge, we have a stipulation
7 with regard to the testimony of Carlos Marquinez.
8 THE COURT: All right.
9 MR. SAMPSON: With regard to apparent changes
10 in the testimony.
11 THE COURT: All right. Would you take it
12 into my law clerk: You guys go into my law clerk and
13 have him type that up.
14 Did you each receive a copy of the proposed
15 verdict sheet?
16 MR. SAMPSON: Yes.
17 THE COURT: Is it okay?
18 MR. SAMPSON: Yes.
19 MR. McTIGUE: Can I just find it, Judge?
20 (Jury brought out)
21 THE COURT: All right. Mr. Sampson, ready?
22 MR. SAMPSON: Yes, your Honor.
23 THE COURT: You may begin.
24 MR. SAMPSON: Ladies and gentlemen, on behalf
25 of the defendant and myself, I would like to thank you

Summation-by Mr. Sampson

1 for your time and attention in this extremely important
2 case.
3 I know that over ~~the~~ past, I forget now if
4 it's two or we're going on three weeks, that we have
5 taken up a lot of your time and burdened you at times
6 with other matters that you really doesn't want to hear
7 about. But the simple truth is, that over the course
8 of time, we have discovered through practice this is
9 the best way to assure that an individual on trial
10 charged with extremely serious charges can receive a
11 fair consideration of the case against him.
12 You know in the beginning of this case we
13 went through a process to try to pick 14 of you to be
14 jurors in this case. And what we really wanted, as we
15 explained to you, is to have individuals who could
16 judge this case without bias, or passion, or prejudice,
17 and you could come together using your collective
18 wisdom, your collective experience, your God-given
19 common sense, to make a determination as to the guilt
20 or innocence of another human being.
21 In this case that's all we ask you to do is
22 to judge this evidence fairly, without bias, without
23 passion, and we think that in this particular case,
24 that after that is said and done, you will conclude
25 that the State of New Jersey has failed to prove its

1 case beyond a reasonable doubt against Luis DaSilva.

2 Now, I would imagine that in a case this
3 serious, that it's really hard to make a determination
4 without passion. We're talking about the loss of a
5 human life here. Felix Chininin, on the early morning
6 hours of November the 4th, 2002, was murdered. There's
7 no question about that. It was probably in the
8 commission of a robbery. It's hard to tell, because
9 the evidence in this case is unclear.

10 Nonetheless, ladies and gentlemen, your
11 determination here today, and what you have to decide
12 as jurors, is whether the State of New Jersey has
13 proved this case against Mr. DaSilva beyond a
14 reasonable doubt.

15 Now, we start with certain considerations.
16 We have already explained to you that Mr. DaSilva
17 appears here today as the result of an indictment.
18 Now, you know what an indictment is. We have explained
19 that to you. It simply tells the defendant what the
20 charges are against him and you know from the testimony
21 that some of the witnesses appeared before the grand
22 jury, some of the witnesses told their version of the
23 events to the grand jury, and those people made a
24 determination that there was at least sufficient
25 evidence at that point for the defendant to stand

1 trial.

2 What you also know, though, I think I told
3 you in the beginning and I will tell you now, is that
4 the defendant wasn't represented. The defendant
5 doesn't have an attorney there. The defendant does not
6 at that point have an opportunity to ask questions of
7 witnesses, and we think if we had been there before the
8 grand jury --

9 MR. McTIGUE: Objection, Judge.

10 THE COURT: Objection sustained.

11 MR. SAMPSON: Though we were not there, what
12 we say is now is our opportunity to ask questions, to
13 ask difficult questions of witnesses. That is to say,
14 now we have the opportunity to ask the witnesses about
15 the inconsistencies and contradictions in their various
16 statements. And we believe that when you consider all
17 the various contradictions and inconsistencies in this
18 case, you will see that the State has failed to prove
19 its case beyond a reasonable doubt.

20 As I have explained to you before, at this
21 point the defendant is still entitled to what's called
22 a presumption of innocence. That is, as you sit here
23 right now, the defendant has to be presumed innocent of
24 the charges against him, and that presumption of
25 innocence stays with him unless and until, after

1 considering all of the evidence in this case, you find
2 that the State has proved its case beyond a reasonable
3 doubt.

4 And, ladies and gentlemen, I tell you today
5 that in our estimation, based upon our review of the
6 evidence, we believe that the State has failed to meet
7 its burden.

8 In reviewing the evidence in this case, you,
9 ladies and gentlemen, are the judges of the facts.
10 It's going to be your individual and collective
11 determination that decide what the facts are in this
12 particular case.

13 Judge Vazquez is the judge of the law, he
14 controls the proceedings. But you, ladies and
15 gentlemen, individual and collectively, make a
16 determination as to whether or not the State has proved
17 its case beyond a reasonable doubt.

18 And the burden in this case, the burden is
19 always on the prosecutor. Under our system of justice,
20 the defendant doesn't come in and have to prove that he
21 didn't do it, the State has to prove that he did it,
22 and they have to do it through clear and convincing
23 evidence from witnesses who come here and put their
24 hands on the bible and swear to tell the truth.

25 Now, as I told you in the beginning, and as

1 is aptly clear from the evidence in this case, the
2 witnesses, there are many witnesses, and you remember
3 at the beginning of case when you were sitting back
4 there in the well of the courtroom and we told you
5 about this case, and me and the prosecutor read to you
6 a list of potential witnesses, and it must have been
7 about 100 different names that you heard of people who
8 could possibly be involved in this case.

9 But, you know, ladies and gentlemen, after
10 you listened to that entire list of people who may have
11 evidence in this particular case, there aren't 100
12 witnesses here. The State's case really boils down to
13 two witnesses: Carlos Marquez and Alex Tixi.

14 I say that, ladies and gentlemen, because in
15 this case, despite all the investigation and everything
16 that took place after the events of November the 4th,
17 2002, there is no evidence against the defendant.

18 You, ladies and gentlemen, will have before
19 you in the juryroom photographs, you will have physical
20 evidence in this case, you will see pictures of the
21 crime scene, and you will recall the testimony of
22 witnesses.

23 Remember Investigator Berrian coming in and
24 describing her arrival at the crime scene over there
25 first on Thomas Street, and then over on Virginia

1 Street? And she told you when she got to Virginia
2 Street it was a bloody scene, that there was blood
3 smeared all over the interior of the Lincoln Town Car.
4 There was blood pools on the floor. There was blood
5 all over the seats. There was brain matter on the back
6 seat of the vehicle. And one would expect under those
7 circumstances that the State, as it did, would conduct
8 a scientific evaluation of all the physical evidence in
9 this case. And they would make an effort to find any
10 blood evidence that would link the defendant, Luis
11 DaSilva, to that crime scene. And you heard the
12 investigators tell you that Investigator Berrian, and
13 Detective Vitiello, and Fernard Williams, the crime
14 scene investigator, that despite their best efforts and
15 using the best scientific means available today, there
16 is not a bit of physical evidence that links that
17 defendant to this case. There's no blood evidence.
18 There is no fingerprint evidence. There's no DNA
19 evidence. There is no hair or fiber evidence in this
20 particular case. No objective scientific evidence
21 which would link that defendant to the horrific events
22 of November 4th, 2002. After conducting their
23 investigation for a period of time, they still had no
24 proof linking the defendant to this particular case.
25 Now, at some point, ladies and gentlemen, and

1 I should tell you this up front, my recollection of the
2 testimony doesn't mean a thing. And if I say something
3 during the course of my presentation that is contrary
4 to your recollection of this, it's your recollection
5 that controls. No one is trying to mislead you. It's
6 just that over the course of two weeks, maybe the
7 recollections have changed, have changed or varied.
8 But what's going to happen is at some point when you go
9 into the juryroom, you are going to talk about it with
10 each other and, again, it's your collective
11 recollection of the facts that controls. Okay.
12 But it seems to me that the events in the
13 days just after November the 4th, the State was lacking
14 any witnesses. Remember Investigator Berrian and
15 Detective Vitiello telling you that when they went to
16 the crime scene on Thomas Street, they then went to the
17 crime scene on Virginia Street. She went to the extent
18 of canvassing all the people who lived in the area. No
19 one saw anything.
20 They brought the dog, the K-9 Unit out there
21 to search. They were unable to make any determination.
22 No one saw who left the vehicle there. No one saw who
23 parked the cab there. And that was about November the
24 4th, the early morning of November the 4th.
25 You will also recall that three or four days

1 later, three or four days later Gloria Nieves, a
2 dispatcher at Millennium Cab Company, got a phone call.
3 She was able to give a date and the approximate time
4 that phone call was received. She said that the call
5 was from a woman, an older and mature woman is her
6 testimony. She said that the woman spoke to her in
7 Spanish and the woman had an Ecuadorian accent, and the
8 woman told her essential they had knowledge about the
9 death of Mr. Chininin, and the caller gave her a name.
10 That's where El Chato comes from. El Chato is Alex
11 Tixi.

12 Well, based on that information, they began
13 to do an investigation and Gloria Nieves told you that
14 just after she spoke to this woman, that Mr. Chininin's
15 father also gave her a call and wanted to know what the
16 phone call was about, and he coincidentally knew this
17 guy Alex, El Chato. And in this case there are a lot
18 of apparent coincidences.

19 For example, Alex Tixi, El Chato, just
20 happens to live in the same house as the victim's aunt
21 and uncle, the same house of the same aunt and uncle
22 who happen to get Felix Chininin's cell phone. So the
23 cell phone bill was coming to that location and the
24 police were doing an investigation of that particular
25 house.

1 Well, based on that, ladies and gentlemen, do
2 you think that getting that phone call that has
3 specific information that was sufficient to lead them
4 to Alex Tixi, would it be unreasonable to ask that they
5 speak to the individual who made the phone call?

6 I raise that, ladies and gentlemen, because
7 you will have before you cell phone records. And under
8 the cell phone records that you will have a chance to
9 look at, they listed all the phone calls on that
10 particular date, the date in which Gloria Nieves got
11 the telephone call. And as you go through, I guess
12 about five pages of phone calls, it's my opinion that
13 most of these appear to be of extremely brief duration.
14 Most of the phone calls last a matter of seconds: 10,
15 20, 30 seconds, a minute.

16 As you go down this list of phone calls, you
17 will see one which lasted approximately eight and a
18 half minutes. And you recall the investigator that
19 Gloria Nieves said that the phone call came in around
20 10 o'clock, and you will see that approximately 9:46 on
21 this day there was a phone call that lasted about eight
22 minutes, eight and a half minutes.

23 Now, that phone call was of some interest to
24 the State, to the investigators. And as a result of
25 that, they obtained a communications data warrant and

1 they explained to you what that is because you just
2 can't go to the phone company and say: Give me
3 information. It has to be through a warrant.

4 And you know that they wanted to know who
5 placed this call, who placed the call to Millennium
6 Cab, and they got a name, and they got an address, and
7 they got a phone number to that person.

8 One of the things that sticks out in my mind
9 in this case during the examination of Investigator
10 Berrian, I asked her did she ever speak to that person,
11 and her response was no, I didn't have to. It seems to
12 me, ladies and gentlemen, based upon all the evidence
13 in this case, that that is a critical witness. That is
14 someone who needed to be talked to. That is someone
15 who had information. And that is someone who was not
16 talked to.

17 The reason that person wasn't talked to was
18 they said they had Alex Tixi, that Alex Tixi gave
19 statements in this particular case, and the trail
20 leading to Luis DaSilva began with Alex Tixi.

21 Now, you will recall that Alex Tixi, El
22 Chato, was initially interviewed by the police and when
23 he was initially interviewed, said he didn't know
24 anything. They confronted him. They said: We don't
25 believe you. And he gave another statement. This is

1 the statement, ladies and gentlemen, that involved him
2 and Carlos Marquinez making a trip to Penn Station to
3 pick up Mr. DaSilva. They said they got a phone call,
4 they were just driving around Harrison 7:30, 7:45, 8
5 o'clock on a Monday morning, they got a phone call from
6 the defendant telling them to pick him up.

7 Well, ladies and gentlemen, you know now that
8 the statement that Mr. Tixi gave was a complete
9 fabrication, that what was contained in there wasn't
10 true.

11 Well, ladies and gentlemen, let me ask you
12 this. In this particular case, the witness gives a
13 statement saying that he got a phone call early in the
14 morning, that he went and picked up a man at Penn
15 Station. Part of the investigation, would it be
16 unreasonable to ask, did the State trace that phone
17 call? Were they able to establish that that phone call
18 was actually made? If I'm not mistaken, Carlos
19 Marquinez has a pager. Did anybody establish that he
20 got a page at that time and what phone number the call
21 came from?

22 Let me also ask you, if a witness says it's 8
23 o'clock on a Monday morning, I'm at Penn Station in
24 Newark. Now, can you imagine, ladies and gentlemen,
25 that after the intense security down there at Penn

1 Station, now a man is walking around in Penn Station
2 covered in blood with this object, and it could be a
3 radio, CD case, or something wrapped in a white tee
4 shirt covered in blood at Penn Station, and no one, no
5 one asked him a question?

6 Ladies and gentlemen, all we're saying is
7 that you have to use your collective wisdom, your life
8 experience. Do you think if an individual walking
9 around covered in blood with blood stains on him at
10 Penn Station at 8 o'clock on a Monday morning with all
11 the people there, all the security, that that's
12 possible? But they took that at face value. They took
13 that statement at face value.

14 He also has -- he also gave a scenario later
15 on where he completely changes his story. And you
16 recall Mr. Tixi telling you the story about going to
17 the Budweiser -- going past Budweiser on I & 9 to
18 Elizabeth, and he says he picked up Mr. DaSilva over
19 near Budweiser in Elizabeth. Well, you also now know
20 that that story is untrue.

21 But, ladies and gentlemen, that is where the
22 investigation began, and that's how Mr. DaSilva got
23 thrown into the case. They spoke to Carlos Marquez,
24 and you know the various stories that Mr. Marquez has
25 told over time.

1 Finally, when he comes to court a year and a
2 half later, his story has changed again. He is now
3 testifying that on the early morning hours of November
4 the 4th, he had been at his mother's house, okay. He
5 says he had been there all day with Alex Tixi and they
6 were drinking beer. And he said they were fairly
7 intoxicated. He says that at that hour in the morning
8 his mother comes and knocks on the door and announces
9 that someone is outside blowing the horn.

10 Well, has anyone confirmed that? Have you
11 heard any testimony affirming that there was someone
12 outside blowing the horn? He says that he was there
13 with his family. There's no family, there's no
14 testimony from his family members.

15 Ladies and gentlemen, Carlos Marquez in
16 this case has a motive, has a bias, has a reason to
17 lie. You know this because he's already told you he's
18 got charges pending in two counties and as the
19 prosecutor has told you or will tell you, there is no
20 formal deal for Mr. Marquez. But he is testifying in
21 the hope that he can help himself with these cases.
22 And you know that he's got one case, one drug case with
23 Alex Tixi, and you know Alex Tixi has already pled
24 guilty on that, and part of his deal is that he testify
25 here.

1 Mr. Marquinez has a charge, drug charges
2 pending in Hudson County as well as up in Somerset
3 County, in which he has got a burglary, attempted
4 burglary charge, a conspiracy, and you know that case
5 involves something about a gun.

6 So, ladies and gentlemen, Mr. Marquinez has a
7 reason to be here to testify against the defendant.
8 More importantly, according to the testimony, Mr.
9 Marquinez and Mr. Tixi had been to Mr. DaSilva's house.

10 You know that Mr. Marquinez told you that on
11 at least one occasion he had been to Mr. DaSilva's
12 house, and there was no one home. Mr. DaSilva has also
13 told you that on prior occasions when Mr. Marquinez had
14 been to his house, he had advised him that there was a
15 police officer, be careful, don't go to the front of
16 the house with beer or drinks, because there's a cop
17 that lives there. So Carlos Marquinez has the
18 opportunity and the motive to do the break-in at 27
19 Brill Street.

20 You know there are certain things that
21 people -- well, we have certain phrases for it in our
22 society. You don't do certain things near where you
23 live. And would it make sense for Carlos, would it
24 make sense for Luis DaSilva to break into the house of
25 the guy who lives downstairs? Does it make any sense?

1 Why would he do that and create all that heat and
2 pressure in his own home? It doesn't make any sense.
3 He's a working man. He's working. He's got a family.
4 You heard about the construction business that he's
5 engaged in. So why would he do this? Why would he
6 break into the house downstairs? Why would he be out
7 committing a robbery when that very morning he's on his
8 way to work down in Baltimore or down in Maryland, and
9 you know the police must have believed he was working
10 there because we had Detective Vitiello telling you one
11 day they set up a surveillance down in Penn Station
12 because they believed he was going down there. You
13 heard the State tell you about advising the authorities
14 down in Maryland to be on the look-out for him during
15 that period of time.

16 So, ladies and gentlemen, what I'm saying in
17 this particular case is that the evidence, the evidence
18 in this case is a fabrication. Carlos Marquinez and
19 Alex Tixi had every reason to make up this story.

20 The Court is going to tell, the Court is
21 going to tell you about the difference between direct
22 evidence and circumstantial evidence. Remember the
23 testimony -- I'm sorry, the example the Judge gave you
24 about the issue of whether or not it was raining or
25 snowing outside, and he said direct evidence is some

1 someone tells you they see it. Circumstantial, if you
2 go to bed and it's dry out, and in the morning you wake
3 up, everything is wet, the car is wet, the driveway is
4 wet, there's water on the window.

5 Ladies and gentlemen, in this particular case
6 the circumstantial evidence has been created by Carlos
7 Marquinez and Alex Tixi and they have every motive to
8 fabricate this. Why? Because you know they were in
9 Newark on that morning, according to them. They were
10 in the vehicle. They had Mr. -- they had the
11 defendant's car. They had a motive, and he had
12 opportunity to commit this particular crime. They say
13 they were there. There's connections between them.
14 They have got Carlos Marquinez's step dad is a cab
15 driver for Classic Cab, which is connected to
16 Millennium Cab. You have Alex Tixi living in the same
17 house as Mr. Chininin's family. You have a number of
18 connections between them and the crime.

19 And I suggest to you, ladies and gentlemen,
20 that when all is said and done, the State has not been
21 able to tie this defendant to the offense except
22 through the testimony of these two guys.

23 As a consequence, rather than dealing with
24 the absence of any physical evidence, there's no
25 fingerprint evidence, no blood evidence, DNA evidence,

1 hair or fiber evidence. There are a number of other
2 things that have been thrown into this case on the
3 theory that if you throw enough stuff against the wall,
4 something may stick. So you have heard all this
5 testimony about threats, about conversations between
6 the defendant and Alex Tixi and Carlos Marquinez.

7 Ladies and gentlemen, let me ask you this.
8 You know that Mr. Marquinez and Mr. Tixi have told you
9 a number of untruths in this case. There's no way
10 around it, that is what has happened.

11 Mr. DaSilva says that on the later date, and
12 for the first time in over a year, he sees Carlos
13 Marquinez. Now, imagine that someone has fabricated a
14 story about you, told things that weren't true, got you
15 thrown into a homicide. The first time that you see
16 them, is it unreasonable that you might curse at them?
17 That you might say a few things to them? Does it make
18 you guilty of anything? No. It makes you pissed off
19 because you have been lied about. In this case that's
20 what happened.

21 In this case, ladies and gentlemen, you heard
22 a number of threats and allegations. They have no
23 relevance to this particular case. In this case,
24 ladies and gentlemen, you heard about flight. You have
25 heard the defendant tell you that he left after the

1 events in question. We don't deny it, that sometime in
2 late November, late November, he took off. But, ladies
3 and gentlemen, you are also aware that from November
4 the 4th, up until the end of November, the defendant
5 was present. The defendant was present in New Jersey
6 working, that they knew he was in the area. That you
7 have -- you have heard the police report of November
8 the 24th up in West Orange when Mr. DaSilva reported
9 his car stolen.

10 So up until that period of time, at least
11 through November the 24th, for three weeks after this,
12 he was there. That's not flight, ladies and gentlemen.
13 That's not running, at least right afterward. He says
14 when he heard about the charges, he told you he's a
15 Brazilian national, that he has been here for a number
16 of years, that he thought that if he were arrested,
17 that he would get held on an extremely high bail. That
18 he would lose everything that he worked for. You heard
19 testimony that he has now been locked up for 16 months.
20 That's exactly what he was afraid of.

21 Did he have a false driver's license? Yes.
22 Did he have fake I.D.? Yes. Fortunately, in our
23 society, apparently a lot of people do it because you
24 need a driver's license, you need identification. It
25 does not make you guilty of murder.

1 Now, ladies and gentlemen, there are a lot
2 of -- there's a lot of evidence in this case. There
3 are a lot of statements which have been made. You know
4 that a number of the witnesses have given two or three
5 statements in this case. They have given two
6 statements. They appeared before the grand jury. They
7 have appeared here at the time of trial.

8 The sad truth is that these statements are
9 all contradictory and at variance with each other.
10 They don't make sense. They don't hang together.
11 Josephina Garcia says the entire transaction in her
12 home took place in the dark, the lights were never on.
13 There was no way for her to see. Did she ever tell you
14 why, if someone comes in and is hiding something under
15 the bed, as she said the computer was, that she didn't
16 say anything? Doesn't tell you that.

17 There's no searches of any of the homes.
18 Alex Tixi's home was never searched. Carlos
19 Marquinez's home was never searched. No physical
20 evidence was ever recovered.

21 In this case, ladies and gentlemen, the State
22 has failed to prove its case beyond a reasonable doubt.
23 It's not a question of whether or not we have sympathy
24 for Mr. Chininin's family, because we do. The question
25 is whether, considering all of the evidence in this

1 particular case, the State has proved its case beyond a
2 reasonable doubt.
3 And after you consider all the evidence here,
4 the State has failed to do so. Thank you.
5 THE COURT: Sir, you need a moment?
6 MR. McTIGUE: Yes, please.
7 THE COURT: All right, ladies and gentlemen,
8 you will go into the juryroom for just a few minutes
9 and then we'll bring you back to hear Mr. McTigue's
10 closing arguments.
11 (Jury excused)
12 THE COURT: Is there something you wanted to
13 say or you just wanted to set up?
14 MR. McTIGUE: I just wanted to set up.
15 THE COURT: Yeah, sure.
16 (Recess)
17 (Jury brought out)
18 THE COURT: Mr. McTigue.
19 MR. McTIGUE: Your Honor, counsel, ladies and
20 gentlemen of the jury. When we first started this case
21 and I had the opportunity to address you in an opening
22 statement, I told you that the end of case that we
23 would have an opportunity to speak again, at which time
24 I would make comment on the evidence that's before you.
25 I would like to thank you for your patience,

1 for your attendance. We have taken you away from home,
2 family, and your occupations, but you are about to
3 shoulder an important responsibility, a responsibility
4 that's been shouldered by every jury that's ever sat in
5 this country in a criminal case.
6 Hundreds, if not thousands of jurors before
7 you, you are going to share the common bond that is our
8 jury system to make a determination of guilt or
9 innocence. The time for lawyers is closing, with all
10 due respect to Judge Vazquez who will charge you on the
11 law, his time is about to end, and your function, your
12 time as judges of the facts is about to begin.
13 The truth is what you determine it to be.
14 You will have to consider all the evidence. Consider
15 it as a whole, not searching for guilt, not hunting for
16 reasonable doubt, but ascertaining all of the evidence
17 to get a picture of what is the truth.
18 This has been a fairly lengthy trial. You
19 heard from approximately 21 witnesses. People have
20 testified in three languages: English, Spanish and
21 Portuguese; and you have heard from a number of
22 experts. But we are here for one central reason: The
23 death of Felix Chininin.
24 We know from the testimony of Dr. Shaikh, we
25 know and we will see the photos that Felix Chininin, at

1 the age of 19 years, died from a contact wound to the
2 back of the head. Somebody, and the proofs indicate
3 Luis DaSilva, took this gun and put it to the back of
4 his head and pulled the trigger and took his life and
5 everything that he would have done in his life. Cold,
6 hard act, brutal in nature. Motivation: Robbery,
7 ladies and gentlemen.

8 You have heard from a number of witnesses in
9 the trial, and each one of those witnesses has
10 presented you with some fact or facts important to this
11 case. There have been search warrants executed, three
12 in number. There have been electronic search warrants,
13 communications data warrants issued. There has been
14 significant forensic testimony. All of those tests,
15 all of those warrants provide you with additional
16 information.

17 You have heard from witnesses whose
18 credibility you will have to test. When Judge Vazquez
19 gave you his introductory remarks before we started
20 this case, he mentioned certain tests as far as
21 credibility. How do you tell if a person is telling
22 the truth? Well, you look at them. You look at their
23 demeanor. You consider their interest in the case.
24 You consider: Are they telling me the truth? Are they
25 telling me part of the truth? Or are they telling the

1 entire truth? What motivation do they have to lie?
2 Why say something? And those are tests you are going
3 to have to look at. You are going to have to determine
4 if you think that something was untrue, well, what's
5 the motivation behind that untruth? And is it an
6 untruth about something that's important, something
7 that's material to the case, something that would cause
8 you to change your mind?

9 Just an example of what is material and what
10 isn't. I'm wearing a tie. I have worn a tie every day
11 during the course of the trial that I monopolized your
12 time. Do you remember what color tie I was wearing
13 four days ago? And is it important? You know the I
14 was here monopolizing your time with counsel and the
15 Court, but whether you can recollect that detail I
16 submit is immaterial to the larger picture.

17 Look to the relationships the witnesses enjoy
18 with each other. Consider the proofs you have heard.
19 This is a crime which occurred involving many people
20 with within a tight-knit immigrant community. People
21 know each other. Information travels quickly. People
22 band together. They trust each other. They help each
23 other out as every immigrant group in our history has.
24 It helps explain how things happen. You can use your
25 own common sense and your collective sense of community

1 about which you represent in reaching these
2 determinations. Very often tests are important,
3 searches are important, not so much for what they find,
4 but for what they don't find.

5 In this instance no cash proceeds were found
6 on the cabby who collects cash during the course of his
7 business. No wallet for identification was found on
8 the body of Felix Chininin. No computer was found, but
9 computer cables were found. No gun was found
10 immediately, but shell casings and the bullet that took
11 Felix Chininin's life were found. No fingerprints were
12 found. And is there an explanation for that? Where
13 you find a deficit, is there an explanation for it?
14 Where the police have tried to accomplish something but
15 have not succeeded, is there an explanation?

16 And I think many of the questions that were
17 raised by counsel during his summation are explainable
18 through the facts that you have heard.

19 Counsel has submitted that the State has
20 failed to carry its burden to prove the guilt of Luis
21 DaSilva beyond a reasonable doubt. I spoke to you,
22 ladies and gentlemen, that within this case there are
23 certain lines or chains of evidence that establish the
24 guilt of Luis DaSilva beyond any doubt. These are
25 chains of evidence which become chains that bind Luis

1 DaSilva firmly to the guilt that he must bear for the
2 death and robbery of Felix Chininin.

3 And what's interesting, ladies and gentlemen,
4 in this case, because there's been some comment about
5 fabrication, concoction, is that the circumstances, as
6 you heard from people who swore oath, indicates that
7 this was a broad ranging investigation.

8 The police used the tools at their disposal
9 as best they could. They gathered as much information
10 as they could quickly, because if you don't get it
11 within the first few days, ladies and gentlemen, common
12 experience tells us you are not going to get it. There
13 was hard work and exposure of shoe leather, the old
14 fashion way, going out and speaking to people, lining
15 things up and importantly, ruling people out. No rush
16 to judgment, and we'll discuss that.

17 But some of the most important evidence in
18 this case, despite all the hard work, despite all the
19 effort, despite the hours of time spent sifting through
20 pages of telephone sources, comes from people who
21 weren't even investigating this case, they were
22 investigating other crimes: The West Orange Police
23 Department, the New York City Police Department, the
24 Belleville Police Department. From people not
25 associated with Luis DaSilva, people who may have met

1 him tangentially.

2 All that belies concoction, ladies and
3 gentlemen, and it's good to work hard. But sometimes
4 it's good to have luck on your side. And quite
5 frankly, in the investigation of this case, there were
6 some breaks, things that one did not expect to yield
7 very important information.

8 You your recollection has to govern, ladies
9 and gentlemen, as I discuss facts, if you disagree
10 collectively with me, what you say goes. But it's been
11 suggested, in fact, you almost have to find, in order
12 to acquit Luis DaSilva, that everybody he knows who
13 testified in this courtroom lied. Alex Tixi has to
14 lie. Carlos Marquinez has to lie. Josephina Garcia
15 has to lie. Nicholas Castro Garcia has to lie. Look
16 at the connections among these people. See if that
17 holds true.

18 I mentioned chains of evidence, ladies and
19 gentlemen. And the first chain starts with Millennium
20 Cab. People told you important things. There are a
21 group of people who were called, they were all called
22 for a reason. You heard about the last hours of Felix
23 Chininin on this earth. He had a very poignant
24 snapshot of a young man who was about to die.

25 He was 19, obviously strong. Dr. Shaikh was

1 surprised, quite frankly, by certain things, and we'll
2 discuss that. Nineteen, happy in his work, horsing
3 around with his fellow employees. Gloria Nieves told
4 you about that, about his squabbles about who picks up
5 who, who pays and who gets to go home, things of that
6 nature. Not trouble, not in fear of anyone, just a
7 young guy trying to get by doing a tough job, who had a
8 new toy, something that he enjoyed, something he had in
9 his car, a computer or DVD player that shows movies.

10 It's ironic, Mr. Reyes told you this, the
11 last movie he ever saw was Sniper. You got a taste of
12 that. There were no troubles or difficulties in his
13 life. There was nobody he feared. You were able to
14 track his movements up to a point through dispatch
15 records, the last dispatch call 2:56 a.m. You know he
16 had a cell phone. The last call was minutes before
17 list death.

18 You heard a lot about CVW, and like any other
19 tools, they have their uses, they have their
20 limitations. Investigator Berrian told you about that.
21 It's not a magic bullet. You don't push a button and
22 something pops out. You get data that may or may not
23 be useful, may not point you to a person. Some calls
24 are captured, some aren't. The clocks and timing are
25 only as good to the person looking at the clock and

1 noticing the call which may or may not match different
2 clocks carry different times. Did they give you
3 something that is exact? No. Do they give you an
4 approximation that allows the police to use it as one
5 of many tools? Yes. And those tools are used.

6 One thing the records will not tell you is
7 who is on the phone. It's not a tape recorder. Who
8 ever has access to a phone may be using it. The fact
9 that a call came in from a phone by itself establishes
10 nothing.

11 And, again, we all in this day and age tend
12 to get caught up in technological magic. But at the
13 end of the day all that technology can do, in many
14 instances, is just point us in the direction, tell us
15 an area where we might want to look, and very often it
16 turns up nothing.

17 For instance, Kathleen Armstrong, the lady
18 they interviewed by Detective Vitiello, the dispatch
19 records, computerized records, we know she made a call
20 from 330 Woodside, the last call ever received from
21 Felix Chininin via dispatch.

22 In talking to Ms. Armstrong: I didn't call.
23 Likewise, a anonymous callers are anonymous callers.
24 They provide the basis of information. There's no way
25 to prove the person made a call. There's no way to

1 know what they said was reliable or was it based on
2 something they heard from somebody who heard it from
3 somebody else. But it's a starting point. It's a tool
4 that's used in investigation, and a tool that I submit
5 was used extensively here.

6 Using those tools, ladies and gentlemen, we
7 heard about an anonymous call that came in. Gloria
8 Nieves identified three men. Three men. One, El
9 Chato. And doing it the old fashion way, asking
10 questions. How do people compare notes within a
11 close-knit community? They were able to identify an El
12 Chato and, yes, there are coincidences. We see one or
13 two things that are coincidences. Maybe that's
14 happenstance. There are far too many things that click
15 here, ladies and gentlemen, to be mere coincidence.

16 These are not accidental bumps in the night.
17 When we come to Alex Tixi, from Alex Tixi we go to
18 Carlos Marquinez. From Carlos Marquinez, we go to
19 Josephina Garcia. And that path leads to where the
20 guilt lies: Luis DaSilva.

21 Alex Tixi and Carlos Marquinez have testified
22 before you. They are what they are. And they are
23 friends of Luis DaSilva. They are the people that he
24 consorts with. They are the people that he goes to
25 parties with. They are the people who come to his

1 house. And they each tell a story that differs
2 slightly, but with one central element. One central
3 element. That it was Luis DaSilva who shot and killed
4 the cabby. Shot him, as Carlos Marquinez said, behind
5 the right ear, took a computer, and robbed him of \$120.
6 Concoction? Alex Tixi at first thought it was some
7 sort of radio, maybe a lap top. Why concoct a lap top?
8 Look at the details. Look at the details.
9 Your recollection will have to control. Alex Tixi
10 entered a plea of guilty in Hudson County. There was
11 no deal from the State. None. And importantly, he
12 gave his statements well before any explanation of
13 guilty before a Court. His first statement was given
14 in November of 2002. You will recall the testimony, he
15 was sentenced February of 2004, more than a year
16 afterward. Whether that played any part in his
17 expectation, I submit not. He has been sentenced
18 through the Hudson County courts, through the Hudson
19 County Prosecutor's Office with no contact from the
20 Essex County Prosecutor's Office.
21 The second statement likewise in December was
22 given well before he had to deal with the consequences
23 of his illegal activity. Again, take facts, put them
24 in context as to whether they are important or not
25 important. You had an opportunity to look at the

1 demeanor of Alex Tixi, a slight young man, looked
2 scared stiff on the stand for a reason, because he told
3 you he had been threatened.
4 Very shortly after he gave his first
5 statement, he was called by Luis DaSilva and
6 threatened. He told you he was in fear of his life.
7 And upon questioning again, he changed a little bit to
8 the exact happenstance of it. But, again, the central
9 focus was still Luis DaSilva. When you look at people
10 like Alex Tixi and you believe maybe they are
11 concealing something, what are they concealing?
12 I think you got the idea pretty clearly from
13 Alex Tixi that when it comes to murder, he's in way
14 over his head. And he wanted nothing to do with this.
15 Did he want to protect himself, put some distance?
16 Yes, he did. He told you that. He wanted to get as
17 far away from this as he could, to the point where he
18 would not even ride home with Fernando, as he called
19 him. Wouldn't even get into the car with him, even
20 though he was offered a ride.
21 He could appreciate, even such as he is, and
22 you may have to pass some judgment on him, the horror
23 of what had been done, the enormity of the taking of a
24 human life, that's not what he was about. He is what
25 he is, and you will decide what that is. But he's not

1 a person who would take a life and everything you saw
2 about him portrays that, communicates it.
3 Carlos Marquez. Carlos is important
4 because he gives us a number of very important details.
5 Remember, things are going on simultaneously. This is
6 not a one-track tape. There are multiple tracks going
7 on here. We're in late November now, the investigation
8 has relatively cleared up. We know that Investigator
9 Berrian and Detective Vitiello are doing the best they
10 can from Millennium Cab. They are trying to get
11 records from the telephone company to assist them in
12 the investigation. Their ruling people out also
13 because, remember, Gloria Nieves told you about a call
14 she got. Before Investigator Berrian can get more
15 details of that, she pursued another lead because she
16 had received information regarding a crime involving a
17 cab driver that led her to look with other officials at
18 two people.
19 Miguel Ortiz and Mr. Torres. People weren't
20 concocting things against Mr. DaSilva. They weren't
21 setting him up. The police were doing what we hope the
22 police should do, looking at all the evidence, sifting
23 to see where the investigation should proceed. Nothing
24 was cast in stone at this point.
25 And I think it is important for your

1 understanding to understand that there was a full and
2 complete investigation here, and Mr. DaSilva was not
3 focused on his convenient statement and all the
4 evidence belies that.
5 We come to Carlos Marquez. Mr. Marquez
6 gives us a wealth of important details. He's got
7 charges pending. There are no deals for him. He gave
8 a statement. He testified before the grand jury, as
9 did Alex Tixi. No deals. He was brought in before
10 those grand jurors and he was asked to testify and did
11 so.
12 And Mr. Sampson made reference to that both
13 during this examination of Mr. Marquez and during his
14 cross examination of him. Mr. Marquez, of the two
15 men, was the closer to Fernando. He had known him a
16 little bit longer, socialized with him; in fact, he
17 employed him. He employed him to drive his car around.
18 He tells us that he would sometimes engage in drug
19 activity, and he's charged with that, though he further
20 indicates that Mr. DaSilva was not part of that
21 operation. He hired him as a driver to get him back
22 and forth to where he had to go to do his business.
23 And Mr. Sampson has told you Omar Edmonds
24 ominously that he had a gun, but he still, as did Mr.
25 DaSilva, enjoys the presumption of innocence, as does

1 all people charged with crimes. But not this gun. We
2 know that. And what does Mr. Marquez do? Now,
3 remember, he's had the opportunity, I believe it came
4 out during testimony, there may have been some
5 discussion between Alex Tixi and Mr. Marquez before
6 he gave his statement. Well, he did, I submit to you
7 what Mr. Tixi did, he tried to distance himself in some
8 way. Again, you had the chance to see him, to observe
9 him. This is something he wants no part of. He is
10 what he is, but he's not a killer. He likewise wants
11 no part. Luis DaSilva is something they want to push
12 as far away from as they can. Perhaps for selfish
13 reasons, they don't need the police examining their
14 activities. But they don't want to be part of the
15 bloody crime that Luis DaSilva or Fernando, as they
16 called him, is guilty of.

17 They tell basically of Fernando coming,
18 having a computer, both indicate the gun. Alex Tixi
19 indicated, but not too clear, but he told you he had
20 seen a gun like this before. Like this before. But
21 Carlos Marquez gives you more information about the
22 gun and about another fact that explains a number of
23 things in this case.

24 He told you where the gun came from, right
25 down to the location in the closet. Up until this

1 point, ladies and gentlemen, remember the ballistics
2 had been examined, they looked at a fragment taken
3 during the autopsy, they were able to determine the
4 type of shell casing it was, but they had nothing to
5 compare it against. Ballistics testing had the gun
6 that early.

7 But in that chain, Carlos Marquez provided
8 a link, and that link was to Officer Paz. He indicated
9 it had NPD on it. He told you he never really trusted
10 Mr. DaSilva after that. Why? Given his activities, I
11 think you know why. He wasn't quite sure about him.

12 He told you that Mr. DaSilva had showed him
13 this gun, had a chance to look at it. Also told you
14 about the car that he drove in. He told you that it
15 had gloves in it. Had gloves in it. But we know from
16 another source; namely, Mr. DaSilva, himself, that he
17 did have gloves, not just work gloves, not just work
18 gloves, but latex gloves he supposedly used for tile
19 setting.

20 It pieces together, ladies and gentlemen. He
21 told you about a hole. You will have a picture of the
22 interior of the car. He told you about a hole. When
23 you look at a person's testimony, you have to evaluate
24 it, and you have to match verbal testimony against
25 verbal testimony. Look to physical evidence which

1 relates it, interlocks it. Those aren't coincidences,
2 they are called evidence.

3 Yet, still no gun was found. But we do at
4 this point have two people, friends, casual
5 acquaintances, employees of the witnesses, indicating
6 they saw the proceeds taken from the body of Felix
7 Chininin. They saw the gun and they wanted no part.
8 No part. But gives the police vital information
9 because, again, many tracks at this point, ladies and
10 gentlemen, we are able to identify the gun. And you
11 heard from Lieutenant Russamanno about how that
12 happened. He told you that firearms are issued to the
13 Newark police officers directly from the department.
14 And before that gun is issued, in order to assure
15 responsibility on the part of the police officers to
16 determine when their guns are fired or not fired, they
17 undertake a procedure. They fire test rounds, two test
18 rounds to preserve the casing and the shell. In this
19 case the bullet that passed through the head of Felix
20 Chininin and the casing which was found by those
21 detectives that were maligned or called into question
22 by counsel, their efforts paid off. Because now we
23 know what weapon was used to kill Felix Chininin. We
24 still didn't have it though.

25 The chain continues to Josephina Garcia.

1 Mentioned almost as an after thought in counsel's
2 summation, she's very important, ladies and gentlemen,
3 because she comes to you really without any baggage.

4 Yeah, they didn't want you to know perhaps
5 the lady with children, and maybe there was some weed
6 in her house, something she doesn't need. But what
7 motive did she have to lie? Remember in Mr. DaSilva's
8 own testimony, this is a lady he met through Carlos,
9 and she was pretty candid about that she was having a
10 fling with him. She was pretty candid about who was
11 running it, the relationship too. She had been to his
12 house at a birthday party. No reason to lie. No
13 reason to just go along with this.

14 Carlos Marquez. Her attitude toward him
15 was clear. She was having a thing with a man somewhat
16 younger than her. She saw him when she wanted to see
17 him. She knew he had a wife. She knew it was nothing
18 serious there, and she's not going to judge that.
19 That's just the way it is. But she tells you that
20 Carlos Marquez isn't a focal point in her life. It
21 was just something she was doing, and she has no motive
22 whatsoever. She's not under criminal charges. No
23 deals with the State. No reason to tell anything but
24 what she knew.

25 And in her testimony, it is limited in

1 certain areas as to her observations. But she did
2 corroborate or backup a good deal of what was told to
3 the police by Alex and Carlos. They being Alex,
4 Fernando and Carlos, all wound up at her house. She
5 heard a knock on the door. Whether she answered it, or
6 her child answered it, half awake, if you know who is
7 coming to the door simultaneously that, ladies and
8 gentlemen, I leave to you. But she, with no motive to
9 lie, nothing over her head, corroborated perhaps the
10 most significant portion of their story. Why lie?
11 Taken together as a whole, I submit to you their
12 testimony is powerful, convincing. It is mutually and
13 externally corroborated.

14 Chain two. And again I won't regurgitate too
15 much of the testimony, but there are things I want to
16 point out to you. Chain two starts with Carlos
17 Marquinez, which leads to Officer Paz. One thing, when
18 you start to determine who or what to give credibility
19 to, be consistent, ladies and gentlemen. Apply the
20 test to both sides. Mr. Sampson asked you what sense
21 does it make for someone to break in when they know who
22 the police are. And why break into Officer Paz's house
23 who you know? Well, why break into a house where your
24 friend lives and bring trouble on him? Do you go over
25 your Buddy's house and cause trouble?

1 Remember, Officer Paz was '95 percent sure, I
2 believe was his phrase, that the gun was in the closet.
3 He went nuts trying to search for it, probably in a
4 panic when he came back from vacation. But who was in
5 a position to know the details of the moves of Officer
6 Paz? A person who was over there once or twice, such
7 as Mr. Marquinez? Or a person who was there a good bit
8 of time, in a position to know the movements of the
9 officer? In a position to know the layout of the
10 apartment? That's if Carlos Marquinez even knew that
11 Officer Paz was a police officer living there. We only
12 have Luis DaSilva's word for that. We only have his
13 word for that, as he shoves things over in Mr.
14 Marquinez's direction. Be consistent in the way you
15 apply the test to the evidence.

16 Officer Paz took the bullets to Nicholas
17 Castro Garcia by accident. By accident. You saw
18 Nicholas Castro Garcia, slight young Mexican man, got
19 himself arrested for waving around a gun, which was
20 loaded. Somebody hit him, took the gun away from him,
21 and called the cops. A real threat to the public
22 safety. Shouldn't have had the gun. We know that, he
23 knows that. He pled guilty to that. These are not
24 aggravated circumstances when you are five foot
25 something, as he is, and somebody is able to take a gun

1 away from you in front of your friends. It's a little
2 embarrassing. He tried to get the gun back. I think
3 it shows you what he is. Can I have my gun back?
4 He tell us he knows Fernando. He knows
5 Fernando. Knew him from when they lived up in the
6 Scotland Road area. Mr. DaSilva tells you he lived up
7 there. He fenced around a little bit as to whether it
8 was around the corner or a block or two away, whether
9 it was on Jefferson or Scotland. But Mr. DaSilva
10 corroborated Mr. Garcia.

11 Now, again, this is by Luis DaSilva's
12 testimony, not a person who is a close friend. This is
13 not somebody who came immediately to the mind of Mr.
14 Castro Garcia. A casual contact. They lived near each
15 other. Both Spanish-speaking, both
16 Portuguese-speaking. In the case of Mr. DaSilva, had
17 some mutual friends, hung out casually. Hadn't seen
18 him in a while. Hadn't seen him in a while.

19 Where is the animus? Why punch Mr. DaSilva
20 in the back? Because the police asked him where he got
21 the gun, and he told them. He got the gun from his
22 friend Fernando. That was discovered, not through the
23 hard work and diligence of Investigator Berrian, it
24 wasn't discovered through the hard work and endless
25 hours of Detective Vitiello or other members of the

1 Prosecutor's Office. It was found by the West Orange
2 Police Department investigating a ruckus in a
3 restaurant where a guy had his gun taken away from him.

4 But the link in that chain was back to Mr.
5 DaSilva, separated in time. Also makes sense, as far
6 as what's going on with the evidence here.

7 Mr. Sampson has told you quite so that they
8 did DNA, they did fingerprints. We weren't able to get
9 the car right away. They didn't get the gun right
10 away. There was time. There was time. Time for a
11 clever fellow to get rid of the evidence, to dispose of
12 the evidence, to dispose of latex gloves or other
13 gloves that may have been used, time before telling
14 your wife to pack for Brazil and simply discard the
15 clothing, time to report your car stolen and give the
16 police an address in Maryland that was fictitious. A
17 lot of time while you're on the run. Time to dispose
18 of the murder weapon. Let's find somebody to give that
19 gun to.

20 This speaks of a level of planning, ladies
21 and gentlemen. This speaks of a level of planning. A
22 lot of planning going on here. Never confuse formal
23 education with shrewdness or somebody who thinks they
24 are clever. They are not the same. There was plenty
25 of time and opportunity for the evidence to be disposed

1 of. We know why there are no fingerprints. Gloves.
2 The person who thinks they are clever, to put his
3 vehicle in a certain area after, and dropping somebody
4 off after a robbery, clever enough to try to indicate
5 other people. Clever enough to threaten witnesses.
6 And with those things, sometimes are you not entirely
7 clever, details catch up with you, small details you
8 don't expect. One of those surfaced during the search
9 of the Mitsubishi. The police did their best to
10 fulfill their oath to search and protect. They took
11 that car apart to look for everything they could. And
12 they found something. They found something that didn't
13 make any bit of difference, really. Wasn't important
14 at the time. But you will have it in evidence. They
15 found a key to a motel, the Belleville Motor Lodge. In
16 the Mitsubishi owned by Tattiana Barbosa, and used by
17 Luis DaSilva.

18 We know from Mr. DaSilva's testimony, weeks,
19 probably months prior to this, that he had a baby. His
20 pregnant wife made him resort to the Belleville Motor
21 Lodge, or would that be Mr. DaSilva some place he was
22 familiar with, some place he would go. It's just an
23 interesting item but, again, look at the evidence.
24 There is an independent weaving here. Not
25 coincidences, not accidents, not acts of God.

1 Evidence.
2 On the threats, sometimes you get too clever.
3 You threatened a person as they come close to you in
4 this very courthouse where justice is to be meted out,
5 and you are smart so you speak in Spanish and
6 Portuguese. But what you don't count on is that
7 there's a Spanish-speaking police officer there to hear
8 what you say, to hear the tone, and to realize this guy
9 is threatening a witness in my custody. Mr. DaSilva
10 does a good job of controlling what he can, ladies and
11 gentlemen, and it came out during his testimony. There
12 are things that he slips up on, things that he can't
13 control.

14 And among them was Officer Billy Garcia, who
15 told you there was profanity. There he was a sworn
16 officer assigned to transport him, took it as a threat.
17 It was just: How dare you file false accusations
18 against me? In rough street language. You saw the
19 mind of Luis DaSilva with those threats. The thing
20 they call perhaps a projection. He should have left
21 the country. He should have left the country, as he
22 intended to. And, again, still clever, still pushing.
23 Still pushing. Trying to make sure that he cast
24 something broad.

25 Well, there's no proof, as Mr. Sampson says,

1 other than Alex Tixi's word that he was threatened.
2 Well, there's proof that Carlos Marquinez was
3 threatened. Does a leopard change its spots, or do you
4 try to intimidate and intimidate and control?
5 Finally, to the last chain. And that chain
6 deals with Mr. DaSilva's flight after he left, after
7 the murder of Felix Chininin. We have it from Michel
8 Pereira, Thiago Barbosa Rodriguez, Geracione Andrde,
9 Police Officer Oliveira, Detective Kelly of the
10 Belleville Police Department. Again, one of those
11 lucky happenstances that lead right back to Mr.
12 DaSilva.

13 He was on the run had his wife packing for
14 Brazil. He had no intention of turning himself in. He
15 was going to get out of the country. He had false
16 identification, license, social security card, credit
17 cards. You will have them. He had Thiago Barbosa's
18 passport, a young man of similar age. Who if you
19 change your appearance often as Mr. DaSilva has told
20 you he did, you might just get by. And he told you, he
21 intended to use this to get out of the country.

22 You can consider that, ladies and gentlemen,
23 as to consciousness of guilt. Here the man had a wife,
24 a young baby, sending them to Brazil. His father lived
25 in the area, his mother lived in the area, he had

1 brothers in the area. He had steady employment in the
2 area, and he had another brother in Delaware. His
3 entire -- this was not a person cast adrift. A
4 friendless immigrant in a foreign and strange land. He
5 has been here since he was a kid. His family is here.
6 His support network is here.

7 You can consider all that when you consider
8 whether his explanations as to why he fled hold any
9 water. Consider his testimony, ladies and gentlemen,
10 because you know what, the defendant has no burden in
11 the case. Has no burden. But once a defendant chooses
12 to take the stand and testifies, those same tests of
13 credibility that the Judge told you about, that Mr.
14 Sampson asked you to apply to the State's witnesses,
15 apply to Mr. DaSilva.

16 Look at his demeanor. He has no burden of
17 proof, but does he persuade you? Did his testimony
18 persuade you that four friends of his lied to implicate
19 him? Did he persuade you as to why he fled? He fled
20 because he doesn't want to get caught, not because of
21 his fears about the American justice system.

22 Were you persuaded by his demeanor and the
23 answers he gave to questions? This is a central event
24 in his life. Stop and think of the implication of what
25 he said to you. Again, we know this is not a young man

1 adrift. He didn't get off the boat on Ellis Island all
2 by himself with a suitcase. His family is here. He's
3 got people. He's got employers. He knew at least some
4 time prior to the police going to his house that he was
5 wanted for murder, or was at least, or very least the
6 subject of interest in a homicide investigation.

7 He got all of these people employing him. We
8 didn't hear any names. Didn't hear any solid
9 information about the guy who had the company car.
10 Didn't hear anything exact in Baltimore. As he gave
11 answers to the questions, were you satisfied with them?
12 Did it appear to be rehearsed? Did it appear that he
13 would go only so far, as he knew the State had
14 something in writing? And after that, he was free to
15 go where he went.

16 In fact, he turned the table on me once, you
17 will recall. It's your recollection. In response to a
18 question: You got that in writing? You got proof of
19 that? Can you pin me down on this? Or is it open
20 field, broke and running? Nothing that could be
21 traced. Nothing that even over night that could be
22 checked out was brought out. Yet, that which he was
23 caught red-handed with. Not any more. Was there any
24 explanation as to why his friends conspired against
25 him? What grievances these people bore against him, to

1 thrust on him the most serious charge we have in
2 American law? Were you satisfied? Were you persuaded?
3 Was his testimony such as to cause you to disregard
4 that other testimony? In any honest analysis, his
5 testimony was limited, unaccepted and uncorroborated.

6 When the New York City Police Department
7 found him by accident, ladies and gentlemen, when they
8 executed a warrant for somebody they wanted in New
9 York, they got a murderer. Just not the one they were
10 looking for. But even in that conduct, leading up to
11 that, certainly goes to flight, ladies and gentlemen,
12 consciousness of guilt. Guilty men flee. Guilty men
13 flee.

14 But, again, it shows the manipulative nature
15 of Mr. DaSilva, and casts out any credibility he has.
16 Michel Periera told you he wanted him out of his
17 mother's house because he had seen something on
18 television, something in the newspapers.

19 We know from Investigator Berrian they
20 bombarded the airways and the media in an effort to
21 locate Luis DaSilva, who at various times is known as
22 Fernando, Michael Santiago, Michael Santiago Figueroa,
23 Marcello, Robert Nunez. We are looking for that
24 person. He didn't see anything for the months he was
25 hanging out on the run, so he could figure out what was

1 going on. Never saw any of that. You believe that?
2 What's the first thing you do if you're a criminal and
3 you think something might be in the papers? You look
4 at the papers, you watch television, check the news
5 stories. Is that an odd proposition that he wanted to
6 know what was going on so he could figure it out?

7 And he took vantage of the trust of Michel
8 Pereira's mother Delzuita. And Mr. Pereira said he
9 thought his mother was right upstairs. So they throw
10 him out with the help of a friend, Geracione Andrade.
11 Geracione Andrade took him. Get him out of my house.
12 That was only after they put him out once, and he came
13 back in.

14 It's tough to hide when the heat is on. He
15 finally he came back. They finally got Mr. Andrade to
16 get him out. Mr. Andrade took him to the Belleville
17 Motor Lodge. The key. There are no coincidences.
18 There's evidence. And then Mr. Andrade didn't think he
19 was manipulated, and he was. He was. He was. Because
20 Marcello, as he was then known, had to make some sort
21 of a phone call, handed him a hundred dollar bill and
22 said: Go pay. Go sign in under your name. That was
23 the effect of it. There was no discussion of that, but
24 that's what happened. That's what Marcello then
25 thought was going to happen. You sign up as Marcello,

1 and then so when the police come looking for you, you
2 are now counting on them picking up Mr. Geracione. You
3 can't count on that, that the police officer would
4 actually get the person who transported you and be able
5 to pick out the name and the business records of
6 Belleville Hotel. These aren't coincidences, ladies
7 and gentlemen. You are dealing with a manipulative,
8 clever man who is trying to get away with murder. He's
9 been implicated by his friends. He's been implicated
10 by the physical evidence. And the lack of certain
11 physical evidence he has provided explanations as to
12 its lack.

13 I respectfully submit to you as you sift
14 through the evidence, look for those linkages. You
15 will find those are no coincidences. There's proof
16 beyond a reasonable doubt that Mr. DaSilva is guilty as
17 charged.

18 Judge Vazquez is going to charge you on the
19 law. You will be charged on different offenses. You
20 are going to be charged on murder, it's the knowing and
21 purposeful killing of one human being by another. I
22 submit there's more than adequate proof as provided to
23 you by Dr. Shaikh, and provided to you by the pictures
24 you have, that that gun was placed there, and the
25 trigger pulled, and Felix Chinin's, who life was

1 taken by Luis DaSilva, or Marcello, or Fernando, or
2 whatever name you choose, this man.

3 There was also a robbery, ladies and
4 gentlemen. The proofs show that. No cash receipts,
5 wallet, I.D. were taken. As Carlos Marquinez says, he
6 went through his pockets. Look at the scene photos on
7 Thomas Street. There's a pen and change. That's what
8 would fall out of a person's pockets if they had been
9 gone through.

10 There was a robbery, ladies and gentlemen, a
11 robbery of a live person. I told you witnesses weren't
12 called just to call witnesses. Under our law you have
13 to be alive to be robbed. You are not a person unless
14 you are alive. Anthony Narcisco and Officer Greimel
15 told you the person they saw, Felix Chininin, on the
16 early morning hours he was alive. He was dying. He
17 had but minutes to live. But his life force was still
18 in his body. His young, strong body confounded what
19 Dr. Shaikh thought would be the case. He was able to
20 stagger around. Dr. Shaikh mentioned some jerky-type
21 movement. Mr. Narcisco described drunken type
22 movements. Officer Freimel noted that he was gurgling.
23 And you will have the hospital records too, ladies and
24 gentlemen. As you go to the inventory, which is items
25 not found, but you notice the pulse of 100 was also

1 noted in that record by people attending Felix Chininin
2 in his dying moments. At least to a charge of felony
3 murder, the Judge will instruct you in detail on felony
4 murder. Felony murder is basically the killing, the
5 taking of a human life during the course of the flight
6 from a robbery. The Judge will tell you it's not
7 necessary to find that there is an actual intent to
8 kill or cause serious bodily injury resulting in death
9 to find a person guilty of felony murder. Only the
10 death need be proved, and the identity of the person
11 who did the killing. I suggest to you, you have an
12 abundance.

13 The two charges are not mutually exclusive.
14 You can find both. You can find, and I submit the
15 evidence justifies, a verdict of guilty of willful and
16 purposeful murder, and that that murder was committed
17 during the course of a robbery of Felix Chininin.

18 You will have tampering with Alex Tixi and
19 terroristic threats made to him. And I won't belabor
20 the facts on that. You will have charges of possession
21 of a weapon for an unlawful purpose, that being a
22 robbery and murder of Felix Chininin. And you will
23 certainly have a document that shows that Mr. DaSilva
24 had no right to possess a gun on the night in question.

25 There are more facts that I wish I could

1 discuss with you, but I have burdened your time
2 significantly. But consider all the evidence, even the
3 small pieces, ladies and gentlemen, the little pieces
4 like Nicholas Castro Garcia telling you that Fernando,
5 as he knew him, who worked down at the beach down at
6 the shore. Consider the fact of the license, you will
7 have it, the picture of Felix Chininin was mailed back
8 from the man from Philadelphia in the summer months.
9 Bits and pieces. Are you satisfied with Luis DaSilva's
10 story? I submit to you it doesn't hold water. It
11 raises more questions than it provides answers.

12 It's an attempt to muddy the waters, ladies
13 and gentlemen. But the truth will shine through. All
14 you need to do is consider the evidence as I have
15 outlined it to you and your job will not be easy, but
16 will be a job you can do without doing violence to any
17 of your beliefs and conscious. You will be able to
18 fulfill your oath.

19 Consider the evidence. I ask you to return a
20 verdict of guilty on all counts. Thank you, ladies and
21 gentlemen.

22 THE COURT: All right, ladies and gentlemen.
23 I'm about to read you a charge on the law. We'll take
24 a five-minute break. We will take a five-minute break
25 first, and I will bring you out to give you a charge.

Court's Charge

1 (Recess)

2 THE COURT: Bring them out.

3 (Jury brought out)

4 THE COURT: All right, ladies and gentlemen,
5 of the jury. The evidence in this case has been
6 presented and the attorneys have completed their
7 summations. We now arrived at the time when you as
8 jurors are to perform your final function in this case.
9 And at the outset I want to thank you all for being
10 here, for your patience, and for your paying attention
11 to the testimony and the evidence as it is has been
12 presented.

13 Now, before you retire to deliberate and
14 reach your verdict, it is my obligation to instruct you
15 as to the principles of law applicable to this case,
16 and you shall consider my instructions in their
17 entirety and not pick out any particular portion and
18 place undue emphasis on it. You must accept the law
19 and apply the law to this case as I give it to you in
20 this charge. And any ideas of what you have about what
21 the law is or should be, or anything the lawyers
22 mention about the law, if it differs from what I tell
23 you, you have to follow what I tell you.

24 During the course of trial, I was required to
25 make certain rulings on the admissibility of evidence,

1 either in your presence or outside of your presence.
2 These rulings involve questions of law and the comments
3 the attorneys may have made at the time is not
4 evidence. And in ruling, I have decided questions of
5 law. And whatever the ruling may have been in a
6 particular case, you should understand that was not an
7 expression of mine, or an opinion of mine on the merits
8 of the case. Neither should any of my rulings in any
9 aspect of the trial be taken as favoring one side or
10 the other. I just call them as I see them. Each
11 matter is decided on its own merits.

12 When I use the term "evidence," I mean the
13 testimony you have heard from the various witnesses, as
14 well as the physical evidence that has been admitted
15 into evidence and marked into evidence, and that will
16 go with you into the juryroom.

17 There is also a stipulation. A stipulated
18 fact is one that all parties have stated they agree
19 upon as being true. You must regard such stipulation
20 as proper evidence, and you may accept the facts
21 therein as having been proven. But remember, however,
22 that you are the sole judges of the facts. And even
23 though there is no dispute over the stipulated facts,
24 you must still determine how much weight if any to give
25 to them in your deliberations.

1 In this case, the parties have entered into a
2 stipulation that in a joint interview by the attorneys
3 with Carlos Marquez prior to his testimony, he stated
4 that the defendant Luis DaSilva was paid to drive
5 Marquez in the defendant's car to his drug activity,
6 but the defendant was not involved in the drug
7 activity.

8 Any testimony that I have had occasion to
9 strike is not evidence and shall not enter into your
10 final deliberations. It must be disregarded by you.
11 That means even though you may remember it, you must
12 also remember not to consider it.

13 Further, if I give a limiting instruction as
14 to how you to use certain evidence, that evidence must
15 be considered by you for that purposes only, and not
16 for any other purpose. As jurors, it is your duty to
17 weigh the evidence calmly, without any bias, passion,
18 prejudice or sympathy, because any influence caused by
19 these emotions has the potential to deprive both you,
20 the State, and the defendant as to what was promised,
21 that is a fair and impartial trial, by a fair and
22 impartial jury. Also, speculation and conjecture, or
23 any form of guessing play no part in your job as
24 jurors.

25 Now, the defendant stands before you on an

1 indictment returned by the grand jury charging him in
2 eight counts with felony murder, murder, robbery,
3 unlawful possession of a weapon, possession of a weapon
4 for an unlawful purpose, tampering with a witness,
5 terroristic threats, and receiving stolen property.

6 That indictment is not evidence of the
7 defendant's guilt on the charges. An indictment is
8 simply a step in the procedure to bring the case here
9 to you, the jury, to determine as to whether or not the
10 defendant is guilty or not guilty on the charges stated
11 in the indictment.

12 Of course, the defendant has pled not guilty
13 to the charges. And the defendant on trial is presumed
14 to be innocent. And unless each and every essential
15 element of an offense charged is proved beyond a
16 reasonable doubt, the defendant must be found not
17 guilty of that charge.

18 The State has the burden of proving the
19 defendant guilty beyond a reasonable doubt, and that's
20 a different standard than in civil cases. Some of you
21 may have served in civil case before where you were
22 told that it was only necessary that a fact be proven
23 more likely true than not true. In criminal cases the
24 State's burden is more powerful than that, it's beyond
25 a reasonable doubt.

1 Now, the prosecution must prove its case by
2 more than a mere preponderance of the evidence, yet not
3 necessarily to an absolute certainty. A reasonable
4 doubt is an honest and reasonable uncertainty in your
5 mind about the guilt of the defendant after you have
6 given full and impartial consideration to all of
7 evidence. And a reasonable doubt may arise from the
8 evidence, itself, or it may arise from a lack of
9 evidence. It's a doubt that a reasonable person,
10 hearing the same evidence, would have. Proof of a
11 defendant's guilt is proof, for example, that leaves
12 you firmly convinced of the defendant's guilt.

13 In this world we know very few things with
14 absolute certainty. And in criminal case the law does
15 not require proof that overcomes every doubt. If based
16 on your consideration of the evidence, you are firmly
17 convinced that the defendant is guilty of the crime
18 charged, then you must find him guilty. On the other
19 hand, if you are not firmly convinced, then you have to
20 give him the benefit of the doubt and find him not
21 guilty.

22 In my preliminary charge when I started the
23 case, I explained to you that you were also judges, you
24 are judges of the facts in the case. And as judges of
25 facts, you are to determine the credibility of the

1 various witnesses that testified, as well as what
2 weight to give to their testimony. You and you alone
3 are the sole and exclusive judges of the evidence, of
4 the credibility of the witnesses, and the weight to be
5 attached to the testimony of each witness. Regardless
6 of what counsel said, or even if I say anything
7 regarding the evidence in the case, it is your
8 recollection of the evidence that should guide you as
9 the judges of the facts. Arguments, statements,
10 remarks, openings and summations that we just had of
11 counsel are not evidence and must not be considered as
12 evidence.

13 Although the attorneys may point out to you
14 what they think is important in the case, you must rely
15 solely on your understanding and recollection of the
16 evidence that was admitted during the course the trial.

17 Whether or not the defendant has been proven
18 guilty beyond a reasonable doubt is for you to
19 determine, based on all the evidence produced during
20 the trial. Comments of counsel are not controlling.

21 It is your sworn and affirmed duty to arrive
22 at a just conclusion after considering all the evidence
23 that was presented during the course of the trial.

24 You know, the function of Court is different.
25 I preside over the trial and keep things going in an

1 orderly manner. It's my responsibility to determine
2 any questions of law that arise during the course of
3 the case. And now my final job is to instruct you on
4 the law which applies to the case, and you must follow
5 that law and then apply it to the facts as you find the
6 facts to be.

7 Now, I have sustained objections to some
8 questions asked by counsel, which questions may
9 themselves have contained certain statements or fact.
10 The mere fact that an attorney asks a question and
11 inserts facts or comments or opinions in that question,
12 in no way proves the existence of those facts. You
13 will only consider such facts which in your judgment
14 have been proven by the testimony of witnesses or from
15 the exhibits admitted into evidence by the Court or the
16 stipulation.

17 Any remarks made by me to counsel or by
18 counsel to me, or between counsel, are not evidence,
19 and should not affect or play any role in your
20 deliberations.

21 As I said before, evidence may be either
22 direct or circumstantial. Direct evidence means
23 evidence that directly proves a fact, without any
24 inference, and which, in itself, if true, conclusively
25 establishes the that fact. On the other hand,

1 circumstantial evidence means evidence that proves a
2 fact from which an inference of the existence of
3 another fact may be drawn.

4 You will recall I gave you an example. If a
5 person testifies on the witness stand that they looked
6 out the window at night and saw snow falling, that's
7 direct evidence of the fact that snow was falling. On
8 the other hand, if they testified that they looked out
9 the window at night, they didn't see any snow, went to
10 bed, woke up the next morning at dawn and saw snow on
11 the ground, that's circumstantial evidence of the fact
12 that it snowed during the night.

13 An inference is a deduction of fact that may
14 logically and reasonably be drawn from another fact or
15 group of facts established by the evidence. And
16 whether or not inferences should be drawn is for you to
17 decide using your own common sense. Ask yourselves:
18 What is probable? What is logical? What is more
19 reasonable?

20 Now, it's not necessary that all the facts be
21 proven by direct evidence. They may be proven by
22 direct evidence, circumstantial evidence, or a
23 combination thereof. All are acceptable as means of
24 proof. And in many circumstances, circumstantial
25 evidence may be more certain and satisfying and

1 persuasive to you than even direct evidence is.

2 However, direct and circumstantial evidence
3 should be scrutinized and evaluated carefully, because
4 a verdict of guilty may be based on direct evidence
5 alone, circumstantial evidence alone, or a combination
6 thereof, so long as it convinces you of the defendant's
7 guilt beyond a reasonable doubt.

8 The reverse is also true. A defendant may be
9 found not guilty by direct evidence alone,
10 circumstantial evidence alone, or a combination
11 thereof, or a lack of evidence, so long as it raises in
12 your minds a reasonable doubt as to the defendant's
13 guilt.

14 Now, as the judges of fact, you are to
15 determine the credibility of the witnesses. And in
16 considering whether a witness is worthy of belief and
17 therefore credible, you may take into consideration the
18 following: The appearance and demeanor of the witness;
19 the manner in which the witness may have testified; the
20 witness's interest in the outcome of the trial, if any;
21 the witnesses means of obtaining knowledge of the
22 facts; the witness's power of discernment, meaning
23 their judgment, understanding; the witness's ability to
24 reason, observe, recollect and relate; the possible
25 bias, if any, in favor of the side for whom the witness

1 testified; the extent to which, if at all, each witness
2 is either corroborated, contradicted, supported or
3 discredited by other evidence; whether the witness
4 testified with an intent to deceive you; the
5 reasonableness or unreasonableness of the testimony the
6 witness has given; the presence of any inconsistencies
7 or contradictory statements; and any and all matters in
8 the evidence which serve to support or discredit that
9 particular testimony to you.

10 Through this analysis, as the judges of
11 facts, you weigh the testimony of each witness, and
12 then determine what weight to give to it. And through
13 that process, you may accept all of it, a portion of
14 it, or none of it.

15 If you believe that any witness or party
16 willfully or knowingly testified falsely to any
17 material facts in the case with an intent to deceive
18 you, you may give such weight to his or her testimony
19 as you may deem it is entitled. You may believe some
20 of it, or you may in your discretion disregard all of
21 it.

22 Now, inconsistencies or discrepancies in the
23 testimony of a witness, or between witnesses, may or
24 may not cause you to disregard that testimony. Two or
25 more persons witnessing an incident, or hearing

1 something, may see or hear it differently. An innocent
2 misrecollection, like a failure to recollect, is not an
3 uncommon experience. So in weighing the effect of a
4 discrepancy, consider, first, whether it pertains to a
5 matter of importance or an unimportant detail. And
6 next, whether the discrepancy results from an innocent
7 error or a willful falsehood.

8 Now, on the subject of credibility of the
9 witnesses, evidence has been introduced to show that
10 certain witnesses currently have pending charges, or
11 testified pursuant to a plea agreement, under which
12 they pled guilty to lesser charges, await specific
13 sentences and dismissal of certain other charges. In
14 criminal trials when a witness takes the stand to
15 testify, the fact that he or she has charges pending
16 against him or her is permitted to be placed before the
17 jury for your consideration, not for the general
18 credibility to be given to the testimony of that
19 witness, but only to evaluate whether or not the
20 witness has testified the way he did in hopes or
21 consideration of getting favorable treatment from the
22 State in connection with those pending charges.

23 Evidence, including a witness's statement or
24 prior testimony prior to trial, showing that at a prior
25 time a witness has said something which is inconsistent

1 with testimony at the trial, may be considered by you
2 for the purpose of judging the witness's credibility.
3 It may also be considered by you as substantive
4 evidence, that is proof of the truth of what is stated
5 in the prior contradictory statement.

6 Evidence has been presented showing that at a
7 prior time a witness has said something, or failed to
8 say something which is inconsistent with the witness's
9 testimony at trial. This evidence may be considered by
10 you as substantive evidence of the proof of the truth
11 of the prior contradictory statement, or omitted
12 statement. However, before deciding whether the
13 inconsistent or omitted statement reflects the truth,
14 in all fairness, you will want to consider all of the
15 circumstances under which the statement or failure to
16 disclose occurred.

17 You may consider the extent of the
18 inconsistencies or omission, and the importance or lack
19 of importance of the inconsistencies or omission on the
20 overall testimony of the witness as bearing on his or
21 her credibility.

22 You may consider such factors as where and
23 when the prior statement or omission occurred, and the
24 reasons, if any, therefor. The extent to which
25 inconsistencies or omissions reflect the truth is for

1 you to determine. Consider their materiality and
2 relationship to the entire testimony and all the
3 evidence in the case; when, where, and the
4 circumstances under which they were said or omitted,
5 and whether the reasons given to you appear to be to
6 you believable and logical. In short, consider
7 everything that I have already told you about prior
8 inconsistent statements or omissions.

9 You will, of course, consider other evidence
10 and inferences from other evidence, including
11 statements of other witnesses, or acts of witnesses and
12 others, disclosing other motives they may have had to
13 testify as they did; that is, reasons other than they
14 can give.

15 Now, a hypothetical example to help you under
16 what constitutes a prior contradictory statement, and
17 more importantly, how it may be used by you is as
18 follows. Assume a witness testified that the car was
19 blue. And then testimony is introduced, evidence is
20 introduced that at a prior time that witness said the
21 car was red. Well, you can use the fact that the
22 witness at a prior time said the car was red in judging
23 the credibility of that witness, whether he was
24 believable or not. But you can also use that
25 statement, the prior statement that the car was red as

1 evidence that the car was actually red instead of blue.
2 Now, there's also evidence that you have
3 heard that Alex Tixi has previously been convicted of a
4 crime. This testimony may be only used in determining
5 the credibility or believability of this witness's
6 testimony. The jury has a right to consider whether a
7 person who has previously failed to comply with
8 society's rules, as demonstrated through a criminal
9 conviction, would be more likely to ignore the oath
10 requiring truthfulness on the witness stand than a
11 law-abiding citizen.

12 You may consider in determining this issue
13 the nature and degree of the prior conviction and when
14 it occurred. You are not, however, obligated to change
15 your opinion as to the credibility of this witness
16 simply because of a prior conviction. It is evidence
17 you may consider, along with all the other factors we
18 previously discussed, in determining the credibility of
19 witnesses.

20 A certain rule of evidence is that witnesses
21 can testify only as to facts known by them. This rule
22 ordinarily does not permit a witness to express an
23 opinion. However, an exception to this rule exists in
24 the case of an expert witness who may give his opinion
25 as to any matter in which he is versed, which is

1 material in the case. In legal terminology, an expert
2 witness is a witness who has some special knowledge,
3 skill, expertise or training that is not possessed by
4 the ordinarily juror, and who thus may be able to
5 provide assistance for the jury in its fact finding
6 duties.

7 In this case, the medical examiner, Dr.
8 Shaikh and Lieutenant Russamanno were called as
9 experts, and they testified regarding, in the case of
10 Dr. Shaikh, a cause and manner of death. And in the
11 case of Lieutenant Russamanno, on ballistics.

12 You are not bound by such experts' opinions,
13 but you should consider each opinion and give it the
14 weight to which you deem it is entitled, whether
15 that be great or slight, or you may reject it.

16 In examining each opinion, you may consider
17 the reason for giving it, if any, and you may also
18 consider the qualifications and credibility of the
19 expert. It is always within the special function of
20 the jury to decide whether the facts on which an answer
21 of an expert is based actually exist, and the value or
22 weight of the opinion of the expert is dependent upon
23 and no stronger than the facts on which it is
24 predicated.

25 Now, there are in evidence photographs that

1 were used to identify the defendant in this case. With
2 reference to the photographs submitted into evidence,
3 you will notice that many or all of the photographs
4 appear to have been taken by law enforcement agencies
5 or some other governmental entity. You are not to
6 consider the fact that the agency obtained the
7 photograph of the defendant as prejudicing him in any
8 way. The photographs are not evidence that the
9 defendant has ever been arrested or convicted of any
10 crime. Such photographs come into the hands of law
11 enforcement from a wide variety of sources, including
12 but not limited to driver's license applications,
13 passports, ABC identification cards, various forms of
14 government employment, private employment requiring
15 State registration, including but not limited to Casino
16 license application, security guard applications, et
17 cetera, or from a variety of other sources, totally
18 unconnected with criminal activity.

19 There is for your consideration in this case
20 an alleged oral statement made by the defendant. It is
21 your function to determine whether or not such
22 statement was actually made by the defendant, and if
23 made, whether such statement or any portion of it is
24 credible.

25 In considering whether or not the statement

1 is actually made by the defendant, and if made, whether
2 it is credible, you should receive, weigh and consider
3 such evidence with caution in viewing of
4 generally--recognized risk of misunderstanding, and
5 accuracy, and error in communication, and recollection
6 of the verbal communication by the hearer. The
7 specific words used and the ability to remember them
8 are important to the correct understanding of any
9 verbal communication because the presence or absence or
10 change of a single word may substantially alter the
11 true meaning of even the shortest sentence. You
12 should, therefore, receive, weigh and consider such
13 evidence with caution.

14 Now, with regard to the testimony that you
15 heard regarding the alleged threat made by defendant to
16 Carlos Marquinez on June 7th of this year, as well as
17 testimony regarding defendant's possession of a social
18 security card, credit cards and a driver's license in
19 names other than his own, as well as testimony
20 regarding a stolen passport, I charge you as follows.

21 Evidence of other crimes, wrongs or acts is
22 not admissible to prove the disposition of a person in
23 order to show that he acted in conformity therewith.
24 That evidence may be admitted for other purposes such
25 as to prove consciousness of guilt, when such a matter

1 is relevant to a matter, material matter in dispute.

2 In this case the evidence regarding the
3 alleged threats, social security card, credit cards and
4 driver's license in different names, and the theft of
5 the passport, if you believe it and if you find it
6 relevant, cannot be considered except as to the issue
7 of consciousness of guilt. You may not consider that
8 evidence as proof that the defendant had a tendency to
9 commit any of the crimes for which he has been indicted
10 or that he acted in conformity with that tendency.

11 Now, as I told you during the course of the
12 case, the defense is not arguing by the testimony you
13 have heard about the defendant leaving for Baltimore,
14 that the defendant is not responsible for the shooting
15 of Mr. Chininin because he could not have been
16 physically present at the time the crime was committed.

17 Now, there has been some testimony in the
18 case from which you may infer that the defendant fled
19 shortly after the alleged commission of the crime.
20 While the defendant admits he was on the "on the run"
21 from the authorities sometime after late November of
22 2002, he suggests that his actions in leaving shortly
23 after the shooting were for travel to work in
24 Baltimore.

25 If you find the defendant's explanation

1 credible, you should not draw any inference of the
2 defendant's consciousness of guilt from the defendant's
3 departure shortly after the shooting.

4 If, after a consideration of the all of the
5 evidence, you find that the defendant, fearing that an
6 accusation or arrest could be made against him on the
7 charges involved in the indictment, took refuge in
8 flight for the purposes of evading the accusation or
9 arrest, then you may consider such flight in connection
10 with all the other evidence in the case as an
11 indication or proof of a consciousness of guilt. It is
12 for you, as judges of the facts, to decide whether or
13 not evidence of flight shows a consciousness of guilt,
14 and the weight to be given to such evidence in light of
15 all the other evidence in the case.

16 Now, the defendant is charged in Count 1 with
17 felony murder. And the State contends that on November
18 4th, of 2002, while the defendant was engaged in the
19 commission of, or attempt to commit, or flight after
20 committing or attempting to commit the crime of
21 robbery, as charged in Count 3 of the indictment, that
22 he shot and killed Felix Chininin.

23 The section of the statute applicable to this
24 case reads in pertinent part as follows. Criminal
25 homicide constitutes murder when it is committed when

1 the actor is engaged in the commission of, or attempt
2 to commit, or flight after committing or attempting to
3 commit robbery, and in the course of such crime, or the
4 immediate flight therefrom, causes the death of a
5 person other than one of the participants. Generally
6 it does not matter that the act which caused death was
7 committed recklessly, or unintentionally, or
8 accidentally. The perpetrator is as guilty of felony
9 murder as it would be if he had purposely or knowingly
10 committed the act which caused death.

11 In order for you to find the defendant guilty
12 of felony murder, the State is required to prove beyond
13 a reasonable doubt from all of the evidence in the case
14 all of the essential elements of the crime charged.

15 Accordingly, you can find the defendant
16 guilty of felony murder before -- rather, in order to
17 find the defendant guilty of the felony murder, the
18 State must prove beyond a reasonable doubt: One, that
19 on or about November 4th of 2002, the defendant was
20 engaged in the commission of, or attempt to commit, or
21 flight after committing or attempting to commit the
22 crime of robbery, as charged in Count 3 of the
23 indictment. Two, that the death of Felix Chininin was
24 caused by the defendant. And three, that the death of
25 Felix Chininin was caused at some time within the

1 course of the commission of that crime, including its
2 aftermath of flight and concealment efforts.

3 The first element requires the State to prove
4 beyond a reasonable doubt that the defendant was
5 engaged in the commission of, or attempt to commit, or
6 flight after committing or attempting to commit the
7 crime of robbery. I will define the elements of
8 robbery which defendant is accused of having engaged in
9 when I do Count 3.

10 The second and third elements require the
11 State to establish that the victim's death was caused
12 by the defendant, and was caused during the commission
13 of or, attempt to commit, or flight after committing or
14 attempting to commit the robbery. In order to meet its
15 burden of proof as to the second and third elements,
16 the State must prove beyond a reasonable doubt the
17 following.

18 That but for defendant's conduct in the
19 commission of, or attempt to commit, or flight after
20 committing or attempting to commit robbery, the victim
21 would not have died. In other words, that the victim's
22 death would not have occurred without the commission of
23 the robbery. Two, that the victim's death was a
24 probable consequence of the commission, or attempt to
25 commit, or flight after committing or attempting to

1 commit robbery.

2 In order for the death to be a probable
3 consequence of the robbery, the death must not have
4 been too remote or too accidental in its occurrence or
5 too dependent on another's volitional acts to have a
6 just bearing on the defendant's liability or the
7 gravity of his offense.

8 In other words, you must decide if the State
9 has proven beyond a reasonable doubt, that under all
10 the circumstances, the death did not occur in such an
11 unexpected or unusual manner, that it would be unjust
12 to find the defendant responsible for the death.

13 In conclusion, if you find, after
14 consideration of all the evidence, that the State has
15 proved to your satisfaction beyond a reasonable doubt
16 each of the these elements as I have just explained
17 them: One, that the defendant was engaged in the
18 commission, or attempt to commit, or flight after
19 committing or attempting to commit the crime of robbery
20 as charged in Count 3 of the indictment; two, that the
21 defendant -- that the death, rather, of Felix Chinirin
22 was caused by defendant; three, that the death of that
23 person was caused at some time within the course of the
24 commission of that crime, including its aftermath of
25 flight and concealment efforts; then you must find the

1 defendant guilty.

2 On the other hand, if you find that the State
3 has failed to prove to your satisfaction beyond a
4 reasonable doubt any one or more of those elements,
5 then you must find the defendant not guilty of felony
6 murder.

7 If the State has failed to prove beyond a
8 reasonable doubt that the defendant caused the death of
9 the victim, then the defendant must be found not guilty
10 of all charges of homicide offenses.

11 In the second count the defendant is charged
12 with the murder of Felix Chinirin. A person is guilty
13 of murder if he: One, caused the Victim's death or
14 serious bodily injury that then resulted in the
15 victim's death; and two, that the defendant did so
16 purposely or knowingly.

17 By the way, when I read definitions, which I
18 do throughout the course of the case, for example,
19 during the course of this case purposely or knowingly,
20 remember the definitions because they come up more than
21 once. And I don't generally repeat them, the
22 definitions, each time.

23 In order for you the find the defendant
24 guilty of murder, the State is required to prove each
25 of the following elements beyond a reasonable doubt:

1 One, that the defendant caused Felix Chininin's death
2 or serious bodily injury that resulted in Felix
3 Chininin's death; and two, that the defendant did so
4 purposely or knowingly.

5 One element the State must prove beyond a
6 reasonable doubt is that the defendant acted purposely
7 or knowingly.

8 A person acts purposely when it is the
9 person's conscious object to cause death or serious
10 bodily injury resulting in death.

11 A person acts knowingly when the person is
12 aware that it is practically certain that his conduct
13 will cause death or serious bodily injury resulting in
14 death.

15 The nature of the purpose or knowledge with
16 which the defendant acted towards Felix Chininin is a
17 question of fact for you the jury to decide. Purpose
18 and knowledge are conditions of mind, which cannot be
19 seen, and can only be determined by inferences from
20 conduct, words or acts.

21 It is not necessary for the State to produce
22 a witness or witnesses who could testify that the
23 defendant stated, for example, that his purpose was to
24 cause death or serious bodily injury resulting in
25 death, or that he knew that his conduct would cause

1 death or serious bodily injury resulting in death. It
2 is within your power to find that proof of purpose or
3 knowledge has been furnished beyond a reasonable doubt
4 by inferences which may arise from the nature of the
5 acts and the surrounding circumstances. Such things as
6 the place where the acts occurred, the weapon used, the
7 location, number and nature of wounds inflicted, and
8 all that was done or said by the defendant proceeding,
9 connected with, and immediately succeeding the events
10 leading to the death of Felix Chininin are among the
11 circumstances to be considered.

12 The other element that the State must prove
13 beyond a reasonable doubt is that the defendant caused
14 Felix Chininin's death or serious bodily injury
15 resulting in death. As I previously advised you, in
16 order to convict the defendant of murder, the State
17 must prove beyond a reasonable doubt that the defendant
18 either purposely or knowingly caused the victim's death
19 or serious bodily injury resulting in death. In that
20 regard, serious bodily injury means bodily injury which
21 creates a substantial risk of death. A substantial
22 risk of death exists where it is highly probable that
23 the injury will result in death.

24 In order for you to find the defendant guilty
25 of purposeful serious bodily injury murder, the State

1 must prove beyond a reasonable doubt that it was the
2 defendant's conscious object to cause serious bodily
3 injury that then resulted in the victim's death; that
4 the defendant knew that the injury created a
5 substantial risk of death; and that it was highly
6 probable that death would result. In order for you to
7 find the defendant guilty of knowing serious bodily
8 injury murder, the State must prove beyond a reasonable
9 doubt that the defendant was aware that it was
10 practically certain that his conduct would cause
11 serious bodily injury that then resulted in the
12 victim's death; that the defendant knew that the injury
13 created a substantial risk of death; and that was
14 highly probable that death would result.

15 Whether the killing is committed purposely or
16 knowing, causing death or serious bodily injury
17 resulting in death must be within the design or
18 contemplation of the defendant.

19 In order for you to find the defendant guilty
20 of murder, the State must first establish beyond a
21 reasonable doubt that the defendant caused Felix
22 Chininin's death or serious bodily injury resulting in
23 death, either purposely or knowingly, as I have defined
24 those terms for you. The State, however, is not
25 required to prove a motive. If the state has proved

1 the essential elements of the offense beyond a
2 reasonable doubt, the defendant must be found guilty of
3 that offense, regardless of the defendant's motive or
4 lack of a motive. If the State, however, has proved
5 the motive, you may consider that insofar as it gives
6 meaning to other circumstances. On the other hand, you
7 may consider the absence of motive in weighing whether
8 or not the defendant is guilty of the crime charged.

9 A homicide or a killing with a deadly weapon,
10 such as a handgun, in itself would permit you to draw
11 an inference that the defendant's purpose was to take
12 life or cause serious bodily injury resulting in death.

13 A deadly weapon is any firearm or other
14 weapon, devise, instrument, material, or substance,
15 which in the manner it is used or is intended to be
16 used, is known to be capable of producing death or
17 serious bodily injury. In your deliberations you may
18 consider the weapon used and the manner and
19 circumstances of the killing. And if you are satisfied
20 beyond a reasonable doubt that the defendant shot and
21 killed Felix Chininin with a gun, you may draw an
22 inference from the weapon used that it is the gun, and
23 from the manner and circumstances of the killing as to
24 the defendant's purpose or knowledge.

25 All jurors do not have to agree unanimously

1 concerning which form of murder is present, so long as
2 all believe that it was one form of murder or the
3 other. However, for a defendant to be guilty of
4 murder, all jurors must agree that the defendant either
5 knowingly or purposely caused the death or serious
6 bodily injury resulting in the death of Felix Chininin.

7 If after a consideration of all the evidence
8 you are convinced beyond a reasonable doubt that the
9 defendant either purposely or knowingly caused Felix
10 Chininin's death, or serious bodily injury resulting in
11 death, then your verdict must be guilty.

12 If, however, after a consideration of all of
13 the evidence you find the State has failed to prove any
14 element of offense beyond a reasonable doubt, your
15 verdict must be not guilty.

16 In Count 3, the defendant is charged with the
17 crime of robbery. The pertinent part of the statute on
18 which this indictment is based reads as follows: A
19 person is guilty of robbery if in the course of
20 committing a theft he knowingly inflicts bodily injury
21 or uses force upon another.

22 In order for you to find the defendant guilty
23 of robbery, the State is required to prove each of the
24 following elements beyond a reasonable doubt. One,
25 that the defendant was in the course of committing a

1 theft; and two, that while in the course of committing
2 that theft, the defendant knowingly inflicted bodily
3 injury or used force upon another.

4 As I have said, the State must prove beyond a
5 reasonable doubt that the defendant was in the course
6 of committing a theft. In this connection, you are
7 advised that an act is considered to be in the course
8 of committing a theft if it occurs in an attempt to
9 commit the theft, during the commission of the theft,
10 itself, or in immediate flight after the attempt or
11 commission.

12 Theft is defined as the unlawful taking or
13 exercise of unlawful control over property of another
14 with the purpose to deprive him thereof.

15 I used the phrase "with purpose." You may
16 hear me say or use that phrase or "purposely" again. A
17 person acts purposely with respect to the nature of his
18 conduct or a result thereof if it is his conscious
19 object to engage in conduct of that nature or to cause
20 such a result. A person acts purposely with respect to
21 attendant circumstances if he is aware of the existence
22 of such circumstances, or he believes or hopes that
23 they exist.

24 With purpose, design, with design, or
25 equivalent terms have the same meaning. Purpose is a

1 state of mind that can not be seen, and can only be
2 determined by inferences from conduct, words or acts.
3 Therefore, it is not necessary that the State produce
4 witnesses to testify that a defendant said that he
5 purposely did something. His purpose may be gathered
6 from his acts and conduct, from all that he said and
7 did at the particular time and place, and from all the
8 surrounding circumstances reflected in the testimony.

9 In addition to proving beyond a reasonable
10 doubt that the defendant was in the course of
11 committing a theft, the State must also prove beyond a
12 reasonable doubt that while in the course of committing
13 the theft, the defendant knowingly inflicted bodily
14 injury or used force upon another.

15 A person acts knowingly with respect to the
16 nature of his conduct or the attendant circumstances,
17 if he is aware that his conduct is of that nature or
18 that such circumstances exist, or if he is aware of a
19 high probability of their existence.

20 A person acts knowingly with respect to the
21 result of his conduct if he is aware that it is
22 practically certain that his conduct will cause such a
23 result.

24 Knowledge is a condition of mind that can not
25 be seen and can be determined only by inferences from

1 conduct, words or acts.

2 A state of mind is rarely susceptible of
3 direct proof, but must ordinarily be inferred from the
4 facts. Therefore, it is not necessary for the State to
5 produce witnesses to testify that an accused said that
6 he had a certain state of mind when he engaged in a
7 particular act. It is within your power to find that
8 such proof has been finished beyond a reasonable doubt
9 by inferences which may arise from the nature of the
10 defendant's acts and conduct, from all that he said and
11 did at the particular time and place and from all
12 surrounding circumstances.

13 The phrase "bodily injury" means physical
14 pain, illness or any impairment of physical condition.
15 Force means an amount of physical power or strength
16 used against the victim, and not simply against the
17 victim's property.

18 The force need not entail pain or bodily
19 harm, and not leave any mark. Nevertheless, the force
20 must be greater than that necessary merely to snatch
21 the object from the victim's grasp, or the victim's
22 person, and the force must be directed against the
23 victim, not merely at the victim's property.

24 Now, a section of our statute provides that
25 robbery is a crime of second degree, except that it is

1 a crime of first degree if the robber is armed with or
2 uses or threatens the immediate use of a deadly weapon.

3 In this case, it is alleged that the
4 defendant was armed with a deadly weapon, used or
5 threatened the use of a deadly women weapon while in
6 the course of committing the robbery. In order for you
7 to determine the answer to this question, you must
8 understand the meaning of term deadly weapon. A
9 "deadly weapon" is any firearm or other weapon, devise,
10 instrument, material, or substance, which in the manner
11 it is used or intended to be used, is known to be
12 capable of producing death or serious bodily injury, or
13 which in the manner it is fashioned, would lead the
14 victim reasonably to believe it to be capable of
15 producing death or serious bodily injury.

16 In this case, the State alleges the defendant
17 was armed with a handgun. You must determine if this
18 object qualifies as a deadly weapon, and if the State
19 has proven beyond a reasonable doubt that the defendant
20 used it in the course of committing the robbery. I
21 have already defined serious bodily injury for you.

22 To summarize, if you find that the State has
23 not proven beyond a reasonable doubt any element of the
24 crime of robbery as I have defined that crime to you,
25 then you must find the defendant not guilty.

1 If you find that the State has proven beyond
2 a reasonable doubt that the defendant intended to
3 commit the crime of robbery, as I have defined that
4 crime to you, but if you find the State has not proven
5 beyond a reasonable doubt that the defendant was armed
6 with or used or threatened the immediate use of a
7 deadly weapon at the time of the commission of the
8 robbery, then you must find the defendant guilty of
9 robbery in the second degree.

10 If you find that the State has proven beyond
11 a reasonable doubt that the defendant committed the
12 crime of robbery and was armed with a deadly weapon, or
13 used or threatened the immediate use of a deadly weapon
14 at the time of the commission of the robbery, then you
15 must find him guilty of robbery in the first degree.

16 Actually, rather than using first or second
17 degree in my verdict sheet to you, I believe, and I
18 will check to make sure, I just said: Do you find
19 robbery? Guilty or not guilty. And then ask a
20 question: Was the defendant armed with, used or
21 threatened to use a deadly weapon? Yes or no.

22 In Count 4, the defendant is charged with
23 unlawful possession of a handgun. The statute upon
24 which this count is based reads as follows. Any person
25 who knowingly has in his possession any handgun without

1 first having obtained a permit to carry the same is
2 guilty of a crime.

3 In order to convict the defendant, the State
4 must prove each of the following elements beyond a
5 reasonable doubt. One, that S-64 in evidence is a
6 handgun; two, that the defendant knowingly possessed
7 the handgun; and three, that the defendant did not have
8 a permit to possess such a weapon.

9 The first element the State must prove beyond
10 a reasonable doubt is that S-64 was a handgun. Under
11 our law a handgun is any pistol, revolver, or other
12 firearm originally designed or manufactured to fire or
13 eject any solid projectile, ball, slug, pellet, missile
14 or bullet, or any gas, vapor or other noxious thing by
15 means of a cartridge or shell, or by action of an
16 explosive or the igniting of flammable or explosive
17 substance by the use of a single hand.

18 The second element the State must prove
19 beyond a reasonable doubt is that the defendant
20 knowingly possessed the handgun. I have already
21 defined knowingly for you and that is a condition of
22 mind.

23 The word "possess" as used in criminal
24 statutes signifies a knowing, intentional control of a
25 designated thing, accompanied by a knowledge of its

1 character. Thus, the defendant must know or be aware
2 that he possessed the handgun, and defendant must know
3 what it is that he possesses or controls is a handgun.
4 The possession cannot merely be a passing control, that
5 is fleeting or uncertain in its nature. In other
6 words, to "possess" within the meaning of law, the
7 defendant must knowingly procure or receive the handgun
8 possessed, or be aware of his control thereof for a
9 sufficient period much time to have been able to
10 relinquish control, if he chose to do so. A person may
11 possess a handgun, even though it was not physically on
12 his person at the time of the arrest, if the person had
13 in fact at some time prior to his arrest, had control
14 and dominion over it. When we speak of possession, we
15 mean a conscious, knowing possession.

16 The third element that the State must prove
17 beyond a reasonable doubt is that the defendant did not
18 have a permit to possess such a handgun. If you find
19 that the defendant knowingly possessed the handgun, and
20 that there is no evidence that the defendant had a
21 valid permit to carry such a handgun, then you may
22 infer, if you think it is appropriate to do so based
23 upon the facts presented, that the defendant had no
24 such permit. Note, however, that as with all other
25 elements, the State bears the burden of showing beyond

1 a reasonable doubt the lack of a valid permit and that
2 you may draw the inference only if you feel it is
3 appropriate to do so under all the circumstances and
4 facts.

5 If you find the State has failed to prove any
6 of the elements of the crime beyond a reasonable doubt,
7 your verdict must be not guilty. On the other hand, if
8 you are satisfied that the State has proven all of the
9 elements of the crime beyond a reasonable doubt, your
10 verdict must be guilty.

11 The fifth count of the indictment charged the
12 defendant with the crime of possession of a firearm
13 with a purpose to use it unlawfully against the person
14 or property of another. The statute on which this
15 count of the indictment is based reads in pertinent
16 part: Any person who has in his possession any firearm
17 with a purpose to use it unlawfully against the
18 personal or property of another is guilty of a crime.

19 In order for you to find the defendant guilty
20 of this charge, the State has the burden of proving
21 beyond a reasonable each of the following four elements
22 of the crime: One, that exhibit S-64 is a firearm.
23 Two, the defendant possessed the firearm. Three, the
24 defendant possessed the firearm with a purpose to use
25 it against the person or property of another. Four,

1 the defendant's purpose was to use the firearm
2 unlawfully.

3 The first element that the state must prove
4 beyond a reasonable doubt is that exhibit S-64 is a
5 firearm. And if you find that S-64 is a handgun or a
6 deadly weapon under the prior definitions, then it is
7 also a firearm.

8 The second element the State must prove
9 beyond a reasonable doubt is that the defendant
10 possessed the firearm, and I have already defined
11 possession for you.

12 The third element the State must prove beyond
13 a reasonable doubt is that the defendant's purpose in
14 possessing the firearm was to use it against the person
15 or property of another. I have already defined purpose
16 for you, and that is a condition of the mind. The
17 defendant's purpose or conscious objective to use the
18 firearm against another person or the property of
19 another may be found to exist at any time he is in a
20 possession of the object, and need not have been the
21 defendant's original intent in possessing the object.

22 The fourth element the State must prove
23 beyond a reasonable doubt is that the defendant had a
24 purpose to use the firearm in a manner that was
25 prohibited by law. Again, I have already defined

1 purpose for you. This elements requires that you find
2 that the State has proven beyond a reasonable doubt
3 that the defendant possessed a firearm with the
4 conscious objective, design, or specific intent to use
5 it against the person or property of another in an
6 unlawful manner as charged in the indictment, and not
7 for some other purpose.

8 In this case, the State charges or contends,
9 rather, that the defendant's unlawful purpose in
10 possessing the firearm was to shoot Felix Chininin
11 and/or to rob Felix Chininin.

12 You must not rely upon your own notions of
13 the unlawfulness of some other undescribed purposes of
14 the defendant; rather, you must consider whether the
15 State has proven the specific unlawful purpose charge.
16 The unlawful purposes alleged by the State may be
17 inferred from all that was said or done, and from all
18 of the surrounding circumstances of this case.

19 However, the State need not prove that the defendant
20 accomplished his unlawful purpose of using the firearm.

21 If you are satisfied beyond a reasonable
22 doubt that the State has proven each of the elements of
23 this offense as I have defined them, then you must find
24 the defendant guilty.

25 However, if you find that the State has

1 failed to prove beyond a reasonable doubt any of the
2 elements of this offense as I have defined them, then
3 you must find the defendant not guilty.

4 The indictment charges the defendant in Count
5 6 with tampering with a witness. The pertinent part of
6 the statute upon which this count is based reads as
7 follows. A person commits a an offense if, believing
8 that an official proceeding or investigation is pending
9 or about to be instituted, he knowingly attempts to
10 induce or otherwise cause a witness or informant to:
11 Withhold any testimony information, document or thing.
12 This offense involves knowing attempts to induce a
13 witness or informant to testify falsely or in other
14 ways to subvert the administration of justice.

15 Before the defendant can be found guilty of
16 violating this statute, the State must prove beyond a
17 reasonable doubt each and every one of the following
18 elements. One, that the defendant believed that an
19 official proceeding or investigation was pending or
20 about to be instituted. Two, that the defendant
21 knowingly attempted to induce or otherwise cause a
22 witness or informant to withhold any testimony,
23 information, document or thing.

24 The first element provides that the defendant
25 must have believed that an official proceeding or

1 investigation was pending or about to be instituted.
2 This requires that the defendant consider to be true
3 the fact that an official proceeding or investigation
4 was pending. In other words, that the defendant in his
5 mind believed that an official proceeding or
6 investigation was pending.

7 The State must prove that the defendant held
8 his belief but need not prove that a proceeding or
9 investigation was in fact pending or about to be
10 instituted. The statute focuses on what the defendant
11 believed, and not on what was necessarily true, and not
12 on external facts that may be irrelevant to the
13 defendant's aim to subvert the administration of
14 justice.

15 The first element also speaks of official
16 proceedings or investigations. The word
17 "investigation" is not strictly limited to police
18 investigation, but covers any kind of official
19 proceeding or investigation.

20 Official proceedings is define as a procedure
21 heard or which may be heard before any legislature,
22 judicial, administrative or other governmental agency
23 or official authorized to take evidence under oath,
24 Including any referee, hearing examiner, commissioner,
25 notary or other person taking testimony or deposition

1 in connection with any such proceeding.

2 The second element of the offense is that the
3 defendant knowingly attempted to induce or otherwise
4 cause a witness or informant to withhold any testimony,
5 information, document or thing. The second element
6 also requires an attempt. Thus the actor need not
7 actually induce a witness or informant to do anything.
8 The law provides that a person is guilty of an attempt
9 to commit a crime if the person does anything with the
10 purpose of causing result without further conduct on
11 his part.

12 In essence, the defendant's purpose must be
13 to influence the behavior of the witness or informant.
14 Having that purpose, the defendant must knowingly
15 engage in the attempt to induce or otherwise cause the
16 witness or informant to withhold any testimony,
17 information, document or thing.

18 The word "threat" includes both overt threats
19 and more subtle forms of intimidation.

20 I'm sorry, let me back up. The third element
21 requires the actor to employ force, deception or
22 threat. And the word "threat" includes both overt
23 threats and more subtle forms of intimidation; to
24 withhold any testimony, information, document or thing.

25 In conclusion, in order to sustain is

1 conviction, the State must prove beyond a reasonable
2 doubt each and every element of this offence. If the
3 State has failed to prove one or more of the elements
4 beyond a reasonable doubt, your verdict should be not
5 guilty. If, however, the State has proven each of
6 these elements beyond a reasonable doubt, your verdict
7 should be guilty.

8 The seventh count of indictment charges the
9 defendant with committing terroristic threats. The
10 pertinent part of our statute is as follows. A person
11 is guilty of a crime if he threatens to commit any
12 crime of violence with the purpose to terrorize another
13 or in reckless disregard of the risk of causing such
14 terror.

15 The prosecution must prove the following
16 elements beyond a reasonable doubt: That the threat to
17 commit a crime of violence was with a purpose to
18 terrorize another or in reckless disregard of the risk
19 of causing such terror. I have already defined
20 purposely for you.

21 The gist of the offense is that the words or
22 actions used by the defendant are of such a nature to
23 convey the menace or fear of a crime of violence to the
24 ordinary hearer or individual.

25 The crime of violence is that the words or

1 actions used by the defendant are of such a nature to
2 convey the menace or fear of a crime of violence to the
3 ordinary hearer. I read the sentence twice because I
4 printed it out twice by accident.

5 The crime of violence that is alleged by the
6 prosecution that the defendant threatened is the
7 following language alleged to have been said by the
8 defendant to Alix Tixi, that he was going to pay me a
9 visit before he went away.

10 It is not necessary that the victim was
11 terrorized. It is not a violation of this statute if
12 the threat expresses only a fleeting anger, or that the
13 threat was merely with the intent to alarm.

14 If the State has failed to prove beyond a
15 reasonable doubt any one of the elements that have been
16 described to you, you must find the defendant not
17 guilty. If the State has proven all the elements
18 beyond a reasonable doubt, then you must find the
19 defendant guilty.

20 Now, the subject of the charges in Counts 6
21 and 7 of the indictment are the alleged words of
22 defendant towards Alex Tixi on December 14th, of 2002,
23 and not the alleged words of defendant towards Carlos
24 Marquinez on June 7th, of 2004.

25 In Count 8 of the indictment, the defendant

1 is charged with the crime of receiving stolen property.
2 And this charge is based on a statute which reads in
3 pertinent part: A person is guilty of theft if he
4 knowingly receives movable property of another, knowing
5 it has been stolen, or believing that it has probably
6 been stolen.

7 Under this statute, the State must prove
8 three elements to establish that a defendant is guilty
9 of receiving stolen property. These elements are:
10 One, that the defendant received movable property of
11 another. Two, that the defendant acted knowingly when
12 he received the movable property of another. And
13 three, that the defendant either knew that the property
14 had been stolen or believed that it had been stolen at
15 the time he received the property.

16 The first element the State must prove beyond
17 a reasonable doubt is that the defendant received
18 movable property of another. The term "receive" means
19 to acquire possession, control, or title of the
20 property. The term "movable property" means property,
21 the location of which can be changed. The term
22 "property" means anything of value. Property of
23 another means property in which the defendant does not
24 have a lawful interest. The State need not, however,
25 prove the identity of the owner, the identity of

1 original thief, or the identity of the person from whom
2 the defendant received the property.

3 The second element the State must prove
4 beyond a reasonable doubt is that the defendant acted
5 knowingly when he received the movable property of
6 another. I have already defined knowingly.

7 The third element the State must prove beyond
8 a reasonable doubt is that the defendant either knew
9 that the property had been stolen, or believed that it
10 had probably been stolen at the time the defendant
11 received the property.

12 Stolen property means property that has been
13 the subject of an unlawful taking and unlawful taking
14 occurs when a person takes or exercises unlawful
15 control over the property of another with a purpose,
16 that is, the conscious object of depriving the other of
17 it permanently, or for extended a period as to
18 appreciate a substantial portion of its economic value.

19 I have already defined the term "knowing" to
20 you.

21 The State is not required to prove that the
22 property, in fact, had been stolen. On the other hand,
23 mere proof that the property was stolen is not
24 sufficient to establish this element. Rather, what the
25 State must prove is that the defendant either knew that

1 the property was stolen, or believed that it had
2 probably been stolen. A belief that property has
3 probably been stolen is a belief that it is more likely
4 than not that the property has been stolen.

5 Again, knowledge and belief are states of
6 mind, which cannot be seen, and you have heard me
7 repeat that state of mind definition several times.

8 To reiterate, the three elements which the
9 State must prove are: One, that the defendant received
10 movable property of another; two, that in so doing, the
11 defendant acted knowing; and three, that the defendant
12 either knew that the property had been stolen, or
13 believed that it had probably been stolen when he
14 received it.

15 If you conclude that the State has proved all
16 of these elements of the offense beyond a reasonable
17 doubt, you must find the defendant guilty. On the
18 other hand, if you find the State has failed to prove
19 any of the elements beyond a reasonable doubt, you must
20 find the defendant not guilty.

21 That concludes my instructions on the
22 principles of law regarding the offenses charged in the
23 indictment.

24 There is nothing different in the way that
25 the jury is to consider the proof in a criminal case

1 from that which all reasonable persons treat any
2 questions, depending upon evidence presented to them.
3 You are expected to use your own good common sense,
4 consider the evidence only for the purposes for which
5 it has been admitted, and give it a fair and reasonable
6 construction in the light of your knowledge of how
7 people behave. It is the quality of evidence, not
8 simply the number of witnesses that controls.

9 Anything that has not been marked into
10 evidence cannot be given to you in the juryroom, even
11 though it may have been marked for identification.
12 Only those items marked for evidence go into the jury
13 room.

14 Very shortly you will go into the juryroom to
15 start your deliberations. I remind you that during
16 deliberations, and in fact any time that you're in the
17 jury deliberation room, you must keep any cell phone,
18 pager, or other communication device you possess turned
19 off. You are to apply the law as I have instructed you
20 to the facts as you find them to be for the purposes of
21 arriving at a fair and correct verdict. The verdict
22 must represent the considered judgment of each juror
23 and must be unanimous as to each charge.

24 This means that although you must agree
25 whether the defendant is guilty or not guilty on each

1 charge, it is your duty as jurors to consult with one
2 another and to deliberate with a view to reaching an
3 agreement, if you can do so without violence to
4 individual judgment. Each of you must decide the case
5 for yourself, but do so only after an impartial
6 consideration of the evidence with your fellow jurors.

7 In the course of your deliberations, do not
8 hesitate to re-examine your own views and change your
9 opinion, if convinced it is erroneous, but do not
10 surrender your honest conviction as to the weight or
11 effect of evidence solely because of the opinion of
12 your fellow jurors, or for the mere purpose of
13 returning a verdict. You are not partisans, you are
14 judges of the facts.

15 In this case you may return on each charge a
16 verdict of either not guilty or guilty. This is a
17 criminal case, and therefore your verdicts, whatever
18 they may be, must be unanimous. All 12 of you who are
19 ultimately chosen as the deliberating jury must agree
20 as to the verdict.

21 To assist you in reporting a verdict, I have
22 prepared a verdict sheet for you. You will have this
23 with you in the juryroom. The verdict form, in itself,
24 is not evidence. The order in which the charges are
25 listed in the verdict sheet is merely the order that

1 they are listed in the indictment. But that order is
2 not intended to direct you as to which order you should
3 consider the charges, you may consider them in a
4 different order, if you choose to do so.

5 And basically we have the count number, what
6 the charge is, and then a place to mark guilty or not
7 guilty. Count 1, felony murder, not guilty or guilty.
8 Count 2, purposeful and knowing murder, not guilty or
9 guilty. Robbery, not guilty, or guilty. If guilty,
10 consider was the defendant armed with, used or
11 threatened to use a deadly weapon, then you check that
12 either yes or no. Count 4, unlawful possession of a
13 weapon, not guilty or guilty. Count 5, possession of a
14 weapon for an unlawful purposes, not guilty or guilty.
15 Count 6, tampering with a witness or informant, not
16 guilty or guilty. Count 7, terroristic threats, not
17 guilty or guilty. Count 8, receiving stolen property,
18 not guilty or guilty.

19 If during your deliberations you have a
20 question or you feel you need further instruction from
21 me, write your question on a sheet of paper, get the
22 Sheriff's officer attention by turning on the red light
23 over the door. He'll show you the switch that turns it
24 on. He will come to the door, you will give him the
25 question, he will bring it to me, and I will try and

1 answer it. But if that happens, please be patient. Do
2 not send out -- if you do send out a question, do not
3 disclose where you stand on your deliberations, whether
4 you have reached a verdict on some counts and not the
5 other, or where you stand on any particular count, if
6 are you 10 to 2 or 8 to 4. Don't tell us anything.

7 If you have reached a unanimous verdict,
8 again, turn on the red light. The sheriff's officer
9 will come to the door, and just tell him you have
10 reached a verdict, not anything more, and then we will
11 bring you into the courtroom, as soon as we have
12 collected all the people involved, and take your
13 verdict in open court.

14 Gentlemen, I have come to the end of my
15 charge. Do you need a sidebar for any objections to
16 the charge?

17 MR. SAMPSON: No objection, your Honor.

18 MR. McTIGUE: Just one thing, Judge.

19 (The following takes place at sidebar)

20 MR. McTIGUE: Judge, on the charge of
21 receiving stolen property, I don't believe, I will
22 stand to be corrected if I'm wrong, that you mentioned
23 Officer Paz's gun.

24 THE COURT: I didn't. That's the only thing.
25 I will mention it. Okay?

1 MR. McTIGUE: Yes.

2 (The following takes place in open court)

3 THE COURT: With regard to Count 8, receiving
4 stolen property, I didn't mention what it is alleged
5 that the defendant had stolen. That is Officer Paz's
6 gun, S-64. That's what alleged to have been received.
7 That's the property, the stolen property alleged to
8 have been received.

9 All right. We will now reduce the jury to 12
10 by selecting two alternates at random.

11 Mr. Clerk, if you will do that.

12 THE CLERK: Yes. First alternate juror is
13 juror number one, Willie Sims.

14 THE COURT: Mr. Sims, you are an alternate.

15 THE CLERK: The next alternate is number 9,
16 Helen Danielson.

17 THE COURT: Ms. Danielson, you are an
18 alternate juror. That means that since juror number 1
19 is an alternate, juror number 2, Ms. Copeland, you are
20 the foreperson of the jury. That's simply because you
21 are the next one left after Mr. Sims has been made an
22 alternate, and your responsibility is to lead the
23 deliberations. That simply means that make sure
24 everybody gets a chance to say whatever it is they want
25 to. And then at the appropriate time, when you vote,

1 you're the one that will tally the vote.

2 Finally, when you have reached a verdict, it
3 will be your responsibility when you come out to tell
4 us what the verdict is. When you reach a verdict and
5 we ask you to come out, the court clerk will ask you to
6 stand, you will have the verdict sheet in your hand,
7 you will be the one that will mark the verdict sheet
8 not guilty or guilty and so forth, and he will ask you:
9 Have you reached a verdict? And hopefully you will say
10 yes. And then he will ask you: Is that verdict
11 unanimous? Hopefully you will say yes. And then he
12 will go through each count. Count one, felony murder,
13 how do you find? And then you will say not guilty or
14 guilty. And we will go down through all the questions
15 of Counts 1 through 8. Otherwise, your vote doesn't
16 count any more than anybody else's.

17 Now, as soon as the officers have been sworn,
18 you will be returned to the juryroom. But do not begin
19 your deliberations until all the evidence has been
20 brought in by the officers. And I'm going to actually
21 send you to lunch. The first thing you should do is go
22 into the juryroom and tell me whether or not you want
23 to take a full hour of lunch or some lesser time period
24 than a full hour for lunch, or whether you want to go
25 get your lunch and bring it back. Whatever is fine.

1 But make that decision immediately, and then let me
2 know what it is by sending me out a note right away,
3 and then we'll adjourn for whatever period of time that
4 you wish to adjourn.

5 Let's swear in the officers.

6 (Officers sworn)

7 THE COURT: Counsel will review the evidence
8 and place on the record that all the evidence is in s
9 order.

10 You may go into the juryroom at this time to
11 make that decision. The alternates can go in too for
12 the purposes of making that decision. Of course you
13 are not beginning your deliberations. All you are
14 deliberating about now is are you going to lunch, for
15 how long. As soon as you know, that let me know and I
16 will bring you back out and I will give an instruction
17 to the alternates as well. As a matter of fact, I will
18 let you make that decision first.

19 (The jury is excused)

20 MR. McTIGUE: Judge, with regard to the
21 evidence, we do have a firearm, but there are no
22 bullets, so I'm not anticipating any objection from the
23 court officer in that regard. He will clear it of
24 course before it goes in.

25 The second item I have is very practical. As

1 the Court may have expressed itself, some of the
2 exhibits involve clothing, which is bloody. And quite
3 frankly, Judge, and as noticeable, a very unpleasant
4 odor. We do have photographs available. The evidence
5 can be available to the jurors, should they wish it.
6 If they want to look at that evidence, we'll provide
7 gloves and things for them to use. And how you wish to
8 convey that to them, I will leave to you.

9 THE COURT: Any objection, Mr. Sampson?

10 MR. SAMPSON: No, Your Honor.

11 THE COURT: I will convey it just as you have
12 said it when we bring them out after they have made
13 their decision as to how long they want to go for
14 lunch.

15 MR. McTIGUE: All right, Judge.

16 (Jurors brought out)

17 THE COURT: All right, ladies and gentlemen,
18 you are going to be excused for lunch, at your request,
19 for 45 minutes. Even if all of you sit at the same
20 table in the cafeteria, do not discuss the case. You
21 are only to discuss the case when 12 of you are
22 together in the juryroom with the evidence. Okay?

23 And the alternates, you are not excused as
24 jurors. You will be kept in a separate location in
25 case it becomes necessary to substitute one or both of

1 you for another juror or jurors. You should not
2 therefore discuss this case with anyone or between the
3 two of you. If it becomes necessary to substitute an
4 alternate, I will give you and the remaining
5 deliberating jurors further instructions at that time.
6 If there is a question, or there is a verdict, you will
7 be brought into the courtroom to hear it as well, so
8 you can all go to lunch together, if you like or not,
9 however you do it, it doesn't really matter. But,
10 again, remember, do not discuss the case, and we'll see
11 you back at approximately 1:30. Enjoy your lunch.

12 Ladies and gentlemen, one more thing. You're
13 going to have the evidence when you all come back, and
14 you are not going to begin deliberations until the 12
15 deliberating jurors are in the juryroom. We will have
16 the evidence in the juryroom for you already, but what
17 won't be in the juryroom that is in evidence are some
18 clothes that have blood stains on them. Okay? They
19 obviously have blood stains on them and they have some
20 smell to them as well. And if you want to see them,
21 then you ask by turning on the red light and ask the
22 sheriff's officer and we'll make appropriate
23 arrangements to bring them in and have gloves or
24 whatever. Okay? I just wanted you to know that. All
25 right, go to lunch.

1 (Jury excused).

2 (Lunch recess)

3 (Deliberations commence at 1:40)

4 (Jury brought out)

5 THE COURT: All right, ladies and gentlemen,
6 you sent us a question that I have marked C-one,
7 today's date. The question reads: Please give the
8 jury the specific law for finding guilty or not guilty
9 on the charge of tampering with witness or informants.

10 The indictment charges the defendant in Count
11 6 with tampering with a witness in violation of a
12 statute which provides as follows. Tampering. A
13 person commits an offense, if believing that an
14 official proceeding or investigation is pending or
15 about to be instituted, he knowingly attempts to induce
16 or otherwise causes a witness or informant to withhold
17 any testimony, information, document or thing. The
18 offense involves knowing attempts to induce a witness
19 or informant to testify falsely or in other ways to
20 subvert the administration of justice.

21 Before the defendant can be found guilty of
22 violating the statute, the State must prove beyond a
23 reasonable doubt each and every one of the following
24 elements: One, that the defendant believed that an
25 official proceeding or investigation was pending or

1 about to be instituted; two, that the defendant
2 knowingly attempted to induce or otherwise cause a
3 witness or informant to withhold any testimony,
4 information, document or thing.

5 The first element provides that the defendant
6 must have believed that an official proceeding or
7 investigation was pending or about to be instituted.
8 This requires that the defendant consider to be true
9 the fact that an official proceeding or investigation
10 was pending. In other words, that the defendant in his
11 mind believed an official proceeding or investigation
12 was pending.

13 The State must prove that the defendant held
14 his belief, but need not prove that a proceeding or
15 investigation was in fact pending or about to be
16 instituted.

17 The statute focuses on what the defendant
18 believed and not on what was necessarily true, and not
19 on external factors that may be irrelevant to the
20 defendant's aim to subvert the administration of
21 justice.

22 The first element also speaks of official
23 proceedings or investigations. The word
24 "investigation" is not strictly limited to police
25 investigations, but covers any kind of official

1 proceeding or investigation.

2 Official proceeding is defined as a
3 proceeding heard or may be heard before any
4 legislature, judicial administrative, or other
5 governmental agency or official authorized to take
6 evidence under oath, including any referee, hearing
7 examiner, commissioner, notary or other person taking
8 testimony or deposition in connection with any such
9 proceedings.

10 The second element of this offense is that
11 the defendant knowingly attempted to induce or
12 otherwise cause a witness or informant to withhold any
13 testimony, information, document or thing.

14 The second element requires an attempt, thus
15 the actor need not actually induce a witness or en
16 informant to do anything. The law provides that a
17 person is guilty of an attempt to commit a crime if the
18 person does anything with the purpose of causing that
19 result without further conduct on his part.

20 In essence, the defendant's purpose must be
21 to influence the behavior of the witness or informant.
22 Having that purpose, the defendant must knowingly
23 engage in the attempt to induce or otherwise cause the
24 witness or informant to withhold any testimony,
25 information, document or thing.

1 The third element requires the actor to
2 employ force, deception or threat. The word "threat"
3 includes both overt threats and more subtle forms of
4 intimidation.

5 In conclusion, in order to sustain a
6 conviction, the State must prove beyond a reasonable
7 doubt each and every element of that offense. If the
8 State has failed to prove one or more of the elements
9 beyond a reasonable doubt, your verdict should not be
10 not guilty. If, however, the State has proven each of
11 the elements beyond a reasonable doubt, your verdict
12 should be guilty.

13 That's the charge you requested, you may
14 return and deliberate.

15 (Jury continues deliberations at 2:20)

16 (Jury brought out)

17 THE COURT: You may take the verdict.

18 THE CLERK: Will the foreperson please rise.

19 As to Indictment 2003-06-2254, between the
20 State of New Jersey and Luis F. DaSilva, have you
21 agreed upon a verdict?

22 THE FOREPERSON: Yes, we have.

23 THE CLERK: Is this verdict unanimous?

24 THE FOREPERSON: Yes, it is.

25 THE CLERK: On Count one, how do you find as

1 to the charge of felony murder?
2 THE FOREPERSON: Guilty.
3 THE CLERK: An Count two, how do you find as
4 to the charge of purposely or knowing murder?
5 THE FOREPERSON: Guilty.
6 THE CLERK: On Count three, how do you find
7 as to the charge of robbery?
8 THE FOREPERSON: Guilty.
9 THE CLERK: If guilty of robbery, was the
10 defendant armed with, use, or threaten to use a deadly
11 weapon?
12 THE FOREPERSON: Yes.
13 THE CLERK: On Count four, how do you find as
14 to the charge of unlawful possession of a weapon?
15 THE FOREPERSON: Guilty.
16 THE CLERK: On Count five, how do you FIND as
17 to the charge of possession of a weapon for an unlawful
18 purpose?
19 THE FOREPERSON: Guilty.
20 THE CLERK: On Count 6, how do you find as
21 the charge of tampering with witness or informants?
22 THE FOREPERSON: Not guilty.
23 THE CLERK: On Count 7, how do you find as to
24 the charge of terroristic threats?
25 THE FOREPERSON: Not guilty.

1 THE CLERK: On count 8, how do you find as to
2 the charge of receiving stolen property?
3 THE FOREPERSON: Guilty.
4 THE COURT: Thank you.
5 THE COURT: Would the officer please get the
6 jury verdict sheet. You may sit, ma'am.
7 Please poll the jury.
8 THE CLERK: Ladies and gentlemen of the jury,
9 the Court has ordered that the jury be polled. As your
10 name is called, please answer "I agree" if this is your
11 verdict; or "I do not agree" if this is not your
12 verdict.
13 (Whereupon the jury is polled and all answer
14 in the affirmative)
15 THE CLERK: The jury has been polled.
16 THE COURT: Anything else before I excuse the
17 jury, gentlemen?
18 MR. McTIGUE: Nothing further, Judge.
19 MR. SAMPSON: No, Your Honor.
20 THE COURT: Ladies and gentlemen of the jury,
21 everything I say goes for the alternate as well. As
22 you know, and as you now must realize, the function
23 that you have performed is the most important task
24 which you will ever be called on to fulfill, at least
25 the most important civic task any way. With the return

1 of your verdict, your service in this case is complete.
2 The key to your function has been the free
3 discussion among yourselves during your deliberation.
4 It is essential to the continuation of the fair
5 administration of justice that those discussions remain
6 solely within your minds.

7 Upon your discharge, you are not required,
8 except upon order of this Court, to discuss your
9 deliberations or verdict with anyone.

10 Additionally, no person connected with this
11 trial is permitted, under the rules of court, to engage
12 you in conversation about this matter or about your
13 role in its outcome. All jurors have a right to expect
14 that communications with their fellow jurors during
15 deliberation will remain confidential. Under no
16 circumstances should you make a statement which you
17 would not be willing to repeat under oath in open court
18 in the presence of your fellow jurors.

19 I want to thank you for your service. Its
20 been a little bit longer than the ordinary case, and I
21 thank you for very being patient and being attentive
22 during the whole time you have been here, all of you.
23 And I'm going to tell you like I tell all the jurors,
24 and that is, there are a lot of places in this world
25 where you can get a trial, but very few where you can

1 get a jury trial. And this is the way we found is the
2 best way to resolve disputes between the State and
3 citizens, and between citizens and citizens. And it
4 only works because people like yourself are willing to
5 participate and serve as jurors.

6 When we picked you, you know it took quite a
7 few panels before we got people who could serve for two
8 weeks, and its a couple days more than two weeks, I
9 guess. And I'm not saying that any of those people who
10 made excuses, they weren't the truth, but you at least
11 didn't make excuses and you have been here and
12 sacrificed your time, and we appreciate that very much.
13 So I hope you take away a good feeling from having done
14 your civic duty.

15 You are discharged. You may go home, you
16 need not go back to the fourth floor. We just need
17 you, on your way out, to hand the officer your jury
18 badges. Thank you.

19 (Jury excused)

20 THE COURT: All right, Mr. McTigue, you are
21 going to have to go over the evidence in order to
22 acknowledge return of it.

23 MR. MCTIGUE: Before doing that, Judge, I do
24 have an application to the Court.

25 Judge, the jury, having spoken and rendered

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

its verdict, I move to revoke the defendant's bail and ask that he be remanded pending sentence.

THE COURT: Bail is revoked and remanded pending sentence. When you are ready?

MR. McTIGUE: I will get the investigator up, Judge. We are going to have to get a cart and get things out. And Mr. Sampson has a few things he has to get also.

THE COURT: Sentencing will be September 17th.

(Matter concluded)

* * * *

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

September 7, 2007
Date