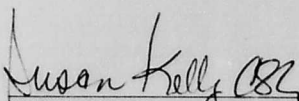


C E R T I F I C A T E

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17 Official Court Reporter
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Dated: 9-9-04

SUPERIOR COURT OF NEW JERSEY
Ocean County - LAW DIVISION
CRIMINAL PART
INDICTMENT NO. 02-09-01247
A.D.# 6934-03-T4

 5 STATE OF NEW JERSEY)
 6 vs.)
 7 RENATO SANTOS, GREGORY)
 MAPLES, MARVIN WORTHY,)
 8 JAMES IRWIN,)
 9 Defendants.)

TRANSCRIPT
OF
TRIAL

RECEIVED
 APPELLATE DIVISION
 OCT 19 2004
 SUPERIOR COURT
 OF NEW JERSEY

Place: Ocean County Courthouse
120 Hooper Avenue
Toms River, New Jersey

Date: May 12th, 2004

B E F O R E:

HONORABLE EDWARD J. TURNBACH, J.S.C., and a Jury

TRANSCRIPT ORDERED BY: Raymond S. Santiago, Esq.

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Assistant County Prosecutor
Attorney for the State.

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OCT 19 2004

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A P P E A R A N C E S (Cont'd)

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		<u>I N D E X</u>			
	<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
1	<u>For the State</u>				
2	DANIEL BARRETT				
3	By Mr. Heisler	4		39	
	By Mr. Welle		27		39
4	By Mr. Kinarney		33		40
	By Mr. Zager		36		
5	<u>Witnesses</u>				
	<u>For the Defense</u>				
6	JOSEPH MITCHELL				
	By Mr. Kinarney	54		80	
7	By Mr. Zager		59		81
	By Mr. Heisler		76		83
8	JAMES FINNEGAN				
	By Mr. Zager	85		114, 122	
9	By Mr. Kinarney		104		118
	By Mr. Heisler		107		
10	RONALD VELARDI				
	By Mr. Zager	123			
11	By Mr. Heisler		129		
	MARVIN WORTHY				
12	By Mr. Welle	136			
	By Mr. Heisler		141		

<u>E X H I B I T S</u>				
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1 THE COURT: Ready to proceed, Mr. Heisler?

2 MR. HEISLER: Yes, your Honor.

3 THE COURT: Jury out, please.

4 (Jury in the box at 9:55 AM.)

5 THE COURT: Good morning to each of you.

6 Nice to see you back again.

7 Mr. Heisler.

8 MR. HEISLER: Thank you, your Honor. Daniel
9 Barrett.

10 D A N I E L B A R R E T T , Witness for the State,
11 sworn.

12 THE COURT: Mr. Heisler.

13 MR. HEISLER: Thank you, your Honor.

14 DIRECT EXAMINATION BY MR. HEISLER:

15 Q Good morning, Mr. Barrett.

16 A Good morning, counselor.

17 Q By whom are you employed, sir?

18 A Ocean County Sheriff's Department.

19 Q And what do you do for the Sheriff's
20 Department?

21 A I work at CIU, the laboratory. I'm a forensic
22 scientist.

23 Q And how long have you been employed as a
24 forensic scientist by the Ocean County Sheriff's
25 Department?

1 A 28 years this October.

2 Q And what's your educational background?

3 A Bachelor of Science in chemistry, Bachelor of
4 Science in electronics, and a Master's in software
5 engineering.

6 Q And over the years, have you had any
7 particular training regarding firearms and ballistics?

8 A Yes, I have.

9 Q And can you tell us generally what that
10 training has consisted of?

11 A Initially, I was employed by the New Jersey State
12 Police for three years. I had six months' on-the-job
13 training there. And during the number of years I have
14 been employed, I have been to various seminars and
15 courses offered by the FBI, ATF.

16 Q And in your experience with the New Jersey
17 State Police and with the Ocean County Sheriff's
18 Department, have you conducted ballistics tests and
19 ballistics examinations?

20 A Yes, I have.

21 Q And examined firearms and things along those
22 lines?

23 A Yes, I have.

24 Q They're part of your normal job duties?

25 A Yes.

1 Q Have you ever qualified in the Superior Court
2 of New Jersey before as an expert witness in the area
3 of firearms and ballistics?

4 A Yes.

5 MR. HEISLER: Judge, at this time I'd offer
6 Mr. Barrett as an expert witness in the area of
7 firearms and ballistics.

8 THE COURT: Counsel?

9 DEFENSE ATTORNEYS: No objection.

10 THE COURT: There being no objection, once
11 again, members of the jury, I'm going to authorize this
12 witness to testify as an expert in the field of
13 firearms and ballistics and give you opinion testimony.
14 What I said about all the other experts also applies to
15 his testimony.

16 MR. HEISLER: Thank you, your Honor.

17 Q Now, Mr. Barrett, when we are talking about
18 the field of ballistics, in reference to firearms, what
19 are we talking about?

20 A You're talking about firearms examination, the
21 discharge of cartridge ammunition through modern
22 firearms. You're talking about lands and grooves,
23 ballistic and -- signature on the bullet or projectile.
24 You're talking about ballistic ridge face signatures on
25 the casing, basically tool mark identification as it

1 relates to firearms.

2 Q And that's to determine whether a particular
3 projectile has been fired from a firearm, or a
4 particular shell casing was ejected from one?

5 A There's a lot of objectives; but basically what
6 you're trying to do is, you're trying to see if the
7 casing and/or projectile was discharged or fired from
8 that particular weapon.

9 Q Now, with respect to handguns of a revolver
10 type, which is the area you concentrate on more, the
11 actual projectile or the casing?

12 A Both.

13 Q With respect to automatic handguns, do you
14 get different information from casings in that
15 situation than you do from revolvers?

16 A Well, it would depend on the situation. I mean,
17 we try to get whatever evidence we can from whatever's
18 submitted.

19 Q And in this case, were two handguns submitted
20 to you?

21 A Yes, they were.

22 Q And they were both revolvers; is that right?

23 A That is correct.

24 Q And what types of comparisons did you do with
25 respect to those weapons and the projectiles that were

1 recovered in connection with this case?

2 A I examined the submitted projectiles that came in
3 with the evidence submission against laboratory-fired
4 projectiles from the weapons to see if, in fact, I
5 could find any comparison.

6 Q When you say "laboratory-fired projectiles,"
7 do you actually fire the weapons in your laboratory?

8 A Yes, I do.

9 Q And by doing that, do you get the projectile
10 that you are going to compare to the ones that were
11 submitted?

12 A Yes, I do.

13 Q Let me show you two items that have been
14 marked as S-2 and S-3. Start with S-2. Do you
15 recognize the box, for starters?

16 A Yes. It's from Case Number 1372-02, has an
17 evidence sticker with my initials on it.

18 Q And this item on the evidence list was which
19 number?

20 A I believe this was the Smith & Wesson six-shot.
21 It was 77, I believe. I'd have to refer to my
22 laboratory notes.

23 Q Okay. We have the evidence report blown up
24 as S-39. Is item 77 shown on there?

25 A Yes.

1 Q And it's described as: Smith & Wesson .38
2 special six-shot revolver, silver, with brown wooden
3 grips, no serial number?

4 A Yes.

5 Q Is this that item?

6 A Yes, it is.

7 Q And also in that box is an envelope. What's
8 contained in the envelope?

9 A Four spent -- without opening it, just reading the
10 outside, four spent shell casings.

11 Q Is that what was submitted to you as one of
12 the items to be tested?

13 A I believe so. Again, I'd have to refer to the
14 laboratory submission.

15 Q Let me show you a photograph that's been
16 marked as S-35, from when that weapon was recovered.
17 Does it show a number of casings in that weapon?

18 A Yes.

19 Q And how many are they?

20 A It looks like four.

21 Q And that's out of a six-shot revolver;
22 correct?

23 A Yes.

24 Q So you test-fired this weapon?

25 A Yes, I did.

1 Q And let me show you S-3. We'll open that up.
2 And is that evidence item Number 76?

3 A Yes, it is.

4 Q And what else is in that box?

5 A Envelope with five spent shell casings.

6 Q And that's a five-shot revolver?

7 A Yes.

8 Q Let me show you a photograph that's S-38 in
9 evidence, showing a recovery of that weapon. What does
10 that show?

11 A It shows a revolver with the cylinder opened, and
12 there's five casings in the cylinder.

13 Q Now, in addition to the guns and the spent
14 casings, were certain recovered projectiles turned over
15 to you?

16 A They were there with other evidence submitted in
17 the laboratory.

18 Q And they consist of projectiles recovered
19 from the scene and recovered from the victim; is that
20 correct?

21 A I believe so, yes.

22 Q And did you conduct an examination of the
23 projectiles that were submitted to you?

24 A Yes, I did.

25 Q And of the five projectiles that were

1 submitted, were any of them of ballistic value for you
2 to make comparisons?

3 A Yes.

4 Q How many?

5 A Two, I believe, if I could refer to my notes.

6 THE COURT: Do you have your notes? Let him
7 have his notes.

8 MR. HEISLER: Sure.

9 A Yes. Two.

10 Q And for the purpose of continuity and
11 documentation, are those items referred to in your
12 report by the same evidence numbers that there are on
13 the CIU evidence list?

14 A I believe so.

15 Q So of the two that were of ballistic value --
16 let me ask you this. What does that mean?

17 A Ballistic value, that there's sufficient detail
18 and/or tool mark characteristics to make a
19 determination as to whether it was or was not
20 discharged from that weapon.

21 Q And in making that initial determination as
22 to what may or may not be of ballistic value, what do
23 you do?

24 A well, I normally look at it and, you know, if it's
25 deformed and out of shape, or devoid of any markings,

1 then I would say it's of no ballistic value, not even
2 attempt identification. I try to get the bullets as
3 close to whole as I can.

4 Q Okay. And in this case, you determined three
5 of the five were of no ballistic value?

6 A Items Number 16, 66 and 68 were of no ballistic
7 value.

8 Q Okay. And again referring to your evidence
9 list, let's start with the first of those. Item 16 is
10 shown on the evidence list as, will you tell us,
11 please?

12 A Projectile from under front of vehicle Number 1,
13 parking space Number 8, east side of parking lot, 402
14 Prospect Street, ballistic comparison.

15 Q So item Number 16, the projectile from under
16 that vehicle, was of no ballistic value?

17 A Correct.

18 Q What was the next one?

19 A 66.

20 Q And 66 shows on the evidence list?

21 A One projectile recovered from upper right chest
22 plate, collected at autopsy.

23 Q So that was collected from the victim?

24 A Yes.

25 Q And the last one that was of no ballistic

1 value?

2 A 68. One projectile recovered from right upper
3 chest of victim, collected at autopsy.

4 Q Now, the two that were of ballistic value,
5 you said one was 69?

6 A Yeah.

7 Q Could you tell us what that is?

8 A One projectile recovered from lower right rib cage
9 of victim, collected at autopsy.

10 Q So you were able to compare that one from the
11 victim's lower right rib cage?

12 A Yes.

13 Q And item Number 1, I believe you said, was of
14 ballistic value?

15 A Yes.

16 Q Could you tell us what that is?

17 A Projectile from right lane of parking lot, 402
18 Prospect Street, in front of west side parking space
19 Number 2.

20 Q So with respect to item Number 1 and item
21 Number 69, which were of ballistic value, what did you
22 do with those items?

23 A I compared them against identical ammunition fired
24 from the specimen weapons.

25 Q And once you've test-fired them and gotten

1 your test-fire projectiles, what do you do with those
2 to compare them?

3 A I place them under a lights comparison, ballistic
4 comparison microscope, to see if I can match them.

5 Q And when you say "match them," what you are
6 looking for?

7 A I am looking for sufficient details, we call
8 striations, that have been imparted to the projectile
9 from the lands, the grooves and the rifling. And the
10 way the premise works is, that since the bullet is of
11 softer material than the metal that's made up of the
12 barrel, then it will impart characteristic striations
13 to the projectile.

14 Then if you fire another projectile from that
15 weapon, theoretically you could compare the two weapons
16 to see if, in fact, they did give sufficient details to
17 say positively that they were fired from the same
18 weapon.

19 Q Okay. And when you say "lands, grooves and
20 rifling" in the barrel, what are you talking about?

21 A One of the processes in order to make a barrel is
22 that a special plug that's harder than the steel that's
23 composed the barrel is pushed through the barrel. What
24 this does, it puts what is called lands and grooves in
25 a twist motion.

1 And the lands and grooves bite into the
2 bullet and direct the bullet to a spiral. And some
3 weapons spiral left, some weapons spiral right, and the
4 purpose of this is to increase its ballistic
5 coefficient as it flies through the air, make it more
6 accurate, similar to a football being thrown. They
7 spiral it so it cuts through the air with better
8 co-efficient.

9 Q So a bullet comes out spiraling like a thrown
10 football, rather than tumbling?

11 A Yes. It adds to the distance and the accuracy of
12 the projectile.

13 Q And in this case, did you take some
14 photographs of the comparisons that you made under the
15 microscope?

16 A Yes, I did.

17 MR. HEISLER: If we could have the easel,
18 please.

19 Q Mr. Barrett, if you could step down here,
20 let's start with what's been previously marked as S-71.
21 I'm going to ask you to step to the side, on one side
22 or the other, so you don't block anybody's view. Tell
23 us first what that shows.

24 A All right. If you look carefully, you'll see a
25 shadow that goes down; and what this is, this is the

1 cut. Actually, you're looking at two different
2 projectiles, one being on the left side, which is the
3 unknown, and one being on the right side, which is the
4 known.

5 The known is a cartridge that I fired from
6 that weapon, that I know in fact did come from that
7 weapon, compared to one of the specimens that was
8 submitted, which is now considered to be unknown.

9 Q And this particular blown-up photograph,
10 which projectile is that of the two that you found to
11 have ballistic value?

12 A Well, the projectile that you are looking at on
13 the left is from Case 1372. It's specimen Number 1.
14 On the right was laboratory-fired projectile.

15 Q So this is Number 1?

16 A Yes.

17 Q And on the right and in that comparison, can
18 you show us what you're looking for and what you found?

19 A Okay. I'd like to preface that first with an
20 understanding of the rifling in the barrel. The
21 rifling in the barrel has what we call lands and
22 grooves. The lands project further from the barrel
23 than the grooves do.

24 So it would be like the teeth on a sprocket.
25 If you can think of it as a sprocket, the part that

1 extends higher would be the land, and the part that
2 doesn't would be the groove; however, when the bullet
3 goes through, they're reversed. The one that's
4 deep-seated a little bit is imparted by the land, and
5 the one that's raised a little bit would get its
6 compression or markings from the groove, so it's
7 reversed. All right?

8 And what you are looking at is one section of
9 what would be the land here, of the two projectiles
10 compared together.

11 Q And in that comparison, what do you see that
12 tells you this is or is not fired from the same weapon?

13 A The barrel has a, I wouldn't call it necessarily
14 manufacturing defect, but an unfinished or
15 insufficiently polished imperfection in the barrel. It
16 left another striation that's offset from the inner
17 section of the land and groove. So what I'm looking at
18 right here --

19 THE COURT: Move over a little bit so that
20 the --

21 THE WITNESS: what I'm looking at right here
22 is, this particular line right here, you'll see that
23 not only is it offset, but it increases in angle. It
24 starts here slow and starts angling away, and if you
25 can see by matching up where the lands and grooves

1 were, this is -- continues all the way through, just as
2 though if you were looking at from one bullet.

3 So you have this characteristic, not to
4 mention the two lands and grooves.

5 And if you also look further down, you will
6 see indentations, striations here, and on the other
7 side, that go across. So, if you can follow them from
8 one projectile to the other projectile, that's an
9 indication that they were fired from the same weapon.

10 Q So we all understand, to this side, to the
11 jury's left, is the specimen that was turned in as
12 evidence, and this is the side-by-side comparison to
13 the right of the projectile that you fired in the
14 laboratory?

15 A Yes.

16 Q And these lines continue from one to the
17 other, and they match?

18 A Yes.

19 Q And in your opinion, were those two
20 projectiles fired from the same weapon?

21 A Yes, they were.

22 Q And which weapon was that?

23 A That was the six-shot Smith & Wesson. I believe
24 it was specimen Number 77.

25 Q Let's take a look now at S-72. And what

1 specimen is this showing?

2 A This is also Number 1, but on a different set of
3 lands and grooves, all right, not the same one. And if
4 you notice, you have a particular shading or a
5 roll-over of the land right here, that's the same width
6 as the one over here, and this has a similar angle.

7 Probably what happened was, when this barrel
8 was being produced, that the tool was damaged or was
9 used too many times, whatever, and it also gave an
10 angular secondary ballistic signature off to the side
11 here that lines up.

12 Remember though, this is, I wouldn't say
13 extreme magnification, but it's 125 times what it would
14 normally look like to the eye.

15 Q And that's why you use the microscope?

16 A Yes.

17 Q Now, as you do these comparisons, do you
18 rotate the projectiles?

19 A Yes.

20 Q And they're round, so you have to turn them
21 over to check them; correct?

22 A Yeah, they're 360 degrees. That's why any
23 projectile that's flattened on one side is very poor,
24 or less capable of being a suitable projectile to be
25 compared to, because you've lost, you know, half the

1 evidence.

2 Q And does that also sometimes distort what you
3 would see?

4 A Certainly.

5 Q Okay. So again, did what we see in S-72
6 contribute to your opinion that --

7 A Yes. You have two different sections on different
8 rotations of the bullet where they line up.

9 Q So the specimen that was in evidence as
10 Number 1, in your opinion, was fired from the gun
11 that's in evidence as Number 77?

12 A That's correct.

13 Q Now we'll move on to S-73, and can you tell
14 us what this shows?

15 A Yes. Now, this is another projectile. But
16 notice, you could say, oh, look, that's the same as on
17 the other one. Well, it's the same gun. So you can
18 see right now from this that, by looking at this, you
19 can ID this gun quite readily now, 'cause you've seen
20 it before. All right?

21 And this is the same markings; however, you
22 have more detail in this picture. Instead of just a
23 single line, you have a shadow here, and another line
24 which is also equal. In the side over here, you notice
25 you have one, two, three lines or separate striations

1 that also match up to the other side.

2 Q And S-74?

3 A S-74 is similar. It's specimen Number 69, against
4 the specimen Number 77, the six-shot Smith & Wesson.
5 And notice here additional lines. Here, you have a
6 larger departure (sic) from the inner section of the
7 land and groove, much wider. But the angle stays the
8 same.

9 In addition to that, you have striations
10 right here that go across, ones right here go across;
11 and although this came out poor here, I believe there's
12 also here. Remember, you're trying to put a three-
13 dimensional image on a two-dimensional image.

14 Q Two-dimensional photograph?

15 A Photograph. It's a lot clearer under the
16 microscope.

17 Q And S-75?

18 A Here we have the same thing as I showed you
19 previously, except right here you notice that there
20 must have been a slight cavity in the rifling, and the
21 lead melted and flowed into that, so you have a
22 bubbling effect on both of them. And the angle is
23 right here, goes across. Now, these striations are
24 much clearer to see over here.

25 Q And in your opinion, was this projectile that

1 was turned into evidence as Number 69 fired from the
2 gun which is in evidence as Number 77?

3 A Yes.

4 MR. HEISLER: You can resume your seat, Mr.
5 Barrett.

6 Q Now, Mr. Barrett, those were the only two
7 bullets that were of ballistic value that you could
8 compare; correct?

9 A Yes.

10 Q And let me show you what have been marked, to
11 begin with, as S-70. Can you tell us what that is?

12 A One projectile recovered from the upper right
13 chest.

14 Q And what evidence number is that?

15 A Looks like 66.

16 Q And that's one that was not of comparable
17 ballistic value; is that correct?

18 A Yes.

19 Q S-69?

20 A Well, this is 68.

21 Q Okay, but it's S-69.

22 A Oh, I'm sorry. This is specimen Number 68, which
23 is the same determination as Number 66.

24 Q That it was not of any ballistic value?

25 A That is correct.

1 Q And then we have S-68. which evidence number
2 is that?

3 A Number 69.

4 Q And that was one of the bullets that was
5 comparable?

6 A Yes.

7 Q That you determined was fired from the Smith
8 & Wesson?

9 A Yes, the one from the lower right rib cage.

10 Q okay. Then we have S-67. Can you tell us
11 what that is?

12 A Yes. This is Number 16, which I determined also
13 to have no ballistic value.

14 Q That was one that was recovered from under
15 the vehicle that was described as Vehicle Number 1?

16 A That is correct.

17 Q And then we have S-66.

18 A This is Number 1, one of the ones I did compare.

19 Q Also determined to be fired from the same
20 gun?

21 A Yes.

22 Q So, were you -- did you have anything else to
23 compare to the other gun that's marked as item Number
24 76 in S-3 for identification?

25 A well, yes. I would compare all laboratory firings

1 against both weapons, and it just so happened that I
2 matched the two that were matchable to the one weapon.

3 Q So nothing matched this other gun?

4 A That I did, no. I only had two that I felt were
5 of ballistic value, and they matched the one gun.

6 Q Okay. Let's go back for a second to talk
7 about the item that was in evidence as Number 16,
8 recovered from under Vehicle Number 1. You looked at
9 some photographs earlier of that vehicle; correct?

10 A Yes.

11 Q Let me show you S-24 and S-27; and, directing
12 your attention specifically to the door of that
13 vehicle, what do they show?

14 A It shows an indentation on the lower, I assume,
15 passenger door.

16 Q And that was determined by Detective Frey to
17 be a possible bullet ricochet; right?

18 A Yes.

19 Q And then S-25, where Detective Frey marked a
20 projectile that was taken into evidence as item Number
21 16?

22 A Yes. That looks like a deformed .38 wad cutter
23 underneath the vehicle.

24 Q Bullets come out of a gun at high velocity;
25 correct?

1 A Yes.

2 Q And normally, if it's -- a bullet's unimpeded
3 and fired in or through a car that's parked next --
4 right next to this van, would you expect that bullet to
5 have gone through the door?

6 A Could you rephrase that, please?

7 Q Sure. If you have a car parked right next to
8 this van, where the ricochet mark is --

9 A Uh-hum.

10 Q -- and a gun is fired in it or just from the
11 other side of it, and the bullet goes through
12 unimpeded, would you have expected it to pierce that
13 door rather than ricochet?

14 A The bullet goes through unimpeded of what?

15 Q Unimpeded from the car that it's fired in.

16 A You would have -- you would imagine it would have
17 sufficient energy to penetrate the sheet metal of the
18 vehicle, yes.

19 Q Okay. What would cause a bullet to ricochet
20 in that manner as opposed to penetrating the door?

21 A Well, it's yawing, so it most likely went through
22 something.

23 Q And when you say "something," would that have
24 to be something of some substance?

25 A Usually.

1 Q Okay. Now, in this case, the jury's heard
2 testimony that the victim had a through-and-through
3 shot in his left forearm. Would that be sufficient to
4 send that bullet tumbling into that door?

5 A I believe it could.

6 Q Okay. What about shots that went through
7 clothing, that didn't strike any body part?

8 A Depending on the clothing and the angle, but it's
9 more unlikely that that would be a contributor than the
10 body part.

11 Q And now we see the ricochet back on the door
12 on the right side. The bullet was recovered up under
13 the front part of the car on the right side. Can you
14 account for how it would wind up there?

15 A My guess, since this is a --

16 MR. WELLE: Your Honor, a guess --

17 THE COURT: If you have an opinion, you can
18 give your opinion.

19 THE WITNESS: Yes, your Honor. My opinion
20 would be, due to the fact that it's a cylindrical wad
21 cutter, it would probably hit on the tip of it or an
22 angle, and would flip over underneath the car once it
23 came down from the side of the vehicle.

24 Q Does it react, does a bullet in that fashion
25 react like any other common object we know, bouncing

1 around?

2 A Well, it's -- I would say the majority of time you
3 can't necessarily judge how it's going to go. Could be
4 like a football, where it could take a weird bounce,
5 depending on how it hits.

6 MR. HEISLER: That's all I have, Judge.

7 THE COURT: Mr. Welle?

8 CROSS-EXAMINATION BY MR. WELLE:

9 Q Mr. Lesniak --

10 MR. HEISLER: This is Mr. Barrett.

11 MR. WELLE: I'm sorry.

12 Q Mr. Barrett, you're a highly educated fellow,
13 probably the most educated guy in the courtroom --

14 A I doubt that.

15 Q -- Besides the Judge. You have had 25 years
16 of experience in this field?

17 A 30.

18 Q 30 years. During the course of that time,
19 you have gone to how many seminars, would you estimate,
20 or training sessions?

21 A I don't know. A dozen, maybe.

22 Q There are different kinds of examinations and
23 forensic examinations that you, as a ballistics expert,
24 can do; are there not?

25 A I suppose so, yes.

1 Q Now, in this particular case, you took
2 remnants of a bullet, matched them up with a gun, and
3 came to some conclusions; correct?

4 A I wouldn't, I wouldn't classify them as remnants.
5 I would call, classify them as projectiles. To me, a
6 remnant is a smaller piece of something.

7 Q All right. Part of a projectile you were
8 able to match up with a gun?

9 A A projectile I was able to match up with a gun. I
10 am not trying to mince words, counselor, I'm just
11 trying to indicate that it was not a piece of a bullet
12 but it was -- or projectile, but it was, in fact, a
13 projectile itself.

14 Q Okay. You did testify, did you not, that
15 there was a projectile obtained from the body of this
16 particular victim that was from the upper back area or
17 upper chest area, that you were not able to make any
18 determination about as to what gun that projectile
19 might have come from?

20 A Yes, that is correct.

21 Q Okay. Now, you said you had to fire these
22 weapons, you fired these weapons?

23 A Yes.

24 Q Did you fire those weapons and attempt to
25 determine whether there was any particular gunpowder

1 residue pattern that would be presented by either of
2 those weapons?

3 A No, I did not do a muzzle-to-garment distance
4 examination.

5 Q Is that something you were capable of doing?

6 A I have been trained in it, yes.

7 Q Does the Ocean County Sheriff's Department do
8 that kind of work?

9 A We have done that, yes.

10 Q And the reason for doing that kind of work is
11 to determine the distance from a victim or an impact
12 point as to where a gun may have been when it was
13 fired; is that correct?

14 A It's used to come up with a range.

15 Q A range?

16 A Yes.

17 Q All right. So that if a gun was fired --
18 and, of course, this is depending on the gun and the
19 ammunition, and a lot of variables, but if the gun was
20 fired from seven inches, six inches, the likelihood is
21 it would leave a pattern; is that correct?

22 A A pattern of a gunshot residue?

23 Q Yes.

24 A Yes.

25 Q Okay. And as one would move away -- in fact,

1 when you do the testing, you would move away or you
2 would do it at various distances, to see what the
3 diffusion of that gunshot residue would be; is that
4 correct?

5 A That is correct.

6 Q And at some point in time, you would reach a
7 point where there would be no pattern; is that correct?

8 A That is correct.

9 Q But there could still be gunshot residue
10 there?

11 A There could be.

12 Q At the maximum distance?

13 A We have to set what definition we call a pattern.
14 Is a pattern traces? 'Cause if a pattern is traces --

15 Q I am suggesting that the pattern is not
16 traces.

17 A Okay. Then that is an organized set of traces.

18 Q A diffuse spreading of gunpowder on a
19 particular item that is not interpretable as a finite,
20 defined pattern.

21 A All right.

22 Q All right. At some point, you would get to
23 that?

24 A Yes.

25 Q And then beyond that point, you would get

1 nothing?

2 A You would not get gunshot residue, but you would
3 get, say, lead residue.

4 Q Okay. Well, at some point, all right,
5 gunshot lead, the gun would be too far away for either
6 lead or gunpowder residue to be on that item?

7 A That is correct. Gravity would have pulled any
8 free-floating particles down to the ground.

9 Q Okay. So doing that kind of pattern test
10 could help in determining whether a particular
11 projectile that caused some damage to an individual was
12 fired at a particular range?

13 A Yes.

14 Q And that would be used by the fact finder to
15 try to determine the distance of whoever had that gun
16 that did that shooting, how far away they would have
17 been when that shot was fired?

18 A Yes.

19 THE COURT: Are you implying that the gun
20 would be identified?

21 MR. WELLE: No, no, no.

22 THE COURT: I want to make that clear. You
23 said, "that gun."

24 MR. WELLE: I'm sorry.

25 THE COURT: And --

1 Q That the position of the shooter, all right,
2 when the gun was fired, and a particular projectile,
3 that would assist you in determining how far away that
4 person presumably with the gun would have been from the
5 victim?

6 A Usually how it gets put out or how it gets written
7 is that the gun had to be -- the gun, not the position
8 of the shooter, but the gun had to be within 12 to 15
9 feet, something like that, or closer than six inches,
10 so on, so forth. They don't mention the position of
11 the shooter. They just talk about the weapon.

12 Q The gun. But, of course, we're in the real
13 world, and guns don't go off unless somebody's shooting
14 them.

15 A That's correct.

16 Q Did you order or direct that this kind of
17 examination be done to assist the fact finders in this
18 case to that particular circumstances?

19 A That's not my position, to order or direct
20 anybody. I do what I'm told.

21 Q Are you aware of whether anybody in this case
22 directed or requested anybody to do that kind of test
23 or any kind of test to determine whether there was any
24 lead or gunpowder residue on any item relevant to this
25 case?

1 MR. HEISLER: At this point I am going to
2 object. Whether Mr. Barrett's aware isn't relevant.
3 He said he didn't do the tests.

4 THE COURT: You can rephrase it to ask him if
5 he was requested to do it.

6 Q Were you requested to contact anybody to do a
7 test in this particular area?

8 A No, I was not.

9 Q So you wouldn't be aware of whether one was
10 done and we just don't know the results?

11 A I am aware that one was done, but I was not -- I
12 am not the person who directed it to be done.

13 Q Okay. So you are aware that one was done?

14 A Yes.

15 MR. WELLE: I have no further questions,
16 Judge.

17 THE COURT: Mr. Kinarney?

18 MR. KINARNEY: Thank you, Judge.

19 CROSS-EXAMINATION BY MR. KINARNEY:

20 Q Good morning, Mr. Barrett.

21 A Good morning, sir.

22 Q I wanted to direct you to what I think's been
23 marked for identification as S-39. It's S- something.
24 We'll know in a minute.

25 THE COURT: A lot of S's here.

1 Q A lot of S's, millions of S's. I'm right.
2 It's S-39, which, as Mr. Heisler indicated, is a
3 blow-up of the evidence, let's call it an evidence log;
4 correct?

5 A Yes.

6 Q Would it be accurate to say item Number 1,
7 001 through item Number 092, are all things of
8 evidential value related to this case, as far as you
9 know?

10 A Yes, as far as I know.

11 Q Now, you've indicated, and I believe it's
12 marked as S-2 for identification -- yeah, it's been
13 marked as S-2 for identification, and this was the
14 revolver that you determined, in your expert opinion,
15 fired the two projectiles, one of which was extracted
16 from the right lower rib cage of the victim, and the
17 other projectile was found in the parking lot?

18 A Yes.

19 Q Correct?

20 A Correct.

21 Q Okay. And S-2, in regards to S-39 -- I know
22 it's a lot of S's -- is item Number 77; correct?

23 A Correct.

24 Q And in S-39, item Number 77 is a Smith &
25 Wesson .38 Special six-shot revolver, silver, brown

1 wooden grip, wooded grip, serial number filed off,
2 containing four spent shell casings and one white sock
3 used to cover the weapon. Correct?

4 A Right.

5 Q So the gun that fired the bullets that were
6 found in the parking lot and taken out of the body of
7 the victim were encased in a white sock; correct?

8 A I believe the firearm was encased in --

9 Q That's what I meant to say. Excuse me if I
10 misstated that. So the gun that fired the two bullets
11 that were of evidential value, one from the body of the
12 victim and one from the parking lot, was in the white
13 sock; correct?

14 A Correct.

15 Q And you've indicated that the tests that you
16 performed on S-2, which is the gun we're talking about,
17 those same tests were performed on S-3, which is the
18 other gun; correct?

19 A Correct

20 Q And you came back with no forensic findings
21 tying S-3 to anything in this case; correct?

22 A Correct.

23 MR. KINARNEY: I have nothing further.

24 THE COURT: Mr. Zager?

25 MR. ZAGER: Thank you, Judge.

1 CROSS-EXAMINATION BY MR. ZAGER:

2 Q Good morning, Detective.

3 A Good morning, counselor.

4 Q Detective, S-2 and S-3 are the two guns in
5 front of you; correct?

6 A Let's see. S-2 and S-3, that is correct,
7 counselor.

8 Q Okay. And based on all the tests that you
9 explained to us this morning, that doesn't tell you who
10 shot the gun; correct?

11 A That is correct.

12 Q And does it matter to you the source in which
13 the guns were recovered by the police?

14 MR. HEISLER: Judge, I am going to object,
15 just because I don't understand the question.

16 THE COURT: Do you understand, "the source"?

17 THE WITNESS: I could -- that could go both
18 ways. I don't know how to answer that. I would say
19 yes and no.

20 Q Pretty safe answer. Let me rephrase the
21 question, Detective. Does your opinion or your testing
22 change in any manner based upon the manner in which the
23 police recovered S-2 and S-3?

24 A Well, I would have concerns ballistically if they
25 were recovered in a condition that made them unsafe for

1 testing. But other than that, then no, I have no
2 concerns on how the evidence comes into the laboratory.

3 Q Okay. There's been testimony in the case
4 that Mr. Barber helped the police recover S-2 and S-3.
5 Do you have any knowledge of that?

6 A No knowledge of that, counselor.

7 Q Okay. The question that Mr. Heisler asked
8 you on direct examination about a bullet penetrating
9 the van?

10 A Yes.

11 Q Did you understand that question to mean that
12 the bullet that we are talking about that was fired was
13 fired inside the Jeep?

14 A No. I did not interpret it, that question, that
15 way. I interpreted it that if a bullet's unimpeded,
16 one would expect it to go through the door frame of the
17 parked vehicle. Since it did not, then thus it must be
18 impeded, and if it was such impeded, which would be
19 more likely, the clothing or the body part? And that's
20 how I understood it, and I picked the body part.

21 Q Okay. And your answer to that question was
22 based upon your assumption that the bullet was or was
23 not fired in the Jeep?

24 A The assumption is that, knowing the kinetic energy
25 of a projectile that caliber, that it would have no

1 trouble ballistically penetrating the sheet metal of a
2 U.S.-made vehicle.

3 Q Okay. There's been testimony in the case
4 that there's no forensic or scientific evidence that
5 any gun was fired in the Jeep. Knowing that, does that
6 change your opinion at all with regard to the answer
7 that Mr. -- the question Mr. Heisler asked you?

8 A No, as my interpretation of that is based on the
9 kinetic energy of that projectile, which would have no
10 difficulty in penetrating that sheet metal.

11 Now, if it was determined that it was not
12 inside the van, well, then that's a whole different set
13 of understandings. But my understanding was, if
14 unimpeded, would you expect it to go through the sheet
15 metal of the parked vehicle. And yes, I would expect
16 it.

17 Since it didn't, then it was deflected or
18 slowed down or some of the kinetic energy was lost, and
19 since it was lost, how would it be lost, one would
20 expect it to be lost if it went through a body part.

21 Q Based on your testing, you don't have an
22 opinion as to whether or not Mr. Barber shot the gun?

23 A I know nothing of any of the suspects, defendants,
24 who had what gun.

25 MR. ZAGER: Okay. Thank you, sir.

1 THE COURT: Mr. Somers.

2 MR. SOMERS: No questions, your Honor.

3 THE COURT: Mr. Heisler.

4 REDIRECT EXAMINATION BY MR. HEISLER:

5 Q Mr. Barrett, the fact that you didn't find
6 anything that matched the gun that's S-3, doesn't mean
7 that the projectiles that you couldn't compare couldn't
8 have been fired from that gun, does it?

9 A That's true, correct.

10 Q By the way, does water wash away gunshot
11 residue?

12 A Yeah.

13 MR. HEISLER: That's all I have, Judge.

14 THE COURT: Anything further?

15 MR. KINARNEY: I just have one in response
16 to --

17 THE COURT: Mr. Welle's standing first.

18 MR. KINARNEY: I'm sorry.

19 RECROSS EXAMINATION BY MR. WELLE:

20 Q You said you were aware of some gunshot
21 residue testing being done, after we asked you a couple
22 of questions to get to that point?

23 A Yes, I'm aware that there -- a report was issued
24 by the State Police.

25 Q So something was sent for examination?

1 A Apparently.

2 MR. HEISLER: I'm going to renew my
3 objection. It's not this witness's test. Whether he
4 is aware of it or not is really not relevant.

5 THE COURT: I think he's answered your
6 question.

7 MR. WELLE: Fine.

8 THE COURT: Mr. Kinarney?

9 MR. KINARNEY: Thank you.

10 RECROSS EXAMINATION BY MR. KINARNEY:

11 Q The last question posed to you by Mr. Heisler
12 concerned possibility; right?

13 A Yes.

14 Q Just because you couldn't make any forensic
15 tie-in of the second gun doesn't mean it couldn't have
16 been used; correct? I mean, that's the bottom line.

17 A Yes.

18 Q But that doesn't mean that it was used;
19 right? You can't form any opinion?

20 A No opinion.

21 Q You are a scientist; correct?

22 A Yes.

23 Q You are an expert; correct?

24 A Yes.

25 Q You used scientifically accepted tests on

1 these two weapons; right?

2 A Yes.

3 Q And the bottom line is, based upon your
4 expertise and the scientifically valid tests that you
5 performed, there's no way there is any forensic tie-in,
6 in your opinion, on the second gun to this crime;
7 correct?

8 A Correct. I can only say what I determined to be
9 positive, and which I said.

10 MR. KINARNEY: Thank you.

11 THE COURT: Mr. Heisler, anything further?

12 MR. HEISLER: No, sir.

13 THE COURT: Thank you very much, Mr. Barrett.
14 You're excused.

15 THE WITNESS: Thank you, your Honor.

16 (Witness excused.)

17 THE COURT: Mr. Heisler.

18 MR. HEISLER: Your Honor, subject to moving
19 of evidence, the State rests.

20 THE COURT: Okay. Members of the jury, the
21 State has rested its presentation with regard to
22 evidence in its case-in-chief. At this time I have to
23 review the evidence that the State wants to move into
24 evidence that you are permitted to have in the jury
25 room during deliberations. So I'm going to ask you to

1 step into the jury room while I take care of that.

2 (Jury retires.)

3 THE COURT: Okay.

4 MR. HEISLER: Judge, at this time I would
5 move S-1, which is a photograph of the green Jeep.

6 THE COURT: S-1 in evidence.

7 MR. HEISLER: S-2 and S-3, which is the boxes
8 containing the two firearms with the spent shell cases.

9 THE COURT: S-2 and 3 in evidence.

10 MR. HEISLER: S-4, which is the aerial
11 photograph of Lakewood, going over to Jackson.

12 THE COURT: S-4 in evidence. I presume,
13 counsels, if there is going to be an objection --

14 MR. KINARNEY: If I'm going to object, I will
15 let you know, Judge, yes.

16 MR. HEISLER: Judge, I believe everything
17 after that, through S-14, is already in.

18 THE COURT: Is that so?

19 THE CLERK: Yes.

20 MR. HEISLER: S-15, which is the diagram
21 prepared by CIU, I would move that.

22 THE COURT: S-15 in evidence.

23 MR. HEISLER: I believe everything through
24 S-27 is in evidence. I didn't move the photographs,
25 S-28, 29 and 30. I'd like to move those at this time.

1 THE COURT: In evidence.

2 MR. HEISLER: 31 through 38 appear to be in
3 evidence already. I'd move S-39, which is a blow-up of
4 the evidence list.

5 THE COURT: In evidence.

6 MR. HEISLER: S-40A, Judge, which was the
7 victim's light-blue shirt. I am not moving the whole
8 box, just the shirt.

9 THE COURT: In evidence.

10 MR. HEISLER: And S-41 A and S-41 B, which
11 are the victim's jacket and the victim's pants.

12 THE COURT: In evidence.

13 MR. HEISLER: 42 through 53 are in. I'm not
14 moving 54 or 55. They were never identified. 56
15 through 58 are in. Judge, I'm going to move S-59,
16 which is the latent fingerprint log sheet; S-60, which
17 is the evidence report concerning the latent
18 fingerprints which were not of comparative value; and
19 S-61, which is the report that was of fingerprints of
20 comparative value.

21 THE COURT: In evidence.

22 MR. HEISLER: S-62, which is a diagram.

23 MR. KINARNEY: Judge, if I could just ask,
24 it's listed as "large, multicolored diagram." which
25 diagram is that?

1 MR. HEISLER: I believe it's the map.

2 THE COURT: Street map.

3 MR. KINARNEY: I have no objection to the
4 map.

5 THE COURT: In evidence.

6 MR. HEISLER: S-63, which was the computer-
7 assisted dispatch log.

8 THE COURT: In evidence.

9 MR. HEISLER: 64, which was the Consent to
10 Questioning form that Sergeant Hayes testified to
11 yesterday.

12 THE COURT: In evidence.

13 MR. HEISLER: S-65, which was a Miranda
14 rights form.

15 THE COURT: In evidence.

16 MR. HEISLER: S-66 through 70 are the
17 projectiles.

18 THE COURT: In evidence.

19 MR. HEISLER: And S-71 through 75, which were
20 the charts that Mr. Barrett used this morning.

21 THE COURT: In evidence.

22 MR. HEISLER: I believe that's it, Judge.

23 THE COURT: Okay. Counsel ready to proceed?

24 MR. WELLE: Well, your Honor with respect to,
25 I guess motions at this particular point in time --

1 THE COURT: You have motions? I will hear
2 you.

3 MR. WELLE: Okay. Judge, on behalf of Mr.
4 worthy, I would move for a motion to dismiss at this
5 particular point in time.

6 It's Mr. Worthy's position that there is
7 insufficient evidence of the existence of a conspiracy
8 on this particular day, anything that exists to
9 implicate him in a particular conspiracy, or to place
10 him, reasonably and credibly, of course, in a situation
11 where he would be in any way responsible for these
12 events.

13 THE COURT: Mr. Zager. No. Mr. Kinarney.

14 MR. KINARNEY: Thank you, your Honor. I join
15 in co-counsel's comment. I'm going to respectfully
16 move for judgment of acquittal. I don't have to recite
17 the law to your Honor. Your Honor clearly knows it.

18 I would submit to the Court, giving the State
19 the benefit of all -- even giving the State the benefit
20 of all reasonable inferences, certainly there is
21 insufficient evidence on Count 1, which is the
22 conspiracy count.

23 As a matter of fact, I think the evidence
24 shows that if there may have been a dispute, the
25 dispute was settled prior to the victim dying. I think

1 that relates to the conspiracy. I'm just going to
2 submit on the remaining two counts, charging Mr. Santos
3 with murder and possession of a weapon for an unlawful
4 purpose.

5 THE COURT: Mr. Zager.

6 MR. ZAGER: Your Honor, I would be moving for
7 a judgment of acquittal based on the State's failure to
8 present evidence that would allow a jury to make a
9 reasonable inference. Maybe the jury could make an
10 inference, but in light of the State's testimony as I
11 recollect it -- and I don't really want to do a closing
12 argument now, Judge, but I think my client stands a
13 little differently before the Court with regard to the
14 credible evidence that's been submitted than perhaps
15 Mr. Santos and Mr. Wooley.

16 My understanding and recollection of all of
17 the State's forensic experts was that they had no
18 evidence whatsoever to suggest that Mr. Maples was at
19 Highpoint on April 28th, 2002 at 11:00 AM.

20 The State's witness who is alleged to be an
21 eyewitness to what occurred is the only person that's
22 put Mr. Maples at the scene. And I'm not going to
23 argue his credibility now, 'cause I don't think that's
24 appropriate.

25 THE COURT: Right.

1 MR. ZAGER: But taking his testimony, if you
2 wanted to, as truthful, to hold Mr. Maples in on his
3 testimony would, I think, be inappropriate, Judge,
4 because although he puts Mr. Maples at Highpoint, he
5 clearly states that Mr. Maples is not in the Jeep, but,
6 I believe it was, 60 yards away when the shots
7 occurred.

8 And my suspicion is that you may have a
9 thought about conspiracy with regard to my client with
10 Mr. Santos as contained in, I think, the second or
11 first count of the indictment, from the only witness
12 that the State's produced, which again is Mr. Barber.

13 He clearly testified on cross-examination
14 that he was not aware of any plan, of any agreement, of
15 anything that was going to go down at Highpoint. I
16 asked him all the questions relating to the jury charge
17 and the elements of conspiracy and accomplice
18 liability, to which he answered no, there was -- he was
19 not there, he didn't -- he was not aware that my client
20 aided or agreed to aid, or planned or anything with
21 regard to conspiracy.

22 There is an allegation, and I think that that
23 is perhaps the only way that your Honor could even
24 consider keeping my client in the case, and it's based
25 on what goes back to what I asked for, a Rule 104

1 hearing, about this alleged incident in Yonkers.

2 You have Mr. Hakim Shabazz, who testifies
3 nothing about Yonkers, simply testified that on
4 Thursday before the Sunday shooting, that my client was
5 mad at the victim, they had an argument, and everything
6 was cool and the argument was done.

7 You have Mr. Haleem Shabazz testifying that
8 something occurred in Yonkers; but, quite frankly, if
9 you believe his testimony, my client didn't pull the
10 gun. Other people did.

11 And no matter what may have happened, if
12 anything did happen, quite frankly, Judge, everything
13 was resolved the next day, which would have been a
14 Friday. And, as a matter of fact, there was testimony
15 that, using their words, everything was cool, and there
16 were no problems. And there's testimony that on Friday
17 before the shooting at Highpoint, and on Saturday, the
18 victim was with my client.

19 So, if the Court were to possibly consider
20 that there was some sort of conspiracy that started in
21 Yonkers, it ended the next day, because everything was
22 fine on Friday and Saturday between my client and the
23 victim.

24 There's something, there's some allegation
25 that something occurred in Philadelphia; but that's not

1 part of what I would suspect to be a conspiracy charge,
2 in light of, if there was something, it ended after the
3 alleged incident in Yonkers. And I am not conceding
4 that the thing in Yonkers occurred.

5 Judge, that's my recollection of the
6 testimony relevant to my client. And I don't have to
7 argue to you that you have to take the evidence
8 separate with respect to my client.

9 But, quite frankly, Judge, there's nothing
10 here that the jury should be even given the opportunity
11 to consider, because any inference that the State's
12 entitled to get, which they're entitled to get all
13 favorable, reasonable inferences, if you gave them, if
14 you gave the State any benefit of the doubt, the only
15 inference that could be drawn would be an unreasonable
16 inference that my client conspired, because, quite
17 frankly, they have nothing.

18 And it's 20 witnesses. They have nothing to
19 show that my client conspired or had a purpose, or any
20 of the elements of conspiracy or murder. And, Judge, I
21 don't mean to put your Honor on the spot, but if your
22 Honor is inclined to deny my motion, under State vs.
23 Reyes and the appropriate case law and court rules, I
24 would ask your Honor to articulate findings of fact.

25 THE COURT: I don't make findings of fact.

1 The jury makes findings of fact.

2 MR. WELLE: well, perhaps conclusion of law,
3 then, with regard to -- if there is a denial of my
4 motion. Thank you.

5 MR. SOMERS: Your Honor, Defendant James
6 Irwin makes -- moves to dismiss those counts of the
7 indictment against him. I do not believe that the
8 State has made a prima facie case. Thank you, your
9 Honor.

10 THE COURT: All right. well, with regard to
11 this matter, as counsel's aware, the Court accepts the
12 evidence presented by the State, views it in its most
13 favorable light, and gives the State the benefit of all
14 reasonable inferences that can be drawn therefrom.

15 During the course of the trial here, to the
16 best of my recollection, I've heard testimony of the
17 Shabazz brothers, who were brothers of the victim, with
18 regard to a course of conduct involving the defendants
19 worthy, Santos and Maples and the victim, starting
20 three days prior to the murder of the victim.

21 The course of conduct was rather violent in
22 nature, in that guns were possessed by the defendants,
23 two of the defendants, and threats were exchanged, and
24 there was an indication that there was some concern
25 that one of the defendants thought the victim tried to

1 do him physical harm in Philadelphia, and threats were
2 exchanged and guns were displayed starting three days
3 prior to April 28th. And that's the best of my
4 recollection.

5 I have heard testimony that on April 28th the
6 defendants Worthy and Maples appeared at the Highpoint
7 condominium complex in Lakewood early in the morning;
8 they spoke with Mr. Barber, a State's witness, as well
9 as the accused Irwin in this case, allegedly -- that's
10 the testimony -- and there was some discussion even at
11 that point by the defendant with Worthy about the
12 events three days earlier, and the fact that, you know,
13 violence could be done to the victim in this case.

14 Worthy and Maples left and went -- I think it
15 was Worthy who returned in the Acura. They both left
16 in the Jeep. Worthy returned in the Acura. There was
17 testimony that Worthy then, along with several others,
18 including Mr. Barber, went and retrieved a handgun at
19 Winteringham Village in Toms River, and returned to the
20 Highpoint area.

21 And there was testimony that, shortly
22 thereafter, the green Jeep was again in the parking lot
23 of the Highpoint complex, and in the green Jeep was the
24 defendant Worthy with the defendant Santos. The
25 defendant Maples entered the Jeep, and there was

1 testimony that the shots were fired and that the victim
2 came out of the Jeep and started to run, not very well,
3 apparently, having been shot, and that the defendant
4 Santos then pursued him and kept shooting at him until
5 he fell dead.

6 Once again, it's not up to the Court to pass
7 upon the credibility of the evidence, but merely to
8 note the presence of evidence and that it is sufficient
9 in nature to justify submission of the case to the
10 jury, along with all the ballistics information and
11 other items that have been admitted into evidence.

12 So, all of the motions are denied.

13 With regard to Mr. Somers' client, again, Mr.
14 Barber testified that he and Mr. Somers' client,
15 Mr. Irwin, took the Jeep following the murder into the
16 woods in Jackson.

17 He testified that Mr. Irwin attempted to
18 start a fire in the gas tank by putting a handkerchief
19 or something in the gas tank and attempting to light
20 it, and that Mr. Irwin then went and buried the guns,
21 and he testified that he would be able to locate the
22 guns because there were certain other items, a glove
23 and duct tape, left in the area.

24 He went there with the law enforcement
25 officers; and, lo and behold, they found the guns, the

1 duct tape and the glove. So, there's sufficient
2 evidence also, then, to hold Mr. Irwin into the case.

3 So all the motion are denied. I'll take ten
4 minutes and see counsel as to your time schedule for
5 the event of who's going to testify and who's not.

6 (Recess taken.)

7 * * *

8 THE COURT: Counsel, ready to proceed?

9 MR. ZAGER: Yes, your Honor.

10 THE COURT: Do you have witnesses ready?

11 MR. WELLE: I'm sorry?

12 THE COURT: Witnesses ready?

13 MR. WELLE: Judge, we're still looking for a
14 witness. Our investigator is out. But from this point
15 of view, I would ask that you inquire of the other
16 counsel if they're ready to proceed.

17 MR. KINARNEY: Judge, I could call
18 Investigator Mitchell.

19 THE COURT: All right, start with
20 Investigator Mitchell?

21 MR. KINARNEY: Yes, Judge.

22 THE COURT: Jury out.

23 (Jury in the box.)

24 THE COURT: All right. As you're aware, the
25 state has rested its presentation-in-chief. I have

1 marked exhibits into evidence that you will be
2 considering at the conclusion of the case.

3 And, Mr. Kinarney, you have a witness you
4 wish to call?

5 MR. KINARNEY: Yes, I do, Judge, Investigator
6 Joseph Mitchell.

7 J O S E P H M I T C H E L L, Witness for the Defense,
8 sworn.

9 THE COURT: Mr. Kinarney.

10 MR. WELLE: Thank you, your Honor.

11 DIRECT EXAMINATION BY MR. KINARNEY:

12 Q Good morning, Investigator.

13 A Good morning.

14 Q Investigator Mitchell, whom are you employed
15 by?

16 A The Ocean County Prosecutor's Office.

17 Q And for how long have you been so employed?

18 A Approximately ten years.

19 Q And what is your function with the Ocean
20 County office?

21 A I am assigned to the Major Crime Homicide Unit as
22 an investigator.

23 Q Now, in reference to the matter of the murder
24 that we have been talking about in this case, were you
25 assigned to this case?

1 A Yes.

2 Q And how did you come to be assigned to this
3 case?

4 A I was contacted by my supervisor and requested to
5 respond out to the crime scene.

6 Q Okay. And do you recall what date that was?

7 A April 28th, 2002.

8 Q And did you, in fact, go to the crime scene?

9 A Yes, sir.

10 Q And as part of your functions in this case,
11 did you interview several citizens?

12 A Yes, I did.

13 Q Lay witnesses; correct?

14 A That's correct.

15 Q People who were not suspected of any criminal
16 activity; am I correct?

17 A That's correct.

18 Q And a couple of the people that you spoke to
19 were a married couple called James and Pamela Dunn?

20 A That's correct.

21 Q And did you interview them?

22 A Yes, I did.

23 Q Did you essentially ask them: Tell me what
24 you know?

25 A That's correct.

1 Q And they had a conversation with you and told
2 you the knowledge they had concerning what they
3 observed; correct?

4 A Yes.

5 Q Now, referring to Mr. Dunn, did you interview
6 him on April 28th of '02?

7 A Yes, I did.

8 Q And he had certain information he gave to
9 you; correct?

10 A That's correct.

11 Q Did Mr. Dunn tell you that he saw at least
12 three black males run around the Jeep?

13 A That's what he stated, yes.

14 Q He didn't indicate to you that any of those
15 three males was possibly a dark-skinned Hispanic male,
16 did he?

17 A He just stated three black males.

18 Q Did he indicate to you that the subjects ran
19 around the Jeep and that all the suspects entered the
20 Jeep and drove away?

21 A That's what he told me, yes.

22 Q He didn't indicate to you that he couldn't
23 tell if the third guy got in the Jeep or not; right?

24 A I don't believe so.

25 Q Okay. Now, you also had a conversation with

1 his wife, Pamela Dunn; correct?

2 A Yes.

3 Q She indicated to you that she observed a
4 black male jogging in front of the house and down
5 Prospect Street towards Route 9?

6 A That's correct.

7 Q She never indicated to you that it was
8 possibly a Hispanic male; correct?

9 A That's correct.

10 Q Did she also indicate to you that she saw
11 another man running, and gave a clothing description as
12 to the two men?

13 A Yes.

14 Q One of the men that went towards Route 9 she
15 told you was wearing a gray fleece sweatshirt; correct?

16 A Possibly, she stated.

17 Q Possibly?

18 A Yes.

19 Q Did she indicate to you that she saw anything
20 in his hands?

21 A No.

22 Q Did she indicate to you that she saw him
23 handing anything off to another individual?

24 A No, she did not.

25 Q Now, as part of your duties in this case, you

1 also had an interview with Halim Shabazz; am I correct?

2 A Yes.

3 Q Halim Shabazz told you that at some point in
4 time prior to this incident, he had gone to Yonkers,
5 correct, with a number of individuals?

6 A Yes.

7 Q He indicated to you that they had made a stop
8 first in Newark; correct?

9 A I believe they were en route to Newark.

10 Q Right.

11 A And eventually ended up in Yonkers.

12 Q Okay. Did he indicate to you that while on
13 the way to Newark he fell asleep?

14 A Yes.

15 Q He didn't indicate to you that he was awake
16 and he only fell asleep after leaving Newark going
17 to -- he did not indicate to you that he was awake the
18 entire time up to Newark, and only fell asleep when
19 they left Newark to go to Yonkers; correct?

20 A I'm not sure at what point in time when he fell
21 asleep during the trip, but I do know that he stated he
22 fell asleep during the trip.

23 Q You prepared a police report in reference to
24 this incident; correct?

25 A Yes, sir.

1 Q And I am referring to your report of May
2 16th, 2002.

3 A That's correct.

4 Q You have that with you?

5 A Yes, sir.

6 Q Now, in reference to your police report, you
7 attempt to make it as accurate as possible; correct?

8 A That's correct.

9 Q I would refer you to page three of your
10 four-page report. And I would refer you to the first
11 full paragraph on page 3. The first sentence
12 indicates: "While en route to Newark, New Jersey, Mr.
13 Shabazz fell asleep." Correct?

14 A Yes.

15 MR. KINARNE.. Thank you. I have nothing
16 further.

17 THE COURT: Mr. Zager? Oh, Mr. Somers?

18 MR. SOMERS: No questions.

19 MR. ZAGER: I'm sorry, Judge. It's me.

20 Thank you.

21 CROSS-EXAMINATION BY MR. ZAGER:

22 Q Good morning, Detective.

23 A Good morning.

24 Q You were working under the direction of
25 Investigator Hayes?

- 1 A Sergeant Hayes, yes.
- 2 Q Sergeant Hayes. And you were called in to be
3 part of the investigation of the shooting of Mr. Roy?
- 4 A Yes, sir.
- 5 Q And you got involved on April 28th; correct?
- 6 A That's correct.
- 7 Q And on April 29th, the next day, you went to
8 the Ocean County Jail and interviewed Mr. Halim
9 Shabazz; is that correct?
- 10 A Yes, sir.
- 11 Q And I know Mr. Kinarney asked that, but you
12 were trying to find out as much information as you
13 could relevant to what happened at Highpoint; correct?
- 14 A That's correct.
- 15 Q You were aware that Mr. Shabazz was Mr. Roy's
16 half-brother?
- 17 A Yes.
- 18 Q And in the sense that you were getting
19 information from him, you tried to be as accurate as
20 possible; correct?
- 21 A Yes.
- 22 Q You engaged in a series of questions, and
23 then he responded?
- 24 A That's correct.
- 25 Q And did you take some notes?

1 A Yes, sir, I did.

2 Q As we say in the business, did you take
3 copious notes?

4 A I noted all the information that he related to me.

5 Q Okay. And I hate to be repetitive, but you
6 tried to take down the information from this witness as
7 reliable and as accurate as you could; correct?

8 A That's correct.

9 Q So whatever he told you, you would write down
10 in the form of notes and then memorialize from the
11 notes into a report; correct?

12 A Yes.

13 Q And then as a result, you prepared a report
14 two weeks later, roughly, on May 16th, consisting of
15 four pages?

16 A Yes.

17 Q So, we are on the same page that that report
18 is as accurate as it could have been with regard to
19 what Mr. Halim Shabazz told you on April 29th; correct?

20 A That's correct.

21 Q Okay. Were you in the courtroom when Mr.
22 Shabazz testified last week?

23 A No, sir, I was not.

24 Q Okay. Mr. Kinarney kind of stole some of my
25 thunder, but I'm going to ask you anyway, your report

1 notes that Mr. Halim Shabazz told you that he fell
2 asleep on the way to Newark; correct?

3 A Yes, sir.

4 Q He did not tell you that he was half asleep,
5 half awake on the way from Newark to Yonkers?

6 A No, he did not tell me that.

7 Q If I understand what Mr. Halim told you, as
8 you just testified to, he never told you that they went
9 to Newark?

10 A That's correct.

11 Q In other words, as you understood what he
12 said, he slept right through the trip to Newark?

13 A What he stated was that they were en route to
14 Newark and, during that travel time, fell asleep.

15 Q So he didn't tell you that they went to a
16 Muslim shop?

17 A He stated that they were en route to a Muslim shop
18 located in Newark.

19 Q Okay. I understand that. But he never told
20 you that they actually got there?

21 A No, sir.

22 Q He never told you that he drove around
23 Newark, after the Muslim shop, for about an hour, did
24 he?

25 A No, sir.

1 Q He never told you that he bought Hennessy, I
2 guess it's Scotch or bourbon, in Newark?

3 A No, sir.

4 Q According to what he told you, he wakes up,
5 and the first thing he sees is a sign that says
6 "Yonkers"?

7 A Yes.

8 Q And then he tells you that he saw a sign that
9 said, "welcome to the Home of the Bronx Bombers"?

10 A I don't recall that, no.

11 Q Never told you that?

12 A No.

13 Q Okay. At some point, he tells you that the
14 vehicle that he was in pulled into a miniature golf
15 place?

16 A That's correct.

17 Q Behind it?

18 A Just stated that they pulled into a miniature golf
19 park.

20 Q Okay. And then he described for you what
21 apparently happened there; right?

22 A Yes.

23 Q Did he ever tell you that an 18-wheel tractor
24 trailer pulled into that park?

25 A No, sir.

1 Q Did he ever mention an 18-wheel tractor
2 trailer?

3 A No, sir.

4 Q As he's describing the incident that occurred
5 behind or near the miniature golf place in Yonkers, did
6 he ever tell you that Mr. Maples got out of the car?

7 A I don't recall exactly, but I can check my report.

8 Q Please do.

9 A I'm sorry. Your question, sir?

10 Q Did he ever tell you, during his description
11 of the alleged incident in Yonkers, that Mr. Maples
12 ever got out of the car?

13 A No.

14 Q Did he ever tell you during the alleged
15 incident that had happened in Yonkers that Mr. Maples
16 ever demanded Rashon Roy's cell phone?

17 A No, sir.

18 Q Did he ever tell you during this incident at
19 the -- in Yonkers, that Maples said to anyone, "Take
20 the gun off of Peanut," meaning him?

21 A No, sir.

22 Q He never told you that; right?

23 A That's right.

24 Q He does tell you that they leave Yonkers and
25 they drive back to Seaside Heights?

1 A Yes.

2 Q And that he's dropped off at the Metropol, is
3 that the name of -- the Metropol Hotel?

4 A Yes, that's correct.

5 Q He and Mr. Roy?

6 A Yes.

7 Q Did he ever tell you that there was a police
8 cruiser within a block of the Metropol Hotel?

9 A Not when I interviewed him, no.

10 Q Okay. And then he told you something about
11 the next day; correct?

12 A That's correct.

13 Q He told you he was thinking about reporting
14 to the police what happened in Yonkers; right?

15 A Yes.

16 Q But in the same breath, he didn't tell you
17 that there was a cop car right there for him to do --

18 A No.

19 Q Let me take you back to Yonkers for a minute,
20 'cause I forgot to ask you a question. While there in
21 Yonkers and these guns are allegedly pointed, did he
22 ever say to you that Mr. Santos said: If you run, I'll
23 shoot you?

24 A No.

25 Q He never said that; right?

1 A No, he did not.

2 Q The next day, he tells you that he met with
3 Mr. Maples and Mr. Roy and LuRay Maples; right?

4 A Yes.

5 Q And he says during that conversation, or that
6 meeting, that Mr. Maples said to Roy, "I wouldn't hurt
7 you." Correct?

8 A Yes.

9 Q Something to that effect; right?

10 A Yes.

11 Q But what's omitted from his statement to you
12 is that he never told you that Maples said: I won't
13 hurt -- I won't hurt you, meaning Halim, "you" meaning
14 Roy, Bus, and Mom. He never mentioned Bus and Mom;
15 right?

16 A That's correct.

17 Q "Bus" meaning his other brother?

18 A That's correct.

19 Q He tells you that on the next day, which is
20 Saturday, that he and Rashon Roy, Mr. Maples and LuRay
21 Maples all get together and they meet some girls on
22 Saturday sometime in the morning; correct?

23 MR. HEISLER: Judge, I think Mr. Zager's
24 referring to the wrong day.

25 MR. ZAGER: That could be.

1 Q Was that on Friday? Am I mistaken?

2 A Yes, that would be Friday.

3 Mr. ZAGER: Okay. Thank you, Mr. Heisler.

4 Q And during that conversation or that meeting
5 on Friday, which is, I guess, the day after what
6 happened in Yonkers occurred -- right?

7 A Yes.

8 Q He tells you about a problem regarding
9 Anthony Mason and some gentleman by the name of Byron,
10 whose last name was unknown; right?

11 A Yes.

12 Q And as you understood from that, there was a
13 threat made by Byron; correct?

14 A That's what I was told, yes.

15 Q By Mr. Halim Shabazz?

16 A Yes, sir.

17 Q Okay. Now, he told you that this person
18 Byron made a threat against Rashon Roy; isn't that
19 accurate?

20 A If I could check my report.

21 Q Please do.

22 A Yes, that's what he stated.

23 Q He never told you that he understood the
24 threat was against Mr. Maples?

25 A That's correct.

1 Q He then tells you that Mr. Roy himself and
2 some others go to confront this person by the name of
3 Byron; right?

4 A Yes.

5 Q There's no question in your mind that this
6 threat by Byron was to rob Rashon Roy?

7 A That's what I was told.

8 Q Later that same day, if I'm correct, it's on
9 a Friday, 6:00 PM, you attended the autopsy of Mr. Roy;
10 is that fair to say?

11 THE COURT: Not a Friday.

12 MR. HEISLER: Friday?

13 MR. ZAGER: I'm sorry.

14 Q On Sunday or Monday -- what day did you
15 attend the autopsy?

16 A Monday the 29th.

17 Q Monday, obviously, after the shooting?

18 A That's correct.

19 Q Okay. That was at six o'clock; right?

20 A Yes, sir.

21 Q And you were there?

22 A Yes, I was.

23 Q Along with some other investigators.
24 standard operating procedure?

25 A That's correct.

1 Q And you had known the results of the autopsy
2 when you walked out?

3 A Yes.

4 Q You knew that the victim died by way of
5 gunshot wounds; correct?

6 A That's correct.

7 Q Were you also aware that there was, according
8 to Dr. Park, a bullet from a previous shooting in the
9 victim's chest?

10 MR. HEISLER: Judge, I am going to object to
11 that, just on the grounds of relevance --

12 THE COURT: I will sustain it.

13 MR. HEISLER: -- as to whether Investigator
14 Mitchell's aware.

15 Q Did you know that?

16 THE COURT: I sustained the objection.

17 MR. HEISLER: Objection.

18 Q Anthony Mason was with Halim Shabazz, my
19 client and some other people on Friday night before the
20 shooting; correct?

21 A Yes.

22 Q Anthony Mason was arrested that night for
23 some charges; correct?

24 A I don't know whether he was or not.

25 Q Okay. You know, do you know whether or not

1 he was in the Ocean County correctional institution?

2 A No, sir.

3 Q Did you or anyone in your office, knowing
4 what you may have known from the autopsy, and knowing
5 what Mr. Halim Shabazz told you regarding a threat from
6 this man Brian (sic) to rob Rashon Roy, did you or
7 anyone in your office investigate or talk to Anthony
8 Mason relevant to that threat?

9 A As far as I'm concerned, no. I did not.

10 Q Did you or anyone else in your office look
11 for or attempt to interview this person by the name of
12 Brian or Byron?

13 A I did not, no.

14 Q No one else in your office did, either;
15 correct?

16 A I don't know.

17 Q Your office is right across the street;
18 right?

19 A Yes.

20 Q The detective bureau is downstairs?

21 A Our unit is, yes.

22 Q And Investigator Hayes has an office down
23 there?

24 A That's correct.

25 Q You have an office down there?

1 A That's correct.

2 Q Everyone in the prosecutor's investigators'
3 office that's involved in this case has an office
4 across the street in the basement; correct?

5 A That's correct.

6 Q Are you telling this jury that you have no
7 clue as to whether or not any investigator from the
8 Ocean County Prosecutor's Office followed through on
9 this threat from Mr. Byron? Is that your testimony?

10 MR. HEISLER: Objection, Judge.

11 THE COURT: Sustained, sustained.

12 Argumentative, and also seeking hearsay.

13 MR. ZAGER: Just want to know if he
14 investigated, Judge.

15 THE COURT: No, wait. He's answered what
16 he's done. He's been very responsive to what he's
17 done.

18 Q Do you talk amongst yourselves, you
19 investigators that investigate cases, and compare
20 notes?

21 MR. HEISLER: Judge, I am going to object to
22 that whole line continuing.

23 THE COURT: Yes. It's sustained.

24 Q Let me take you back to the Yonkers incident,
25 'cause it was relayed to you in some sort of fashion by

1 Mr. Halim Shabazz; right?

2 A Yes.

3 Q After you received this information from Mr.
4 Shabazz, did you contact the Yonkers police?

5 A I did not, no.

6 Q Did you make any effort to confirm that there
7 is even a golf course in Yonkers?

8 A No, I did not.

9 Q Did you make any effort to confirm whether
10 there was a miniature golf course in Yonkers?

11 A No, sir.

12 Q Have you ever been to Yonkers?

13 A Not that I am aware of.

14 Q Have you ever been to the Bronx?

15 A Yes.

16 Q Yankee Stadium?

17 A Yes.

18 Q Home of the Bronx Bombers?

19 A That's correct.

20 Q Do you know how to read a map?

21 A Yes.

22 MR. ZAGER: Judge, if I could have a map
23 marked as, I guess, DW maybe, Number 1.

24 THE COURT: DM?

25 MR. ZAGER: DM.

1 THE CLERK: DM-1.

2 (DM-1 marked for identification.)

3 Q Investigator, let me show you what's been
4 marked as DM-1 and ask, would you agree with me this is
5 a map of New York State?

6 A Yes.

7 Q And on whatever side this is, do you
8 recognize that area that's on the map?

9 A Yes.

10 Q would you agree with me that that may very
11 well be the five boroughs of New York City?

12 A Yes.

13 Q Can I ask you to come with me over here?
14 Could you take that, please?

15 Can I borrow your marker, Mr. Prosecutor?

16 MR. HEISLER: Sure.

17 Q Could you point out on the map where the
18 Borough of -- Port Newark is?

19 A I'm sorry, Port Newark?

20 Q Newark, the city of Newark.

21 A It's right here.

22 Q Could you circle that and put an N near it?

23 A (Complies.)

24 Q And can you point out the Bronx?

25 A Right there.

1 Q Could you circle that and put a B? And could
2 you point out -- I don't know if it's a borough or not,
3 but Yonkers?

4 A Right there.

5 Q Would you put a Y there?

6 A (Complies.)

7 Q And would you -- do you know from personal
8 knowledge, is Yankee Stadium in the Bronx?

9 A I believe it was.

10 Q Bronx Bombers; right?

11 A Yes.

12 Q And I guess the furthest point this shows is
13 Sayreville. Could you put an S around Sayreville?

14 A How about right above it?

15 Q Okay. And you would agree that if we went
16 further down to the bottom of the map, somewhere down
17 below the S would be Lakewood or Seaside?

18 A Yes, right.

19 Q Now, as you understand it from what Mr.
20 Shabazz told you, where did he go? Did -- he first
21 went to Newark, according to him?

22 A They were en route to Newark.

23 Q And then, according to what he testified to
24 in court, they were in Newark for a while, and then you
25 understand him to say that he went up to Yonkers?

1 A Yes.

2 Q And that's where the incident occurred?

3 A That's what I was told, yes.

4 Q Okay. And then did he see the sign that says
5 "Home of Bronx Bombers" before or after the guns were
6 drawn in Yonkers; do you know?

7 A He never mentioned to me that he saw a sign,
8 "Bronx Bombers."

9 Q Okay. So as far as you know, he went from
10 Newark, traveled up substantially north to Yonkers,
11 somehow came back to Brooklyn, and came home; is that
12 it, how you understand --

13 A I don't recall his exact route of travel, but
14 once they left New York, they came back down to
15 Seaside.

16 MR. ZAGER: Okay. I have no further
17 questions. Thank you, sir.

18 THE WITNESS: You're welcome.

19 THE COURT: Mr. Somers, do you have any
20 questions?

21 MR. SOMERS: No questions, your Honor.

22 THE COURT: Mr. Welle?

23 MR. WELLE: No questions.

24 THE COURT: Mr. Heisler?

25 CROSS-EXAMINATION BY MR. HEISLER:

1 Q Investigator Mitchell, let's talk about the
2 Dunns for a second. The descriptions they gave you
3 were black males?

4 A That's correct.

5 Q And Mr. Dunn said he was looking out what
6 part of his house?

7 A He had looked out the back sliding glass door.

8 Q And that's when he said he saw the three
9 fellows around the Jeep?

10 A That's correct.

11 Q He also told you that he saw somebody throw
12 something into the Jeep, didn't he?

13 A Yes, he did.

14 Q And this is after he's heard seven, eight or
15 nine gunshots?

16 A That's correct.

17 Q And with respect to Mrs. Dunn, she said she
18 saw somebody walking in front of her house on Prospect
19 toward Route 9: correct?

20 A That's correct.

21 Q And she also saw somebody else, another black
22 male, with a good build, she said; is that right?

23 A Taller than the one that she saw previously, yes.

24 Q Run into the woods?

25 A That's correct.

1 Q Now, the person who ran into the woods was
2 subsequently identified as Steven Bennett; correct?

3 A Yes.

4 Q When did you interview Halim Shabazz?

5 A I interviewed him on Monday, the 29th of April.

6 Q So this would be the day after the murder?

7 A That's correct.

8 Q And you interviewed him in the jail, because
9 he was in on some kind of a child support problem;
10 correct?

11 A Yes, sir.

12 Q And when you interviewed him, what was his
13 condition when you first started to talk to him?

14 A He was very upset, and had a difficult time
15 composing himself.

16 Q He described this incident of going to
17 Yonkers; correct?

18 A Yes.

19 Q And if my geography is correct, along the
20 Hudson River side, leaving the Bronx, Yonkers is the
21 next city north, isn't it?

22 A Yes, it is.

23 Q So you would go directly from the Bronx into
24 Yonkers, or Yonkers into the Bronx if you chose to?

25 A Yes.

1 Q Correct?

2 A Yes.

3 Q Did Mr. Shabazz indicate to you that he was
4 awake while they were in New York, whether it was
5 Yonkers or the Bronx?

6 A He stated he was awake; when he did wake up, that
7 they were in Yonkers.

8 Q Okay. So the part where he was asleep was
9 before the incident where the guns were pulled?

10 A That's correct.

11 Q And even though he didn't mention the
12 18-wheeler pulling in, did he describe guns being
13 pulled by Santos and by worthy on him and his brother
14 Rashon Roy?

15 A Yes, he did.

16 Q In fact, he described that in some detail,
17 didn't he?

18 A Yes, he did.

19 Q And did he tell you who was giving the orders
20 at that time while those guns were pulled?

21 A Yes, he did.

22 Q Who was that?

23 A Gregory Maples.

24 Q And he also told you, did he not, that
25 Gregory Maples was doing the talking to the victim,

1 telling him that if he ever felt threatened again, he'd
2 have him killed?

3 A That's correct.

4 Q Didn't Mr. Shabazz tell you that when they
5 came back to Seaside Heights, that's when the
6 conversation took place between him and his brother
7 about possibly going to the police?

8 A Yes.

9 Q Immediately after they were dropped off?

10 A Yes, sometime thereafter.

11 Q Then he told you about a situation the next
12 day where Gregory Maples was telling the victim and
13 Mr. Shabazz, "I won't let anyone hurt you." Correct?

14 A That's correct.

15 Q And is there any reason in the world to say
16 anything like that unless there's been some other
17 attempt to hurt somebody, Detective?

18 MR. KINARNEY: Objection.

19 THE COURT: Sustained.

20 Q When you conducted your interview of Halim
21 Shabazz on Monday, were you aware that Renato Santos
22 had confessed to Sergeant Hayes and Sergeant Isnardi
23 the day before?

24 A I don't believe so, no.

25 Q On Monday the 29th, were you aware of the

1 Santos statement to Hayes and Isnardi the day before,
2 that he was the shooter?

3 A Yes, I was.

4 Q And you had information from Halim Shabazz,
5 and there was other information being developed from
6 Hakim Shabazz; right?

7 A Yes.

8 Q Regarding Gregory Maples; correct?

9 A Yes.

10 Q And Marvin Worthy?

11 A That's correct.

12 Q At that point, was there any reason to go
13 looking for somebody named Byron about a robbery that
14 never took place?

15 A No, there was not.

16 MR. HEISLER: That's all I have, Judge.

17 THE COURT: Mr. Kinarney.

18 MR. KINARNEY: Thank you.

19 REDIRECT EXAMINATION BY MR. KINARNEY:

20 Q In reference to the gun up in Yonkers that
21 Santos supposedly had, Shabazz said it was a
22 wood-handled gun; right?

23 A Yes, he did.

24 Q He never mentioned anything about it looked
25 like plastic or was plastic; correct?

1 A That's correct.

2 MR. KINARNEY: Nothing further.

3 THE COURT: Mr. Zager?

4 MR. ZAGER: Briefly, Judge.

5 RECROSS EXAMINATION BY MR. ZAGER:

6 Q Mr. Heisler asked you about comments that Mr.
7 Maples may have made in Yonkers; right?

8 A Yes.

9 Q And he asked you the question, "If I feel
10 threatened again, I'll have you killed." That's the
11 question he asked you; right?

12 A I believe so, yes.

13 Q To which you responded yes; correct?

14 A That's correct.

15 Q That's not really accurate, though; right?

16 MR. HEISLER: Talking about my question or
17 his answer, Judge?

18 THE COURT: Yeah.

19 MR. ZAGER: Both.

20 Q Take a look at your report, Detective, page
21 3, first full paragraph, second sentence. At the right
22 it says, "He would kill him." It doesn't say he would
23 have him killed. Am I right?

24 A You're referring to what Maples stated to the
25 victim?

1 Q That was the question Mr. Heisler asked you.
2 I guess what I'm trying to point out is that Halim
3 Shabazz says that Maples said he would kill Roy, not he
4 would have him killed?

5 A That's correct.

6 Q That's correct. Mr. Heisler also asked you
7 if Mr. Shabazz told you if Mr. Maples in Yonkers was
8 giving the orders. Remember that question a minute
9 ago?

10 A Yes, I do.

11 Q Your answer was yes?

12 A That's correct.

13 Q In your report does it reflect anything about
14 Maples giving orders in Yonkers?

15 A Do you mind if I check my report?

16 Q Help yourself.

17 A "Maples did not have a gun, but ordered them out
18 of the van."

19 Q Ordered them out of the van?

20 A That's correct.

21 Q But yet Halim told you nobody got out of the
22 van; right?

23 A As far as who getting out of the van, sir?

24 Q All right, I'm sorry, I will withdraw that
25 question. He asked you about Mr. Shabazz's demeanor on

1 the day after his brother was shot, when you
2 interviewed him at the county jail; right?

3 A Yes, he did.

4 Q And we've already established that you take
5 copious notes and try to write everything from your
6 notes into your report; correct?

7 A That's correct.

8 Q Nowhere in your report does it reflect that
9 Mr. Shabazz was very upset, does it?

10 A No.

11 Q And we can assume that he was upset; right?

12 A Absolutely.

13 Q But you don't reflect that in your report?

14 A That's correct.

15 Q Nor do you reflect in your report that Mr.
16 Shabazz could barely compose himself; am I right?

17 A That's correct.

18 MR. ZAGER: I have nothing further.

19 THE COURT: Anything further, Mr. Heisler?

20 MR. HEISLER: Yes, just a couple, Judge.

21 RECROSS EXAMINATION BY MR. HEISLER:

22 Q Do you need a note in your report,
23 Investigator Mitchell, for you to sit here and remember
24 now that Mr. Shabazz was upset?

25 A No.

1 Q And with respect to maybe I misspoke when I
2 asked the question, the threat from Maples that he
3 would kill the victim if he ever felt threatened again,
4 the time that threat was made, who did Mr. Shabazz tell
5 you was holding the guns on the victim?

6 A Santos and Worthy.

7 MR. HEISLER: Thank you. That's all I have,
8 Judge.

9 THE COURT: Anything further? Thank you.
10 You're excused.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 THE COURT: Is there another witness?

14 MR. KINARNEY: Judge, can we approach
15 side-bar, off the record?

16 THE COURT: Yes.

17 (Side-bar conference off the record,
18 after which the following occurs.)

19 THE COURT: Officer Finnegan.

20 MR. ZAGER: I believe he is a detective.

21 THE COURT: Detective?

22 MR. ZAGER: Yes.

23 THE COURT: Detective Finnegan, please.

24 J A M E S F I N N E G A N, Witness for the Defense,
25 sworn.

1 THE WITNESS: Good afternoon, Judge.

2 THE COURT: Good afternoon.

3 Mr. Zager.

4 DIRECT EXAMINATION BY MR. ZAGER:

5 Q Good morning, Detective.

6 A Good morning.

7 Q Are you employed by Lakewood Police?

8 A Yes, I am.

9 Q And in what capacity?

10 A I am a detective.

11 Q How many years have you been a police
12 officer?

13 A About eleven years now.

14 Q And how many years have you been a detective?

15 A A little bit over eight.

16 Q In your capacity as a detective, on April
17 28th were you dispatched to the Highpoint condos or
18 apartments for a shooting?

19 A Yes, I was.

20 Q And would it be fair to say that you were the
21 lead detective out of Lakewood regarding this incident?

22 A I was one of, one of a team of detectives from
23 Lakewood.

24 Q Okay. Who was the lead, or is there such a
25 thing as a lead?

1 A We had supervisors.

2 Q Supervisors? Okay. Isnardi was your
3 supervisor?

4 A He was one of the supervisors, yes.

5 Q Do you guys work in conjunction with the
6 investigators from the prosecutor's office?

7 A Yes, we do.

8 Q And do you work in conjunction with CIU from
9 the Sheriff's Department of Ocean County?

10 A Yes.

11 Q You all work together to solve the case;
12 right?

13 A That's correct.

14 Q You were assigned, by whoever it was, various
15 duties in this investigation?

16 A Yes.

17 Q Was one of your duties to investigate or
18 interview a gentleman by the name of Steven Bennett?

19 A Yes.

20 Q And did you, in fact, do that?

21 A Yes, I did.

22 Q Did you go to someone's house looking for Mr.
23 Bennett?

24 A Yes, I did.

25 Q And what happened when you got to that house?

1 MR. HEISLER: Judge, I am going to object to
2 this on grounds of relevance as to anything that's been
3 brought up to this point.

4 MR. ZAGER: Judge, why do I have to be
5 concerned about what he's brought up? This is my case,
6 and --

7 MR. HEISLER: Well, in that case, Judge, if
8 we can approach side bar, I'd like an offer.

9 THE COURT: All right.

10 (The following takes place at side bar.)

11 THE COURT: I gather your objection was
12 founded on the fact that you anticipated this was a
13 witness with prior inconsistent statements.

14 MR. HEISLER: That's the first thing I was
15 anticipating, Judge

16 THE COURT: But now Mr. Zager says that's not
17 what he's about to engage in.

18 MR. ZAGER: Well, that's -- to be fair to Mr.
19 Heisler, that's the majority of the purpose for which I
20 was calling this witness, was the inconsistencies in
21 the statements between Barber, his testimony, and what
22 he told this witness. On the other hand, I'm certainly
23 entitled to ask this investigator what he did during
24 the course of the investigation.

25 THE COURT: You just asked a very broad

1 question about what happened when he got there. Now,
2 let's --

3 MR. HEISLER: We got Bennett hanging out a
4 window and trying to get away from the cops. What does
5 that have to do with anything at this point?

6 MR. ZAGER: Bennett was charged with
7 conspiracy to commit murder.

8 MR. HEISLER: Not by the grand jury he
9 wasn't, so what difference does it make?

10 MR. ZAGER: If I want to point a finger at
11 Bennett and Barber, I'm certainly entitled to do that
12 during my defense.

13 THE COURT: You certainly can do that if, you
14 know, if you can produce relevant testimony. My only
15 concern is, you are not going to be able to introduce
16 statements that Bennett may have made, to challenge --
17 raise inconsistent statements by Barber or someone.

18 MR. ZAGER: I think I understand that.

19 THE COURT: In other words, it's all
20 statements of witnesses who have testified.

21 MR. ZAGER: Understood, for the
22 inconsistencies.

23 THE COURT: Yes.

24 MR. HEISLER: And the other thing, Judge, is,
25 as far as Barber's concerned, I think he, every time he

1 brought out an inconsistent statement, he admitted that
2 he made it. So I don't think that he gets a second
3 shot at putting a witness on that's inconsistent with
4 what he said.

5 MR. WELLE: I don't think that's a
6 reasonable --

7 MR. ZAGER: Judge, I can just -- actually,
8 I'm not going far with Bennett. I just want to bring
9 to this jury's attention that --

10 MR. WELLE: The guy was running. Bennett was
11 running.

12 MR. ZAGER: -- Mr. Bennett ran from the
13 detectives. He ran. He attempted to flee. He ran
14 from the scene. This guy's an eyewitness to him
15 running from the scene. They interviewed Bennett. I'm
16 not going to ask him what Bennett said, 'cause I'm not
17 allowed to. If you want, I can perhaps lead. But at
18 the risk of being objected to --

19 THE COURT: All right, elicit testimony that
20 he ran when they arrived there, but, you know --

21 MR. ZAGER: All right. Thank you.

22 (Sidebar conference concluded.)

23 BY MR. ZAGER:

24 Q Did you and Investigator Frulio, from the
25 prosecutor's office, attempt to locate Mr. Bennett at

1 someone's house, at 223 White Street?

2 A Yes, we did.

3 Q In some town?

4 A In Jackson.

5 Q All right. And when you arrived at the
6 house, did you learn that Mr. Bennett was there?

7 A Yes, we did.

8 Q Did Mr. Bennett attempt to flee from you?

9 A Yes, he did.

10 Q Did you eventually take Mr. Bennett down to
11 the Lakewood Police Department?

12 A Yes.

13 Q And did you interview him?

14 A Yes.

15 Q And did you ask him questions regarding what
16 happened at Highpoint on April 28th?

17 A Yes.

18 Q As the result of talking to Mr. Bennett, were
19 you -- I'm sorry. were you at the crime scene?

20 A Yes, I was.

21 Q And you were working in conjunction with
22 other detectives, so you kind of had an idea of what
23 had happened at the crime scene?

24 A Yes.

25 Q Did you come to the conclusion that

1 Mr. Bennett ran from the scene?

2 A Yes, I believe so.

3 Q Did you come to the conclusion that Mr.
4 Bennett was wearing a multicolored, striped tee shirt
5 or polo shirt?

6 A Yes.

7 Q And one of the stripes was yellow; correct?

8 A I'd have to look through my report. I don't
9 recall that, if there was stripes or not.

10 Q Please do that.

11 A Is that in my report, sir?

12 Q You know what, Detective? To be fair to you,
13 I'm not really sure. So don't go looking through eight
14 pages. I'm sure Mr. Kinarney may want to ask you a
15 question about that.

16 A Okay.

17 Q You also came to the conclusion that whatever
18 it is that Mr. Bennett told you, his version was such
19 that he ran right through the crime scene; correct?

20 A Yes.

21 Q And the path that he took was right where the
22 victim had been shot; correct?

23 A In that general area, yeah.

24 Q Okay. Well, we're not talking about a
25 parking lot that's very wide; right?

1 A I'm talking about a street.

2 Q Okay. The shooting occurred in a parking
3 lot; right?

4 A Yes.

5 Q The victim ran toward Prospect; correct?

6 A That's correct.

7 Q And as I understand it, Bennett ran somewhere
8 in that path?

9 A He also ran across Prospect Street.

10 Q That was my next question. So he ran out of
11 the parking lot, north across Prospect Street; right?

12 A Yes.

13 Q Through the woods, and he was gone?

14 A That's correct.

15 Q Okay. And it was your job to go chat with
16 him?

17 A Yes.

18 Q Okay. And as part of your having chatted and
19 interviewed him, and based on the rest of your
20 investigation, Mr. Bennett was originally charged with
21 conspiracy to commit murder; right?

22 A I don't remember what he was charged with, if he
23 was charged with anything.

24 Q I'm going to show you Investigator Vincent
25 Frulio's report, from the prosecutor's office. And

1 would you direct your attention to about the fourth
2 paragraph down on page 7 of his report. Could you read
3 the last sentence to yourself?

4 A Yeah, okay. I did that already.

5 Q You did?

6 A Uh-hum.

7 Q Does that refresh your recollection as to
8 what charges Mr. Bennett had as a result of your
9 investigation?

10 A Well, based on what I'm reading, that's what's in
11 Investigator Frulio's report. I believe that's what he
12 was charged with, but I don't recall charging Mr.
13 Bennett or even being aware that he was charged with
14 anything.

15 Q Okay. You would agree with me now that he
16 was charged with conspiracy?

17 MR. HEISLER: Objection, Judge.

18 THE COURT: Sustained, sustained.

19 Q In the course of your investigation, you had
20 the pleasure of interviewing Ernesto Barber; correct?

21 A Yes.

22 Q And not once, but three times?

23 A Several times, at least three times.

24 Q Okay. The first statement was April 29th,
25 the day after the shooting, page 5 of your report?

1 A Yes, I have it.

2 Q Okay. And then you had another statement
3 with him, I guess the date's irrelevant, and then you
4 interviewed him at his hotel room on May 3rd; right?

5 A Yes.

6 Q But you didn't take a statement that day; is
7 that right? You chatted with him, but you didn't take
8 a formal statement at his hotel room?

9 A I believe we did take a statement from him on that
10 day, if you look to page eleven on my report.

11 Q Well, I'm referring you to page nine, down
12 toward the bottom. On May 3rd, you went to his hotel
13 room and chatted with him; is that right?

14 A What's the question, sir?

15 Q On May 3rd, did you go to Mr. Barber's hotel
16 room and chat with him?

17 A Yes, we did.

18 Q And as a result of chatting with him on that
19 day, did you then formalize the statement on May 8th in
20 a formal taped statement, on page eleven of your
21 report?

22 A Yes.

23 Q Okay. So you had an opportunity to talk to
24 him on three different times, one when he was
25 incarcerated, you pulled him out of jail; right?

1 A Yes.

2 Q Brought him to Lakewood?

3 A Yes.

4 Q Okay. Did Mr. Barber ever tell you in any of
5 his three statements -- let me give you a frame of
6 reference here. You discussed with him the morning of
7 the shooting on April 28th, what occurred prior to the
8 shooting; accurate?

9 A Yes.

10 Q Okay. And there was some discussion about
11 what occurred at the Coventry Apartments and who was
12 there; you recall that?

13 A Yes.

14 Q And according to Mr. Barber, certain people
15 showed up in a Jeep, and there was a discussion in
16 Coventry; right?

17 A I'd have to review my notes. I believe that he
18 told us that some people had showed up in Coventry, and
19 there was a discussion, yes.

20 Q Okay. Did you review your notes before you
21 came in here, sir?

22 A Briefly. I only got a call last night that I was
23 to come in this morning.

24 Q Okay. You know --

25 THE COURT: I'll tell you what, Mr. Zager.

1 It's 12:25. If you are going to ask the witness here
2 questions about his reports and notes, I'm going to
3 give the jury their lunch hour at this time, so that
4 way, he can refresh his memory and move right along
5 that way; okay?

6 MR. ZAGER: Judge, you know why he didn't get
7 any notice, but I didn't necessarily want to bring that
8 up.

9 THE COURT: Okay. No problem.

10 I will excuse you for lunch. Have a nice
11 lunch. Please be up there at 1:30. We'll have you
12 over and continue with the trial.

13 (Jury dismissed for lunch at 12:25 PM.)

14 (Witness steps down.)

15 THE COURT: We'll reconvene at 1:30. Mr.
16 Welle, can I just see you up here for a second?

17 (Luncheon recess taken.)

18 (Exhibits S-1 through S-4; S-15; S-28; S-29; S-30;
19 S-39; S-40A; S-41A; S-41B; S-59 through S-75 marked
20 into evidence.)

21 * * *

22 A F T E R N O O N S E S S I O N

23 THE COURT: Is our witness --

24 MR. HEISLER: I believe he's right outside,
25 Judge.

1 THE COURT: would you tell him to come in.
2 J A M E S F I N N E G A N , previously sworn, resumes
3 the stand.

4 (Jury in the box.)

5 THE COURT: Good afternoon to each of you.
6 Mr. Zager.

7 MR. ZAGER: Thank you, Judge.

8 DIRECT EXAMINATION BY MR. ZAGER (Cont'd):

9 Q Good afternoon, Detective.

10 A Good afternoon.

11 Q Did you have a chance to review your report?

12 A I have reviewed it, yes, I did.

13 Q I apologize. I should have given you Mr.
14 Barber's statements. So, if you need them, let me
15 know. Okay?

16 A I have, I think, two of his statements with me.

17 Q You have two, okay, good. All right. I
18 forget where I was, so let me take you to April 28th,
19 the day of the shooting. Mr. Barber tells you certain
20 things that occurred prior to the shooting; is that
21 right?

22 A Yes.

23 Q Okay.

24 MR. HEISLER: Judge, can we fix a time frame
25 on which interview with Mr. Barber we're talking about?

1 THE COURT: Was there an interview on April
2 28th?

3 MR. ZAGER: Judge, I am talking -- okay.

4 Q If you want a time frame, I'm talking about
5 around 9:30 Sunday, April 28th, which seems to be in
6 Mr. Barber's first report, dated -- statement taken
7 April 29th at 6:14 PM. Do you have that, Detective?

8 A Yes, I do.

9 Q Okay. Let me do it this way. Directing your
10 attention to page three of that report, some of the
11 questions at the top of that report, did Mr. Barber
12 tell you in that statement that he got into the Jeep at
13 Coventry? Third question.

14 A He says he's standing outside in the front of the
15 passenger. Is that --

16 Q Yes.

17 A Yes.

18 Q So he never told you he got in the Jeep?

19 A Not at that --

20 Q He told you: I was standing outside the
21 front passenger door. Correct?

22 A He states: "I'm standing outside, in front of the
23 passenger."

24 Q Okay. I'm looking for an answer to the one
25 question, though. He never told you he got inside that

1 Jeep?

2 A I don't believe at that time he told me he got
3 into the Jeep, no.

4 Q Or at any time; right?

5 A Later, in another interview, he did tell me that
6 he got into a vehicle and left Coventry and went to
7 Highpoint.

8 Q Understood. But at the time at Coventry that
9 he's listening to a conversation that -- what may have
10 occurred in Yonkers, he specifically told you he stood
11 outside the Jeep?

12 A That's correct.

13 Q Okay. At no point in time, when he's
14 describing what happens at Coventry, does he tell you
15 that he and everyone with him at Coventry are smoking
16 pot; correct?

17 A Are you still referring to the same statement that
18 I am looking at now, or somewhere else in my
19 investigation and my report?

20 Q I think I am referring to the first
21 statement.

22 A Not at that time, he did not tell me that he
23 smoked marijuana.

24 Q Did he tell you at any other time that they
25 smoked pot, during this conversation regarding Yonkers

1 at Coventry?

2 A No, not in Coventry Square.

3 Q Okay. And directing your attention to the
4 bottom of page two, top of page three, on that same
5 statement of April 29th, when he related to you the
6 incident regarding Yonkers, he never told you, "he"
7 meaning Barber, that the issue of something that
8 occurred in Philadelphia was discussed?

9 A That's correct.

10 Q That's correct?

11 A Yes.

12 Q During that same time frame, he never told
13 you that he heard anything in that conversation about
14 Mr. Maples helping the victim out and putting him on
15 his feet to get him established; is that right?

16 A That's correct.

17 Q I'm going to refer you to both the April 29th
18 statement and the April 30th statement. I'm sorry.
19 Well, you know, all three, if you don't mind. Which
20 statement are you missing, May 8th?

21 A I have May 8th. I have April 29th.

22 Q So then you would be missing April 30th?

23 A That's correct.

24 Q Is that right?

25 A Yes.

1 MR. HEISLER: I have an extra copy of it, Mr.
2 Zager.

3 MR. ZAGER: I got it, thank you. Three
4 pages, Mr. Heisler?

5 MR. HEISLER: Yes.

6 MR. ZAGER: Thank you.

7 Q When he described the trip to Highpoint, he
8 originally -- at no point did he ever tell you that on
9 the way to Highpoint, however, whatever version it is
10 that he used to get there, he never told you that
11 Steven Bennett was dropped off in Jackson; is that
12 right?

13 A That's correct.

14 Q In fact, he basically told you that he drove
15 there with Worthy; and then in another statement, he
16 told you he went in Mr. Bennett's red Pontiac Grand Am.
17 Is that accurate?

18 A Yes.

19 Q But in neither of those two trips did they go
20 to Jackson, according to him?

21 A That's correct.

22 Q And I think that I'm directing you to the
23 April -- the May 8th statement, where he's describing
24 what happens at Highpoint. I think it starts somewhere
25 around the top of page 3, the middle of page 3, I'll

1 kind of refer my questions to you.

2 Mr. Barber never told you that, at Highpoint,
3 Mr. Maples did anything other than walk, and I
4 emphasize the word "walk," out of the Jeep. Was that
5 accurate?

6 A Yes, that's correct.

7 Q He never said, "walked briskly"?

8 A No, I believe he said he walked from the Jeep to
9 the Acura.

10 Q There were no adjectives before the word
11 "walk"?

12 A No, I don't believe so.

13 Q Okay. Besides the three stories that -- or
14 statements that Mr. Barber gave you, at any point did
15 Mr. Barber ever tell you that -- let me withdraw that.
16 Besides Mr. Barber's three statements, do you know of
17 any other evidence to support the allegation that Mr.
18 Maples was at Highpoint on April 28th at 11:00 AM?

19 MR. HEISLER: Judge, I am going to object to
20 that question at this point. I think we need --

21 THE COURT: I will sustain the objection.

22 MR. ZAGER: Judge, did I use the words, "do
23 you know?" Or did I say, "Are you aware?"

24 THE COURT: No, but I will be glad to see you
25 at side-bar for a minute.

1 MR. ZAGER: Thank you.

2 (The following takes place at sidebar.)

3 THE COURT: My concern, I note the
4 prosecutor's is the statement of Renato Santos.

5 MR. HEISLER: Judge, there is the
6 statement --

7 MR. KINARNEY: I'm a little concerned, too.

8 MR. HEISLER: There's a statement of Renato
9 Santos, there's a statement of -- subsequently from
10 James Irwin; there's a statement from Steven Bennett.
11 And I don't really think Mr. Zager wants to open this
12 door.

13 MR. ZAGER: No, I don't. Thank you.

14 (Sidebar conference concluded.)

15 MR. ZAGER: Thank you, Judge.

16 Q Detective, did you take any other statements
17 from Mr. Barber besides those three that we have
18 discussed?

19 A No.

20 MR. ZAGER: Thank you for your time.

21 THE WITNESS: You're welcome.

22 THE COURT: Mr. Kinarney.

23 MR. KINARNEY: Thank you, Judge.

24 CROSS-EXAMINATION BY MR. KINARNEY:

25 Q Good afternoon, Detective.

1 A Good afternoon.

2 Q One of the first things, if not the first
3 thing, you did in this case is, you canvassed the area;
4 correct?

5 A Yes.

6 Q Your job at that point, to do a good police
7 job, is you want to find out anybody who's got any
8 knowledge about what occurred; correct?

9 A That's correct.

10 Q Civilians, anybody. You're just looking for
11 people who knew what happened; right?

12 A Yes.

13 Q And you come upon four individuals, four
14 Spanish-speaking individuals who saw at least part of
15 what occurred; correct?

16 A Yes.

17 Q And as a result of gaining that information,
18 those four individuals are taken to police
19 headquarters; correct?

20 A Yes.

21 Q And they are questioned by, I think his name
22 is Officer Shimonovich?

23 A Yes. Actually, it's a female. It's Jeanette
24 Shimonovich.

25 Q Okay. And the reason that she's aiding you

1 in your duties is because you are not Spanish-speaking?

2 A That's correct.

3 Q So it's a situation, and correct me if I'm
4 wrong, where you asked the female officer, who I'm
5 assuming is Spanish-speaking -- correct?

6 A Yes.

7 Q -- to ask these four individuals questions;
8 they will then respond to those questions; and she'll
9 translate back to you what they said?

10 A That's correct.

11 Q Am I correct? And two of these individuals
12 were Maria Arenas and Mario Molina; am I correct? This
13 is on page 3 of your report, down at the bottom.

14 A Yes.

15 Q Okay. And, as a matter of fact, all the
16 individuals indicated to you that they were eating
17 breakfast; correct?

18 A Yes.

19 Q They heard gunshots or what sounded like
20 gunshots; correct?

21 A Yes.

22 Q They looked outside, they see an individual
23 chasing another individual in the parking lot; correct?

24 A That's correct.

25 Q These two individuals are running across the

1 parking lot?

2 A Yes.

3 Q Correct? Did they indicate to you, any of
4 those four individuals, that they observed the
5 individual who was chasing the other individual
6 actually shoot the man as he was laying on the ground?

7 A No.

8 Q And, as a matter of fact, they went on and
9 told you, they all went on and told you that three or
10 four males ran towards vehicles; correct?

11 A Yes.

12 Q Attempted to get in, two of the guys tried to
13 get in a green van and couldn't get in, so they went
14 into a Jeep Cherokee; correct?

15 A That's correct.

16 Q They indicated to you at that point in time a
17 third man ran over to the green Jeep Cherokee and threw
18 something into the Cherokee; correct?

19 A Yes.

20 Q He then took off running down towards
21 Prospect Street; correct?

22 A That's correct.

23 Q And the individuals all indicated to you that
24 that man was dressed in a short-sleeve, striped shirt,
25 possibly yellow and white; correct?

1 A Yes.

2 Q None of the four said that man who threw
3 something in the Jeep Cherokee and ran towards Prospect
4 Street was dressed in a gray sweatshirt; correct?

5 A That's correct.

6 Q They never used the word "gray" at all;
7 correct?

8 A That's correct.

9 MR. KINARNEY: Thank you, Officer. I have
10 nothing else.

11 THE COURT: Mr. Somers, do you have any
12 questions?

13 MR. SOMERS: No questions, your Honor.

14 THE COURT: Mr. Welle, anything?

15 MR. WELLE: No questions, Judge.

16 THE COURT: Mr. Heisler?

17 MR. HEISLER: Just a few, Judge.

18 CROSS-EXAMINATION BY MR. HEISLER:

19 Q Detective Finnegan, Steven Bennett took off
20 from the scene; correct?

21 A Yes.

22 Q Everybody took off from the scene; is that
23 correct?

24 A That's correct.

25 Q A reasonable reaction when somebody's being

1 shot at?

2 A Yes.

3 Q Whether you're involved or not?

4 A Everybody runs.

5 Q Now, you spoke to some witnesses, you got a
6 description of what Bennett was wearing that day;
7 correct?

8 A Yes.

9 Q And Mr. Bennett was wearing a velour
10 sweatsuit; is that right?

11 A That's correct.

12 Q As you got these descriptions, the one that
13 Mr. Kinarney just asked you about of the person that
14 threw something into the Jeep, he was described to you
15 as a light-skinned black male; is that correct?

16 A Yes, light-skinned black male.

17 Q And that's the person with the shirt with the
18 yellow and white stripes?

19 A That's correct.

20 Q Isn't it a fact that Renato Santos, when he
21 was picked up, was wearing a multicolored striped
22 shirt, the first of which were yellow and white?

23 A I didn't get to see Mr. Santos when he was brought
24 in.

25 Q Did you see him at all that day at Lakewood

1 Police Headquarters?

2 A No, no, sir.

3 Q When you started taking statements from Mr.
4 Barber, starting right from the first things that he
5 started to tell you, it was apparent to you and
6 Investigator Frulio that he wasn't being entirely
7 truthful; correct?

8 MR. WELLE: Your Honor, I'm going to object.

9 MR. SOMERS: Object as well.

10 THE COURT: Sustained.

11 Q Did you start checking into things that Mr.
12 Barber told you?

13 A Everything, yes.

14 Q You found inconsistencies, didn't you?

15 MR. WELLE: Your Honor, I'm going to object.

16 MR. SOMERS: Object again.

17 MR. WELLE: Side-bar, please?

18 THE COURT: I will have a side-bar with you,
19 sure.

20 (The following takes place at sidebar.)

21 THE COURT: Mr. Welle, you're objecting, and
22 yet you didn't even ask any questions.

23 MR. WELLE: I know that. I'm trying to
24 protect the record.

25 THE COURT: Oh, okay. Well, we appreciate

1 your protection, then.

2 MR. WELLE: And my objection is, it seems to
3 me when the direct attempted to show either
4 inconsistencies in other witnesses' statements, or
5 lapses or failures, it's improper for the prosecutor to
6 then try to rehabilitate Mr. Barber or any of these
7 witnesses with what he believes to be consistencies.

8 I mean, there is a direct purpose for that
9 direct examination, and it was: The man never said
10 this, or he did in fact say this, which is different
11 from something we heard.

12 But for then -- that does not open the door
13 to the prosecutor, in my opinion, being able to just
14 rehash all of what he believes to be probative and
15 supportive testimony of that witness.

16 MR. KINARNEY: I join.

17 THE COURT: The present questions that you
18 are objecting to are not the attempt to show that what
19 he said was consistent, but rather to show that upon
20 further investigation and inquiry, he said other
21 things.

22 MR. ZAGER: That's why I didn't object, but I
23 am ready to at any moment.

24 MR. KINARNEY: I think that has to be brought
25 out in the case-in-chief. I agree with Mr. Welle. I

1 think if the purpose of the direct examination is to
2 point out prior inconsistent statements, the State
3 can't then, on cross, attempt to combat that by showing
4 prior consistent statements.

5 We are not alleging recent fabrication here.
6 We are alleging he fabricated from the get-go.

7 THE COURT: I appreciate that. And I don't
8 think he's doing that, but rather showing that there
9 was an on-going investigation, and when he went back
10 and questioned further, what he said -- is that what
11 you're doing?

12 MR. HEISLER: Basically, yeah, Judge.

13 MR. WELLE: Then we get to the end of line
14 with: well, the end result is, this person believes
15 that the last thing he got out of the guy's mouth was
16 the truth.

17 THE COURT: No, he is not going to be allowed
18 to ask that. There was an objection to that right from
19 the get-go, when he said, "was it apparent to you."
20 And I sustained that objection. We are not going to
21 let him give his opinion as to what the truth is or
22 anything like that. Jury will decide that. Okay.

23 (Sidebar conference concluded.)

24 BY MR. HEISLER:

25 Q Now, Detective, as you're talking to

1 Mr. Barber, you also have other investigative
2 activities going on; correct?

3 A Yes.

4 Q Mr. Barber gives you some information that
5 he's with somebody named Matt LaBatch. You checked
6 that, or had somebody check it; correct?

7 A Yes.

8 Q LaBatch said no, that wasn't true. You went
9 back to Barber with that; correct?

10 A That's correct.

11 Q And as you start pointing these things out,
12 you start getting more information from Mr. Barber?

13 A Yes.

14 Q And you were able to corroborate at least
15 some of what he told you about what happened on that
16 Sunday; correct?

17 A That's correct.

18 Q By way of example, he told you about the Jeep
19 being in the woods; correct?

20 A Yes.

21 Q By the time you got to Mr. Barber, the Jeep
22 had already been recovered; correct?

23 A Yes.

24 Q But he told you that you there had been a
25 homeowner, that he and Mr. Irwin had gone to use the

1 phone. Did you speak to that homeowner?

2 A Yes, I did.

3 Q And what was his name?

4 MR. ZAGER: Judge, I am going to object.

5 THE COURT: We're going rather far afield
6 now. I will sustain the objection.

7 Q But in any event, you were able to
8 corroborate things he told you?

9 MR. ZAGER: Objection.

10 THE COURT: Sustained. Jury will disregard.

11 Q There came a point in time in May when you
12 went back to Mr. Barber to speak to him again. What
13 investigative activity led you to do that?

14 MR. ZAGER: Objection. Basis you're looking
15 for? Basis is. Judge, that I called this witness for
16 specific limited purposes, inconsistencies.

17 THE COURT: Yes, and I think he's attempting
18 to explore some of that with him.

19 MR. HEISLER: Yeah, Judge. I remind counsel
20 I am on cross with this witness.

21 THE COURT: I appreciate that.

22 MR. ZAGER: But he doesn't get to retry his
23 case.

24 THE COURT: He is not going to retry his
25 case.

1 Q Was there a specific investigative finding
2 that led you back to Mr. Barber with respect to the
3 guns?

4 A Yes.

5 Q What was that?

6 A I believe it was information from the prosecutor's
7 office or CIU that a specific amount of shells or
8 casings were in each gun, and we wanted to speak to
9 Ernesto Barber about -- more specifically about how
10 many times each weapon was fired and who might have had
11 each weapon.

12 Q And you did that, and he gave you -- that was
13 the final taped statement that you took from Mr.
14 Barber?

15 A Yes, that's correct.

16 MR. HEISLER: I think that's all I have for
17 the detective right now, Judge.

18 THE COURT: Mr. Zager?

19 REDIRECT EXAMINATION BY MR. ZAGER:

20 Q The reason that you went back to interview
21 Mr. Barber at his hotel room was not what you just
22 said, but was in fact because you or the prosecutor
23 weren't sure which weapon was the murder weapon; isn't
24 that the real reason you went back to his hotel room?

25 MR. HEISLER: Objection, Judge, it's

1 argumentative. Mr. Zager's leading. He is on direct
2 here.

3 THE COURT: I'll sustain the objection.
4 Rephrase, or attempt to rephrase it.

5 MR. ZAGER: Thank you, Judge.

6 THE COURT: Opening up a new area.

7 Q Detective, you have your report dated July
8 5th?

9 A Yes, I do.

10 Q 2002?

11 A Yes.

12 Q Do you have page nine of that report?

13 A Yes, I do.

14 Q Do you have the last paragraph on page nine?

15 A Yes.

16 Q Is the question I just asked inappropriate?

17 MR. HEISLER: Objection.

18 THE COURT: Wait, wait, wait now.

19 MR. ZAGER: I'm sorry, Judge.

20 Q Let me ask you this, Detective. You prepared
21 this report?

22 A I did, yes.

23 Q Did that last paragraph have a reason why you
24 went back to the hotel to interview Mr. Barber for the
25 third time?

1 A Can you rephrase that question? I don't
2 understand what you are trying to get at.

3 Q Okay. Did you go back to interview Mr.
4 Barber at his hotel on May 3rd, 2002?

5 A Yes, I did.

6 Q Did you have a specific reason why you were
7 going back there?

8 A Yes.

9 Q Was that reason a little different than the
10 reason that you just gave Mr. Heisler?

11 A It was --

12 Q Similar but different?

13 A -- information developed.

14 Q Okay. Why don't you just read to the jury
15 what you put in your report. That should straighten it
16 out.

17 MR. HEISLER: Objection.

18 THE COURT: Sustained.

19 Q Did the interview take place due to
20 information that was developed in reference --

21 MR. HEISLER: Objection, Judge. It's
22 leading. It's -- Mr. Zager's obviously reading from
23 the report.

24 THE COURT: I appreciate that. But obviously
25 there is some purpose to his question which is not

1 being objected to, and I want him to elicit --

2 MR. ZAGER: I'm trying the best I know.

3 THE COURT: I know, all right, just take a
4 breath and let's --

5 MR. ZAGER: All right.

6 THE COURT: why did you go there?

7 MR. ZAGER: That's the question.

8 THE COURT: Okay? You can answer that.

9 THE WITNESS: Okay. We went there
10 specifically to find out more about the two handguns.

11 Q And did you go there about the handgun that
12 perhaps it's alleged that Mr. Santos may have used?

13 A Yes, that's one of the handguns we wanted to
14 question him about.

15 Q Were you going there because that most likely
16 may not have been the murder weapon?

17 MR. HEISLER: Object to the leading nature of
18 the question.

19 MR. ZAGER: Judge, it's not that leading.

20 MR. HEISLER: It's almost like --

21 THE COURT: I know, I know.

22 MR. ZAGER: I only have two more sentences to
23 go, Judge.

24 THE COURT: I think he's answered your
25 question, so --

1 MR. ZAGER: All right.

2 Q At the time that you went there on May 3rd,
3 had the possibility developed that the gun in the sock
4 may have been the murder weapon? In other words, you
5 went to Mr. Santos' -- to Mr. Barber's house, or his
6 hotel, on May 3rd, to try to figure out which was the
7 murder weapon?

8 A To get more information on the weapons, yes.

9 Q I said "Santos," but I meant Barber's hotel;
10 right?

11 A Yes, that's correct.

12 Q To get more information to determine which
13 was the murder weapon?

14 A Yes.

15 Q That's the real reason we have been going
16 through this for five minutes, right?

17 A That's correct.

18 Q 'Cause that's why you went there?

19 A Yes.

20 MR. ZAGER: Okay. Nothing further.

21 THE COURT: Mr. Kinarney.

22 MR. KINARNEY: Thank you, Judge.

23 RECROSS EXAMINATION BY MR. KINARNEY:

24 Q Let me try it this way. When you filed your
25 report, you tried to make it as accurate as possible;

1 correct?

2 A That's correct.

3 Q And you filed your report within a fairly
4 short period of time after this event; correct?

5 A Yes.

6 Q Would it be fair to say that your memory of
7 what you were doing and why you did it was probably
8 clearer in 2002 than in 2004?

9 A Much.

10 Q Okay. Now, referring to page 9 of your
11 report, the last paragraph, I ask you to read that to
12 yourself. You have read it; right?

13 A Yes.

14 Q Probably read it a few times; right?

15 A Yes.

16 Q And I ask you if it refreshes your
17 recollection as to the reason that you went to talk to
18 Barber at his motel room was because the possibility
19 was developed that, most likely, the murder weapon was
20 not Santos'. Yes or no?

21 A What was the question?

22 Q Does that refresh your recollection as the
23 reason why you went to speak to Barber again in
24 Barber's motel room was, evidence was developed that
25 the weapon Renato Santos supposedly fired at Roy was

1 most likely not the murder weapon?

2 A We went to the hotel room to try to determine,
3 again, who had which handgun.

4 Q Okay.

5 A And to see -- to seek further information from Mr.
6 Barber in reference to the handguns.

7 Q And without going into it, did you gain this
8 information?

9 A Yes, we did.

10 Q Okay. And, as a matter of fact, in your
11 report, which you determined you wanted to make as
12 accurate as possible, that's what it says. You wanted
13 to develop information, or information had been
14 developed, that in reference to the weapon Santos has,
15 it was most likely not the murder weapon; is that
16 correct?

17 A That's what I put in my report, yes.

18 Q Now, just getting back to a question that Mr.
19 Heisler asked you in reference to the interview of the
20 four Spanish-speaking individuals who, among other
21 things, told you that an individual wearing a striped
22 shirt threw something in the Jeep and then ran down
23 Prospect Street, Mr. Heisler indicated to you or asked
24 you if, in fact, they described that man as a
25 light-skinned black male; is that correct?

1 And I'm referring to page 4 of your report,
2 if you need to, third paragraph.

3 A Light-skinned black male, yes, with short hair,
4 yes.

5 Q None of those four individuals described that
6 man as Hispanic; correct?

7 A That's correct.

8 Q And all four of those individuals themselves
9 were Hispanic; correct?

10 A That's correct.

11 MR. KINARNEY: Thank you. Nothing further.

12 THE COURT: Mr. Heisler, anything further?

13 RE CROSS EXAMINATION BY MR. HEISLER:

14 Q Would you describe Mr. Bennett's complexion.

15 A He is dark-skinned.

16 Q As you sit here today, with what you know
17 about the ballistics testing, do we know which gun
18 fired all the rounds in this case? In other words, we
19 know we have matches to two bullets, but we don't have
20 matches to others; correct?

21 A That's correct.

22 Q So, as you sit here today, both guns could
23 have been involved; correct?

24 A I believe --

25 MR. KINARNEY: Your Honor, I'm going to

1 object. That's pure speculation.

2 THE COURT: I will sustain the objection.

3 You want to rephrase that?

4 MR. HEISLER: I will withdraw it, Judge. I'm
5 finished. Thank you.

6 THE COURT: Anything further?

7 MR. KINARNEY: Nothing, your Honor.

8 MR. ZAGER: Judge, I just have perhaps an
9 omitted question, very briefly.

10 THE COURT: Sure.

11 MR. ZAGER: Thank you.

12 FURTHER REDIRECT EXAMINATION BY MR. ZAGER:

13 Q Directing your attention to the April 30th
14 statement of Mr. Barber, last page, when Mr. Barber
15 tells you that he doesn't know whose gun it was, but it
16 was the gun he saw in the hands of Debo, meaning Steve
17 Bennett, on a prior occasion, do you know which gun he
18 is talking about?

19 A The gun that was in the sock.

20 Q Yes. Thank you.

21 FURTHER RECROSS EXAMINATION BY MR. HEISLER:

22 Q He didn't say he saw the gun in Bennett's
23 hand that day, did he, on April 28th?

24 A No, he never referred to seeing the -- he never
25 said that Steven Bennett had a handgun on April 28th.

1 MR. HEISLER: That's all I have, Judge.

2 THE COURT: Thank you. You're excused.

3 THE WITNESS: Thank you, Judge.

4 (Witness excused.)

5 THE COURT: Counsel?

6 MR. ZAGER: Investigator Ronald Velardi.

7 THE COURT: Investigator Velardi, please.

8 R O N A L D V E L A R D I, Witness for the Defense,
9 sworn.

10 THE COURT: Mr. Zager.

11 MR. ZAGER: Thank you, Judge.

12 DIRECT EXAMINATION BY MR. ZAGER:

13 Q Investigator Velardi, are you employed by the
14 Ocean County Prosecutor's Office?

15 A Yes, I am.

16 Q And how long, sir?

17 A Six years now.

18 Q And you have been with the Major Crimes
19 Homicide Unit for how many of those six years?

20 A Three years.

21 Q And were you assigned to the investigation of
22 the homicide that took place on April 28th of 2002 at
23 Highpoint?

24 A Yes, sir.

25 Q In the capacity as an, I guess, an

1 investigator working under Detective-Sergeant Hayes?

2 A That is correct.

3 Q Thank you. During, in the course of that
4 investigation, did you have occasion to interview a
5 gentleman by the name of Hakim Shabazz, on April 28th,
6 approximately 4:00 PM?

7 A That is correct.

8 Q And did that interview take place at the
9 Lakewood police station?

10 A Yes, it did, sir.

11 Q And it was shortly after the death of his
12 brother; right?

13 A That is correct.

14 Q In the course of a normal interview, do you
15 take notes?

16 A Yes, I do, sir.

17 Q Do you take copious, detailed notes?

18 A Correct.

19 Q And then from those notes, do you eventually
20 transcribe it into a typewritten report?

21 A That is correct, sir.

22 Q And the object of your endeavor would be to
23 take accurate notes and put in your report everything
24 that would be told to you, as accurately as you can; is
25 that fair to say?

1 A That is correct, sir.

2 Q That's what you try to do; correct?

3 A Correct.

4 Q Okay. Directing your attention to the
5 interview of Mr. Hakim Shabazz on April 28th, did he
6 tell you details of an incident that occurred on April
7 25th, which would be the Thursday before the Sunday of
8 the shooting that occurred in, I guess in Seaside?

9 A He explained an incident that occurred that day,
10 correct, sir.

11 Q Okay. And you took notes and you questioned
12 him about that incident; is that right?

13 A That is correct.

14 Q So you understood who was there and what the
15 basis of that incident was; is that right?

16 A That is correct.

17 Q During the course of his explanation to you
18 of what occurred, did Mr. Shabazz ever tell you that
19 Mr. Maples was in a bar in Philadelphia?

20 A No, sir.

21 Q He never mentioned a bar?

22 A No, sir.

23 Q If he didn't mention a bar, then I'm assuming
24 he never told you that the bar that he never mentioned,
25 Mr. Maples had his son with him in that bar; is that

1 accurate?

2 A That is accurate.

3 Q During the course of that conversation, did
4 he tell you that it started in Seaside with all of
5 these people that he mentioned?

6 A No, sir.

7 Q He didn't tell you where this incident
8 occurred?

9 A Are you asking the questions pertaining to the
10 incident that occurred in Philadelphia, or the
11 conversation or the incident that occurred that day?

12 Q I'm referring to what he told you about what
13 happened on Thursday, I believe it was in the
14 afternoon, April 25th, in Seaside, where Mr. Worthy and
15 his brother Halim and certain other people were in
16 Seaside.

17 MR. WELLE: I'm sorry. What was that? Mr.
18 Worthy and his brother Halim? I didn't -- I'd just
19 like to object to the connection.

20 THE COURT: Yes.

21 MR. ZAGER: That's fair enough.

22 THE COURT: Halim is not Mr. Worthy's
23 brother.

24 MR. ZAGER: After two weeks of trial, I'm a
25 little burned out.

1 Q He told you about a meeting he had or an
2 incident in Seaside; right?

3 A Correct. He explained an incident that occurred,
4 not in great detail, but he explained an incident,
5 correct.

6 Q That's what I'm talking about.

7 A Okay.

8 Q Did he tell you that meeting, incident,
9 whatever we are calling it, that happened in Seaside,
10 did he tell you it was in Seaside?

11 A No, sir.

12 Q He didn't?

13 A No, sir.

14 Q Then I'm assuming that he didn't tell you
15 that everyone was in a van and they drove to Toms River
16 and continued to discuss everything?

17 A During the course of that interview, it was
18 explained that they were hanging around in the area,
19 hanging out during the course of that day. And during
20 the course of that day, that's when he explained that
21 particular incident, what had occurred.

22 THE COURT: Are you talking about an incident
23 in Philadelphia, or an incident that day?

24 THE WITNESS: That day.

25 THE COURT: All right. Let's say "an

1 incident that day."

2 MR. ZAGER: That's all I'm talking about,
3 Judge. Maybe I didn't make myself clear.

4 Q Mr. Shabazz, Hakim Shabazz, was telling you
5 what happened in Seaside on April 25th; right?

6 A Again, he didn't specifically say "Seaside."

7 Q Okay. That answers one of my questions. Did
8 he ever tell you that that conversation he was having,
9 wherever it may have been, since he didn't tell you
10 Seaside, continued in a van and traveled to Toms River?

11 A No, sir.

12 Q Did he ever tell you the conversation he had,
13 wherever it may have occurred, continued in a van and
14 not only went to Toms River, but went to Lakewood?

15 A No, sir.

16 Q What was his demeanor that day? Was he
17 upset?

18 A Yes, he was.

19 Q He was still able to talk to you, though;
20 right?

21 A Yes.

22 MR. ZAGER: I have nothing further.

23 THE COURT: Mr. Kinarney.

24 MR. KINARNEY: Nothing, your Honor.

25 THE COURT: Mr. Somers.

1 MR. SOMERS: No questions, your Honor.

2 THE COURT: Mr. Welle.

3 MR. WELLE: Nothing.

4 THE COURT: Mr. Heisler.

5 CROSS-EXAMINATION BY MR. HEISLER:

6 Q Investigator Velardi, I think you just told
7 Mr. Zager that Mr. Shabazz did not describe this
8 incident in great detail; correct?

9 A Correct.

10 Q And you said he was very upset?

11 A That is correct.

12 Q And your interview took place at around four
13 o'clock in the afternoon on the 28th; is that right?

14 A That is correct.

15 Q And his brother had been murdered just a
16 couple of hours earlier that day?

17 A That is correct.

18 MR. HEISLER: That's all I have, Judge.

19 THE COURT: Anything further?

20 MR. ZAGER: No, sir.

21 THE COURT: Thank you, sir. You're excused.

22 (Witness excused.)

23 MR. ZAGER: The defense of Mr. Maples rests.

24 THE COURT: I want to see all counsel at side
25 bar. You can stay there, if you want.

1 (Side-bar conference off the record,
2 after which the following occurs.)

3 THE COURT: Would you take a step into the
4 jury room for a moment? Things are moving rather
5 quickly.

6 (Jury retires at 2:30 PM.)

7 THE COURT: We're going to clear the
8 courtroom and allow counsel to talk to their clients
9 right here. Would clients and counsel stay here.
10 We'll give you five to ten minutes.

11 MR. WELLE: Thank you, Judge.

12 (Recess taken.)

13 * * *

14 (In open court at 2:40 PM.)

15 THE COURT: All right. I have given counsel
16 further time to discuss matters with their respective
17 clients. Mr. Welle, have you discussed with Mr. Worthy
18 his right to testify or not to testify?

19 MR. WELLE: Yes, I have, your Honor. I've
20 gone over it with him, I went over it with him at lunch
21 time, and we've continued to go over it. I have
22 advised him of the pros and the cons in light of the
23 case and how it's situated, and the proofs that the
24 State believes that it has, and my evaluation of the
25 quality of those proofs. And we have discussed it.

1 I also explained to him that if he chose not
2 to take the stand, there is a charge that I would
3 suggest and request to the Court to give, which is his
4 failure to take the stand could not be used against
5 him, and he understands that.

6 At this point in time, I believe it is his
7 desire to take the stand.

8 THE COURT: All right. Mr. Worthy, you
9 understand you have the right to testify, you know, and
10 respond to questions asked by your attorney, and to be
11 cross-examined by counsel for the State, if you so
12 choose; or, you have the right to exercise your right
13 not to testify, in which case the Court would advise
14 the jury that they are not to take that into
15 consideration with regard to their decision in this
16 matter in any way, shape or form.

17 Do you understand that?

18 MR. WORTHY: Yes, I do.

19 THE COURT: And you have had sufficient time
20 to discuss with Mr. Welle what your options are and
21 what your choice would be?

22 MR. WORTHY: Yes.

23 THE COURT: And what do you choose, sir?

24 MR. WORTHY: I choose to take the stand. I
25 choose to testify.

1 THE COURT: Okay. Thank you. You may sit
2 down.

3 Mr. Kinarney, have you had the chance to
4 explain the same to your client, Mr. Santos?

5 MR. KINARNEY: Yes, I have, Judge. We have
6 discussed it a number of times. It's been my advice to
7 the defendant that he not testify, based upon --

8 (Temporary power failure in courtroom.)

9 MR. KINARNEY: I didn't know that it was that
10 earth-shattering.

11 Yes, we have discussed the pros and cons,
12 Judge. I have advised my client, in reference to
13 certain evidence that could be adduced against him,
14 only if he testifies and not if he doesn't, that it was
15 my advice that he not testify.

16 I also advised him of the model jury charge
17 concerning a defendant's election not to testify. I
18 further advised him he could request that the Court
19 charge that or request that the Court not charge that.

20 He indicates to me he does not wish to
21 testify, and elects to have your Honor advise the jury
22 that they can draw no adverse inference from his
23 failure to testify.

24 THE COURT: Mr. Santos, you understand your
25 right to testify if you wish, and respond to questions

1 by your attorney and cross-examination by counsel for
2 the state?

3 MR. SANTOS: Yeah.

4 THE COURT: You also understand that you have
5 the right, if you choose, to waive your right to
6 testify, and that if you make that election, the Court
7 would instruct the jury that they are not to consider
8 that in any way, shape or form in arriving at their
9 verdict in this matter?

10 MR. SANTOS: Yes.

11 THE COURT: Is it your choice, as your
12 counsel indicates, that you have chosen not to testify?

13 MR. SANTOS: Yes.

14 THE COURT: You're doing this freely and
15 voluntarily?

16 MR. SANTOS: Yes.

17 THE COURT: Thank you.

18 Mr. Zager.

19 MR. ZAGER: Judge. I've -- my client and I
20 have gone over the pros and cons in detail for over
21 three months. My client elects not to testify.

22 THE COURT: Mr. Maples, you also understand
23 you have the right to testify and respond to questions
24 by counsel and cross-examination by counsel for the
25 state, if you so choose?

1 MR. MAPLES: Yes.

2 THE COURT: And you also have a right not to
3 testify if you so elect; and if you elect not to
4 testify, the court will instruct the jury they're not
5 to consider that in any way, shape or manner. Do you
6 understand that?

7 MR. MAPLES: Yes.

8 THE COURT: And is it correct, as your
9 counsel reports, that you are electing not to testify
10 in this matter?

11 MR. MAPLES: Yes.

12 THE COURT: Are you doing that freely and
13 voluntarily?

14 MR. MAPLES: Yes.

15 THE COURT: Thank you. Mr. Zager?

16 MR. ZAGER: My client does not want you to
17 give the charge regarding his right to testify or not
18 to testify.

19 THE COURT: I will make a legal ruling on
20 that tomorrow, then.

21 MR. ZAGER: Okay. Thank you.

22 THE COURT: Mr. Somers.

23 MR. SOMERS: Your Honor, my client will not
24 testify.

25 THE COURT: Okay. You explained to him his

1 right to take the stand and respond to questions by
2 yourself and the State with regard to this matter?

3 MR. SOMERS: Yes, your Honor.

4 THE COURT: And you both explained to him
5 that he has a right, if he so chooses, to waive
6 testifying, and that if he does so waive, the Court
7 will instruct the jury that it's not to take that into
8 consideration with regard to deciding issues in this
9 matter?

10 MR. SOMERS: Yes, your Honor.

11 THE COURT: And, Mr. Irwin, is it your
12 choice, as your counsel reports, that you choose not to
13 testify in this matter?

14 MR. IRWIN: Yes.

15 THE COURT: Are you doing that freely and
16 voluntarily?

17 MR. IRWIN: Yes.

18 THE COURT: Okay. Thank you.

19 All right. I understand the defendants wish
20 to have a bathroom break. Let's do that as quickly as
21 we can and get back out here, at which time Mr. Worthy
22 will take the stand.

23 (Recess taken.)

24 * * *

25 THE COURT: Mr. Welle, are you ready to

1 proceed?

2 MR. WELLE: Yes, sir.

3 THE COURT: Jury out, please.

4 (Jury in the box.)

5 THE COURT: Mr. Welle.

6 MR. WELLE: Yes. Your Honor, we call Marvin
7 Worthy to the stand.

8 THE COURT: Come forward, Mr. Worthy.

9 M A R V I N W O R T H Y, witness for the Defense,
10 sworn.

11 THE COURT: Mr. Welle.

12 DIRECT EXAMINATION BY MR. WELLE:

13 Q Good afternoon, Mr. Worthy.

14 A Good afternoon.

15 Q I want you to keep your voice up and speak to
16 me and to the jury so they can hear you. Can you tell
17 us how old you are?

18 A 23 years old.

19 Q And where do you reside?

20 A Newark, New Jersey.

21 Q And who do you live there with?

22 A My mother.

23 Q And how long have you lived up in the
24 northern part of the state?

25 A All my life.

- 1 Q Did you go to high school?
- 2 A Yes.
- 3 Q What high school did you go to?
- 4 A St. Benedict's Preparatory High School.
- 5 Q Where is that located?
- 6 A Newark, New Jersey.
- 7 Q Is there any particular thing that would
- 8 bring you down to this Ocean County area from time to
- 9 time?
- 10 A I have a son by somebody that lives in Ocean
- 11 County.
- 12 Q What's your son's name?
- 13 A Marvin.
- 14 Q Marvin, Jr.?
- 15 A Yeah, the third.
- 16 Q The third? How old is he?
- 17 A He's four.
- 18 Q And he lives with his mother?
- 19 A Yes.
- 20 Q And where do they live?
- 21 A In Bayville.
- 22 Q Did there come a time in May of 2002 that
- 23 someone advised you that the police were looking for
- 24 you?
- 25 A Yes.

1 Q And who was it that told you the police were
2 looking for you?

3 A My son's mother.

4 Q And what's her name?

5 A Buffy.

6 Q Buffy. And do you remember what date it was?

7 A No.

8 Q When you heard they were looking for you, did
9 you also learn for what kind of crime it was the police
10 were looking for you?

11 A Yes.

12 Q And what was that crime?

13 A Conspiracy to commit murder.

14 Q And what did you do?

15 A I told my mother -- well, actually, she showed me
16 the newspaper article, and my mother knew about it
17 before I did, 'cause I came in the house, and she
18 showed me the newspaper article, and she gave me the
19 number to a lawyer that works in Newark.

20 The next day, I went to him and brought the
21 newspaper article to him and asked for advice.

22 Q And did you thereafter, with him, turn
23 yourself in to people down here?

24 A Yes. He made a phone call and arranged for me to
25 turn myself in, face the charges.

1 Q You've heard testimony from some people who
2 talked about the date of April 25th, I think, 2002, and
3 about some trip that began somehow in Ocean County and
4 ended up in Yonkers. Do you recall hearing that?

5 A Yes.

6 Q And your name was mentioned in that; do you
7 recall that?

8 A Yes.

9 Q And people, like, were putting things in your
10 hands?

11 A Yes.

12 MR. HEISLER: Judge, may we approach side-bar
13 briefly?

14 THE COURT: Yes, sir.

15 MR. HEISLER: With the reporter, please.

16 THE COURT: Yes, sir.

17 (The following takes place at side bar.)

18 MR. HEISLER: I'm starting to smell an alibi
19 defense here, Judge.

20 THE COURT: Well, it's going to be a denial.
21 I don't know that it's going to be an alibi.

22 MR. WELLE: It's going to be a denial.

23 THE COURT: In other words, he is denying he
24 was here and denying that he did it, but it's not an
25 alibi.

1 MR. HEISLER: Okay.

2 THE COURT: Am I correct, Mr. Welle?

3 MR. WELLE: Yes, exactly.

4 (Sidebar conference concluded.)

5 MR. WELLE: Your Honor, do you think this
6 officer could move just sort of away a little bit?
7 It's a little tough working here. I don't know the
8 purpose of --

9 THE COURT: Well, it's just -- relax, okay?
10 You can work around him.

11 Q On the 25th of April, there was some
12 testimony concerning you. Did you have anything to do
13 with any of those activities that were testified to
14 about April 25th of 2002?

15 A No.

16 Q And you've heard a lot of testimony from
17 different people about events that occurred and the
18 killing of a person by the name of Rashon Roy?

19 A Yes.

20 Q Correct?

21 A Yes.

22 Q And that's -- that occurred on Sunday, the
23 28th?

24 A Yes.

25 Q All right? Did you have anything at all to

1 do with that particular event as has been testified and
2 as the prosecutor is accusing you of doing?

3 A No, nothing at all.

4 MR. WELLE: I have no further questions,
5 Judge.

6 THE COURT: Mr. Kinarney.

7 MR. KINARNEY: Nothing, your Honor.

8 THE COURT: Mr. Zager.

9 MR. ZAGER: No, thank you.

10 THE COURT: Mr. Somers?

11 MR. SOMERS: Nothing, your Honor.

12 THE COURT: Mr. Prosecutor.

13 CROSS-EXAMINATION BY MR. HEISLER:

14 Q So, Mr. Worthy, you're telling us that on
15 April 25th you weren't with these fellows in the van
16 that went up to Newark and then up to New York?

17 A No.

18 Q Were you with them at all that day?

19 A No.

20 Q Did you know Gregory Maples before April 25th
21 of 2002?

22 A Yes.

23 Q How did you know him?

24 A That's my family. That's my cousin.

25 Q He's your cousin. What about Renato Santos;

1 had you ever met him before?

2 A Yes.

3 Q Before April 25th of 2002?

4 A Yes.

5 Q Okay. Where did you meet, and when did you
6 meet him?

7 A About four years ago. He has a child by one of my
8 cousins, Donna Brown.

9 Q Okay. Donna Brown is your cousin?

10 A Yes.

11 Q And Renato Santos has a child with her?

12 A Yes.

13 Q And Gregory Maples is your cousin as well?

14 A Yes.

15 Q And prior to April 25th or 2002, did you know
16 James Irwin?

17 A Yes, I knew of him.

18 Q Okay. When you say "I knew of him," explain
19 to me what you mean.

20 A He's not a friend of mine.

21 Q He's not a friend of yours?

22 A Not a friend of mine.

23 Q But did you know who he is?

24 A Yes. I know his name. I know what he looked
25 like. He's not a friend. He's not someone --

- 1 Q Okay. But you knew who he is?
- 2 A Yes.
- 3 Q And had you ever seen him around your cousin
4 Gregory Maples?
- 5 A No.
- 6 Q Had you ever seen him around your cousin's
7 baby's father --
- 8 A No, sir.
- 9 Q -- Renato Santos?
- 10 A No.
- 11 Q Do you know Hakim Shabazz?
- 12 A Yes.
- 13 Q How do you know him?
- 14 A I met him a few years ago, about five years ago.
- 15 Q And what about Halim Shabazz?
- 16 A The same, around the same time.
- 17 Q How do you know them?
- 18 A I met them through Gregory Maples.
- 19 Q So you've only met the Shabazz twins, like,
20 five years ago?
- 21 A Yes.
- 22 Q You say you live in Newark with your mother.
23 what's her name?
- 24 A Mary Steplight.
- 25 Q Mary Steplight. And your mother owns a beige

- 1 Acura automobile, or did?
- 2 A Yes.
- 3 Q Does she still have it?
- 4 A No.
- 5 Q When did she get rid of it?
- 6 A I don't know. I'm not sure.
- 7 Q She owned it in April of 2002, though, didn't
- 8 she?
- 9 A Yes.
- 10 Q And you had access to that car; right?
- 11 A Yes.
- 12 Q In fact, you drove it?
- 13 A Yes.
- 14 Q When were you taken into custody?
- 15 A I turned myself in May 7th, 2002.
- 16 Q Okay. Where were you on April 25th of 2002?
- 17 A Home.
- 18 Q Just home in Newark?
- 19 A Yes. I wasn't in Ocean county. I don't live in
- 20 Ocean County.
- 21 Q Were you in Newark at all that day aside from
- 22 at your home, maybe around the Muslim shop somewhere?
- 23 A No.
- 24 Q Did you ever meet up with anybody that you
- 25 knew from down here or knew of from down here --

1 A No.

2 Q -- in Newark?

3 A No.

4 THE COURT: One at a time. Let him finish
5 his question, then let him finish his answer before you
6 inquire again.

7 Q And you tell us you weren't in Lakewood on
8 April 28th?

9 A No.

10 Q Prior to that April of 2002, did you know
11 somebody named Ernesto Barber?

12 A No.

13 Q Okay. You saw him in court here?

14 A Yes, I seen him.

15 Q So you didn't know him by --

16 A First time I ever seen him.

17 Q That's the first time you'd ever seen him?

18 A Yes.

19 Q So you didn't know him but know him by some
20 other name?

21 A No.

22 Q What about somebody named Steven Bennett?

23 A Yes, I know Steven Bennett.

24 Q You know Steven Bennett?

25 A Yes.

1 Q You know him by another name?

2 A Yes.

3 Q What's that?

4 A Debo.

5 Q Okay. By the way, do you know another name
6 for your cousin Gregory?

7 A Yes.

8 Q What's that?

9 A Khaleef.

10 Q And do you know any other name for Renato
11 Santos?

12 A Yes.

13 Q What's that?

14 A Red.

15 Q And you know of James Irvin. Did you ever
16 hear anybody refer to him by any other name?

17 A Yes.

18 Q What was that?

19 A Wee Wee.

20 Q So you weren't in the company of any of these
21 guys on April 28th in Newark or New York or Seaside
22 Heights or Lakewood?

23 A No.

24 THE COURT: April 28th?

25 Q I'm sorry, April 25th.

1 A No, not at all.

2 Q Not at all?

3 A No.

4 Q And you weren't with anybody in your Acura or
5 in that green Jeep Cherokee on April 28th?

6 A No.

7 Q You weren't anywhere near Lakewood on Sunday?

8 A No.

9 Q Had you ever seen that green Jeep before?

10 A Yes.

11 Q When and where did you see that?

12 A I don't remember when, but I seen it before. It's
13 Rashon's Jeep.

14 Q Okay, you knew it was Rashon's Jeep.

15 A Yes.

16 Q You knew Rashon; right?

17 A Yes.

18 Q So May 7th, you find out that you've been
19 charged with conspiracy to commit murder of Rashon,
20 that you knew, and you have just sat here through
21 basically two weeks of a trial in which a couple of
22 other guys you know, Halim and Hakim, say that you were
23 involved in pulling guns, around when there was an
24 argument, with Gregory Maples threatening to kill the
25 victim. Is that just all made up?

1 A Yes. Never pulled a gun on anyone.

2 Q Well, based on your testimony, sir, you told
3 us you weren't even there; right?

4 A Wasn't there.

5 Q So the Shabazz brothers are just making this
6 stuff up?

7 A Yes.

8 Q Okay. Then this other fellow that you don't
9 even know, Ernesto Barber, he's making it up, too?

10 A Yes.

11 Q And this is all just one big
12 misunderstanding, as far as you're concerned?

13 A As far as I'm concerned, I shouldn't be here.

14 Q 'Cause you weren't there.

15 A 'Cause I wasn't there.

16 Q So people are just throwing your name out in
17 this thing, and you don't have any involvement with
18 anything?

19 A Yes.

20 MR. HEISLER: That's all I have, Judge.

21 THE COURT: Anything further, Mr. Welle?

22 MR. WELLE: No.

23 THE COURT: You may step down.

24 (Witness excused.)

25 THE COURT: Mr. Welle, with regard to State

1 vs. Marvin Worthy, anything further?

2 MR. WELLE: Yes, your Honor. I had an
3 exhibit.

4 THE COURT: We can deal with that. Aside
5 from moving exhibits.

6 MR. WELLE: Just the exhibit. I would
7 indicate, your Honor, we had hoped to bring another
8 witness forward. We haven't been able to find that
9 particular witness.

10 THE COURT: well, we'll just wait and see
11 what happens.

12 MR. WELLE: At this point in time --

13 THE COURT: You rest, subject to that?

14 MR. WELLE: Yes.

15 THE COURT: Mr. Kinarney?

16 MR. KINARNEY: Defendant rests, your Honor.

17 THE COURT: Mr. Zager.

18 MR. ZAGER: Judge, we rest, subject to the
19 moving of DM-1.

20 THE COURT: And Mr. Somers?

21 MR. SOMERS: We rest, your Honor.

22 THE COURT: All right. Ladies and gentlemen,
23 you have heard all of the evidence you're going to hear
24 with regard to this matter. And tomorrow morning we're
25 going to start closing arguments for counsel. And by

1 noontime tomorrow, I should have instructed you on the
2 law, and you should be getting under way with your
3 deliberations.

4 Now, once the case is turned over to you, you
5 can take as long as you feel is necessary to decide the
6 issues that are presented. What I throw out to you is
7 in the event that you're still deliberating at the end
8 of the day tomorrow, which is Thursday, if possible,
9 and if you haven't made commitments for Friday, if you
10 can come back in on Friday, well, then, you will be
11 certainly done with the case, but -- you know, and next
12 week will be yours completely.

13 So, if you give that some thought tonight,
14 talk it over among yourselves, but you definitely have
15 to be here tomorrow at nine, and we'll start there. I
16 just throw that out to you in case, you know, we can
17 work with regard to your scheduling.

18 Okay. Have a pleasant evening. We'll look
19 forward to seeing all of you tomorrow morning at nine
20 o'clock.

21 (Jury dismissed for the day at 3:10 PM.)

22 THE COURT: All right, we'll recess till nine
23 tomorrow. Oh, let's -- exhibits, I'm sorry. Mr.
24 Zager, you wish to move the map?

25 MR. ZAGER: I do, Judge.

1 MR. HEISLER: No objection, Judge.

2 THE COURT: The map may be marked in
3 evidence.

4 (DM-1 marked into evidence.)

5 MR. KINARNEY: Your Honor, I'm going to move
6 DS-4, which is a copy of the complaint charging Ernesto
7 Barber with his pending charges. That's the only one
8 of my seven I'm moving in.

9 MR. HEISLER: Judge, he was questioned about
10 it. I don't know that the document should go into the
11 jury room. On that basis, I would object. He admitted
12 to it, what the charges were.

13 THE COURT: Yes. Okay, no, not in evidence.

14 MR. WELLE: DW-1, Judge, my diagram.

15 MR. HEISLER: That would be Mr. Welle's more
16 accurate diagram? I have no objection.

17 THE COURT: Yes. In evidence.

18 (DW-1 marked into evidence.)

19 THE COURT: All right. If there is nothing
20 further, then we'll recess till nine tomorrow. Counsel
21 should be ready to address the charge at nine. Have
22 the defendants here definitely at nine. And by 9:30 or
23 earlier, we'll begin summations. Recess till tomorrow.

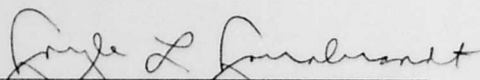
24 (Court in recess for the evening.)

25

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C E R T I F I C A T I O N

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20 Official Court Reporter
21 120 Hooper Avenue
22 Ocean County Courthouse
23 Toms River, NJ 08753

10-12-04
Date

SUPERIOR COURT OF NEW JERSEY
Ocean County - LAW DIVISION
CRIMINAL PART
INDICTMENT NO. 02-09-01247
A.D.# 6934-03-T1

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STATE OF NEW JERSEY)
)
 vs.)
)
 RENATO SANTOS, GREGORY)
 MAPLES, MARVIN WORTHY,)
 JAMES IRWIN,)
)
 Defendant.)

TRANSCRIPT
OF
TRIAL
RECEIVED
APPELLATE DIVISION
OCT 19 2004
SUPERIOR COURT
OF NEW JERSEY

Place: Ocean County Courthouse
120 Hooper Avenue
Toms River, New Jersey
Date: May 13th, 2004

B E F O R E :

HONORABLE EDWARD J. TURNBACH, J.S.C., and a Jury
TRANSCRIPT ORDERED BY: Raymond S. Santiago, Esq.
(Santiago & Associates, PC)

A P P E A R A N C E S :

WILLIAM J. HEISLER, ESQ.
Assistant County Prosecutor
Attorney for the State.

JAMES R. KINARNEY, ESQ.
Attorney for Defendant Santos.

FILED
APPELLATE DIVISION
OCT 19 2004
Jon Flynn
CLERK

GAYLE L. GARRABRANDT, C.S.R.
Official Court Reporter
120 Hooper Avenue
Ocean County Courthouse
Toms River, NJ 08753

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A P P E A R A N C E S (Cont'd)

PAUL E. ZAGER, ESQ.
Attorney for Defendant Maples.

LAWRENCE G. WELLE, ESQ.
Attorney for Defendant Worthy.

GEORGE B. SOMERS, JR., ESQ.
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I N D E X

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1 (The following takes place in open court,
2 out of the presence of the jury.)

3 THE COURT: All right. We're encountering a
4 delay this morning because Mr. Welle claims that he has
5 a witness that he wanted to testify, and that he
6 finally located the witness this morning. And I
7 understand someone is en route.

8 MR. WELLE: Judge, excuse me. When we are
9 done with this, I'll have an update. I am expecting a
10 call, so we'll know where we stand.

11 THE COURT: All right. Well, in any event,
12 we can address the charge. I gave the substantial
13 aspects of the charge to counsel yesterday. They've
14 had a chance to review it overnight, and I will hear
15 from counsel with regard to any objection to the
16 Court's proposed charge in this matter.

17 Mr. Welle?

18 MR. WELLE: Your Honor, if you wouldn't mind,
19 could we have some of the other counsel express their
20 concerns initially?

21 THE COURT: Okay. Mr. Kinarney or Mr. Zager
22 wish to address the matter first?

23 MR. ZAGER: I do, Judge.

24 THE COURT: Okay.

25 MR. ZAGER: Good morning. Judge, first of

1 all, I'm going to request an additional charge of false
2 in one, false in all, with respect to Mr. Barber. If
3 you wanted to hear further argument, I'd be happy to.

4 THE COURT: I can tell you that I don't give
5 that charge, never have given the charge; however, you
6 know, the jury is told that whether a witness testified
7 with intent to deceive you may be considered with
8 regard to the credibility.

9 MR. ZAGER: Judge, perhaps today might be the
10 one time in your experience that that charge should be
11 given, for the following reasons: Mr. Barber admitted
12 on the witness stand at least five times that he lied.
13 State's expert witnesses contradicted his testimony, at
14 least four out of five of them. The State's detective
15 contradicted his testimony significantly.

16 And I think that in this particular case,
17 given that he's the State's star witness as far as what
18 may or may not have occurred on April 28th, it would be
19 appropriate for a "false in one, false in all." I
20 apologize for not giving the heads-up for that, but my
21 notes were covered when I told you that.

22 The next -- I guess these would be objections
23 to the charge, Judge -- is that on the charge of
24 conspiracy, there is no language within the charge with
25 regard to an abandonment of the conspiracy. That's set

1 forth in 2C:5-2(f). I think that that language should
2 be added.

3 I think that language, Judge, should be added
4 to the charge based upon the testimony in the case,
5 which I understand the theory of the conspiracy is
6 because something may have occurred in Yonkers,
7 something occurred to cause the murder, and somewhere
8 between Thursday night, the 25th of April, in Yonkers,
9 and 11:00 AM, April 28th, in Lakewood, there was a
10 conspiracy amongst Worthy, Santos and Maples to kill
11 Rashon Roy.

12 If that's the theory, which apparently it is,
13 'cause it's alleged in the indictment that there was a
14 conspiracy between the 25th and 28th of April, there is
15 ample evidence in the case to support an abandonment of
16 that, given the testimony of the Shabazz brothers and
17 Mr. Barber himself, if you can believe a word that he
18 says.

19 So I would request the appropriate language
20 to be added to the conspiracy charge on abandonment.
21 As far as your Honor has a proposed jury charge for
22 accomplice liability, I'm assuming that your Honor has
23 provided that charge, because it's separate and
24 distinct from the conspiracy charge, but it is in the
25 charge because of the count in the indictment alleging

1 murder.

2 I would ask your Honor not to give the
3 accomplice liability charge. I don't think it's
4 appropriate in this case. The reason I ask, Judge, is
5 Count 1 of the indictment alleges a conspiracy to
6 commit murder. It alleges two statutory references.
7 One is 2C:11, which is the murder, the homicide
8 statute, and one is 2C:5-2, which is the conspiracy
9 statute.

10 It obviously doesn't apply to the conspiracy
11 charge, but if it applies to the murder charge, then I
12 think it would be inappropriate in this case based on
13 the testimony, because no one has placed Mr. Maples at
14 the scene of the Jeep when the murder took place.

15 I think it's over-reaching to give the jury a
16 conspiracy charge on one hand, and say you can decide
17 if he's a co-conspirator, if he's made an agreement,
18 and then you can decide if he facilitated in the
19 murder, given the testimony in this case.

20 The last thing, Judge, is, I've reviewed the
21 charge with my client. You have included the lesser
22 included charges of aggravated manslaughter and
23 reckless manslaughter, under the count of murder. In
24 nine out of ten cases, Judge, I would ask for the
25 charge, and I think a judge would give it even if I

1 didn't ask.

2 My client doesn't want those charges. We're
3 having a little dispute about that. But my client is
4 of the opinion that it's, quite frankly, all or
5 nothing. And there's an indication that, based on the
6 State's theory of this case, this was a planned murder.
7 This wasn't a passion provocation, this wasn't a
8 reckless shooting to constitute aggravated
9 manslaughter. This was a planned murder, a purposeful
10 and knowing murder, and that's the State's case.

11 And although maybe I don't necessarily agree
12 with my client, I want an objection noted that the
13 lesser included offenses probably do not apply in this
14 case and shouldn't be part of the charge.

15 THE COURT: Okay.

16 MR. WELLE: Your Honor, I would join in the
17 application of counsel with respect to those lesser
18 inclusions. I've been instructed by my client that it
19 is his opinion that this is an all-or-nothing case.
20 And as with Mr. Zager, as attorney for Mr. Worthy I may
21 have some different opinions on that. But I would
22 express on behalf of my client his objection to your
23 including the lesser inclusions in the charge.

24 MR. KINARNEY: Judge, I would join in all the
25 requests made by Mr. Zager. I would also indicate for

1 the record that my client and I had a somewhat heated
2 discussion about the lesser included offenses. I had,
3 to use court lingo, strenuously objected to his request
4 that I advise your Honor that you not charge the lesser
5 included offenses; however, despite our animated
6 conversation, he indicated to me he did not want those
7 given.

8 I would ask him one more time, for the
9 record: Mr. Santos, you and I discussed whether the
10 Judge should give the charge on the lesser included
11 offenses; correct?

12 MR. SANTOS: Yes.

13 MR. KINARNEY: I told you that I thought
14 basically you were crazy if you didn't agree to that;
15 am I right?

16 MR. SANTOS: Yes.

17 MR. KINARNEY: Despite that, you indicated to
18 me you wanted me to ask the Judge not to give that
19 charge; am I correct?

20 MR. SANTOS: Yes.

21 MR. KINARNEY: Do you still stand by that?

22 MR. SANTOS: Yes.

23 MR. KINARNEY: You don't want it given?

24 Thank you, Judge.

25 THE COURT: Mr. Somers?

1 MR. SOMERS: Your Honor, I join in Mr.
2 Zager's request.

3 THE COURT: Mr. Heisler.

4 MR. HEISLER: Judge, the charge that's
5 proposed at this particular time appears entirely
6 appropriate to me. The "false in one, false in all"
7 charge that Mr. Zager's asking for is included in the
8 normal charge that your Honor gives. I am familiar
9 with that.

10 As far as the accomplice liability part of it
11 goes, one of the bases for accomplice liability is
12 being involved in a conspiracy. So, I don't think
13 there is any reason to take that out.

14 With respect to the lesser includeds, Judge,
15 I think it's in the case. It may not be in the case
16 very strongly, but I also believe we have a record to
17 protect here as well, because in the event there is a
18 conviction for murder, I can foresee some appellate
19 lawyer saying: Judge Turnbach should have given the
20 jury the opportunity to consider lesser includeds.

21 So I'm going to ask your Honor to leave those
22 in.

23 THE COURT: All right. Well, I appreciate
24 the arguments of counsel. As I've indicated, I don't
25 charge false in one, false in all in that manner, but I

1 do indicate to the jury that if they find someone
2 testified with an intent to deceive them, they
3 certainly must consider that in judging that person's
4 credibility.

5 with regard to abandonment, I will instruct
6 the jury that, you know, if they find there was a
7 conspiracy, that the conspiracy had to continue and be
8 in existence on April 28th of 2002.

9 Accomplice liability is, from the Court's
10 perspective, all over the record in this case. And the
11 lesser included offenses are appropriate, given the
12 circumstances of the charge and the circumstances of
13 the case here.

14 So, your objections are noted, and we'll
15 proceed without change.

16 Mr. Welle.

17 MR. WELLE: Yes, Judge. I'm going to make a
18 couple of calls. I will update you in, like, five
19 minutes.

20 THE COURT: All right, fine. We'll wait to
21 hear from Mr. Welle.

22 (Recess taken.)

23 * * *

24 (In open court at 10:45 AM.)

25 THE COURT: All right. It's 10:45. Mr.

1 Welle, I understand that through the offices of the --

2 MR. WELLE: Yes, your Honor. And, for the
3 record, both myself and Mr. Worthy would like to
4 apologize for this delay that I guess we've occasioned.
5 But the circumstances are such that we'll not be
6 putting on this particular witness. She's up in Asbury
7 Park. There seems to be some trouble with that. So
8 we'd best proceed at this point in time.

9 THE COURT: Your client has decided he
10 doesn't want the witness?

11 MR. WELLE: Yes, that's correct.

12 THE COURT: Ready to sum up?

13 MR. SOMERS: Yes, your Honor.

14 THE COURT: Jury out.

15 (Jury in the box.)

16 THE COURT: A belated good morning to each of
17 you. My sincere apologies for the delay. An issue
18 arose that had to be addressed. It has been addressed.
19 And at this stage of the proceedings, we have what's
20 known as closing statements.

21 Each attorney is permitted to address you
22 with regard to the testimony and evidence in the case,
23 urging you to view it in one light or another. Closing
24 statements take place in reverse fashion of openings.
25 In openings, you will recall the prosecutor addressed

1 you first. In closing, Mr. Somers for the Defense will
2 address you first.

3 MR. SOMERS: Thank you very much, your Honor.
4 Mr. Irwin, co-counsel, members of the jury. I'm George
5 Somers, and I represent James Irwin. I'd like to talk
6 about Mr. Barber's testimony and Mr. Barber. That's
7 what the State's case is based on against my client.
8 It's based on Mr. Barber's testimony. That's it.

9 Now let's look at Mr. Barber's testimony, and
10 let's evaluate Mr. Barber and his testimony. We know
11 that on April the 29th, Mr. Barber was visited by the
12 Lakewood police. They go there, and what's Mr. Barber
13 do? Mr. Barber decides to give a statement. And in
14 this statement he says that after the shooting, he and
15 Mr. Irvin get into the Jeep and drive away. Okay.

16 Now, what else does he say? Or what doesn't
17 he say? well, in that statement, he's asked by the
18 police if, in fact, somebody threw a gun into the Jeep.
19 Did Renato Santos throw that gun into the Jeep? And he
20 says no. He didn't see any of that. All right.

21 Now, what happens next? Okay, the police go
22 to the site, they find the Jeep, they notice that the
23 Jeep has perhaps burn marks on the gas tank, around the
24 gas tank, wherever those marks were. And what did they
25 say?

1 well, they say somebody must have attempted
2 to burn this Jeep. Well, Mr. Barber, was it you? Or
3 was it Mr. Irwin? Who decided to try to burn the Jeep?
4 well, what's Mr. Barber going to say? He's going to
5 say: Well, it was Mr. Irwin. He tried to burn the
6 Jeep. He attempted to burn the Jeep.

7 what else does he do? In this second
8 statement, he tells the police that he knows where the
9 guns are. And he takes them to the guns. Why does he
10 do that?

11 well, here again, he wants to save his deal.
12 He's afraid that his deal is in jeopardy. He's got to
13 give the police something. Okay? How can he do that,
14 and also minimize his involvement? Well, he can turn
15 to the police and say: Well, it wasn't me who hid the
16 guns, it was Mr. Irwin. Mr. Irwin hid the guns, not
17 me.

18 See, all of his testimony is a balancing act
19 between trying to give the police what he thinks that
20 they know or they want, and minimizing his involvement
21 in this case, you see, all the way through, all the way
22 through.

23 Now, how about the third statement that he
24 gives? Okay. Here again, he changes the location of
25 the guns. In the second statement he said the guns

1 were under the seat, one on the back seat, one under
2 the seat. In this third statement he says that the
3 guns are on the passenger side of the interior, and
4 another one is on the back seat or around the back seat
5 area. okay?

6 He believes that the police want that
7 information. So he gives it to them. Why? Because he
8 wants to save his deal. He's looking at a lot of time
9 if convicted. He told you that. A lot of time. And
10 he is determined that he's going to get a break here.
11 He's going to get a deal.

12 Now, what does he do when he comes into court
13 and testifies? Here again, he testifies that, you
14 know, he -- that Mr. Santos threw the gun this time,
15 and the sock, into the car -- okay? -- into the Jeep,
16 and then it was Mr. Irwin who put the gun back inside,
17 in the sock. Changed his testimony.

18 Now, when I asked him, well, when you were at
19 your plea, did you indicate that there was no -- that
20 Mr. Santos had not thrown the gun into the Jeep? And
21 he said yes. well, that's a lie, isn't it? You were
22 lying. You had taken an oath, and you're lying. well,
23 he admitted it. well, what else could he do?

24 So here we have a man who lies on three
25 occasions, okay? And he lies under oath. What does

1 that tell you about Mr. Barber? Mr. Barber has no
2 regard for the truth. He doesn't care about truth or
3 anything else that he has to do, as long as he gets his
4 deal. That's what Mr. Barber is interested in. And if
5 he has to sacrifice everyone, he'll do so to get his
6 deal.

7 Now, this is a criminal case. So the State
8 must prove its case beyond a reasonable doubt. It's
9 the highest standard that we have. You have to decide
10 whether Mr. Barber's testimony constitutes proof beyond
11 a reasonable doubt against James Irwin. I submit that
12 it doesn't.

13 In fact, I feel -- I submit that to base a
14 criminal prosecution on the word of a liar, especially
15 one who lies in court, is an outrage, is an outrage, a
16 true outrage. That's what you have to work with here.

17 Thank you very much.

18 THE COURT: Mr. Zager.

19 MR. ZAGER: Thank you, Judge. Ladies and
20 gentlemen, I guess you know by now my name's Paul
21 Zager. I represent Gregory Maples. I'm going to
22 dispense with some of my usual opening remarks to
23 follow the line of argument that Mr. Somers made on
24 behalf of Mr. Irwin, because when Mr. Barber went in to
25 the police, he was already a two-time convicted felon.

1 And he knew he didn't have a deal at the
2 time. He knew that if he was convicted again, he would
3 be subject to extended term eligibility. And basically
4 the testimony on that is, is whatever degree of crime
5 it is, whatever the maximum is, if the prosecutor wants
6 to move before the Judge, that period of time can be
7 doubled. So it's called extended term. So if you're
8 facing five years, it could be doubled to ten.

9 So Barber, who's an experienced criminal at
10 the time, has a motivation to lie to the police in his
11 first statement, his second statement, and his third
12 statement.

13 And he had a motivation, to follow that
14 argument a little further, he had a motivation to lie
15 to you, because since he gave a statement two years
16 ago, and now, last January, he got arrested, and, lo
17 and behold, for what? A gun, albeit I think a BB gun,
18 but under our law that's a weapon, that's a firearm;
19 pointing it at someone; aggravated assault; terroristic
20 threat; and unlawful possession of a weapon.

21 Guess what? He hasn't been indicted by the
22 Ocean County Prosecutor's Office, and it's been 15
23 months.

24 So don't you think that maybe you can infer
25 that Mr. Barber has a reason to impress this Judge,

1 who's going to sentence him on this case, and impress
2 this prosecutor, or this prosecutor's office -- 'cause
3 any reference I make to the prosecutor is not against
4 this man as an individual, it's against the State,
5 because they're prosecuting this case.

6 So when Mr. Barber comes in to testify now,
7 now he's got second-degree charges that are somewhere
8 around ten -- are ten years that can double to 20. So
9 don't you think Mr. Barber wants to package this case
10 and his new case, for which he hasn't been indicted in
11 a substantially long period, together?

12 And don't you think he wants to impress the
13 authorities in this courtroom so that he doesn't get an
14 extended term of 20 years with maybe, based on his
15 prior record, a jail term of -- a period of parole
16 ineligibility, which means he's gotta serve every day
17 of half of 20, or ten?

18 So he's looking at twenty over ten if he
19 doesn't testify favorably for the State. So there's
20 your motivation for Mr. Barber, and we'll come back to
21 him.

22 Normally I would tell you, when I start my
23 closing, that on behalf of everyone, prosecutor
24 included, we thank you. We know you've been here two
25 weeks. God forbid it goes into a third week. We know

1 you sacrificed for your family and your businesses, and
2 we know that you have been paying attention, so we
3 thank you, because the system doesn't work without you.

4 This is the period of the trial where we get
5 to comment on the evidence. I think the Judge told
6 you -- and if he didn't, he will -- what we say is not
7 evidence. The evidence that you're going to consider
8 is the physical evidence that's going to go into the
9 jury room with you, and the testimony you heard from
10 the witness stand.

11 And if I or anyone else tell you that the
12 evidence said this, and your collective recollection
13 says no, he's wrong, it says this, then you go with
14 what you remember.

15 I told you at the beginning to sit back,
16 relax if you can, enjoy this trial. And I asked you to
17 pay attention to the cross-examination, because
18 you'll -- I'm sure you saw during the trial that
19 certain things don't come out on direct but, lo and
20 behold, they come out on cross-examination.

21 A little example is, one of the experts was
22 talking about the footprint analysis. And on direct
23 examination he said: Oh, yeah, we had the footprints
24 and we did some tests. But nobody asked him the
25 question on direct examination, you know, what were the

1 results of those tests? Only on cross-examination did
2 it come out that the tests didn't point to anybody.

3 So, keep that in mind, that the
4 cross-examination is just as valuable, if not more
5 valuable, than direct examination.

6 I've divided this -- oh, I'm sorry. Mr.
7 Somers said it, I am going to repeat it, this is a
8 criminal case. And just because these four gentlemen
9 are sitting here doesn't mean that they're guilty. The
10 Judge told you, will tell you again, and I'm going to
11 tell you, and every defense attorney will tell you,
12 they're presumed to be innocent.

13 That's how the system works. When you go in
14 to deliberate, you must presume that they are innocent.
15 And the prosecutor's got the burden to prove every
16 single element of every single charge. He's got to
17 prove that beyond a reasonable doubt.

18 And Mr. Heisler's an experienced prosecutor,
19 and he'll probably stand up here and he will tell you
20 that he welcomes that burden, and that I have done this
21 and I've done that. He's got to prove every question,
22 every element beyond a reasonable doubt.

23 So, if you have any answers that we weren't
24 able to answer for you because we didn't ask the right
25 questions, or we asked wrong questions, and you go back

1 in this jury room and you deliberate, and your
2 answers -- your questions haven't been answered, that's
3 his problem, because it's his burden, and you can blame
4 him for not satisfying your questions.

5 with that in mind, with the proof beyond a
6 reasonable doubt and the presumption of innocence, I'm
7 going to analyze the case for you. And I have been
8 known to go too far; and if I do, I apologize.

9 But my client is facing a significant loss of
10 liberty on this trial, and you guys took an oath that
11 you're going to apply the law and you're going to look
12 at the facts, and you're going to determine the facts
13 and determine their guilt or innocence.

14 So, you got a heavy burden, and you've got a
15 moral responsibility to do what you're supposed to do
16 under your oath. And it's my job to help you decide
17 what you're going to do here. So, I may go -- I may
18 aggravate you by talking too much, but I got to do it.

19 I have broken the case down in my mind into
20 types of witnesses. You have lay witnesses, you have
21 expert witnesses, you have interested parties, and you
22 have law enforcement. So I'm going to take them one by
23 one and suggest to you that the case has not been
24 proven anywhere close to beyond a reasonable doubt.

25 And I'm going to ask you what I asked you in

1 my opening statement, is that you have to decide Mr.
2 Maples' case separately from Irwin, worthy and Santos,
3 because the evidence that came out applies to this one
4 and this one and this one, and I'm not going to pretend
5 to tell you what to do when you get in there, but I'm
6 going to ask you that it makes sense to look at this
7 evidence separately as to each defendant.

8 Four eyewitnesses came in, you remember them,
9 maybe more: The Dunns; the two people who needed an
10 interpreter, I think they were from Mexico. And they
11 testified as to what they saw at the scene.

12 And I basically had one question for each of
13 them: Did you see Gregory Maples there, on April 28th,
14 at Highpoint? All four said no. One woman said,
15 "could have been." But I, quite frankly, interpreted
16 that as a little prejudicial remark.

17 How does the State prove that he's there?
18 well, so far, they haven't. But maybe like the
19 gentleman from Jackson who found the car, when he was
20 asked do you recognize anyone, he said: It's two years
21 later. He said, did anybody go out with a photographic
22 array? That's a picture of a person with five or six
23 other people.

24 And hey, why didn't they go out when they had
25 all these suspects and go to these four witnesses and

1 say: You saw four blacks run in and out. Recognize
2 any of these? They didn't do it, so I don't know what
3 these witnesses do with respect to the other
4 defendants, but they do nothing for Mr. Maples.

5 The other lay witness was Lisa Santana. She
6 is the -- or was the girlfriend of Mr. Rashon Roy. And
7 she doesn't tell us anything about Mr. Maples being at
8 Highpoint on April 28th; but what she does do is, she
9 tells us that they were friends, they exchanged
10 vehicles. And he, meaning Maples, was with the victim
11 the night before, with some girls, partying.

12 So, twelve hours before Mr. Roy is killed,
13 he's out with his friend, partying with some girls.
14 That's what she tells us. Does she have any damaging
15 evidence beyond a reasonable doubt? I would suggest to
16 you that she doesn't.

17 You have expert witnesses. Well, lo and
18 behold, it's not a surprise that Dr. Park would tell us
19 that the victim died from gunshot wounds, because
20 that's not a surprise. On cross-examination, we get a
21 little bit of a surprise, though, because Dr. Park
22 tells us two interesting facts. I don't know what I'm
23 going to do with those facts, but you heard them, so I
24 might as well tell them to you.

25 Mr. Roy had three different types of

1 recreational drugs in his urine and his stomach. And I
2 think Dr. Park said in response to my question that
3 since it was found in your stomach, that would mean use
4 that was very recent to his death.

5 But more interesting, apparently someone else
6 wanted Mr. Roy killed at a time previous to April 28th,
7 because on cross-examination, again, you find that
8 there was a bullet not related to this case, and you
9 know what Dr. Park said.

10 So now we come to Scott Frey. Scott Frey had
11 the opportunity to talk to you twice. I'm guessing
12 that maybe, based on some cross-examination from
13 somebody, he decided to go out and do his job a second
14 time. But what does he tell us that relates to Mr.
15 Maples?

16 He tells us, which will be the beginning of a
17 string of State witnesses, that there is no physical or
18 forensic evidence to put Mr. Maples in the Jeep or at
19 Highpoint on April 28th. That's the State's
20 Criminalistic Investigation Unit detective in charge of
21 this case telling you that.

22 What else does he do? He's the first in a
23 string of State witnesses to contradict the State's
24 star witness, Mr. Barber. Because you will recall that
25 Mr. Barber said that, in one of his versions, he

1 arrived at the scene in a red Grand Am, and the Grand
2 Am was driven by Mr. Bennett. And it wasn't parked in
3 a parking spot, it was parked parallel to a parking
4 spot.

5 well, how does Scott Frey contradict him? He
6 says that there is no red Grand Am at the scene. Now,
7 he would have seen it. It wasn't parked in a parking
8 spot. It was parallel.

9 If by chance you don't believe Investigator
10 Frey, Patrolman Humeny, who testified, he was the
11 first -- well, I can't say he was the first. He
12 responds from Lakewood. He goes and finds Mr. Santos.
13 He tells you that there was a dispatch for certain
14 people and certain cars, but there's no dispatch for
15 not only a red Grand Am, there's no dispatch for a
16 beige Acura.

17 The next expert is Investigator Pozalante. I
18 forget, quite frankly, for what purpose he was called,
19 but he was an expert, qualified as an expert, works for
20 Criminal Investigation, and he continues the trend of
21 two things.

22 He's another -- he's the second out of five
23 expert witnesses who says that he has no forensic or
24 physical evidence to put Mr. Maples in the Jeep or at
25 Highpoint on April 28th.

1 MR. HEISLER: Judge, I hate to interrupt at
2 this point, but Frey and Pozalante did not qualify as
3 experts in anything.

4 MR. ZAGER: If that's true, Judge, I stand
5 corrected.

6 THE COURT: That's correct.

7 MR. ZAGER: I stand corrected. Well then,
8 pay no attention to that. What does Pozalante do?
9 Before there was an objection -- I've got to repeat
10 it -- I told you there is no physical or forensic
11 evidence to put Maples in the Jeep or at Highpoint on
12 the 28th.

13 What else does he do? He continues the trend
14 of, State's expert or not, to contradict Mr. Barber,
15 because he tells you that there was no forensic
16 evidence to support Barber's story that the victim was
17 shot in the Jeep.

18 So now you have two State's witnesses, Scott
19 Frey and Pozalante, contradicting the State's key
20 witness.

21 Sergeant Armstrong came in. I had the nerve
22 to question him about his experience. He may not have
23 a lot of experience, but the man knows what he's
24 talking about, 'cause he gave a very professional
25 presentation on the board. And what does he tell you?

1 He tells you that there's 22 sets of fingerprint
2 matches on items in the Jeep from my client.

3 well, I'm not a brain surgeon, but didn't we
4 know that anyway? Because we knew that my client and
5 the victim exchanged their vehicles because they were
6 friends. So that shouldn't come as a surprise to you
7 that my client was in the Jeep at some time.

8 And what does Armstrong do? He confirms what
9 Lisa Santana tells you. They're friends, he used the
10 Jeep. Roy used my guy's van. They exchanged them. So
11 what does that prove? I don't know. Lisa's telling
12 the truth, maybe?

13 But what does Armstrong also tell us? He
14 tells us that there's no physical -- I'm sorry --
15 there's no fingerprints of my client in the Jeep
16 itself. On the items in the Jeep, the CDs and whatever
17 else, but not in the Jeep.

18 So again, I ask him another question that you
19 guys were probably sick of me asking, but: Sergeant
20 Armstrong, do you have any physical proof that my
21 client was in the Jeep on April 28th? And his
22 response, for I think now the third witness, was no.

23 More important, he contradicts, and he's now
24 the third State's witness, perhaps the first expert
25 witness, to contradict Mr. Barber, because Mr. Barber

1 told us, if I remember correctly, that he was in the
2 right front passenger area and he was in the rear
3 driver's side area of the Jeep.

4 But Sergeant Armstrong, who, quite frankly,
5 is a little more credible than Mr. Barber, I would
6 submit, tells us the only match of Barber to the Jeep
7 is somewhere on the passenger side rear door. But for
8 whatever reason, he can't tell us where the print came
9 from.

10 So you remember Barber's story at Coventry
11 the morning of the shooting, a couple of hours earlier,
12 where he got into the Jeep? Or at least that's what he
13 told you guys, he got into the Jeep, smoked a little
14 pot, had a little conversation, overheard a
15 conversation about Yonkers, but he didn't tell the
16 investigators, in his three chances, that he got in the
17 Jeep. He said he stood outside the Jeep.

18 I specifically asked one of the investigators
19 yesterday -- you heard it, I don't have to go through
20 it -- if you're standing outside, maybe put your hand
21 inside, you make the fingerprint? 'Cause there's
22 certainly no prints to support his story that he was
23 inside the Jeep earlier in Coventry.

24 So you have another State's witness, this
25 time I believe an expert, contradicting Mr. Bennett.

1 Detective -- I wrote "Bennett." Pay no attention to
2 that. It's Barrett. His testimony basically was with
3 the ballistics. And quite frankly, there is no
4 allegation my guy had a gun, so I'll let somebody else
5 deal with the ballistics, because I don't understand
6 them.

7 But more importantly, he's qualified as an
8 expert, and what does he tell us? He's now the fourth
9 State witness, second expert, to tell us there is no
10 forensic, there is no physical evidence to put Maples
11 in the Jeep on April 28th.

12 So, if you are looking for proof beyond a
13 reasonable doubt for Mr. Maples, don't look at any of
14 the State's CIU testimony, and don't look at any of the
15 State's experts, because it ain't there. It's just not
16 there. I don't think there is any argument. Everybody
17 heard them all say: No forensic evidence.

18 Investigator Hayes is a great witness. He's
19 a credible witness. He takes copious notes, and he
20 tells you about a confession. Well, I'm not going to
21 deal with the confession, 'cause my guy turned himself
22 in twice, and didn't confess, 'cause he didn't do it.

23 But somebody confessed. It's no secret
24 Mr. Santos confessed. And Mr. Kinarney can deal with
25 that as he chooses. But if you look at Investigator

1 Hayes's testimony and you look for the reason that
2 Mr. Santos says he shot Mr. Roy, you now got a little
3 problem with what happened in Philadelphia, don't you?
4 Because Mr. Santos tells Investigator Hayes: The
5 reason I killed and shot Mr. Roy is because Roy tried
6 to have me, Santos, run down in Philly.

7 I don't know about you guys, but I would not
8 have risked my rear end for a significant period of a
9 loss of liberty for someone else. So, when you take a
10 look at what may have happened in Philly -- and we'll
11 get to Yonkers in a minute, 'cause you know I got a few
12 things to say about that -- ask yourself, what the heck
13 is going on here?

14 Investigator Mitchell, a pretty good
15 investigator, got lot of experience. takes copious
16 notes, testified credibly. I think I called him, or
17 somebody on the defense side called him.

18 And Investigator Velardi. The only reason I
19 think I called him or the Defense called him was to
20 point out to you the inconsistencies, and there were
21 many, at least eight to a dozen, in the stories that
22 Hakeem and Halim Shabazz, the brothers of the victim,
23 gave to the investigators.

24 Now, I'm not a heartless person, and neither
25 are you guys. They lost their brother. Our sympathies

1 go out to them and their family, because it's a tragedy
2 that Mr. Roy is gone. But it would also be a tragedy
3 to convict the wrong person on evidence that's just not
4 in front of you.

5 Now, I understand that Hakeem was interviewed
6 five hours after he got news that his brother died.
7 And yes, you got to expect that he was upset. And
8 Mr. Halim Shabazz, his brother, was interviewed, I
9 guess, 24 hours later, after he found out about his
10 brother. So you know that they got to be upset.

11 But there's so many inconsistencies in their
12 stories from what they said on the witness stand as the
13 first and second witnesses in this case, last week, and
14 what you heard yesterday, when I asked Investigator
15 Mitchell and I asked Investigator Vardi a string of
16 questions each, did he tell you this? No. Did he tell
17 you that? No.

18 And normally I would go through those
19 questions with you, but it happened less than 24 hours
20 ago, and I'm assuming that you guys -- I know you paid
21 attention. I am assuming you remember it.

22 So as far as proof beyond a reasonable doubt,
23 you can cross these guys off. That brings us to, if I
24 spelled it right, the interested parties and the
25 state's theory of this case.

1 Now, don't leave your common sense, please,
2 at the metal detector when you walk into the
3 courthouse, because you have to use your common sense
4 to realize that this case against my client is not a
5 case, it's a theory, built on, what do they call it,
6 smoke and mirrors?

7 And here's the theory. My client, for some
8 reason, was upset that something happened in
9 Philadelphia, in a bar we don't know the name of, with
10 or without his son. We don't know if his son was there
11 or not. We don't know if something happened in the bar
12 or outside the bar, whether he was a pedestrian and a
13 green Escalade tried to run him over, or whether he was
14 in a car and a green Escalade tried to run him off
15 someplace.

16 We don't know that. And the prosecutor
17 doesn't really have to prove that. But he does,
18 because it's his theory that my client was so mad at
19 Mr. Roy because of something that happened in Philly,
20 he drove all the way to Yonkers to threaten him with
21 guns.

22 Then he drives all the way back. They kiss
23 and make up, according to the brothers, everything was
24 cool, in their words. Halim was petrified, he's
25 shaking on the witness stand, he was so scared in

1 Yonkers. The next day, he has a conversation with
2 Maples, and everything's cool.

3 The victim, Roy, was so afraid, he was
4 together with Mr. Maples on Friday, and he was out
5 partying with some women and my client twelve hours
6 before he was shot.

7 So the theory is that something happened in
8 Philly -- what period of time, we don't know -- which
9 resulted in my guy driving up to Yonkers, and then he
10 lets three days pass and he arranges an organized
11 slaughter of Mr. Roy in broad daylight. That's the
12 theory of the case.

13 Now, they've got to prove the case, because
14 you can't come into court with a theory. So what do
15 they do? First of all, to satisfy my client, let me
16 make it perfectly clear that the reason he entered a
17 not-guilty plea and the reason we're having a trial is
18 because by entering the guilty plea (sic), and having a
19 trial, my client is telling you: I'm guilty of
20 nothing, I'm not involved.

21 And it's up to the State to prove to you that
22 he is guilty and he is involved. And how's he going to
23 do it?

24 I went through the lay witnesses, I went
25 through the expert witnesses. There's no forensic,

1 there is no scientific -- you're getting sick of
2 hearing me say it. He's going to rely on an incident
3 that, quite frankly, my client disputes even occurred;
4 but for purposes of this argument, I have to perhaps
5 assume that maybe something occurred, and then argue it
6 didn't.

7 kind of sounds ludicrous, but that's what we
8 are doing.

9 So, Hakeem Shabazz doesn't go to Yonkers. He
10 just knows about a conversation, a confrontation, that
11 happens, I think, before Yonkers, on Thursday, before
12 Yonkers. And when he tells us that, he tells us that
13 conversation starts at 3:30, and he knows that it's
14 3:30, because he got off of work.

15 But he doesn't tell us they drive all over
16 Ocean County, from Seaside to Toms River to Lakewood.
17 And he says: There were threats from Mr. Maples
18 against my brother Roy.

19 Halim, who does take this imaginary trip to
20 Yonkers, says this meeting took place in Seaside,
21 somewhere between four and six. And he tells you that:
22 we rode all around the county. And he says: Yeah,
23 Maples was mad, but there weren't any threats.

24 Don't you think between the two brothers they
25 would know if there were any threats made? So this

1 April 25th, Thursday, is what the State's alleging in
2 Count 1 of their indictment of conspiracy. That's what
3 they're alleging, the conspiracy started here; and
4 they're alleging that it continued all the way through
5 until Mr. Roy was shot at Highpoint. That's their
6 allegations.

7 There's a trip to Yonkers, allegedly, where
8 Halim, the brother, is in the car. Now, you know his
9 inconsistencies of what he told you, and what he told
10 the investigator. But let's go through it, this trip.

11 He doesn't remember how they got from Toms
12 River to Newark. He doesn't tell the investigator that
13 they drove around Newark for a couple of hours. He
14 tells the investigator: I fell asleep on the way to
15 Newark, I woke up in Yonkers.

16 He tells you: I didn't fall asleep at all, I
17 was half asleep, half dozing, you know, somewhere, but
18 I was in Newark, and we were riding around for a couple
19 of hours and we were going to go see some rapper that
20 we all liked and some of us knew, and the rapper's in
21 Manhattan.

22 Now, I don't know who's driving on this
23 imaginary trip, but somebody missed the sign for
24 Manhattan, because the mastermind of all this, Mr.
25 Maples over there, he decides: well, something

1 happened to me, something happened to Santos, something
2 happened in Philly, let me go threaten Roy.

3 So he drives a couple of hours, you know,
4 from Lakewood, and goes to Newark, and then he drives
5 to Yonkers. And he pulls in behind a miniature golf
6 establishment. And guns are drawn, and the victims are
7 threatened. And then they merrily go on their way
8 home. And everything's cool. And this is the start of
9 the great conspiracy.

10 I don't buy it. I don't think you should buy
11 it. Take a look at the map. I'm not Rand-McNally, but
12 if you look at the map, the route that they took and
13 the landmarks they saw make no sense, because Yonkers
14 is way up north, and the Bronx is south of Yonkers.
15 And you can't go into Yonkers and see "Home of the
16 Bronx Bombers" on Yankee Stadium and then go back to
17 Yonkers for the miniature golf.

18 My recollection is he saw a sign that said,
19 "welcome to Yonkers," he saw Yankee Stadium, but he
20 thinks he saw the sign that said, "Home of the Bronx
21 Bombers." And then they went to the miniature golf.
22 So you go from Yonkers, to Yankee Stadium down south,
23 backtrack up to Bronx to threaten somebody. Give me a
24 break.

25 Proof beyond a reasonable doubt, ladies and

1 gentlemen. The conspiracy starts there. How does this
2 conspiracy continue? Because you're allowed to
3 consider that if there was this imaginary trip, and if
4 this theory of a conspiracy started on Friday the -- or
5 Thursday the 25th, did it continue? Or was it
6 abandoned?

7 Because if it happened and it was abandoned,
8 it's over. That's the law. So, if this imaginary trip
9 happened, everything's cool afterwards, he's partying.
10 And why in the world -- it's ridiculous to think that
11 Mr. Maples was involved in the shooting of Mr. Roy,
12 because if he wanted Mr. Roy dead, don't forget, they
13 have known each other since they're five. There's some
14 relationship. They were friends, they were business
15 associates, they exchanged cars together.

16 If he wanted him dead, why didn't he kill him
17 in Yonkers? Nobody was around. If he wanted him dead,
18 why would he do it in broad daylight, at eleven o'clock
19 in the morning, in a condominium complex with houses on
20 one side, condos on the other, hundreds of people all
21 around, in a disorganized fashion? why?

22 I'm not saying he was there, 'cause there is
23 no proof he was there. There just isn't any, except
24 for Barber. We'll get to him.

25 And to compound his stupidity in organizing

1 this murder, he pulls up next to his own van. of all
2 those parking spots -- you will see the pictures -- he
3 orders whoever's driving -- maybe he's driving, that's
4 the theory, no proof. Pulls up right next to his van.
5 That's going to be the getaway van; right?

6 How can it be? Because Detective Frey, who
7 didn't run any tests on the van, tells us the doors
8 were locked. Well, it's Maples' van. He knows the
9 doors are locked. Is he some bumbling conspirator
10 who's going to arrange for a killing in broad daylight
11 and have his getaway car with the doors locked?

12 Conspiracy is a theory. Now, here's your
13 proof of a great conspiracy. Mr. Barber, State's
14 witness -- and here I guess I want my cake and eat it
15 too. Might as well be up front with you, I am telling
16 you don't believe a word Mr. Barber says, and now I am
17 going to tell you believe three little answers he gave
18 you. I don't have a choice. You heard it. You
19 decide.

20 "Mr. Barber, did you know at Coventry, did
21 you know at Winteringham, and did you know at Highpoint
22 that Mr. Roy was going to be killed? No, I didn't
23 know. Did you hear Mr. Maples or Mr. Santos or Mr.
24 worthy talk about killing him? No. Was there a plan?
25 No. Did you know he was going to get shot? No."

1 That's the State's witness telling you
2 there's no conspiracy here. Again on the theory of
3 having your cake and eat it too, what does Barber tell
4 us? Well, what am I telling you? He's an absolute
5 liar, don't believe a word he says, but now I'm telling
6 you here's what he said, do with it what you want.

7 He says that him, Bennett, and Irwin, who's
8 not even charged with murder, all stayed at Irwin's
9 house that night. He says that, told the detective,
10 Bennett had a gun prior to the shooting, not the day of
11 the shooting, but prior to the shooting.

12 Do you think maybe Bennett, who's not even in
13 this courtroom, might have been involved in a
14 conspiracy with Barber, and Irwin may or may not have
15 been involved? I don't know. It ain't my job to find
16 the killer. But Irwin's -- not Irwin -- Barber is
17 covering up something.

18 Now, Barber, if you believe him, is the only
19 person that put my client at the scene. The only
20 person. If I stand -- if I'm wrong, there would have
21 been an objection about ten seconds ago. So
22 miraculously, I may be right.

23 And if you want to convict on Mr. Barber,
24 remember one thing. You have a solemn obligation here.
25 And there's a lot at stake as far as loss of liberty.

1 So, project yourself into the future, six months, a
2 year, five years down the road, 'cause one morning
3 you're going to wake up, you're going to think about
4 this case, and you're going to want to tell yourselves
5 and face yourselves in the mirror and say, "I did the
6 right thing," 'cause otherwise, you won't be able to
7 live with yourself.

8 And quite frankly, if the right thing is to
9 convict him, convict him. You got to look in the
10 mirror. But I don't see how that could be the right
11 thing. So the decision you're going to make today,
12 tomorrow, God forbid Monday, you're going to live with
13 the rest of your life.

14 And I don't think, quite frankly, you would
15 be comfortable making a decision based on the quality
16 of the character that Mr. Barber is, because it
17 wouldn't surprise me, and it may not surprise you, that
18 Barber organized this, pulled the trigger, and is
19 covering his rear end.

20 Bear with me one second, please. You're
21 going to be charged with a jury charge instruction, the
22 law, by Judge Turnbach, who's far smarter than me. But
23 he's going to tell you something along these lines:
24 That on the conspiracy charge, Count 1, if my client
25 agreed with someone else, that's conspiracy. Find him

1 guilty. Look at this evidence very carefully before
2 you make that decision, please.

3 But he's going to tell you something else,
4 because my client's charged in Count 2 with murder.
5 There's not an allegation that my client's the trigger
6 man. There's a theory, based on everything I've
7 discussed, that my client was involved. Don't buy it.

8 But here's the jury instruction you're going
9 to get on that. They're going -- the Judge is going to
10 instruct you that on the theory of accomplice
11 liability, my client can be just as responsible for the
12 killing as the shooter, if he agreed to aid someone, if
13 he agreed to promote the commission of the crime, if he
14 agreed to facilitate the crime, etcetera.

15 In laymen's terms, if Mr. Heisler and I agree
16 that we don't make enough money and we're going to rob
17 a bank, we agree, we shake hands, that's an agreement.

18 Now we go out and we do something. We agree,
19 but we're not going to shoot anyone. He goes into the
20 bank. I'm the getaway driver. A guard pulls a gun.
21 Unbeknownst to me, he's got a gun. He shoots the
22 guard. The guard is dead.

23 He gets in the car, we drive away, we got
24 money. "So how did it go?" And he says, "I shot
25 someone." "What the hell you mean, you shot someone?"

1 I'm as guilty, under accomplice liability, for shooting
2 that guard. That's what the jury charge means.

3 Now, Mr. Heisler is going to argue to you
4 that, given the nature of this case and all criminal
5 cases, he doesn't have a contract, he doesn't have a
6 corporate book or a written legal agreement between
7 worthy, Santos and Maples to come and give to you and
8 say: Here's an agreement, look, here's the conspiracy.
9 Of course he doesn't have that.

10 But what he doesn't have is any proof
11 whatsoever, except for Barber, but Barber puts my guy
12 at the scene but says there is no conspiracy, he didn't
13 know anything about it. And he was in a position to
14 know

15 So, what Mr. Heisler and the prosecutor's
16 office has presented to you is far beyond reasonable
17 doubt. I shouldn't say "beyond," I should say it
18 doesn't amount to reasonable doubt. It doesn't even
19 amount to credible evidence. They have a theory, the
20 prosecutor's office, that they haven't proved. And you
21 know, listening to the testimony, that their
22 investigation was far from a hundred percent.

23 So what happened? They got Barber, they put
24 themselves into this pigeonhole, and now they've got my
25 guy on trial for something that Barber or Bennett or

1 someone else did.

2 So, I told you at the beginning, I'm going to
3 ask you now, apply the principles of law, look at the
4 facts. And I think when you do that, you'll come back
5 and you will find Mr. Maples not guilty of conspiracy
6 and not guilty of accomplice liability in the murder of
7 Rashon Roy. Thank you.

8 THE COURT: Mr. Kinarney.

9 MR. KINARNEY: Thank you, your Honor. Judge
10 Turnbach, co-counsel, Mr. Heisler. Ladies and
11 gentlemen of the jury, good morning, almost good
12 afternoon. You know who I am. All the lawyers have
13 introduced themselves. I might as well. I usually
14 don't. Jim Kinarney, and I represent the real bad guy
15 in this case, I guess, Renato Santos.

16 Of all the evidence that you ladies and
17 gentlemen have heard, you've probably heard the most
18 damaging, the most brutal evidence concerning Renato
19 Santos. But as the other attorneys have indicated to
20 you, we're talking about allegations. We're talking
21 about a court of law.

22 We're not in some field, we're not at Yankee
23 Stadium -- let's say kind of apropos for this case.
24 We're not in the library, we're not in a gym. We are
25 in a special place that's called a court of law. This

1 is a case, and this is a place, particularly a place,
2 where there are certain rules that apply, certain very
3 strict rules that have been around for hundreds of
4 years, that protect people who are accused of crimes.

5 And each one of these four gentlemen are
6 sitting in the hot seat. And anybody, no matter how
7 powerful, if you are a politician, all the way down to
8 a bum laying in a puddle with a brown paper bag, and
9 inside that brown paper bag is a cheap bottle of wine,
10 can be charged with a crime.

11 And every defendant in the United States of
12 America is considered equal when it comes to an
13 accusation of crime, because our government is so
14 powerful and has so much resources, that the way we
15 level the playing field and bring it equal are things
16 called presumption of innocence, burden of proof, and
17 reasonable doubt.

18 So despite the fact that Mr. Santos has had
19 some real bad things said about him the last couple of
20 weeks, he's presumed to be innocent. You ladies and
21 gentlemen can do one of two things here. We know it's
22 an important case. It's a murder case. Doesn't get
23 any bigger than this.

24 You can do one of two things. You can take
25 the easy way, and you can say: You know what? This

1 guy Barber came in here and said Mr. Santos was running
2 around like a chicken with his head cut off, shooting,
3 shooting, shooting, shooting, shooting, even to the
4 point where Mr. Roy -- who again, we all have to feel
5 sorry for him and his family, but you can't let that
6 factor into your decision, 'cause you can't decide a
7 case based upon sympathy. You have to put it out of
8 your mind. You'll hear that from Judge Turnbach in his
9 instructions.

10 But continuing, Mr. Santos is chasing Mr. Roy
11 through this parking lot, according to Mr. Barber, and
12 he's plugging him and he's plugging him, and he's
13 plugging him to the point where Mr. Roy goes down,
14 perhaps in his death throes, and what does Mr. Santos
15 do? He comes up, he stands over him, according to Mr.
16 Barber, and he puts one more round in his upper back.

17 Pretty cold, huh? By the way, nobody else --
18 all these, what I would add, disinterested parties, all
19 the normal people who are going about their business
20 and living there, who saw various things, not one of
21 them, not one of them said they saw anybody go up to
22 Mr. Roy on the ground and put a bullet in him.

23 And these people saw people running around,
24 and these people saw people leaving the scene. And not
25 one of these individuals who lived in that area who saw

1 individuals leaving the scene, in cars or on foot, into
2 the woods, or up Prospect Street towards Route 9, saw
3 anybody standing over anybody putting a bullet in him.

4 What does that say about Barber right there?
5 It says he is a liar. Now, what it says is, he's
6 putting the cherry on top of the cake to get Santos.
7 And think about this. Mr. Barber indicated: I know
8 Mr. Maples. I know Mr. Worthy. I know Mr. Irwin.
9 I've known these guys a long time. But when it comes
10 to Mr. Santos, I know of him. I've seen him around.

11 We have a term in the criminal justice system
12 called "dropping a dime" on somebody. You guys might
13 have heard it on TV shows. Dropping a dime means
14 blaming somebody for something.

15 So if Mr. Barber, who might have been the
16 guilty party here, needed to drop a dime on somebody to
17 save his own skin, the guy he's going to drop the
18 quarter on -- quarter's a little bigger and heavier
19 than a dime -- is going to be Santos, who he doesn't
20 know, compared to these guys.

21 The one thing that you ladies and gentlemen
22 have, which is your most valuable tool, is your mind,
23 your common sense. You weren't at Highpoint, none of
24 the 14 of you, I don't think. You don't know for sure
25 what happened.

1 And by saying "for sure," don't take that to
2 mean that I am saying that this gentleman here must
3 prove this case for sure, because he doesn't. He just
4 has to prove it beyond a reasonable doubt, which is
5 less than for sure.

6 But the point I'm making is, none of you
7 ladies and gentlemen were there on that parking lot on
8 April 28th, 2002. You don't know for sure what
9 happened. So you're going to have to depend, when it
10 comes to Renato Santos, on the testimony of two people
11 that you don't know from Adam, that you never met
12 before, 'cause if you did, you would have said it
13 during jury selection.

14 And that is A.Z., (phonetic), Ernesto Barber,
15 and Investigator Jeffrey (sic) Hayes from the Ocean
16 County Prosecutor's Office, who supposedly took Mr.
17 Santos' confession, which, by the way Mr. Zager said he
18 confessed. Au contraire, I will differ with Mr. Zager,
19 and I will get back to that, in terms of the
20 confession.

21 But you're going to have to depend upon the
22 spoken word of two individuals you don't even know.
23 And when it comes to Investigator Hayes, who took the
24 supposed confession of Renato Santos, each and every
25 one of you 14 people said you wouldn't give any greater

1 credibility to a police officer simply because he's a
2 police officer.

3 So I'm going to ask you to apply that when
4 you analyze Investigator Hayes' testimony.

5 Let's look at evidence pertaining to Renato
6 Santos. Do you recall the young Lakewood police
7 officer, Patrolman Humeny? He's the one who saw
8 Mr. Santos on the street. Use your common sense.
9 Renato Santos chased Mr. Roy through that parking lot.
10 He had a gun, according to the State, one of these two
11 weapons, and he repeatedly shot at Mr. Roy. Mr. Roy
12 went down. He came up and shot him again, and then all
13 the witnesses said everybody ran.

14 Everybody ran, got in cars. One guy ran into
15 the woods, another guy ran towards Route 9 up Prospect
16 Street. Here's where your common sense would come into
17 play.

18 Human beings, when they're in certain
19 environments, in certain situations, the overwhelmingly
20 vast majority of the time, act the same way, no matter
21 who that human being is. And as a human being,
22 we're -- when we're in a parking lot, and we have a
23 gun, and we chase somebody through the parking lot, and
24 we shoot them and kill them, we don't hang around. We
25 don't hang around, 'cause we don't want to get caught.

1 would you agree with that proposition? I
2 think you would. What is the testimony of Patrolman
3 Humeny? I went through great lengths in trying to
4 establish a time line, for the point of showing you
5 that the State's own witness indicated, "I saw
6 Mr. Santos at least eleven minutes after the dispatch
7 came in of the shooting," meaning that it was more than
8 eleven minutes, because there's got to be some passage
9 of time from actual shooting till the police are
10 notified.

11 Eleven minutes. If we were to stop right
12 now, do nothing, nobody in this courtroom do a thing,
13 look at that clock, and go eleven, twelve minutes, it
14 would seem to you guys like you've gone through 14
15 birthdays. Seem like a decade. Eleven, twelve minutes
16 is forever. And how far did he get?

17 Remember, everybody indicated everybody ran.
18 He got an eighth of a mile. Eighth of a mile might as
19 well be this much (indicating.) So you have the
20 executioner, supposedly, according to the State, you
21 have the executioner, Mr. Santos, a really bad guy,
22 kill somebody in cold blood, everybody says he ran, and
23 he's found eleven minutes later, an eighth of a mile
24 away?

25 That's where your common sense comes in,

1 ladies and gentlemen. Mr. Santos was found an eighth
2 of a mile away, eleven or more minutes later? Why?
3 'Cause he didn't do a shooting. That's why. 'Cause if
4 he did a shooting, he'd have been halfway to Europe.
5 He'd have been trying to get to Iowa. He wouldn't have
6 been there.

7 And then think about this. What the State
8 alleges is, Mr. Santos snuck around the Jeep, tried to
9 prevent Mr. Roy from getting out of the Jeep. He's
10 holding the Jeep like that (indicating.) One of the
11 witnesses, Barber -- nobody else said this -- said he
12 got halfway in the Jeep.

13 He got out of the Jeep. He's shooting
14 inside. He's shooting outside. He's running around.
15 According to Barber -- strike that -- according to
16 Investigator Hayes, Santos supposedly said he drove
17 Mr. Roy to the scene. So he's in the vehicle with
18 Mr. Roy.

19 And what does Patrolman Humeny say, on my
20 cross? "Well, Patrolman, did he appear out of breath?
21 No." Hey, if you're running, you're out of breath.
22 Looked like he was sweating? No. Was his clothes
23 messed up? No. What about his hair, if he had any?
24 Was, if he had any hair, was his hair messed up? No.
25 Did he look normal? Yes.

1 Does that jibe with your common sense? If
2 you're in this, won't there be something? There was
3 nothing. Did he appear nervous? No. Also, according
4 to Investigator Hayes, he appeared normal. Calm. He
5 must be a machine. If he just executed somebody, then
6 he must be a machine, ladies and gentlemen, 'cause he
7 was cool as a cucumber. He wasn't sweating or
8 anything.

9 well, you know, Mr. Santos, you can leave.
10 That's all right. I won't leave. Think about it. If
11 a police officer said you can leave, and the police
12 officer doesn't even basically know your name, aren't
13 you going to say: Thank you very much, I think I will
14 leave?

15 I think you would. I think if you shot and
16 killed Mr. Roy, you'd take the chance, if a cop said to
17 you, oh, by the way, you can leave, I think you'd do
18 it. You wouldn't leave if you're not guilty.

19 Now, what information did Patrolman Humeny
20 have? What he had was that there was a shooting in the
21 Highpoint parking lot; there were two black males who
22 left the scene; one black male was wearing a gray
23 sweatshirt, not striped, a gray sweatshirt. That's the
24 information that came over dispatch. That individual
25 went towards Route 9.

1 The other individual was another black male.
2 They were both black males. And he had on a striped
3 shirt, I think the testimony was -- and your
4 recollection governs -- a yellow-and dark-colored
5 striped shirt, and he went through the woods. Well,
6 certainly we know that -- I would submit we should know
7 this -- this man, first of all, is not a black man.

8 Every single person who saw what happened in
9 that parking lot was questioned. There were at least a
10 half a dozen people who spoke to the police. At least
11 four of those half a dozen people were Hispanic.

12 And every single person, to the police -- I
13 am not talking about on the stand -- to the police,
14 when it's fresh in their minds, described the two guys
15 who left as black males. Not Hispanic, not possibly
16 Hispanic. Black males. And I would submit to you that
17 a Hispanic person knows the difference between another
18 Hispanic person and a black male, an African-American.

19 And his name is Renato Santos. That is a
20 Hispanic name. It's not an African-American name. So
21 we have a variance in the information, because the
22 information that everybody's given is that it's a black
23 guy.

24 And then we come up to the fact that
25 Investigator Humeny sees Mr. Santos on the street.

1 He's wearing a gray sweatshirt, which is the
2 information he's received. I would submit to you if
3 you walk into any store, J.C. Penney's, Sears,
4 Bloomingdale's, whatever, and you go look for a
5 sweatshirt, not talking about any letters, anything on
6 it, let's say a plain sweatshirt, the most common color
7 is gray.

8 It's not purple, it's not pink, it's not
9 black. There's probably a lot of whites, but I would
10 submit to you -- and your minds are going to govern
11 here -- the most common color is gray. So the fact
12 that he had a gray sweatshirt on is not dispositive.

13 And he's asked: Where did you come from?
14 And bear in mind, the State says he just killed
15 somebody. He didn't say: I came from the hospital, or
16 I came from down the street or came from -- he's
17 pointed towards the direction of Highpoint. I submit
18 to you that's the actions of an innocent person.

19 And he said he heard something sounded like
20 firecrackers, fireworks or whatever, he went to check
21 it out, and then he left, went on his way. He didn't
22 say he saw anybody. But he is not charged with not
23 telling the cops that he might have seen something. He
24 is charged with murder.

25 And he said he went on his way. Would you

1 like to come to police headquarters with me,
2 essentially? Yeah, I'll go to police headquarters.
3 And he goes to the scene. He is cool, calm and
4 collected and cooperative. He ends up down at police
5 headquarters where, again, according to Investigator
6 Hayes, he's cool, calm, collected and cooperative.

7 And according to Investigator Hayes, who
8 you've never met before, and have indicated to
9 everybody here in court you will give no greater
10 credibility than any other witness simply because he's
11 a police officer -- and Mr. Zager said he's a great
12 witness, keeps copious notes.

13 We don't know that he is a great witness or
14 if he's lying his rear end off. And basically, he said
15 Mr. Santos confessed. And Mr. Santos basically said --
16 pardon my French -- "I'm also a bad-ass, I carry a gun,
17 I've had this gun for a long time, I did the killing, I
18 killed him because he tried to kill me twice in
19 Philly."

20 So I guess with him trying -- by "him" I mean
21 Mr. Roy -- I guess with Mr. Roy trying to kill Renato
22 Santos twice in Philly, and then him supposedly trying
23 to kill Mr. Maples in Philly, I guess Mr. Roy does
24 nothing but try and kill people.

25 This is the first time we're hearing from

1 anybody, according to Investigator Hayes, that the real
2 grudge was Santos, not Mr. Maples. All the other
3 State's witnesses are saying Maples. All of a sudden,
4 Investigator Hayes is saying no, the guy who had the
5 grudge was Santos, 'cause he's got to say that, because
6 that fits into Santos supposedly confessing.

7 And it's key that he said -- and by "he" I
8 mean Investigator Hayes -- that when he was talking to
9 Mr. Santos, all this information is new information.
10 He didn't know any of this stuff, including the
11 identity of the victim, Mr. Roy. And he filled out,
12 sure, copious notes, because we end up with a
13 seven-page police report, seven-page police report by
14 Sergeant Hayes, which sets forth the various versions
15 of the confession given by Mr. Santos.

16 But you know what's interesting about this,
17 ladies and gentlemen? This crime occurred April 28th.
18 This police report was not prepared till May 7th, nine
19 days later. What happened in the interim?

20 well, Mr. Barber talked to the cops. He
21 talked to the cops twice at that point in time. Not
22 three times, twice. And in his first statement he says
23 Santos was running down, running all over, shooting and
24 killing, basically, Mr. Roy.

25 That's not true. Investigator Hayes, when he

1 prepared this statement where he said Santos confessed,
2 had all this information. He had this supposed
3 information from Barber. And I guarantee you, even
4 though Investigator Hayes didn't take the statement
5 from Mr. Barber, these police officers talked, as was
6 brought out.

7 They're all in the same office. They
8 wouldn't be doing their jobs if they didn't talk to
9 each other, especially in a murder case.

10 And here's what I submit to you is key. It's
11 almost like forensic evidence, even though this
12 technically is not forensic evidence. If you are going
13 to charge somebody with something like murder, and
14 you're going to maintain that that person confessed to
15 this murder, I guess we got to take your word for it,
16 because it's not corroborated.

17 And I'm not even talking about forensics. I
18 will get into that. It's not corroborated by anybody
19 else who said: Yeah, he confessed to me, too. And
20 wouldn't you think, wouldn't you be more comfortable,
21 each and every one of you, if there was a tape, a
22 videotape, made of his confession?

23 And then the State will say, well,
24 Investigator Hayes -- he'll say: Investigator Hayes
25 said, we asked him if we could take a videotape, and he

1 said, I got to think about it, no, I don't want to do
2 it.

3 But I brought out the fact that, "why isn't
4 that in your report, the fact that Mr. Santos has
5 refused to consent to a videotape," when he had every
6 other minor detail in his report, and it's been
7 established that police officers put everything that's
8 important in a report, because then they go to trial
9 two years later and they got to remember the important
10 things. So they review their reports, because they
11 have done eight million cases in the passage of time.

12 And nowhere in his seven-page report does he
13 say Mr. Santos refused to be videotaped. And you know
14 what? If you are going to confess, why wouldn't you
15 just say, okay, sure, I will do a videotape? You're
16 cooperative, why wouldn't you? You would. There is no
17 videotape.

18 Okay, you don't want to do a videotape? How
19 about an audiotape? Let me put the machine down and,
20 bup, (phonetic), hit the button, talk. What about a
21 Sipowicz routine? Here's the pad, write it out. We
22 have none of that.

23 We have the uncorroborated testimony of
24 Sergeant Hayes saying Mr. Santos confessed. And the
25 name of the game, ladies and gentlemen, is proof beyond

1 a reasonable doubt. And don't do what the police did,
2 wrap it up real quick here, 'cause they say he
3 confessed. There is too much at stake.

4 And the fact that Mr. Santos might have given
5 the name of Caddo (phonetic) because he had a warrant
6 out of Jersey City, where he's from, means nothing,
7 because he's not charged with having a warrant out of
8 Jersey City.

9 And I don't know about the other lawyers, but
10 I'll say this: I'm not saying Renato Santos is an
11 altar boy or a Boy Scout. I'm not going to ask you to
12 take him home for dinner if you find him not guilty.
13 That's not the issue. Did he tell them he was Caddo?
14 Yes. why? 'Cause he didn't want to go to jail. But
15 that's not dispositive of whether the State's proven
16 beyond a reasonable doubt that he committed the crimes
17 charged here.

18 Now let's get to Mr. Barber. I'm not going
19 to make a lot of big deal about him. Mr. Zager said he
20 is facing -- he's facing 20 years on that charge he
21 wasn't indicted for. He is not facing 20 years. He is
22 facing 31 and a half years. That's the exact amount.

23 He is charged with a second-degree possession
24 of a weapon for an unlawful purpose. It's a
25 second-degree crime, carrying ten years. with the

1 extended term, you can double it to 20. He is charged
2 with a third-degree terroristic threat, third-degree
3 crimes carrying five years, double it to ten, now ten
4 and 20, we're up to 30. He's charged with a fourth-
5 degree pointing a firearm, which doesn't carry the
6 extended term, because it's a fourth-degree.

7 MR. HEISLER: Judge, again I have to object.
8 I mean, the law is not such that you can get two
9 extended terms.

10 MR. KINARNEY: That's what I'm getting at.

11 THE COURT: You're right.

12 MR. KINARNEY: Thank you, your Honor.

13 THE COURT: One extended.

14 MR. KINARNEY: Thank you, Judge. He is
15 charged with a fourth-degree crime, pointing a firearm,
16 which you can't get an extended term for, but you get a
17 year and a half with an automatic nine months without
18 parole. So, no matter how you slice it, he's in the
19 jackpot. Before he testifies, he's facing a ton of
20 time.

21 And in addition to that, he pleaded guilty to
22 what was his supposed involvement in this event, and
23 he's facing five years for that. His cooperation will
24 be brought to the attention of the sentencing judge,
25 Judge Turnbach, who heard him testify and he -- who he

1 pleaded guilty in front of.

2 And he was quite frank. This is one thing
3 that he was true about, I will say about the only
4 thing, when he indicated, because he had no choice but
5 to indicate this, "I don't want to spend a day in jail,
6 I don't want to spend one lousy day in jail."

7 And so he came in here with a motive, ladies
8 and gentlemen, and he essentially said Mr. Santos is a
9 very, very, very bad guy. Not that he isn't, because
10 he's got a prior record for burglary and robbery, and
11 you can consider whether he would violate the oath,
12 based upon the fact that he's thought so little of
13 society's law that he's robbed people and burglarized
14 them.

15 And then he gives three separate stories. He
16 changes his statement. He indicates ultimately my guy
17 shot him -- by "him" I mean Mr. Roy -- right in the
18 back. Nobody else saw that, as I indicated. Everybody
19 else said it was black males running around. But let's
20 tie this with what Mr. Barber said Mr. Santos did, into
21 the forensics.

22 I didn't ask the witnesses in
23 cross-examination, the State's witnesses, what Mr.
24 Zager did, which was: Is there any forensic evidence
25 to prove that my client was at the scene? I could

1 have. I didn't. I'm just saving it for summation.

2 Think about it. My executioner, Renato
3 Santos, supposed executioner, there's not one shred of
4 forensic evidence showing that he was at the scene.
5 Not one shred. Forensic evidence, which is beautiful
6 evidence, 'cause you don't have to judge somebody on
7 credibility, you can embrace it.

8 Forensic evidence. You don't have to worry
9 about, is this person telling the truth or not? This
10 is scientific. It's forensic. Okay?

11 There is not one shred of physical evidence.
12 And I would submit to you that if there was going to be
13 any forensic evidence supposedly tying anybody of these
14 four individuals to the scene, based upon the other
15 testimony, it should be Renato Santos.

16 We have two revolvers here. One has been
17 marked S-2, one has been marked S-3. I would
18 anticipate that what Mr. Heisler will say, because he
19 really has to, is, between Worthy and Santos, I don't
20 know who had which gun, but you know what? He can't
21 abandon his own witnesses, I would submit to you.

22 Halim Shabazz said the supposed event up in
23 Yonkers, he said that S-2, which in the exhibit you're
24 going to have, in there is marked as Number 76 --
25 strike that -- Number 77, was in the hands of Mr.

1 Worthy, not Mr. Santos, up in Yonkers.

2 Mr. Barber, I mean, if you want to believe
3 Mr. Barber -- I say you shouldn't. Disregard what he
4 says. Maybe, as Mr. Zager said, is this me wanting my
5 cake and eating it too? Maybe. Mr. Barber said at
6 Winteringham Village, Mr. Worthy went in and got a gun
7 and a sock, and he saw it.

8 So if Mr. Santos was shooting and killing
9 Mr. Roy, how come when the tests were done on both
10 guns, the same tests, there was no forensic tie-in to
11 the gun that wasn't in the sock, but only to the gun
12 that was in the sock?

13 And then Mr. Heisler, 'cause he had to at the
14 end of questioning the chemist, Barrett, on his
15 redirect examination, said to Mr. Barrett: Just
16 because there was no forensic tie-in to the gun that
17 wasn't in the sock, doesn't mean that the gun wasn't
18 used? And Mr. Barrett said, "Yeah."

19 Well, you know what? What does that show?
20 You know what? I could have been the Pope, but I
21 wasn't. Coulda, shoulda, woulda. Do you know what I
22 mean? There is no forensics tie-in to this gun.

23 And do you think for a minute if Mr. Santos
24 had stood over Mr. Roy, put one in his back, that that
25 projectile would have -- either one of two things would

1 have happened: It would have remained in the body of
2 Mr. Roy, or it would have ended up underneath him on
3 the ground, 'cause he was laying there.

4 That bullet wouldn't have ricocheted off of
5 his body laying there and flown out to Missouri. And
6 yet there's no forensic tie-in. What we have,
7 according to Mr. Barrett, is that the bullet that was
8 found in the parking lot and -- the projectile that was
9 found in the parking lot, the projectile that was found
10 inside Mr. Roy, came from the gun that was in the white
11 sock, because that's Number 77, which is a Smith &
12 Wesson .38-special six-shot revolver, silver, brown
13 wooded grip, serial number filed off, containing four
14 spent shell casings, and one white sock used to cover
15 the weapon."

16 So even under the State's own witnesses,
17 that's not Santos's gun. Think about that. In
18 addition to that, were there any fingerprints of Renato
19 Santos on either one of these guns? No. And the way
20 the State has to address that is through -- I forget
21 the witness's name, the young kid who did the thing for
22 you.

23 He said "Well," I think his words were, "a
24 revolver can take fingerprints, but it's probably non-
25 conclusive." And then I said to him, 'cause he said

1 he's done quite a few of these tests, "have you ever
2 taken a print off a revolver?" Do you remember what
3 his answer was? "I don't remember."

4 "I don't remember?" That's not true. You'd
5 remember. You'd remember if you ever got a print off a
6 revolver. You sure would. And you know it, because
7 that guy was a pretty professional witness, and he
8 didn't seem like a dope. So you would remember.

9 so you have no forensic match to the gun that
10 the state's witnesses supposedly said Mr. Santos had.
11 I dispute that he ever had a gun. Wasn't even there.
12 You have no fingerprints from the gun.

13 You have the testimony of Scott Frey, who
14 said he went to the scene, and in a muddy area between
15 the fence and the parking lot, there were boot prints.
16 And lo and behold, Renato Santos is arrested right
17 away. What's he wearing? Ten-and-a-half size
18 Timberland boots.

19 You know what? That helps Mr. Santos,
20 because they take his boots and they compare them to
21 the footprints at the scene, and they don't match.
22 They don't match. And then you have the clothing of
23 Mr. Santos, which is taken from him.

24 Do you think, if he's in the car with
25 Mr. Roy, do you think, if he's trying to keep Mr. Roy

1 out of the car, do you think, if he's chasing after
2 him, do you think there might be like a little
3 microscopic hair or something on his clothing?

4 Did you hear any evidence of this? No, you
5 didn't, because there was no forensic evidence tying
6 his clothes to this event, or you would have heard
7 about it. You're allowed to consider the evidence and
8 the lack of evidence.

9 And then, in addition to that, what else does
10 Mr. Frey say? He sees, I believe he said, four juice
11 bottles. They appeared to have been recently put in
12 the parking lot. I think he said two -- and your
13 recollection will govern -- two is in by parking space
14 8, and two is in a grassy area by the parking space.

15 Now, ladies and gentlemen, don't you think
16 that they should have done a DNA test? Don't you think
17 you could take a cap off -- if you're drinking juice,
18 you're leaving your DNA on the roof -- on the mouth of
19 that bottle, you're leaving your DNA --

20 MR. HEISLER: Judge, that's a fact that's not
21 in evidence anyway.

22 THE COURT: Yes, I will sustain the objection
23 to that.

24 MR. KINARNEY: Again, ladies and gentlemen,
25 just let me say this to you. You can consider the

1 evidence and the lack of evidence, what they have shown
2 and what they haven't shown. And there is no DNA tie-
3 in to anything, Mr. Santos in this case.

4 And in addition to that -- so you have the no
5 fingerprints on the gun, there's no DNA, no forensic
6 tie-in to his clothes or his boots. The only thing you
7 have is a fingerprint. There are many, many
8 fingerprints that were taken in this case. And you
9 have a fingerprint where Renato Santos' right thumb was
10 on the front and back of the cover of a tape that was
11 found inside the Jeep.

12 As one of the lawyers pointed out, I don't
13 know if it was Mr. Heisler or one of the defense
14 attorneys -- it might even have been the witness
15 volunteering, the fingerprint expert, Armstrong,
16 volunteering it.

17 He said just because you find a fingerprint
18 on an item in a Jeep, doesn't mean the fingerprint was
19 put on the item while that person who put the
20 fingerprint there was in the Jeep. That fingerprint
21 could have been put on that tape box at another
22 location, and then that tape was picked up and ended up
23 in the Jeep.

24 And even if Mr. Santos put his fingerprint on
25 a tape box in the Jeep, I submit to you it doesn't

1 matter, because I'm not arguing to you that Mr. Santos
2 don't know these other individuals. Of course he does.
3 That's been the testimony.

4 And the testimony has also been that all
5 these guys have been in these vehicles, the Jeep, the
6 Acura, the this; that they've all been in these
7 vehicles.

8 As a matter of fact, Renato Santos, as Mr.
9 Zager pointed out in terms of the partying with the
10 girls, in reference to the Yonkers incident, where he
11 indicated Mr. Worthy -- strike that -- Mr. Maples was
12 partying with the girls, so there couldn't have been
13 any grudge, who's the other guy who was partying with
14 the girls? It was Mr. Santos. Mr. Santos has been in
15 that Jeep, and it proves nothing.

16 In sum and substance, ladies and gentlemen --
17 and I'm not going to belabor the point -- in sum and
18 substance, you are doing probably the most significant
19 thing, outside of a family/personal obligation, that
20 you're ever going to do in your life, including you
21 ladies and gentlemen who have served on juries before.

22 It doesn't get any bigger when it comes to
23 civic responsibility than to judge another human being
24 when he is charged with murder. So on one hand, I kind
25 of sympathize with you guys, 'cause you have a lot of

1 responsibility.

2 But on the other hand, you have to remember
3 this: You can't judge the case based on conjecture.
4 You can't judge the case based on surmise or suspicion.
5 You have to -- or sympathy. You have to almost be a
6 machine. You have to take those understandable
7 emotions that we all have, and you have to put them
8 aside, be very analytical, look at the evidence, the
9 reasonable inferences you can draw from the evidence,
10 and then, using your common sense, establish: Has the
11 State proven each and every element of the crimes
12 charged beyond a reasonable doubt?

13 And I would only say this to you. Forensic
14 evidence is very powerful, because it's unshakable.
15 The spoken word from somebody you don't know from Adam
16 is not as convincing.

17 So I know you won't do it. I mentioned it in
18 the beginning, you have been a very good jury, you have
19 paid attention, you have been in a good humor. You
20 probably got ticked off at the lawyers, but I would
21 too, if I wasn't a lawyer. And you've really impressed
22 me as somebody who's going to -- people who are going
23 to do a really good job.

24 I ask you to do that. I mention there's two
25 choices: The easy way and the hard way. I know you're

1 going to do it the hard way. You're going to really
2 analyze things. You're going to keep an open mind.
3 You're going to listen to your fellow jurors, and then
4 you're going to come back with a fair verdict. And
5 that's all I am asking you for, is a fair verdict.

6 I submit to you a fair verdict, when it comes
7 to Renato Santos, is one of not guilty. Thank you.

8 THE COURT: well, members of jury, at the
9 risk of disturbing 200 years' of tradition, it's 12:20,
10 and I think we'll go to lunch from 12:20 to 1:20 today,
11 so please have a nice lunch, be back in Central Jury at
12 1:20. We'll bring you over here and conclude the
13 closing statements.

14 Everybody remain in place until the jury
15 leaves.

16 (Jury retires for lunch at 12:20.)

17 THE COURT: All right. Recess till 1:20.

18 (Luncheon recess taken.)

19 * * *

20 A F T E R N O O N S E S S I O N

21 THE COURT: Mr. Welle, are you ready?

22 MR. WELLE: Yes.

23 THE COURT: Jury out.

24 (Jury in the box.)

25 THE COURT: Good afternoon to each of you.

1 Mr. welle?

2 MR. WELLE: Thank you, Judge. Counsel,
3 ladies and gentlemen, we're now in the afternoon of
4 what is the coming to the end of this two-week trial,
5 which is, of course, of crucial importance to the young
6 men sitting behind me.

7 You have been tremendously attentive. You
8 gave each of the lawyers who came before me your
9 attention, each and every one of you. And I know
10 you're going to give me your attention as I point out
11 some things to you that they may have covered, but some
12 things that are particularly important to Mr. Worthy,
13 and also things that may not have been raised up to
14 this point in time.

15 You know, in adopting some of the things that
16 some of the other counsel say, this is the best country
17 in the world. This is the best system of criminal
18 justice that exists in the world. Our constitution has
19 put in safeguards to protect people charged, because,
20 as Mr. Kinarney said, the power of the State is very
21 strong.

22 And you, sitting here, do not assume that the
23 government or the State gets it right. You don't sit
24 here and say because there was an indictment and
25 because Mr. Heisler does his job of marshaling some

1 people and some exhibits, that they're right.

2 Because there's that presumption of
3 innocence, and everything abides a full presentation of
4 all the evidence, and then your review of that evidence
5 when you go in the jury room. And each and every one
6 of you individually has to be convinced of every charge
7 and every element of every charge beyond a reasonable
8 doubt, as to each and every one of these defendants.

9 One man, fortunate for him, has only been
10 charged with some circumstances dealing with a Jeep.
11 You may even consider whether that was an appropriate
12 charging decision. Mr. Santos has been charged, and
13 you've heard the evidence against him. Mr. Maples has
14 been charged and Mr. Worthy has been charged.

15 The prosecutor -- and, of course, when they
16 talk about it, you know there was an investigation, and
17 evidence was accumulated, evidence. Well, evidence is
18 things; right? But not everything that gets picked up
19 off the ground or determined by some expert is really
20 relevant. Only the things that the Court permits to
21 get out of the mouth of a witness or onto an exhibit
22 number are the relevant stuff.

23 But then there's the stuff that maybe you
24 should have heard about. Maybe there are the things
25 that the prosecution and the investigation should have

1 done, maybe now thinking that it was derelict in not
2 doing them, and that you to be possessed of all of the
3 facts, that you would want to feel comfortable coming
4 to a decision about the life of any of these people,
5 you would want to know, you would demand to know,
6 because absent it, in a case like this, how can you be
7 sure?

8 How can you be firmly convinced beyond a
9 reasonable doubt on the elements of the offenses
10 against any of these people? Because that's the burden
11 that he has. And it's a heavy, heavy, heavy burden.

12 We have one exhibit. And it was a smaller
13 diagram of the bigger diagram of the parking lot with
14 the building on an angle, and I drew in basically
15 that -- the fact that these buildings were adjoined,
16 because we didn't have any pictures.

17 We did not have any, in this investigation of
18 two years ago, that would help you understand the true
19 position of vehicles and the location of people who
20 they were going to bring in here and who were going to
21 tell what you they were able to see, but, maybe more to
22 the point, what they didn't see.

23 And I mean, I did that. I didn't know
24 whether it would generate what it generated, but I was
25 hopeful, and it did generate something, because

1 remember initially we had some photographs that were
2 taken the day of the police getting to the scene,
3 'cause you can see the yellow tape, right? And there
4 are a couple of them, and they show this view from
5 Prospect Street into the parking lot.

6 But what that little exhibit of ours did is,
7 it generated during the course of a trial -- I mean,
8 this is highly, highly unusual, that in the course of a
9 trial, somebody goes out and does something and then it
10 comes in. I mean, you know, this is all supposed to be
11 done months ago. This is supposed to be done on the
12 28th, the 29th, the 30th, the week, the month, the
13 couple -- you know, back then in 2002, not here in
14 April of 2004.

15 But I guess it piqued the concerns of the
16 prosecutor, because you remember -- was it Frey? --
17 somebody went out and took some more pictures. And I'm
18 happy they did, Mr. Worthy is happy they did, because
19 they showed more accurately the viewpoint that the
20 Dunns had and that the Hispanic couple had from those
21 buildings onto the parking lot or across the back yard
22 of the Dunn residence, to see what was going on when
23 supposedly people were running around some cars.

24 Now, I'm not going to mess around with
25 numbers. I'm just going to show you these quickly.

1 And when you go through all of this stuff, I'm sure you
2 will want to look at these.

3 Here's a picture. Obviously, that blue car
4 was not there two years ago, it was there today, but
5 that shows the back of the Dunns' residence looking
6 over the fence, taken so that you could see that he
7 could see some things. He couldn't see things that
8 clearly, but he certainly could see, as he testified,
9 what, three or four people running around the van and
10 the Jeep?

11 And then -- and fortunately, someone actually
12 went up, finally, onto the apartment in Building 402,
13 where that Hispanic couple lived. And I don't think I
14 took them all. I have a couple here. You will see
15 them, and you'll be able to determine which ones they
16 were.

17 They were taken so you could see what that
18 man and that woman were able to see when they looked
19 out, as you can see. And the testimony was that from
20 Apartment Number 5, looking out the window, you can see
21 an area that encompasses the place where the van was,
22 where the Jeep was, and all the way out to Prospect
23 Street right here, all the way out here, and probably
24 beyond that, because, you know, the camera only took
25 this much, but we don't have a window here, we don't

1 have the edge of a window to suggest your view even
2 further would have been disturbed.

3 so those people, when they looked out, you
4 know -- and your recollection as to what each one of
5 them said is your recollection, but there's a response
6 to some shots, there are people running around, there's
7 a guy running across, chasing somebody; right?
8 Proceeding out and down into Prospect Street.

9 And one of them was even able to say that
10 there was another guy there too, and a victim's being
11 chased by one guy, but then there's another guy and
12 then those two guys, victim goes down, and two guys
13 disperse.

14 But what they don't see, because it wasn't
15 there, is, they don't see any other people and any
16 beige Acura. They don't see any beige Acura
17 supposedly parked over here on a yellow line, oddly,
18 nor do they see any black males attempting to get into
19 any vehicle here, because all of this is happening
20 almost simultaneously. Nor do they see any vehicle
21 other than the green Jeep, any of the witnesses he
22 produces, go anyplace.

23 Now, I want to know why, ladies and
24 gentlemen, if an Acura and a beige Acura is where this
25 Mr. Barber suggests it was, it wasn't seen by the

1 people who are looking right there. why was it not
2 seen by any of these other multitudinous people,
3 numbers of people, who were responding to the shots and
4 coming out of the apartments, undoubtedly, over here?

5 I mean, you will see that overview of the
6 apartment. There's a whole bunch of them, in circular.
7 But people obviously were responding. I mean, you come
8 out, you come from here, you come from over here.
9 Nobody said to the cops: By the way, we saw a beige
10 Acura or a beige car, we couldn't tell what kind it
11 was, leaving the scene?

12 That kind of information coming from the
13 police canvass, had it existed, would have been
14 presented to you. It was not, because there was no
15 beige Acura at this scene.

16 Just bear with me one second. You know, when
17 I got up in my opening I said that the Ocean County
18 Criminalistics group is very good, and they're very
19 good with what they choose to do, that is, the actual
20 analysis. But what's more important is what they
21 choose not to do, or neglect to do, or are not told to
22 do.

23 Now, in this particular case, left at the
24 scene is this green van that is Gregory Maples' van.
25 All right? Because when the police get there, they try

1 to open it, and they can't, they write it off. They
2 say to themselves: This had nothing to do particularly
3 with this event.

4 Now, I want you to think about that. What's
5 the testimony of witnesses? The testimony of witnesses
6 is that the perpetrators of this event, where do they
7 go? were a group of people seen running over to the
8 yellow curb where the beige Acura was supposed to be,
9 which Barber says brought them to the scene?

10 I mean, if you're involved in something, and
11 you get to the scene, and you're complicit in a
12 killing, and the crap's hitting the fan, where do you
13 go? where do you go? You go to the thing that is
14 there to get you the hell out of there.

15 Where do the people go, the three to four
16 black males who are running around this place? They
17 try to get into the van. They try to get into the van,
18 the same thing you would do under the stress of getting
19 the hell out of there. You'd get out in the vehicle
20 you came in.

21 Now, I don't know what the answer to this is,
22 whether, as the '97 or '98 Mercury Villager, when you
23 slam the damn door, there's that little latch over
24 there, you know, boom, door slams, maybe the place
25 locks up on you, whether somebody accidentally hit

1 something. But they ignored this. They didn't get --
2 or they did get a search warrant, but they didn't
3 execute it.

4 Now, isn't that human nature, to go to the
5 vehicle that brought you there? When they couldn't get
6 in, what did they do? They got into the Jeep. Mr.
7 Dunn, did he say, I think, three people got into the
8 Jeep? I think he thought more than two people got into
9 the Jeep.

10 I want you to ask yourselves, has anybody,
11 any independent, disinterested person, been able to
12 tell that you there were six individuals out there, in
13 a credible way, even when you put it all together,
14 disinterested eyewitnesses to this thing? There were
15 six people there? No. Because there were not six
16 people there. There were less than six people. And
17 the person who was not there of this crew of Lakewood
18 homeboys was this man (indicating).

19 You know, I said to you, and people, when
20 they talk about again the quality of investigative
21 work, you may have seen me on a number of occasions try
22 to examine Mr. Frey and Mr. Barrett about what they
23 did, maybe what they didn't do.

24 Now, you remember Mr. Barrett? He was your
25 forensics expert with the guns? Didn't bring his

1 report with him, but he says: I did this testing on
2 this gun, I only did this testing, and I matched up
3 certain things.

4 But I began to ask him, well, aren't there
5 some other things you could have done? You could have
6 taken the gun and you could have seen how far away it
7 would have developed a pattern. You could have done
8 that. But he didn't think that was done, or he didn't
9 do that.

10 And we talked about it, and he agreed with me
11 that the closer a weapon would be to the thing that was
12 hit, you'd get a pattern and then a broader pattern,
13 and then some, finally some diffuse indication of
14 nitrates or something. And finally, after, I don't
15 know, ten, twelve questions, he finally said: Oh,
16 yeah, we did send something to the State Police.

17 Oh. Where is it? Where is the result?
18 Somebody, late in the game, felt moved to send
19 something for examination. What's the only thing,
20 other than the body, that one would send for
21 examination? It would be the clothing. For what
22 reason? In a ballistics sense, to try to determine if
23 we can tell how close a weapon was to the garment.
24 That's what you would do it for. Or are there any
25 traces of it?

1 And why is that important? Because it can be
2 done. And they're suggesting here that there was a
3 shooting from the back of the Jeep -- right? -- from
4 somebody in the back of the Jeep, that hit this
5 Mr. Roy, and was a shot that probably killed him or had
6 something to do with killing him. All right?

7 Now, if you do the testing that is possible
8 on the clothing or in the Jeep, which they didn't do,
9 you can tell whether a gun was fired in that Jeep.
10 It's fundamental. It's fundamental. You can tell.
11 Did they do that test?

12 If they did, you would know whether, if
13 somebody said a gun was fired in the Jeep, they were
14 lying; if it showed that a gun had been fired in the
15 Jeep, it would be corroboration.

16 The kind of thing you as reasonable people
17 look for, and what we all look for when we're coming to
18 major decisions, is things that support other things so
19 that we can feel good about our ultimate decision in a
20 case or on anything.

21 But they didn't do it. Were they lazy, the
22 wrong people were directing them? I don't know. But
23 sending these clothes for examination would have
24 determined whether somebody in the back of that
25 relatively small compact area of the Jeep, right, had

1 fired the weapon. Because if it was fired from the
2 back seat, it's likely you would have seen it and
3 determined that it was on the front seat, parts of the
4 front seat.

5 I mean, you would have gotten it. But he
6 can't tell you that.

7 what they want to do, ladies and gentlemen,
8 is rely upon this Mr. Barber, who they went to a day or
9 so after this event, who was there, was involved, was
10 facing big time. And I'll get into that in a few
11 minutes.

12 And based on some things that he said, and as
13 they pick up some things, they construct a theory of
14 the case and move it along as they go, to try to get
15 other people to give them a little stuff that makes
16 them comfortable.

17 Now, Mr. Somers only spoke to you for a short
18 period of time. But what he told you and what he said,
19 I echo. It is outrageous that they, meaning the State,
20 would ask you to convict any of these defendants and
21 Mr. Worthy on the testimony of Mr. Barber.

22 This is a person who said, I don't know how
23 many times up here with his hand on the Bible, "I lied.
24 I lied in my first statement. I lied in my second
25 statement. I lied in my third statement. I'm lying

1 here on the stand. I've lied to you."

2 I mean, he said that. He said that. He lied
3 when he was in front of this Judge. And the prosecutor
4 was saying that, oh, you gave us three statements, and
5 those statements are true; right? I mean, yes, they
6 are.

7 Ernesto Barber, when they came to him, was as
8 complicit an individual as any person who was involved
9 in that shooting. All right? He was facing 30 years
10 to life when they came to talk to him, when they came
11 to him and they talked to him for a little bit.

12 And he talks, and he tells them things about
13 how he gets there, how Debo, Mr. Bennett, gets there.
14 So was Mr. Bennett there? And he's had a chance to
15 talk to Mr. Bennett, and Mr. Bennett's gotten away.
16 And Irwin is Lord-knows-where.

17 But he has a chance to speak to them and tell
18 them. And in all of this, and to you, he says: I was
19 only in this vehicle on one day. Remember that? What
20 day? Day of the shooting. What places? I ask him
21 particularly, what places were you in in this Jeep?
22 And he said: I was in the right front passenger seat,
23 and I was in the left rear seat.

24 was he telling you the truth? well, he might
25 have been in those seats, but he was also in the right

1 rear passenger seat, the same place that he wants to
2 put another person, that person being my client.

3 Latent MV 2-13 was found on the interior door
4 frame of the right rear passenger door, above the
5 interior window frame, and it is the right thumb of
6 Ernesto Barber.

7 Now, I'm not going to do any kind of
8 contortions. And you can figure it out, so when you go
9 in the jury room, I want you to figure out how, in that
10 position, Ernesto Barber's fingerprint gets there,
11 unless he was getting in or getting out of that
12 particular location in that car. Impossible.
13 Impossible.

14 What does that mean? I mean, that's
15 something that you put into this equation. That's
16 something that affects you in your deliberations when
17 you're thinking about the, quote-unquote, evidence that
18 the prosecutor has presented to you.

19 What does that do to Mr. Barber's testimony?
20 Because you know that he has taken himself out of
21 everything; right? I mean, he's there at the scene, he
22 doesn't know what's going on, he approaches the car,
23 nobody's talking. He gives a couple of names to the
24 cops of people who were there, but of course he's
25 backing off, he's got nothing to do with anything.

1 Then he gets into a Jeep, he drives away, and
2 this guy sitting over here is the only one who does
3 anything bad. Come on.

4 Is there any testimony that the -- credible
5 testimony, supported and corroborated by any
6 independent witness, that the beige Acura was there?
7 Of course not. Is there any testimony of any forensic
8 evidence that places Mr. Worthy in the Jeep or anyplace
9 else? The answer is: Absolutely not.

10 Mr. Worthy took the stand, all of what, five
11 foot eight, 140 pounds of him, and he looked each of
12 you in the eye. He was not afraid to get on that
13 stand. He was not afraid to expose himself to the
14 questions of this prosecutor.

15 He's a young kid with family in this area.
16 He is down here on occasion. He grew up in Newark. He
17 went to St. Benedict's, and he lives up in Newark. And
18 what did he say to you? He said: I didn't do this. I
19 didn't do anything on the 25th. I didn't do anything on
20 this day, I don't belong here. I don't belong here.

21 Now, the prosecutor asked him a couple of
22 questions. Now, you'd have to think that either he or
23 I are completely stupid, but when he was asked,
24 "Doesn't your mother have a beige Acura, yes. Yes, she
25 does." You know, sure, he drives the thing. He knows

1 that. People in Lakewood who are associated with
2 Maples know that fact. He knows that.

3 Yes, there is a beige Acura to which I'm
4 connected, but I wasn't in it and didn't drive it, and
5 it wasn't there. That's basically what this testimony
6 is.

7 The prosecutor only asked a few questions,
8 and I think he realized -- and I want you to think back
9 when you saw Mr. Worthy on the stand, about how he
10 looked at you and looked at the prosecutor as he was
11 answering questions, tone of his voice, the firmness of
12 his responses.

13 And the prosecutor asked him, "Do you know
14 Mr. Barber?" And Mr. Worthy says, "I never saw him
15 before he came in here." Okay? Now, that's the truth.
16 But that doesn't mean that Barber, in Lakewood, and
17 knowing these people, does not know of him or have seen
18 Maples and him or anybody in a beige Acura.

19 I mean, you'd have to be an idiot to get up
20 here and say: I never saw Barber before in my life.
21 What you say is: Oh, yeah, I saw him around, and
22 that's how he would know I drive the car. But he
23 didn't say that. He said: I never saw the guy until
24 he came in here.

25 And then, the prosecutor, I think in his last

1 question, may have asked, "How long have you known the
2 Shabazz brothers," or whatever. And he says: About
3 five years. Okay? And with that, the bulb goes off in
4 the prosecutor's head, and he says: I don't know, one
5 of those Shabazz boys says, "I've known him since he
6 was a baby."

7 well, to know him as a baby is to be years
8 older than him and to know when he was born, but we
9 know that this kid grew up in North Jersey. And when
10 Mr. worthy says, "I just met those people five years
11 ago," he's telling you the truth.

12 But I think the prosecutor felt, hey, this is
13 ridiculous, one guy says he knows somebody when he was
14 a baby. And he didn't ask him any questions, but Mr.
15 worthy was there, and he was ready to answer any
16 question Mr. Heisler put to him.

17 There are two ways of looking at that.
18 Either Mr. Heisler says, I'm not going to risk it, not
19 going to show this man and permit him to answer my
20 questions, and to exhibit himself and to show you that
21 he's honest and he's telling you the truth; or else
22 he's going to say, ah, look, it's a lot of baloney, the
23 guy's just up there trying to save his butt.

24 I have tried to give you those things that I
25 think are highly, highly important in terms of your

1 evaluation of the evidence, its quality, its quantity,
2 whether you can be comfortable in making a decision and
3 a determination which is based on a liar and a person
4 who has talked himself out of this particular case,
5 because there are unanswered questions here.

6 The one unanswered question, or one answered
7 question, is that Mr. Santos shot the man, 'cause he
8 admitted it. But as to who else was there and who did
9 what, other than Mr. Barber, and Mr. Bennett and Mr.
10 Irwin, that's a real question. He knows there's a real
11 question.

12 And I submit to you that, based on what
13 you've heard, Mr. Worthy is worthy of your belief, that
14 he was not there, that he did not do this, and there is
15 no corroboration and no independent evidence of any
16 kind that puts him there.

17 So when you go into the jury room, and you
18 weigh all this out, and you got to check a box, each of
19 you hold true to your individual evaluations, because
20 you all come from different backgrounds, you all assess
21 people differently. You all have different senses or
22 ideas of people. So do not let go of your firm beliefs
23 when you go in and assess this evidence.

24 And again I submit to you, Mr. Worthy is not
25 one of six people at this particular event on Sunday

1 the 28th. Whether there were four or five there, I
2 don't know. But I do know this, the van was one of the
3 vehicles that got people there. It's the one some
4 people went to to get the hell out of there as quickly
5 as they could.

6 Santos himself said he drove the Jeep, with
7 supposedly the victim in it. What can you point to
8 with surety that puts Mr. Worthy there and would
9 justify your convicting him with certainty?

10 THE COURT: Mr. Heisler.

11 MR. HEISLER: Thank you, your Honor. Please
12 the Court, counsel, ladies and gentlemen of the jury,
13 good afternoon. It never ceases to amaze me, when I
14 listen to lawyers give closing arguments, you would
15 think so far you've heard four different guys talking
16 about four different cases in four different
17 courtrooms. And you may think you've heard of five,
18 after I finish.

19 I would like to start by thanking you, as did
20 other counsel, for your attention. I know you have
21 been paying very close attention today and for the last
22 two weeks. It's tough to sit here and listen. I think
23 I mentioned that when I opened last week. And I thank
24 you for your attention all throughout the trial.

25 You've heard earlier from counsel. You're

1 going to hear from Judge Turnbach later. Your function
2 here is to use your common sense, use your life's
3 experiences, apply that to what you find to be the
4 credible evidence in the case, put it together and
5 arrive at a verdict.

6 That's what you are here for. What makes
7 sense, and what doesn't, based on what you know? I'm
8 going to talk about the charges a little bit before I
9 get into the facts and the evidence.

10 I told you last week, and you know there is a
11 conspiracy charge, that Marvin Worthy and Gregory
12 Maples and Renato Santos had a plan or an agreement to
13 kill Rashon Roy.

14 And Mr. Zager was right, I'm going to stand
15 here and tell you you don't need a written document, a
16 handshake, anything. You look at circumstances,
17 because these things are always done in secret, not in
18 front of Ernesto Barber in the car in the morning. You
19 look at circumstances to determine whether you believe
20 that a conspiracy existed.

21 One of the things you are going to be
22 considering is the fact that, when this incident
23 started on Thursday night, Mr. Roy wound up dead 60
24 hours later, less than three full days. As they say,
25 the proof is in the pudding.

1 And Mr. Zager would like you to believe that,
2 well, if there was a conspiracy Thursday night, maybe
3 it stopped, because they were out partying Friday or
4 Saturday night. That brings to mind two things.

5 The first is that maybe they were lulling
6 Mr. Roy into a false sense of security, to set him up
7 to kill him later. Maybe they didn't kill him Thursday
8 night because they didn't want to kill his brother
9 Halim. Nobody had a bone to pick with Halim, and you
10 certainly don't want to kill him and leave a witness.
11 So maybe Thursday night didn't work out.

12 And the other place you can go to look to see
13 what was going on is Sunday morning. If there is a
14 conspiracy in existence on Sunday morning, that's a
15 conspiracy. And look at those circumstances, and I
16 will talk about them in a little bit. It doesn't have
17 to be from Thursday to Sunday. If they conspired
18 Sunday, that's a conspiracy.

19 The Judge is going to tell you what the
20 elements of murder are. They're pretty
21 straightforward: Purposely causing someone's death,
22 knowingly causing someone's death, or purposely or
23 knowingly causing bodily injury or serious bodily
24 injury that results in their death.

25 Obviously, Rashon Roy, let's not lose sight

1 of this fact, was brutally and cold-bloodedly murdered
2 on April 28th of 2002. Shot in the back, four times.

3 who can be held responsible for that murder?

4 Obviously, whoever fired the fatal shot.

5 Anybody else who was shooting a gun intending
6 to murder him, whether their bullet was fatal or not,
7 is also guilty of that murder as an accomplice. And
8 anybody who conspired to have him murdered is guilty of
9 that murder.

10 What you folks have to do here is determine
11 what witnesses and what evidence are credible. And
12 with respect to witnesses, there is no magic formula.
13 You do this the same way you do anything else in your
14 life. You listen to what people say, determine whether
15 it makes any sense, whether it kind of fits in or
16 comports with other things that other people say,
17 things that you know to be true based on your common
18 sense and life experience and things along those lines.

19 You look at their demeanor. Do they answer
20 questions for both sides? You know, they're answering
21 questions for one side but, you know, arguing with the
22 other, that kind of thing? You look at their interest
23 in the outcome, and you look at whether they have any
24 motive to lie.

25 Those are the things that you put into the

1 mix, and it's things you do in your everyday life.

2 You heard a lot of chipping around the edges
3 of details of things people said that may not have been
4 entirely consistent with what they said on the witness
5 stand, and let's look at some of that.

6 Let's look at Mr. and Mrs. Dunn, and Mario
7 Molina and Maria Arenas. These people have no interest
8 whatsoever in this case. They're at home, minding
9 their own business, on a Sunday morning, when all hell
10 breaks loose outside their homes.

11 A man is getting shot to death. And it
12 causes some excitement and some commotion, as you might
13 well imagine. And they see what they see, and they
14 remember what they remember. And they don't see all of
15 it. None of them do.

16 But what you're getting by way of defense is:
17 well, Mrs. Dunn, you said "black," not black or
18 Hispanic. Well, I bet Mrs. Dunn was a little excited
19 that morning. She's watching TV with her, I think she
20 said he was an eight-year-old son, while this man's
21 being killed outside her door? She doesn't have any
22 interest in this case. She didn't come in here and
23 lie.

24 Halim Shabazz. Did you fall asleep going to
25 Newark, or after Newark? Does it make a difference?

1 He was awake in Yonkers. I mean, you could dink and
2 dunk around the edges here, and doesn't mean that
3 people are lying. People remember things differently,
4 they remember more later.

5 When you're talking about somebody getting
6 murdered, you know, there are details that you're going
7 to leave out that don't seem important at the time. So
8 you got to take those things into consideration.

9 Ernesto Barber was caught between a rock and
10 a hard place when the police picked him up on April
11 29th. He's got a record, no question about it. He
12 could be in trouble for some things. And people he's
13 associated with have just murdered somebody, and
14 they're still out there. Do you trust the police? Do
15 you trust your friends? What do you do?

16 well, he starts to talk, and he's not
17 completely on the up and up with the police. It
18 happens all the time. But within days, he's taking
19 them to the guns, and he's told them what happened.
20 He's got no deal in this case. He pled guilty to what
21 he did, stealing the Jeep.

22 And he got a great deal on this case that
23 he's been charged with a year later. He's been sitting
24 in jail for the last 15 months. A heck of a lot of
25 help I've been to him.

1 But I am not standing here asking you to
2 believe Ernesto Barber, or Ernesto Barber alone. So
3 let's talk about the evidence, what the evidence does
4 show, as these counsel are real big on telling you what
5 test wasn't done and which fingerprint wasn't where.
6 Let's talk about what evidence we do have, and let's
7 start with that Thursday night.

8 You had the victim's brothers, Hakeem and
9 Halim. And within four hours of the victim's death, on
10 that Sunday afternoon, Hakeem told Investigator Velardi
11 about the incident that happened in New York on
12 Thursday night.

13 Now, what possible reason in the world would
14 Hakeem Shabazz have to make that story up about Gregory
15 Maples and Marvin Worthy and Renato Santos? You
16 haven't heard one word, didn't hear one question on
17 cross-examination about what bone he has to pick with
18 any of them. Not one.

19 Why would Hakeem Shabazz make that story up,
20 tell it to the police within a couple of hours of
21 finding out his brother had been murdered, and come in
22 here and lie about it last week? There hasn't been a
23 suggestion of any reason for him to do that, other than
24 it was true.

25 And the same thing goes for his twin brother,

1 Halim. Again, what possible reason would he have, the
2 day after his brother was murdered, to say Gregory
3 Maples and Marvin Worthy and Renato Santos and I were
4 in New York the other night with my brother, when
5 Maples started giving orders, saying he got threatened,
6 and ordered us out of the van while he had a gun, and
7 he had a gun pointed at me and my brother?

8 What possible reason has been suggested to
9 you by anybody for him to make that story up? None.
10 Got no motive to lie about that. And let's look and
11 see how that gets corroborated, not in any big way,
12 but there are little things.

13 For starters, when you listen to the Shabazz
14 brothers, their versions of what happened in the van
15 before the trip north, when both brothers were together
16 with their brother Rashon, were nearly identical. And
17 it was Maples talking about feeling threatened, and if
18 you ever try to kill me again in Philly or anywhere
19 else, we're going to have a problem, I'm going to kill
20 you.

21 You heard that from both of them. And if
22 they were going to lie about it, why wouldn't they have
23 put a gun in Maples' hand, too, in that story, if they
24 were going to make it up? You're going to make it up,
25 might as well make it a whopper.

1 And again, dinking and dunking around the
2 edges. Well, you know, Investigator Mitchell, did Mr.
3 Shabazz tell you, you know, there was a police car
4 there when they got home? No. But he did tell him
5 they thought about going to the police, and talked
6 about it. I mean, the fact that he didn't tell him
7 about the police car doesn't make the story untrue.

8 And what did Lisa Santana tell you about that
9 Thursday night? Not a big, huge thing, but a little
10 piece you can use to corroborate her. They came in,
11 and something was wrong. They were really quiet. They
12 weren't acting normal, as I suspect most of us wouldn't
13 be acting normal if we had just been held at gunpoint
14 and had our lives threatened within the last couple of
15 hours.

16 But those are kinds of things that you look
17 at and apply your common sense to, say: Okay, this is
18 fitting, this is hanging together.

19 That's that night. And Halim showed you
20 which gun he believed Marvin Worthy had and which gun
21 Renato Santos had. And they happened to be the same
22 guns, or at least the Worthy gun, same guns that
23 Ernesto Barber identified. The Worthy gun was
24 identified as being in Worthy's possession in that sock
25 that Sunday morning.

1 Flash forward to Sunday. Ernesto Barber told
2 you he was with James Irwin and Steven Bennett when
3 Gregory Maples and Marvin Worthy showed up. And there
4 was a conversation in the Jeep. And Ernesto Barber was
5 in the back seat, and that's where his fingerprint was
6 left.

7 Now, Mr. Welle just wants you to believe
8 Barber's now the shooter instead of Marvin Worthy,
9 because his print was in the back seat and Marvin's
10 wasn't. I don't know where that comes from, but there
11 is no evidence to support it, not a shred.

12 And in that conversation, they start talking.
13 Marvin and Khaleef. Gregory Maples. And Maples is
14 saying: I made him what he is, and look what he did to
15 me. They've had a problem now. The only person in
16 this case that you've heard had any motive to do any
17 harm to Rashon Roy was Gregory Maples, over this
18 incident in Philadelphia, and you heard that from
19 Halim, and you heard it from Hakeem, from the Thursday
20 incident when Maples was all upset at the victim.

21 And now you're hearing it on Sunday morning.
22 Now that's coming again from Ernesto Barber. What's
23 different about it at that point? But not so
24 different. You heard Halim tell you Thursday night, as
25 they were driving around, Santos and Marvin are

1 bragging about, "we shot people before." They're tough
2 guys. They're going to impress people.

3 So now we get to Sunday morning, and Maples
4 and Worthy are in the van -- or the Jeep, excuse me.
5 And now we're beyond we got them out and held them at
6 gunpoint; now it's we were going to cap them, but the
7 gun jammed, because we're bad, and we're going to
8 impress Irwin and Bennett and Barber with how bad we
9 are. So now we actually pull the trigger, but the gun
10 jammed, and he begged for his life, so we let him go.

11 Tough guys. It doesn't make what Halim said
12 inconsistent with what Barber said. It's just these
13 guys bragging and making it up as they go along.

14 And how much of what Barber told you about
15 Sunday morning was corroborated? We went in Marvin
16 Worthy's beige Acura. Marvin Worthy doesn't know
17 Ernesto Barber, if you believe anything he said
18 yesterday. Never saw him until Monday. Doesn't know
19 him, didn't give you any possible reason in the world
20 why Ernesto Barber would want to come in here and lie
21 about him for a murder. What's Ernesto Barber's bone
22 to pick with Marvin Worthy, if Marvin Worthy doesn't
23 even know who he is?

24 After Khaleef left in the Jeep with Marvin,
25 Marvin came back in the beige Acura which we know his

1 mother owned, which we know he drove, and which Ernesto
2 Barber would only know about if he got in it that day.
3 And they went to Winteringham Village, where Marvin
4 worthy got a gun and a sock.

5 what did we find in the woods a couple of
6 days later? The gun and the sock. It's corroborative.
7 And there is more talk in the car on the way up to
8 Highpoint. I got a gun, I got three or four bullets in
9 the gun, I ain't afraid to use it, more of that same
10 braggadocio that you were hearing about from Thursday
11 night, from Halim, and earlier that Sunday morning from
12 Barber.

13 And that's consistent from witness to
14 witness. It's the same stuff, same kind of stuff. And
15 what happens? They get back to Highpoint, or get to
16 Highpoint.

17 And Mr. Welle was talking about the van being
18 locked, and that being the getaway car, and your
19 natural reaction is to get away in the car that you got
20 there in. Well, Barber showed you here on this diagram
21 where worthy parked the Acura. It's not in the parking
22 space, it's parked to get out of there. It's
23 pre-positioned to get away.

24 And that's exactly what Marvin worthy and
25 Gregory Maples did. Just what Mr. Welle said your

1 natural reaction would be. They got in the car that
2 brought them there, and they got the hell out, and they
3 left him (indicating) standing there holding the bag.

4 Barber told you Maples also got out of the
5 Jeep, went to the Acura. He told you he saw Santos get
6 out of the driver's side back seat of the Jeep, and
7 sneak around the car with the gun in his hand.

8 Was that corroborated by anybody? Yeah, it
9 was. It was corroborated by Renato Santos in his own
10 statement to Sergeant Hayes. Out of his own mouth, he
11 corroborates the witness that everybody wants you to
12 believe is a stone-cold liar. And now I guess today
13 they want you to believe he's a stone killer, too.

14 Barber says the victim made an effort to get
15 out of the Jeep, he held the door shut. Is that
16 corroborated? You bet. Right out of his own mouth
17 again. Shots are fired. The victim scrambles. He's
18 being murdered. He's being shot in the back, shot in
19 the buttocks, shot in the arm.

20 He's trying to save his life, and he does the
21 only thing he can do. He starts to scramble like a
22 madman out of that Jeep. And he falls, he hits his
23 head, and he gets up, and, as best he can, he runs.
24 And what does Barber tell you the next thing that
25 happens? Santos starts to chase him and shoot at him.

1 Is that corroborated by anybody? well,
2 again, out of his own mouth, to Sergeant Hayes. But
3 it's also corroborated by Maria Arenas, who heard the
4 first group of shots, got up from her dining room
5 table, looked out her window, where she could see clear
6 as a bell.

7 And I make no apology to Mr. Welle for having
8 these pictures taken last week. If I get information
9 about this case tonight, we'll investigate. I don't
10 care how late it is. Look at the pictures. She's got
11 a clear view. She sees somebody running after somebody
12 else, obviously Santos running after Rashon Roy,
13 shooting at him. She hears shots, and she says to her
14 husband and the other people in her dining room:
15 They're killing him.

16 well, that certainly corroborates what Barber
17 told you. What does he say happened next? When Santos
18 is done executing the victim, he comes back to the
19 parking lot. And Barber and Irwin are scrambling
20 around like madmen. They can't get in the van. The
21 Acura's gone.

22 So in a fit of what's probably really a high
23 level of stupidity, they jump in the Jeep where the
24 shooting started. Not the brightest move in the world.
25 But in the process, they take off, and as did Mr.

1 Maples and Mr. Worthy then took off in the Acura, they
2 leave Santos there. They get the hell away from him.

3 But what Barber told you on the witness
4 stand, what Barber told the police during his third
5 interview, I suppose it was after the guns were
6 recovered, is that Santos threw the gun in the Jeep
7 while he was trying to get in. Was that corroborated?

8 well, yeah, that's corroborated by Mr. Dunn:
9 "I saw the third guy throw something in the Jeep, and
10 then he, yeah, I thought he got in, but I'm not sure,"
11 'cause the Jeep's moving, and his view is clear up to a
12 point, but once it starts to move, it's not as clear.

13 It's corroborated by Mario Molina: I looked
14 out my window after the shots, my wife was very upset,
15 I looked out, and here comes this guy. He's black, but
16 he's not very, very black, coming back. He runs over
17 by the Jeep. Two other guys get in the Jeep. This guy
18 tries to get in, and I see him throw something.

19 That's two witnesses in addition to Barber.
20 And by the way, it came out of his mouth again in that
21 statement to Sergeant Hayes.

22 You know, folks, you've heard a couple of
23 times about the 200-years-plus that we have been doing
24 trials in this country. The Judge likes to talk about
25 the 200-year tradition of the 12:30 lunch. But we have

1 been doing trials for that long, and we haven't had all
2 this forensic stuff that's been around now for the last
3 few years. You don't have to have it.

4 And there's two things I have to say about
5 it. When you have it, it's great. Excellent stuff.
6 But I'm going to ask you to disabuse whatever notions
7 you have of what's out there and what's available based
8 on what you see on television. I find "CSI" very
9 entertaining because it's so out-there. It's make-
10 believe.

11 You heard Sergeant Armstrong talk about no,
12 we compare fingerprints. You don't have those
13 computers that pop them up and match them for you. You
14 don't get DNA during your bathroom break. Things take
15 a lot of time, they're very involved, they're very
16 expensive, but when you do get them, they can tell you
17 some things.

18 When you don't get them, they don't tell you
19 anything. The absence of forensic evidence doesn't
20 prove a thing. And you heard me ask Detective Frey the
21 other day, "You don't leave any fingerprints out there
22 and you don't leave any DNA, does that prove you
23 weren't here today? Absolutely not."

24 Let's talk about what we do have. His
25 fingerprint on an item in that Jeep. Twenty-two of his

1 fingerprints, including on items that also contained
2 the victim's fingerprint.

3 We have two bullets that match the gun that
4 you were told, not only by Ernesto Barber, not only by
5 Ernesto Barber, but by Halim Shabazz, looks like the
6 gun that Marvin worthy had on Thursday the 25th and on
7 Sunday the 28th.

8 Mr. Kinarney mentioned something this
9 morning, I'm not sure what he was talking about. Yeah,
10 one of the bullets that was taken from the victim's
11 chest matches that gun. But he said something about a
12 bullet under the body, a ricochet? The shot to the
13 upper back was one of the bullets that was removed from
14 Mr. Roy's body. That's the one that Dr. Park told you
15 lacerated the subclavian artery? It was lodged in his
16 rib.

17 And that bullet was of no ballistic value to
18 Mr. Barrett. He can't say what gun it came from.

19 Couple of other things Without getting into
20 too high-tech of a situation, we did something with
21 Detective Frey. We had him count the bullet holes in
22 the victim's clothes.

23 Now, we know the victim was hit four times.
24 He was hit in the arm. That was probably the round
25 that ricocheted off the vehicle next to it, so, you

1 know, he was in or just getting out of the Jeep when
2 that bullet hit him.

3 He was shot in the buttocks. There was an
4 exit wound on his thigh, but no exit on his pants, so
5 most likely that's the bullet that wound up in the
6 parking lot that came from that gun. As he was
7 running, it probably tumbled down his leg.

8 We know he had two more in his back. But
9 Detective Frey pointed out two other spots on those
10 clothing -- on those clothes where bullets apparently
11 went through. What does that tell you?

12 Well, the guns are recovered. The five-shot
13 revolver's got five empty casings in it, and the other
14 revolver that matches two of the bullets is a six-shot
15 revolver, but it only had four spent casings. Six
16 shots in this case means that both guns were used.
17 Six shots means that both guns were used.

18 One other thing I forgot to mention a few
19 minutes ago in talking about corroborating evidence,
20 Lisa Santana not only told you about Thursday night,
21 and how the victim and his brother were not themselves,
22 she also told you that that Sunday morning he made
23 several phone calls to her, where he just, in a very
24 nervous way, said: "Get my brother, get Bus." That's
25 Hakeem. "Get him."

1 These calls are coming in probably when he's
2 with worthy and Maples and Santos. What did Santos say
3 to Sergeant Hayes? "When I snuck up on him, he was on
4 his cell phone."

5 There have been a lot of other things that
6 have been said here today. Mr. Kinarney just flat-out
7 accused Sergeant Hayes of lying. Where is the tape?
8 Well, he can't take a tape. Once Santos says, "I'm
9 done talking," he can't say anything else to him.
10 That's just the way it is.

11 He says you have to take Hayes' word for it?
12 Well, you heard Sergeant Hayes tell you yesterday, or a
13 couple of days ago -- excuse me -- that once Santos
14 told him what happened, he brought Sergeant Isnardi
15 back in the room, and Santos repeated it in front of
16 Sergeant Isnardi.

17 Now, do you think for one second that if Mr.
18 Kinarney thought Sergeant Isnardi was going to say
19 something different than Sergeant Hayes said, he
20 wouldn't have brought him in here? And if Hayes was
21 going to lie about it, since, as Mr. Kinarney reported
22 out this morning, his report wasn't filled out for
23 about seven or eight days, why wouldn't he
24 doctor-up the motive about who was getting run over in
25 Philly?

1 Because by then, he knows, at least from
2 Barber and from both Shabazz brothers, that it was
3 Maples who claimed he had a problem with the victim
4 trying to kill him in Philly, not Santos having that
5 problem. So if you are going to lie about it, why not
6 implicate Maples through Santos, and make the stories
7 all match up?

8 Now, what's going on in there that Sunday
9 afternoon is, Santos is covering for these guys,
10 probably some misguided notion of macho or what being a
11 stand-up guy is all about, but that's what's going on
12 there.

13 Once the Jeep left the parking lot Sunday,
14 and Irwin and Barber took it into the woods, the only
15 evidence you have in this case is that Irwin tried to
16 burn it. And I don't think there is any question that
17 somebody tried to burn it, because, you know, it didn't
18 spontaneously combust.

19 Might have been a little bit of overkill,
20 actually putting an expert witness on to say that it
21 was an intentionally set fire. You could see it in the
22 photographs. But Barber told you his association with
23 these guys was through him. Barber's got no reason to
24 cover up for these guys, but he (indicating) certainly
25 does.

1 Gregory Maples is the person who all the
2 evidence points to as the one having the motive to kill
3 Rashon Roy. It manifested itself in that incident in
4 Yonkers, where guns were pulled by him, (indicating)
5 and him (indicating), and it manifested itself on that
6 Sunday, when that conspiracy came to fruition, when the
7 plan was accomplished, when Rashon Roy was murdered by
8 Marvin Worthy, Gregory Maples and Renato Santos.

9 If you look at all of the evidence, ladies
10 and gentlemen, put it together, decide what's credible,
11 what corroborates which parts, eliminate the nonsense,
12 the things that the evidence doesn't support, that
13 Barber and Bennett somehow, all of a sudden, became the
14 shooters, without any evidence at all that that
15 happened, put aside that stuff, look at the evidence
16 that you do have, and I would respectfully suggest to
17 you that there is only one conclusion you can reach
18 with respect to all charges and all defendants in that
19 case.

20 And that would be that they're all guilty of
21 each charge. And I ask you to return that verdict.
22 Thank you.

23 THE COURT: "Gosh," you're probably saying,
24 "what's he going to do now?" I appreciate the
25 attention you're giving to our matter. I appreciate

1 the agreement that we made when we selected you as to
2 when you would be here and when you could be here.

3 My court clerk spoke with you, I think, just
4 before you came over here. You had indicated, in
5 accordance with our agreement, that you had certain
6 commitments tomorrow; and, of course I respect that,
7 and you're not going to be here tomorrow if you have
8 commitments.

9 I think you also indicated to my clerk that
10 you would be happy to return on Monday at nine; am I
11 correct? So what I'm going to do now is to excuse you.
12 I will have to talk to you for about an hour and 15
13 minutes or so. It's three o'clock, and you don't want
14 to hear any more. You have heard an awful lot today,
15 especially law. I mean, you might as well wait till
16 Monday to get a law lesson; right?

17 So I'm going to excuse you, wish you all a
18 happy and safe weekend. I ask you to return Monday at
19 nine. By 10:30 you should be deliberating on the case,
20 okay? Thank you once again for your attention.

21 Everybody remain in place until the jury
22 leaves.

23 (Jury dismissed for the weekend.)

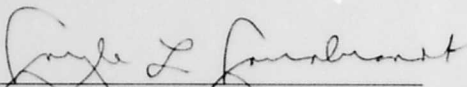
24 THE COURT: All right. In recess till Monday
25 morning, nine o'clock.

1 (Matter in recess for the weekend.)

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4 C E R T I F I C A T I O N

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10 I, GAYLE L. GARRABRANDT, C.S.R., License
11 Number XI00737, an Official Court Reporter in and for
12 the State of New Jersey, do hereby certify the
13 foregoing to be prepared in full compliance with the
14 current Transcript Format for Judicial Proceedings and
15 is a true and accurate non-compressed transcript to the
16 best of my knowledge and ability.

17
18
19
20 
21 GAYLE L. GARRABRANDT, C.S.R.,
22 Official Court Reporter
23 120 Hooper Avenue
24 Ocean County Courthouse
25 Toms River, NJ 08753

10-12-04
Date

SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY - LAW DIVISION
CRIMINAL PART
INDICTMENT NO. 02-09-01247
A.D.# A-6934-03-T1

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STATE OF NEW JERSEY)
)
vs.)
)
RENATO SANTOS, GREGORY)
MAPLES, MARVIN WORTHY,)
JAMES IRWIN,)
)
Defendant.)

TRANSCRIPT
OF
TRIAL

RECEIVED
APPELLATE DIVISION
OCT 19 2004
SUPERIOR COURT
OF NEW JERSEY

Place: Ocean County Courthouse
120 Hooper Avenue
Toms River, New Jersey

Date: May 17 th, 2004

B E F O R E :

HONORABLE EDWARD J. TURNBACH, J.S.C., and a Jury

TRANSCRIPT ORDERED BY: Raymond S. Santiago, Esq.
(Santiago & Associates, PC)

A P P E A R A N C E S :

WILLIAM J. HEISLER, ESQ.
Assistant County Prosecutor
Attorney for the State.

JAMES R. KINARNEY, ESQ.
Attorney for Defendant Santos.

FILED
APPELLATE DIVISION
OCT 1 2004
CLERK

GAYLE L. GARRABRANDT, C.S.R.
Official Court Reporter
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Ocean County Courthouse
Toms River, NJ 08753

A P P E A R A N C E S (Cont'd)

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LAWRENCE G. WELLE, ESQ.
Attorney for Defendant Worthy.

GEORGE B. SOMERS, JR., ESQ.
(Takacs & Somers)
Attorney for Defendant Irwin.

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1 (The following takes place in open court at 9:30 AM.)

2 THE COURT: Good morning. Please be seated.

3 All right. Ready to proceed, counsel?

4 THE ATTORNEYS: Yes, your Honor.

5 THE COURT: Jury out.

6 (Jury in the box.)

7 THE COURT: Good morning to each of you.

8 Good to see all of you back again. You have heard all
9 of the testimonial evidence you're going to hear with
10 regard to this case, and you're going to have with you
11 in the jury room the various exhibits that I've marked
12 into evidence for your consideration during your
13 deliberations.

14 You have also heard the closing arguments of
15 counsel, which of course are not evidence, but they
16 serve a valuable purpose in that each attorney has
17 urged you to view the evidence in one light or another,
18 as advocates of their respective positions, leading to
19 one conclusion or another.

20 It's now time for you to give your
21 consideration and judgment to the charges in the
22 indictment in the matter of State of New Jersey versus
23 Marvin Worthy, Renato Santos, Gregory Maples and James
24 Irwin. It's my function at this time to instruct you
25 with regard to the principles of law that control the

1 case. As I indicated to you at the time you were
2 selected, you're required to follow the law as given to
3 you by the Court, in deciding the issues presented.

4 Now, while the Court is the only source of
5 the law, you, members of the jury, are the sole judges
6 of the facts in this case. You are the sole and
7 exclusive judges of the facts, of the weight of the
8 testimony, of the credibility of the witnesses, of the
9 inferences to be drawn from the facts, and the ultimate
10 conclusion to be reached upon all of the facts.

11 After you have made your factual
12 determinations with regard to the evidence, you simply
13 apply the principles of law you receive from the Court
14 to the facts that you determined, and the result will
15 be your verdict.

16 Now, if I or any of the attorneys, in
17 referring to any of the evidence, were to state as my
18 or their recollection of a fact something that didn't
19 coincide with your recollection, you must be bound by
20 your own recollection and reject that of Court or
21 counsel. Your obligation is to decide this case in
22 accordance with the facts as you find them.

23 Now, I indicated to you at the outset of the
24 trial the fact that a defendant is standing trial as a
25 result of an indictment by a grand jury is not evidence

1 and is not to be considered by you in arriving at your
2 factual conclusions in this case.

3 An indictment is merely a legal document
4 which informs a defendant of the charges brought
5 against him by the State, and it provides the mechanism
6 to bring those charges before a jury such as you for a
7 determination with regard to the charges.

8 So now you know you're judges, judges of the
9 facts, and the fact that the defendant has been brought
10 to trial isn't evidence, so let's review again what is
11 evidence.

12 Evidence consists of sworn testimony by
13 witnesses here in this court before you, along with
14 documents, pictures, physical objects and the like that
15 the Court permits you to consider, and the inferences
16 which you reasonably decide to draw therefrom. The
17 credibility of the evidence is solely within your
18 provision -- within your province. You are the sole
19 judges of the facts.

20 Credible evidence is evidence which, in the
21 light of reason and common sense, is worthy of belief.
22 In order to be believed, testimony should not only
23 proceed from the mouth of credible witnesses, but it
24 also must be credible in itself. It must be such that
25 the common experience of men and women such as

1 yourselves can approve it as believable in the
2 circumstances.

3 In this regard, you had the opportunity
4 during the course of the trial to observe various
5 witnesses appear here and testify.

6 In determining the weight you choose to place
7 upon their testimony, that is, in determining whether a
8 witness is worthy of belief and therefore credible, you
9 may take into consideration the appearance and demeanor
10 of the witness on the witness stand here; the manner
11 with which the witness testified; the witness's
12 interest in the outcome of the trial, if any; the
13 witness's means of obtaining knowledge of the facts to
14 which the witness testified; the witness's ability to
15 reason, observe, recollect and relate to you; the
16 possible bias, if any, in favor of the side for whom
17 the witness testified; the extent to which, if at all,
18 a witness is either corroborated or contradicted,
19 supported or discredited by other evidence; whether the
20 witness testified with an intent to deceive you; the
21 reasonableness or unreasonableness of the testimony the
22 witness has given to you; whether the witness has made
23 prior inconsistent statements concerning material
24 facts; and any and all other matters in evidence which
25 serve to support or discredit the witness's testimony.

1 In this regard, you've heard evidence that
2 several witnesses who appeared here and testified on
3 behalf of the State have previously been convicted of
4 crimes. I refer to Halim and Hakeem Shabazz, and
5 Ernesto Barber. And counsel have brought out for you
6 their prior criminal history.

7 This testimony about a prior conviction of a
8 crime may only be used in determining the credibility
9 or believability of the witness's testimony that you're
10 considering. You, as a jury, have a right to consider
11 whether a person who has previously failed to comply
12 with society's rules, as demonstrated through a
13 criminal conviction, would be more likely to ignore the
14 oath requiring truthfulness on the witness stand than a
15 law-abiding citizen.

16 You may consider, in determining this issue,
17 the nature and degree of the prior convictions and when
18 they occurred. You are not, however, obligated to
19 change your opinion as to the credibility of a witness
20 simply because of a prior conviction. It is evidence
21 you may consider along with all the other evidence and
22 factors discussed in determining the credibility of the
23 witness in question.

24 Additionally, Ernesto Barber, one of the
25 defendants in the indictment returned by the grand

1 jury -- he was charged with theft of the motor
2 vehicle -- has pleaded guilty and testified on behalf
3 of the State. The law requires that the testimony of
4 such a witness be given careful scrutiny.

5 In weighing his testimony, therefore, you may
6 consider whether he has a special interest in the
7 outcome of the case, and whether his testimony was
8 influenced by the hope or expectation of any special
9 treatment or reward, or as a result of having received
10 special treatment, or by any feelings of revenge or
11 reprisal.

12 However, if you find the witness Mr. Barber
13 to be credible and worthy of belief, you certainly can
14 consider his testimony along with all the other
15 evidence in the case in arriving at your conclusions
16 with regard to the matter.

17 Additionally, there was offered for your
18 consideration in this case an oral statement allegedly
19 made to Sergeant Hayes by the defendant Renato Santos.
20 It is your function to determine whether or not the
21 statement was actually made by the defendant Santos
22 and, if made, whether the statement or any portion of
23 it is credible.

24 In considering whether or not an oral
25 statement was actually made by a defendant and, if

1 made, whether it is credible, you should receive, weigh
2 and consider this evidence with caution, based on the
3 generally recognized risk of misunderstanding by the
4 hearer or the ability of the hearer to recall
5 accurately the words used by the defendant accurately.

6 The specific words used and the ability to
7 remember them are important to the correct
8 understanding of any oral communication, because the
9 presence or absence or change of a single word may
10 substantially change the true meaning of even the
11 shortest sentence. You should, therefore, receive and
12 weigh and consider such evidence with caution.

13 In considering whether or not the statement
14 is credible, you should take into consideration the
15 circumstances and facts as to how the statement was
16 made, as well as all other evidence in the case
17 relating to that issue.

18 If, after consideration of all these factors,
19 you determine that the statement was not actually made,
20 or that the statement is not credible, then you must
21 disregard the statement completely. If, on the other
22 hand, you find the statement was made, and that part or
23 all of the statement is credible, you may give what
24 weight you think appropriate to that portion of the
25 statement you find to be truthful and credible.

1 Now, with regard to the alleged oral
2 statement of the defendant Santos, should you find that
3 he made such statement and it was credible and it is
4 credible, that statement is not to be considered as
5 evidence against any of his co-defendants in this case,
6 and is not to be considered by you at all in deciding
7 the charges against the co-defendants. It was strictly
8 and solely admitted with regard to the defendant
9 Santos.

10 Also, evidence was introduced by counsel for
11 the defendant on cross-examination of several witnesses
12 as well as on direct examination of several officers
13 called by the defendants, Investigator Mitchell,
14 Velardi and Detective Finnegan, that at the time the
15 witnesses made their initial statements to authorities,
16 they said something or failed to say something which
17 was inconsistent with their testimony here at trial.

18 In reviewing such evidence, you should
19 consider whether such prior statements or omissions
20 actually occurred and, if they did, whether they are
21 inconsistent with the witness's testimony at trial. If
22 you determine that to be so, it is evidence you may
23 consider in judging the witness's credibility.

24 It may also be considered by you as
25 substantive evidence, that is, proof of the truth of

1 what is stated or omitted in a prior statement;
2 however, before deciding whether a prior inconsistent
3 or omitted statement reflects the truth, in all
4 fairness, you should consider all the circumstances
5 under which the statement was made or failure to
6 disclose occurred.

7 You should consider the extent of the
8 inconsistency or omission, and the importance or lack
9 of importance of the inconsistency or omission on the
10 overall testimony of the witness you are considering as
11 bearing upon his credibility.

12 You should consider such factors as where and
13 when the prior statement was made or omission occurred,
14 and the reasons or explanation, if any, given you
15 therefor. The extent to which such inconsistencies or
16 omissions affect the credibility of a witness or
17 reflect the truth, then, is for you to determine.

18 Consider their materiality in relationship to
19 the witness's entire testimony and all the evidence in
20 the case; when, where and the circumstances under which
21 they were said or omitted; and whether the reasons
22 given you therefor are believable and logical.

23 You should, of course, consider other
24 evidence and inferences from other evidence, including
25 statements of other witnesses or acts of the witness

1 and others disclosing other motives, if any, that the
2 witness may have had to testify as he did, that is,
3 reasons other than the witness gave you.

4 In a nutshell, members of the jury, it is
5 your responsibility to weigh and consider all of the
6 evidence in this case, accepting that which you find to
7 be credible, rejecting that which you find not
8 credible, and reaching your factual conclusions.

9 Additionally, you have heard testimony from
10 certain witnesses that the Court permitted to testify
11 as experts and give you opinion testimony. I refer to
12 Dr. Park, with regard to forensic pathology;
13 Investigator Abrams with regard to cause and origins of
14 fire; Sergeant Armstrong with regard to fingerprint
15 examination identification; and Daniel Barrett with
16 regard to firearms and ballistics.

17 As a general rule, a witness is only
18 permitted to testify concerning facts known by him.
19 Ordinarily, a witness may not testify with regard to
20 his opinion; however, an exception to this rule exists
21 in the case of an expert witness, who may give opinion
22 testimony as to a matter in which the witness is versed
23 which is material to a case.

24 An expert witness is a witness who has some
25 special knowledge, skill, experience or training that

1 is not possessed by the ordinary juror, and who thus
2 may be able to provide assistance to the jury in its
3 fact-finding duties.

4 As I told you at the time these witnesses
5 testified, the fact that I permit them to testify as
6 experts does not mean that I endorse their testimony.
7 The merit and worth of their testimony is strictly
8 within your province as jurors, judges of the facts, to
9 determine.

10 You are not bound by the opinion of an expert
11 witness any more than you are bound by any other fact
12 that may be testified to in the case. You are not
13 required to accept arbitrarily opinions offered to you.

14 In considering the opinions offered, you
15 should evaluate the factual bases and reasons given you
16 for them, as well as the expert's qualifications,
17 training, and experience, and the expert's
18 understanding of the matters to which he testified.

19 In sum, you are required upon your own
20 responsibility to decide the questions of fact after a
21 comparison and consideration of all the evidence, aided
22 by the expert opinion, if in fact you decide the
23 experts' opinions give you any aid or assistance.

24 Additionally with regard to the subject of
25 evidence, your conclusion could be reached upon the

1 basis of direct evidence or circumstantial evidence, or
2 a combination of both. Now, direct evidence is
3 evidence which proves a fact without the necessity of
4 you drawing any inference, and which, in itself, if you
5 determine it to be true, conclusively establishes the
6 fact in issue.

7 If I could give you an example of direct
8 evidence, let's say that a witness appeared here and
9 testified before you that he was in the kitchen of his
10 residence, along with Peter and Eugene, and that Peter
11 and Eugene became involved in a very heated and loud
12 argument, and during the middle of the argument, Peter
13 took a gun out and shot Eugene.

14 Well, if you determined that this witness was
15 truthful and credible, you would have direct evidence
16 that Peter shot Eugene. Somebody actually saw it, you
17 found that he was telling you the truth, you
18 conclusively established that fact.

19 Circumstantial evidence, on the other hand,
20 is evidence which proves one fact from which an
21 inference of the existence of another fact may be
22 drawn. An inference is merely a deduction of fact that
23 may logically and reasonably be drawn from another fact
24 or group of facts established by the evidence.

25 To return to our example, if the witness who

1 appeared here and testified told you he wasn't in the
2 kitchen but that he was in the family room adjoining
3 the kitchen, and Peter and Eugene were in the kitchen,
4 and he heard a loud argument going on in the kitchen,
5 followed by a gunshot, and Peter walked into the family
6 room with a gun in his hand, and the witness went into
7 the kitchen and saw little Eugene on the floor with a
8 bullet hole in him, well, once again, if you determined
9 that this witness was truthful and credible, you could
10 circumstantially infer that Peter shot Eugene.

11 The witness didn't see it; but, based upon
12 what he was able to tell you, if you found it to be
13 truthful and credible, you might logically and
14 reasonably infer that Peter shot Eugene.

15 So your factual conclusions, then, with
16 regard to the issues in this case can be based upon
17 direct evidence or circumstantial evidence, or a
18 combination of both.

19 In many cases, circumstantial evidence may be
20 more certain, satisfying and persuasive than direct
21 evidence. But you must scrutinize it and evaluate it
22 carefully. You must be satisfied that the inferences
23 you draw are logical, reasonable, and supported by
24 facts that are in evidence.

25 There is one area in all criminal cases where

1 circumstantial evidence always comes into play. That's
2 with regard to the defendant's state of mind at the
3 time he did a particular act.

4 I'm going to be discussing with you shortly
5 the specific charges against each of the defendants in
6 this matter. And you will see that when the
7 legislature passed laws prohibiting certain conduct, it
8 provided that if the person does something in certain
9 instances purposely, in certain instances knowingly or
10 in certain instances recklessly, he can be found guilty
11 of having violated the law.

12 So, you see, the legislature imposes upon the
13 state the obligation not only to prove that a person
14 did a certain act, but that he did it with the
15 requisite mental culpability.

16 How does this involve circumstantial
17 evidence, and inferences logically and reasonably drawn
18 from other proven facts? well, the State cannot
19 produce for you an exhibit showing what's in a person's
20 mind at the time he did a certain act. Any person, you
21 or I, when we do something, we normally don't say: I'm
22 doing this purposely, or I'm doing this knowingly, or
23 I'm acting recklessly.

24 So in deciding the nature of the person's
25 conduct, that is, whether his actions were purposeful,

1 knowing or reckless, it's important for you to consider
2 the factual circumstances surrounding the person's
3 actions; that is, well, what is it that he did, how did
4 he do it? What did he do before he did it? What did
5 he do after he did it? What, if anything, did he say?
6 What do all the surrounding circumstances and facts
7 which have been proven indicate?

8 Your determination, then, with regard to a
9 person's mental culpability can be based upon what you
10 logically and reasonably can infer from other facts
11 established by the evidence.

12 Now, I told you during the selection process,
13 and I will tell you again, the defendant in all
14 criminal cases is presumed innocent until proven guilty
15 beyond a reasonable doubt. That presumption continues
16 throughout the entire trial of the case, and into your
17 deliberations, until such time arrives, if it arrives,
18 that you determine the State has proven guilt beyond a
19 reasonable doubt.

20 The burden of proof is on the State, and it
21 never shifts. There is no burden with respect to proof
22 imposed upon a defendant. The defendant is not
23 required to prove his innocence, and indeed not
24 required to present any evidence or testimony at all.
25 The State has the burden to prove the crime charged and

1 each of its elements beyond a reasonable doubt; and if
2 it failed to do so, a defendant is entitled to be found
3 not guilty.

4 Now, I mentioned again the State's burden of
5 proof beyond a reasonable doubt. Some of you may have
6 served as jurors in civil cases, where you were told
7 that it's necessary only to prove that a fact is more
8 likely true than not true. In criminal cases, the
9 State's proof must be more powerful than that. It must
10 be beyond a reasonable doubt.

11 What is a reasonable doubt? A reasonable
12 doubt is an honest and reasonable uncertainty in your
13 mind about the guilt of a defendant after you have
14 given full and impartial consideration to all of the
15 evidence. A reasonable doubt can arise from the
16 evidence itself or from a lack of evidence.

17 It is a doubt that a reasonable person
18 hearing the same evidence would have. Proof beyond a
19 reasonable doubt is proof, for example, that leaves you
20 firmly convinced of a defendant's guilt.

21 In this world we know very few things with
22 absolute certainty. In criminal cases, the law does
23 not require proof that overcomes every possible doubt.
24 If, based on your consideration of the evidence, you
25 are firmly convinced that a defendant is guilty of a

1 crime charged, you must find him guilty.

2 If, on the other hand, you are not firmly
3 convinced of a defendant's guilt, you must give him the
4 benefit of the doubt and find him not guilty.

5 During the course of the trial, counsel for
6 the State or the defendant made various objections, and
7 the Court was called upon to make a number of rulings
8 on admission of evidence, you know, the interminable
9 side-bar conferences, okay?

10 You must understand that the attorneys not
11 only have a right but a duty to make objections that
12 they feel are appropriate, and the fact that the Court
13 ruled for or against any particular party on any
14 particular objection is really of no consequence to
15 you. It's purely a ruling of the Court on a matter of
16 law, which is the Court's responsibility. And you are
17 not to be influenced in any way by the fact that the
18 attorneys made various objections.

19 Now, finally, the defendants Renato Santos,
20 Gregory Maples and James Irwin have chosen not to be
21 witnesses. It is their constitutional right to remain
22 silent. You are not to consider for any purpose or in
23 any manner in arriving at your verdict the fact that a
24 defendant did not testify; nor should that fact enter
25 into your deliberations or discussions in any manner or

1 at any time. Each defendant is presumed innocent until
2 the state proves him guilty beyond a reasonable doubt.

3 Those, members of the jury, are basic charges
4 that are given to every jury in every criminal case, no
5 matter what the crime alleged is involved. I'm going
6 to take up with you now the law with regard to the
7 specific case that you've heard here.

8 In order for you to appropriately consider
9 the issues presented in this case, it is necessary for
10 me to instruct you initially on the principles of our
11 state law with regard to individual responsibility for
12 criminal acts.

13 This is so because, as you are aware, the
14 State is charging three defendants, Marvin Worthy,
15 Renato Santos and Gregory Maples, with the murder of
16 Rashon Roy. It is also charging them with conspiracy
17 to commit the murder. The State is alleging that two
18 handguns were fired during the commission of the
19 murder.

20 You will note that I am and will be
21 constantly using the term, "alleging." This is so
22 because only you, as judges of the facts, can decide
23 whether the State has proven what it alleges beyond a
24 reasonable doubt. If you find that it has proven an
25 allegation beyond a reasonable doubt, then an

1 allegation becomes a fact; but unless it has and until
2 it has, you certainly can not attribute criminal
3 responsibility to anyone based upon a mere allegation.

4 Now, a portion of our state law provides as
5 follows: A person is guilty of an offense if it is
6 committed by his own conduct or by the conduct of
7 another person for which he is legally accountable, or
8 by both.

9 Thus, you see, there are three ways in which
10 a person can be found guilty of an offense: One, if it
11 is committed by his own conduct. You often hear the
12 term "perpetrator" used in this regard. Two, if he
13 joins with another person or persons in actual
14 commission of an offense. An example of this might be
15 a situation where three individuals, each armed with a
16 handgun, enter a store and commit a robbery.

17 The third way a person can be found guilty of
18 an offense is when the offense is committed by the
19 conduct of another person for which he is legally
20 accountable. In this regard, a portion of our state
21 law provides as follows: A person is legally
22 accountable for the conduct of another person when,
23 one, he is an accomplice of such other person in the
24 commission of an offense, or two, he is engaged in a
25 conspiracy with such other person to commit the

1 offense.

2 Let me instruct you first on the law of
3 accomplice liability or responsibility. A person is
4 legally accountable for the conduct of another person
5 when he is an accomplice of such other person in the
6 commission of an offense.

7 A person is an accomplice of another person
8 in the commission of an offense if, with the purpose of
9 promoting or facilitating the commission of the
10 offense, he either solicits such other person to commit
11 the offense and/or aids or agrees or attempts to aid
12 such other person in planning or committing it.

13 This provision of our state law means not
14 only is the person who actually commits the criminal
15 act responsible for it, but one who is legally
16 accountable as an accomplice is also responsible. Now,
17 this responsibility as an accomplice may be equal and
18 the same as he who actually commits the crime, or there
19 may be responsibility in a different degree, depending
20 on the circumstances as you find them to be. I will
21 further explain this distinction to you shortly.

22 In this case, the State is alleging that if
23 any specific defendant did not actually commit the
24 murder of Rashon Roy, that such defendant is equally
25 guilty of that crime because he acted as an accomplice

1 to the defendant who actually committed the murder,
2 with the purpose that the murder be committed.

3 In order for you to find the defendant guilty
4 in this case of the crime of murder as an accomplice,
5 the State must prove beyond a reasonable doubt each of
6 the following elements: One, that one of the three
7 defendants, Marvin Worthy, Renato Santos or Gregory
8 Maples, actually committed the crime of murder, which I
9 will be defining for you shortly; two, that the
10 defendant you are considering either solicited him to
11 commit it, and/or aided or agreed or attempted to aid
12 him in planning or committing it; three, that the
13 defendant you're considering's purpose was to promote
14 or facilitate the commission of the murder of Rashon
15 Roy; and four, that the defendant you're considering
16 possessed the criminal state of mind that is required
17 to be proved against the person who actually committed
18 the murder.

19 One acts purposefully with respect to his
20 conduct or a result thereof if it is his conscious
21 object to engage in conduct of that nature or to cause
22 such a result. The term "solicit" means to strongly
23 urge, suggest, lure or proposition. The term "aid"
24 means to assist, support, or supplement the efforts of
25 another.

1 "Agree to aid" means to encourage by promise
2 of assistance or support. "Attempt to aid" means that
3 a person takes substantial steps in a course of conduct
4 designed to or planned to lend support or assistance in
5 the efforts of another to cause the commission of the
6 offense.

7 If you find that a defendant you're
8 considering, with the purpose of promoting or
9 facilitating the murder of Rashon Roy, solicited one of
10 the other defendants to commit it, and/or aided or
11 agreed or attempted to aid him in planning or
12 committing it, then you should consider him as if he
13 committed the crime himself.

14 To prove a defendant's liability, the State
15 does not have to prove his accomplice status by direct
16 evidence of a formal plan to commit the crime. There
17 does not have to be a verbal agreement by all those who
18 are charged. Proof may be circumstantial.
19 Participation and agreement can be established from
20 conduct as well as from spoken words.

21 Mere presence at or near the scene does not
22 make one a participant in the crime; nor does the
23 failure of a spectator to interfere make him a
24 participant in the crime. It is, however, a
25 circumstance to be considered with the other evidence

1 in determining whether he was present as an accomplice.

2 Presence is not, in itself, a conclusive
3 evidence of that fact. Whether presence has any
4 probative value depends upon the total circumstances.
5 To constitute guilt, there must exist a community of
6 purpose and actual participation in the crime
7 committed.

8 Now, while mere presence at the scene of
9 perpetration of a crime does not render a person a
10 participant in it, proof that one is present at the
11 scene of the commission of the crime without
12 disapproving or opposing it is evidence from which, in
13 connection with other circumstances, it is possible for
14 a jury to infer that he assented thereto, lent it his
15 countenance and approval, and was thereby aiding in
16 same.

17 It depends upon the totality of the
18 circumstances as those circumstances appear from the
19 evidence.

20 Remember that a defendant can be held to be
21 an accomplice with equal responsibility only if you
22 find that, as a fact, that he possessed the criminal
23 state of mind that is required to be proved against the
24 person who actually committed the crime of murder.

25 In order to convict a defendant as an

1 accomplice to a specific crime charged, you must find
2 that the defendant had the purpose to participate in
3 that particular crime, that is, murder. He must act
4 with the purpose of promoting or facilitating the
5 commission of the crime of murder with which he is
6 charged.

7 Now, it's not sufficient to prove only that
8 the defendant had knowledge that another person was
9 going to commit the crime. The State must prove that
10 it was a defendant's conscious objective that the
11 specific crime charged be committed.

12 In sum, then, in order to find any one of the
13 defendants charged guilty of committing the crime of
14 murder as an accomplice, the State must prove each of
15 the following elements beyond a reasonable doubt: One,
16 that any one of the three defendants committed the
17 crime of the murder of Rashon Roy; two, that the
18 defendant you're considering either solicited him to
19 commit and/or aided or agreed to aid or attempted to
20 aid him in planning and committing it; three, that the
21 defendant you're considering's purpose was to promote
22 or facilitate the commission of the murder; and four,
23 that the defendant you're considering possessed the
24 criminal state of mind that is required to be proved
25 against the person who actually committed the murder.

1 Now, as I previously indicated, in
2 considering any of the defendants' liability as an
3 accomplice, you will initially consider whether the
4 State has proven beyond a reasonable doubt that he
5 acted as an accomplice with full and equal
6 responsibility for the crime of murder.

7 However, if you find a defendant was an
8 accomplice to commission of the crime, but did not act
9 with the purpose of promoting or facilitating the crime
10 of murder, or did not possess the criminal state of
11 mind required to be proved against the person who
12 commits murder, then you should consider whether the
13 State has proven beyond a reasonable doubt that the
14 defendant, as an accomplice, is guilty of a lesser
15 offense than the crime of murder.

16 In this regard, I have told you that I will
17 be instructing you on the elements of the crime of
18 murder. You will see that when I do, I will also be
19 instructing you on the lesser charges of aggravated
20 manslaughter and reckless manslaughter.

21 Our law recognizes that two or more persons
22 may participate in the commission of an offense, but
23 each may participate therein with a different state of
24 mind.

25 The liability or responsibility of each

1 participant in an offense is dependent upon his own
2 state of mind and not anyone else's, so that in
3 considering each defendant, you will do so separately,
4 and consider the evidence or lack thereof with regard
5 to his responsibility or liability as an accomplice.

6 And should you find the State has proven
7 beyond a reasonable doubt that he was an accomplice,
8 you would also consider, separately as to each, whether
9 the State has proven beyond a reasonable doubt that he
10 was an accomplice to the crime of murder or the lesser
11 offense of aggravated manslaughter or reckless
12 manslaughter.

13 Now, as I have indicated to you, a person may
14 be held liable for a criminal act if he commits the act
15 himself, if he commits the act jointly with another,
16 and if he is an accomplice to another who commits the
17 act.

18 Our state law also provides a person is
19 legally accountable for the conduct of another person
20 when he is engaged in a conspiracy with another person
21 or persons who commit a crime, and the crime committed
22 is within the scope of the conspiracy.

23 That, then, members of the jury, constitutes
24 the various ways in which a defendant can be held
25 responsible for a criminal act under our state law.

1 The initial charge the State has brought against the
2 defendants Marvin Worthy, Renato Santos and Gregory
3 Maples is conspiracy. And I'll instruct you now on the
4 law regarding that criminal offense.

5 The State initially charges the defendants
6 Marvin Worthy, Renato Santos and Gregory Maples with
7 the criminal offense of conspiracy to murder Rashon
8 Roy. The State alleges that they conspired to
9 purposely or knowingly cause his death, or serious
10 bodily injury resulting in his death, between April
11 25th and April 28th, 2002, the date on which Rashon Roy
12 died.

13 Our state statute pertaining to the criminal
14 offense of conspiracy provides in relevant part as
15 follows: A person is guilty of a conspiracy with
16 another person or persons to commit a crime if, with
17 the purpose of promoting or facilitating the commission
18 of the crime, he agrees with such other person or
19 persons that they or one or more of them will engage in
20 conduct which constitutes the crime, or he agrees to
21 aid such other person or persons in the planning or
22 commission of the crime.

23 A conspiracy to commit the crime of murder is
24 a crime in itself, separate and distinct from the crime
25 of murder. In other words, a defendant may be found

1 guilty of the crime of conspiracy regardless of whether
2 Defendant's guilty or not guilty of the crime of
3 murder.

4 In order for you to find any one of the
5 defendants guilty of the crime of conspiracy, the State
6 must prove the following elements which constitute that
7 crime beyond a reasonable doubt.

8 One, that the defendant you're considering
9 agreed with one or more of the charged defendants that
10 they or one or more of them would engage in conduct
11 which constitutes the crime of the murder of Rashon
12 Roy, and that agreement continued into the day of
13 Sunday, April 28th, 2002, when Mr. Roy was murdered; or
14 two, that the defendant you're considering agreed to
15 aid one or more of the other charged defendants in the
16 planning or commission of the murder of Rashon Roy, and
17 that he did so up until and including Sunday, April
18 28th, 2002, the date on Rashon Roy was murdered; and
19 two (sic), the State must prove beyond a reasonable
20 doubt that the purpose of the defendant you're
21 considering was to promote or facilitate the commission
22 of the murder of Rashon Roy.

23 Now, a person acts purposely with respect to
24 the nature of the conduct or a result thereof if it is
25 his conscious object to engage in conduct of that

1 nature or to cause such a result. A person acts
2 purposely with respect to the circumstances attendant
3 to his conduct if he is aware of the existence of such
4 circumstances, or believes or hopes that they exist.

5 In order to find a defendant guilty of the
6 crime of conspiracy, the State does not have to prove
7 that he actually committed the crime of murder;
8 however, to decide whether the State has proven the
9 crime of conspiracy, you must understand what
10 constitutes the crime of murder. I will be instructing
11 you on that shortly.

12 A conspiracy, again, can be proven by direct
13 or circumstantial evidence. It is not essential that
14 there be direct contact among all the conspirators or
15 that they enter into the agreement at the same time.
16 If the defendant is aware that any person he conspired
17 with also conspired with others to commit the same
18 crime, the defendant is guilty of conspiring with the
19 others. He need not be aware of their identity.

20 Mere association, acquaintance or family
21 relationship with an alleged conspirator is not enough
22 to establish a defendant's guilt of conspiracy; nor is
23 mere awareness of the existence of the conspiracy; nor
24 would it be sufficient for the State to prove only that
25 the defendant met with others or discussed names and

1 interests in common. However, any one of these
2 factors, if present, may be taken into consideration
3 along with all the other relevant evidence in your
4 deliberations.

5 You have to decide whether the defendant's
6 purpose was that he or a person with whom he was
7 conspiring would commit the crime of murder. For him
8 to be found guilty of conspiracy, the State has to
9 prove beyond a reasonable doubt that when he agreed, it
10 was his conscious object or purpose to promote or make
11 it easier to commit the crime of murder.

12 The nature of the purpose with which a
13 defendant acted is a question of fact, again, for you
14 to decide.

15 Purpose is a condition of the mind which
16 cannot be seen, and can only be determined by
17 inferences from conduct, words or acts. It is not
18 necessary for the State to produce a witness or
19 witnesses who could testify that the defendant stated,
20 for example, that he acted with a specific purpose.

21 It is within your power to find that proof of
22 purpose has been furnished beyond a reasonable doubt by
23 inferences which may arise from the nature of the acts
24 and the surrounding circumstances.

25 In summary, the State must prove the

1 following elements beyond a reasonable doubt: One,
2 that the defendant agreed with another person or
3 persons that they or one or more of them would engage
4 in conduct which constitutes the crime of murder of
5 Rashon Roy, and that agreement continued up to the
6 morning, Sunday morning, April 28th, 2002, or that the
7 defendant agreed to aid another person or persons in
8 the planning or commission of the crime of murder, and
9 that agreement and aid continued up until the morning
10 of Sunday, April 28th, 2002; and two, that the
11 defendant's purpose was to promote or facilitate the
12 commission of the murder of Rashon Roy.

13 If, after considering all of the evidence,
14 you are convinced beyond a reasonable doubt that the
15 State has proven all of these elements, then you must
16 find the defendant guilty of the crime of conspiracy.
17 On the other hand, if you find the State has failed to
18 prove to your satisfaction beyond a reasonable doubt
19 any one or more these elements, then you must find the
20 defendant not guilty of the crime of conspiracy.

21 Now, each offense and each defendant in this
22 indictment and the evidence pertaining to him should be
23 considered by you separately. The fact that you may
24 find a particular defendant guilty or not guilty of a
25 particular crime should not control your verdict as to

1 any other offense charged against the defendant, and it
2 should not control your verdict as to the charges
3 against any other defendant.

4 So that's the first crime charged with regard
5 to the matter, conspiracy to commit murder.

6 The next charge brought by the State is that
7 the defendants Marvin Worthy, Renato Santos and Gregory
8 Maples committed the criminal offense of murder, in
9 Lakewood, on April 28th, 2002, by purposely or
10 knowingly causing the death of Rashon Roy, or by
11 purposely or knowingly causing serious bodily injury to
12 Rashon Roy resulting in his death.

13 Our state statute pertaining to the crime of
14 murder provides as follows: A person is guilty of
15 murder if he caused the victim's death or serious
16 bodily injury that resulted in his death; and two, if
17 he did so purposely or knowingly.

18 In order for you to find any one of the
19 defendants guilty of murder, the State is required to
20 prove each of the following elements which constitute
21 that crime beyond a reasonable doubt: One, that the
22 defendant you are considering caused Rashon Roy's
23 death, or serious bodily injury that then resulted in
24 his death, or that the defendant you're considering was
25 an accomplice and equally responsible for that act as I

1 have defined accomplice responsibility for you, or that
2 the defendant you're considering entered into a
3 conspiracy to commit that act and is responsible for
4 the murder of Rashon Roy as I have defined conspiracy
5 and conspiracy responsibility to you; and two, that the
6 defendant you're considering did so purposely or
7 knowingly, or that the defendant you're considering was
8 an accomplice, as I have defined accomplice
9 responsibility for you, and possessed that same state
10 of mind, or that the defendant you're considering is
11 responsible as a conspirator as I have defined that for
12 you.

13 Now, one of the elements the State must prove
14 beyond a reasonable doubt is that a defendant acted
15 purposely or knowingly. A person acts purposely when
16 it is the person's conscious object to cause death or
17 serious bodily injury resulting in death. A person
18 acts knowingly when the person is aware that it is
19 practically certain his conduct will cause death or
20 serious bodily injury resulting in death.

21 The nature of the purpose or knowledge with
22 which a defendant acted toward Rashon Roy is a question
23 of fact for you, the jury, to decide. Purpose and
24 knowledge are conditions of the mind which cannot be
25 seen and can only be determined by inferences from

1 conduct, words or acts.

2 It is not necessary for the State to produce
3 a witness or witnesses who could testify that the
4 defendant stated, for example, that his purpose was to
5 cause death or serious bodily injury resulting in
6 death, or that he knew that his conduct would cause
7 death or serious bodily injury resulting in death.

8 It is within your power to find that proof of
9 purpose or knowledge has been furnished beyond a
10 reasonable doubt by inferences which may arise from the
11 nature of the acts and the surrounding circumstances.

12 Such things as the place where the acts
13 occurred, the weapon used, the location, number and
14 nature of wounds inflicted, and all that was done or
15 said by a defendant preceding, connected with, and
16 immediately succeeding the events leading to the death
17 of Rashon Roy, are among the circumstances to be
18 considered.

19 Although the State must prove that the
20 defendant acted either purposely or knowingly, the
21 State is not required to prove a motive. If the State
22 has proved the essential elements of the offense beyond
23 a reasonable doubt, the defendant may be found guilty
24 of that offense regardless of the defendant's motive or
25 lack of motive.

1 If the State, however, has proved a motive,
2 you may consider that insofar as it gives meaning to
3 other circumstances. On the other hand, you may
4 consider the absence of motive in weighing whether or
5 not Defendant was guilty of the crime charged.

6 Now, homicide or a killing with a deadly
7 weapon such as a firearm in itself would permit you to
8 draw an inference that the defendant's purpose was to
9 take life or to cause bodily injury resulting in death.
10 A deadly weapon is any firearm which, in the manner it
11 is used or intended to be used, is known to be capable
12 of producing death or serious bodily injury.

13 In your deliberations you may consider the
14 weapon used, and manner and circumstances of the
15 killing. And if you are satisfied beyond a reasonable
16 doubt that a defendant shot and killed Rashon Roy with
17 a gun, you may draw an inference from the weapon used,
18 that is, the gun, and manner and circumstances of the
19 killing, as to the defendant's purpose or knowledge.

20 The other element the State must prove beyond
21 a reasonable doubt is that the defendant caused Rashon
22 Roy's death, or serious bodily injury resulting in
23 death. As I previously advised you, in order to
24 convict a defendant of murder, the State must prove
25 beyond a reasonable doubt that the defendant either

1 purposely or knowingly caused the victim's death or
2 serious bodily injury resulting in death.

3 In that regard, serious bodily injury means
4 bodily injury that creates a substantial risk of death.
5 A substantial risk of death exists where it's highly
6 probable that the injury would result in death.

7 In order for you to find a defendant guilty
8 of purposeful serious-bodily-injury murder, the State
9 must prove beyond a reasonable doubt that it was the
10 defendant's conscious object to cause serious bodily
11 injury that then resulted in the victim's death, that
12 the defendant knew that the injury created a
13 substantial risk of death, and that it was highly
14 probable that death would result.

15 In order for you to find a defendant guilty
16 of knowing serious-bodily-injury murder, the State must
17 prove beyond a reasonable doubt that the defendant was
18 aware that it was practically certain that his conduct
19 would cause serious bodily injury that then resulted in
20 the victim's death, that the defendant knew that the
21 injury created a substantial risk of death, and that it
22 was highly probable that death would result.

23 whether the killing is committed purposely or
24 knowingly, causing death or serious bodily injury
25 resulting in death must be within the design or

1 contemplation of the defendant.

2 Now, all jurors do not have to agree
3 unanimously concerning which form of murder is present,
4 so long as all believe that it was one form of murder
5 or the other; however, for a defendant to be found
6 guilty of murder, all must agree that the defendant
7 either knowingly or purposely caused the death or
8 serious bodily injury resulting in the death of Rashon
9 Roy, or is responsible for that act pursuant to the law
10 of accomplice responsibility or conspiracy
11 responsibility as I've defined that for you.

12 If you find that the State has proven beyond
13 a reasonable doubt that the defendant you're
14 considering purposely or knowingly caused death or
15 serious bodily injury resulting in death, or is
16 responsible for that act pursuant to the law of
17 accomplice responsibility or conspiracy responsibility,
18 then you must find the defendant guilty.

19 If, on the other hand, you determine the
20 State has failed to prove any one of the required
21 elements beyond a reasonable doubt, then you must find
22 the defendant not guilty of murder, and go on and
23 consider whether the defendant should be convicted of
24 the crimes of aggravated manslaughter or reckless
25 manslaughter.

1 I once again remind you that each offense and
2 each defendant in the indictment and the evidence
3 pertaining to him should be considered by you
4 separately. The fact that you may find a particular
5 defendant guilty or not guilty of a particular crime
6 should not control your verdict as to any other offense
7 charged against the defendant, and it should not
8 control your verdict as to the charges against any
9 other defendant.

10 Now, with regard to aggravated manslaughter,
11 our state law pertaining to the crime of aggravated
12 manslaughter provides as follows: A person is guilty
13 of aggravated manslaughter if he recklessly causes the
14 death of another person under circumstances manifesting
15 extreme indifference to human life.

16 In order for you to find any one of the
17 defendants you are considering guilty of aggravated
18 manslaughter, the State is required to prove each of
19 the following elements which constitute that offense
20 beyond a reasonable doubt.

21 One, that the defendant caused Rashon Roy's
22 death, or that the defendant was an accomplice and
23 equally responsible for that act, or that the defendant
24 entered into the conspiracy to commit that act and is
25 responsible on that basis for it; and two, that the

1 defendant did so recklessly or was an accomplice who
2 acted recklessly or is responsible as a conspirator;
3 and three, that the defendant did so under
4 circumstances manifesting extreme indifference to human
5 life, or was an accomplice who acted under
6 circumstances manifesting extreme indifference to human
7 life, or is responsible as a conspirator.

8 One element the State must prove beyond a
9 reasonable doubt is that a defendant acted recklessly.
10 A person who causes another's death does so recklessly
11 when he is aware of and consciously disregards a
12 substantial and unjustifiable risk that death will
13 result from his conduct.

14 The risk must be of such a nature and degree
15 that, considering the nature and purpose of the
16 defendant's conduct and the circumstances known to the
17 defendant, his disregard of that risk is a gross
18 deviation from the standard of conduct that a
19 reasonable person would follow in the same situation.

20 In other words, you must find that the
21 defendant was aware of and consciously disregarded the
22 risk of causing death. If you find that the defendant
23 was aware of and consciously disregarded the risk of
24 causing death, you must determine whether that risk
25 that he disregarded was substantial and unjustifiable.

1 In doing so, you must consider the nature and
2 purpose of the defendant's conduct, and the
3 circumstances known to the defendant, and you must
4 determine whether, in light of those factors, the
5 defendant's disregard of that risk was a gross
6 deviation from the conduct that a reasonable person
7 would have observed in the defendant's position.

8 Another element the State must prove beyond a
9 reasonable doubt is that the defendant acted under
10 circumstances manifesting extreme indifference to human
11 life. The phrase, "under circumstances manifesting
12 extreme indifference to human life," does not focus on
13 a defendant's state of mind, but rather on the
14 circumstances under which you find he acted.

15 If, in light of all the evidence, you find
16 that the defendant's conduct resulted in a probability
17 as opposed to a possibility of death, then you may find
18 that he acted under circumstances manifesting extreme
19 indifference to human life. On the other hand, if you
20 find that his conduct resulted in only a possibility of
21 death, then you must acquit him of aggravated
22 manslaughter and consider the offense of reckless
23 manslaughter, which I will explain to you shortly.

24 The final element the State must prove beyond
25 a reasonable doubt is that the defendant caused Rashon

1 Roy's death. You must find that Rashon Roy would not
2 have died but for the defendant's conduct.

3 If you find the State has proven, then,
4 beyond a reasonable doubt that the defendant you are
5 considering recklessly caused Rashon Roy's death under
6 circumstances manifesting extreme indifference to human
7 life, or is responsible for that act pursuant to the
8 law of accomplice responsibility or conspiracy
9 responsibility, you must find the defendant guilty of
10 aggravated manslaughter.

11 If, on the other hand, you determine the
12 State has failed to prove any one of the required
13 elements beyond a reasonable doubt, then you must find
14 the defendant not guilty of aggravated manslaughter,
15 and go on to consider whether a defendant should be
16 convicted of the crime of reckless manslaughter.

17 Our state law pertaining to reckless
18 manslaughter provides as follows: A person is guilty
19 of reckless manslaughter if he recklessly causes the
20 death of another person. In order for you to find any
21 one of the defendants you are considering guilty of
22 reckless manslaughter, the State is required to prove
23 each of the following elements which constitute that
24 offense beyond a reasonable doubt.

25 One, that the defendant caused Rashon Roy's

1 death, or two, that the defendant was an accomplice and
2 equally responsible for that act, or three, that the
3 defendant entered into a conspiracy to commit that act
4 and is responsible on that basis for it; and two (sic),
5 that the defendant did so recklessly or was an
6 accomplice who acted recklessly, or is responsible as a
7 conspirator.

8 Now, the first element the State must prove
9 is that the defendant acted recklessly; and I've just
10 defined "recklessly" for you with regard to aggravated
11 manslaughter. The second element the State must prove
12 is that the defendant caused Rashon Roy's death. You
13 must find that Rashon Roy would not have died but for
14 the defendant's conduct.

15 The difference between aggravated
16 manslaughter and reckless manslaughter is that with
17 regard to aggravated manslaughter, the State must prove
18 that third element, that the defendant acted under
19 circumstances manifesting extreme indifference to human
20 life. Okay?

21 If you find the State has proven beyond a
22 reasonable doubt that the defendant you're considering
23 recklessly caused Rashon Roy's death, or is responsible
24 for that act pursuant to the law of accomplice
25 responsibility or conspiracy responsibility, you must

1 find the defendant guilty of reckless manslaughter.

2 If, on the other hand, you determine the
3 State has failed to prove any one of the required
4 elements beyond a reasonable doubt, you must find the
5 defendant not guilty of reckless manslaughter.

6 Now, with regard to the charge, charges of
7 murder and lesser included charges of aggravated
8 manslaughter and reckless manslaughter, as I've
9 indicated to you in instructing you, to return a
10 verdict of guilty or not guilty, the verdict must be
11 unanimous.

12 However, due to the various ways in which a
13 defendant may be found responsible for any one of these
14 criminal offenses, that is, as a perpetrator or an
15 accomplice or a conspiracy responsibility, a unanimous
16 verdict can be returned even though all 12 of the
17 jurors do not agree on the responsibility basis.

18 If all 12 jurors find that the State has
19 proven beyond a reasonable doubt that any defendant is
20 guilty of any one of these offenses, but all 12 do not
21 agree on the basis of the responsibility, a unanimous
22 verdict can be returned.

23 For example, if six jurors were to determine
24 that a given defendant was guilty as a perpetrator, and
25 six jurors determined that the given defendant, the

1 same defendant, was guilty as an accomplice, you would
2 have reached a unanimous verdict. All 12 would have
3 found the defendant guilty and responsible.

4 This is not to suggest that I have any
5 opinion that any of the defendants are guilty. I do
6 not. That is not my role as the judge of the law. It
7 is solely your role as judges of the facts to determine
8 whether the State has proven any defendant guilty
9 beyond a reasonable doubt.

10 Now, then there are two charges against --
11 one charge each against the defendants Marvin worthy
12 and Renato Santos of possession of a firearm with a
13 purpose to use it unlawfully against the person of
14 another. The State charges the defendants Marvin
15 worthy and Renato Santos with the criminal offense of
16 possession of a firearm with the purpose to use it
17 unlawfully against the person of another.

18 The State alleges that on April 28th, 2002,
19 the defendant Marvin worthy and the defendant Renato
20 Santos each possessed a firearm at the Highpoint
21 condominium complex with the purpose to shoot Rashon
22 Roy.

23 The relevant portion of our state law
24 pertaining to this offense provides as follows: Any
25 person who has in his possession any firearm with the

1 purpose to use it unlawfully against the person of
2 another is guilty of a crime.

3 In order for you to find either defendant,
4 that is, Marvin Worthy or Renato Santos, guilty of this
5 offense, the State must prove each of the following
6 elements which constitute the offense beyond a
7 reasonable doubt: That Exhibits S-2 and S-3 in
8 evidence are firearms; two, that the defendant whose
9 charge you're considering possessed one of the
10 firearms; three, that the defendant whose charge you're
11 considering possessed the firearm with the purpose to
12 use it against the person of Rashon Roy; and four, that
13 the defendant whose charge you're considering's purpose
14 was to use the firearm unlawfully.

15 Now, the first element the State must prove
16 is that S-2 and S-3 are firearms. A firearm means any
17 handgun from which may be fired a bullet. Handgun
18 means any pistol, revolver or other firearm originally
19 designed or manufactured to be fired by the use of a
20 single hand.

21 The second element the State must prove
22 beyond a reasonable doubt is that the defendant you're
23 considering possessed the firearm. Now, under our law,
24 the word "possess" as used in criminal statutes
25 signifies a knowing, intentional control of a

1 designated thing, accompanied by knowledge of its
2 character.

3 Thus, a person must know or be aware that he
4 possesses the item, in this case one of the firearms;
5 and two, he must know what it is that he does possess,
6 that is, that it is a firearm.

7 Now, a person can possess an item even though
8 it's not physically on his person at the time of his
9 arrest, if the person had, in fact, at some time prior
10 to his arrest, control and dominion over it. And
11 specifically, the State is charging that each defendant
12 charged here possessed one of those firearms at the
13 condominium complex on the morning of April 28th, 2002.

14 When we speak of possession, then, we mean a
15 conscious, knowing possession. A person is in actual
16 possession of a particular article or thing when he
17 knows what it is, that is, that it was a gun, and he
18 knows that he has it on him.

19 Now, the third element the State must prove
20 beyond a reasonable doubt is that the defendant's
21 purpose in possessing the firearm was to use it against
22 the person of Rashon Roy. Purpose is a condition of
23 the mind which cannot be seen and, again, can only be
24 determined by inferences from conduct, words or acts.

25 In determining the defendant's purpose in

1 possessing the firearm, you may consider that a person
2 acts purposely with respect to the nature of his
3 conduct or a result of his conduct if it is his
4 conscious object to engage in conduct of that nature or
5 to cause such a result.

6 A person acts purposely if he means to act in
7 a certain way or to cause a certain result. A person
8 acts purposely with respect to the circumstances
9 attendant to his conduct if he's aware of the existence
10 of such circumstances or believes or hopes that they
11 exist.

12 And the fourth element the State must prove
13 beyond a reasonable doubt is that the defendant had a
14 purpose to use the firearm in a manner that was
15 prohibited by law.

16 I have already defined "purpose" for you.
17 This element requires that you find the State has
18 proven beyond a reasonable doubt that the defendant
19 possessed a firearm with the conscious objective,
20 design or specific intent to use it against the person
21 of another in an unlawful manner.

22 And in this case, the State contends and must
23 prove beyond a reasonable doubt that the defendant's
24 purpose in possessing the firearm was for the unlawful
25 purpose of shooting Rashon Roy.

1 Now, if you are satisfied beyond a reasonable
2 doubt that the State has proven each and every one of
3 the elements of this offense as I have defined them,
4 beyond a reasonable doubt, with regard to either
5 Defendant Worthy or Santos, then you should find that
6 defendant guilty; however, if the State has failed to
7 prove any one of the elements beyond a reasonable
8 doubt, you must find that defendant not guilty.

9 Again you are reminded that you must consider
10 each defendant individually and the evidence related to
11 the charge against him separately, and your verdict as
12 to either one does not control your verdict as to the
13 other.

14 Now I'm going to take up with you the charges
15 with regard to the defendant James Irwin. The State
16 initially charges the defendant James Irwin with the
17 criminal offense of hindering apprehension.

18 The State alleges that on April 28th, 2002,
19 this defendant, with the purpose to hinder the
20 apprehension and prosecution of Marvin Worthy and/or
21 Renato Santos and/or Gregory Maples, suppressed
22 evidence of the crime of criminal homicide, the murder
23 of Rashon Roy, specifically suppressed -- the State
24 alleges he suppressed the weapons used in the murder,
25 and the green Jeep used by the perpetrators thereof.

1 Now, our state law pertaining to this offense
2 provides as follows: A person commits an offense if,
3 with the purpose to hinder the detection, apprehension,
4 investigation, prosecution, conviction or punishment of
5 another person for an offense, he suppresses, by way of
6 concealment or destruction, any evidence of the crime.

7 In order for you to find the defendant James
8 Irwin guilty of hindering apprehension, the state is
9 required to prove each of the following elements which
10 constitute that offense beyond a reasonable doubt:

11 One, that the defendant James Irwin knew that Marvin
12 worthy and/or Renato Santos and/or Gregory Maples were
13 likely to be charged with criminal homicide or
14 conspiracy to commit that crime. Criminal homicide is
15 murder, aggravated manslaughter or reckless
16 manslaughter.

17 Two, that the defendant James Irwin
18 suppressed by way of concealment evidence of that
19 crime, specifically two handguns and the green Jeep;
20 and three, that the defendant James Irwin did so with
21 the purpose to hinder the detection, apprehension
22 investigation and prosecution of Marvin worthy and/or
23 Renato Santos and/or Gregory Maples.

24 Now, the first element the State must prove
25 beyond a reasonable doubt to this crime, then, is --

1 beyond a reasonable doubt, is that the defendant must
2 have known that Marvin worthy and/or Renato Santos
3 and/or Gregory Maples was liable to be charged with the
4 crime of criminal homicide or conspiracy.

5 This does not mean that the State must prove
6 that he had actual personal knowledge that any one of
7 them had committed the offense, but rather that he knew
8 such facts either by his own observation or by
9 information given to him as it would reasonably alert
10 someone that one of the three or all of the three were
11 likely to be charged with that offense.

12 The second element the State must prove
13 beyond a reasonable doubt is that the defendant
14 suppressed, by way of concealment, evidence of the
15 crime, specifically two handguns and the green Jeep.

16 And the third element the State must prove
17 beyond a reasonable doubt is that the defendant acted
18 with the purpose of hindering Marvin worthy's and/or
19 Renato Santos' and/or Gregory Maples' apprehension,
20 prosecution for -- and prosecution for the crime of
21 criminal homicide and/or conspiracy.

22 Again, defendant must act with that purpose,
23 and I've already defined "purpose" for you. A purpose
24 to aid another to avoid arrest is not proved merely by
25 showing that the defendant helped someone who is a

1 fugitive, for such help may be provided with
2 motivations having nothing to do with impeding law
3 enforcement.

4 Here, the objective of the defendant must
5 have been to obstruct, to prevent, to hinder
6 authorities from arresting, prosecuting, convicting or
7 punishing worthy and/or Santos and/or Maples for the
8 offense.

9 If, after you've considered all of the
10 evidence in this matter, you find that the State has
11 proven that the defendant James Irwin committed the
12 crime of hindering beyond a reasonable doubt, you must
13 find the defendant guilty of that charge, that crime.
14 If the State has failed to prove any one of the
15 elements beyond a reasonable doubt, you must find the
16 defendant not guilty of that charge.

17 Now, the second charge against James Irwin
18 is, the State charges the defendant James Irwin with
19 theft. The State alleges that on April 28th, 2002, the
20 defendant James Irwin and Ernesto Barber exercised
21 unlawful control over the green 1997 Jeep, with the
22 purpose to deprive the owner thereof. The State
23 charges auto theft.

24 The relevant portion of our state law
25 pertaining to this offense provides as follows: A

1 person is guilty of theft if he unlawfully takes or
2 exercises unlawful control over movable property of
3 another with the purpose to deprive him or her thereof.

4 In order for you to find the defendant guilty
5 of theft of the auto, the green Jeep, the State must
6 prove beyond a reasonable doubt the following elements
7 which constitute the offense: One, that the defendant
8 knowingly took or unlawfully exercised control over
9 movable property; two, that the movable property was
10 property of another; and three, that the defendant's
11 purpose was to deprive the other person of the movable
12 property.

13 The first element, then, the State must prove
14 beyond a reasonable doubt is that the defendant James
15 Irwin knowingly took or exercised unlawful control over
16 movable property. And the term, "movable property,"
17 means anything of value that can be moved. A motor
18 vehicle is movable property.

19 So the first thing the State must prove is
20 that the defendant James Irwin knowingly took or
21 unlawfully exercised control over the green Jeep.
22 Again, a person acts knowingly with respect to the
23 nature of his conduct or the circumstances attendant
24 thereto if he is aware that his conduct is of that
25 nature or circumstances exist, or he is aware of a high

1 probability of their existence.

2 A person acts knowingly with respect to a
3 result of his conduct if he is aware that it is
4 practically certain his conduct will cause such a
5 result.

6 The second element the State must prove
7 beyond a reasonable doubt is that the movable property
8 or Jeep was property of someone else. Property of
9 another includes property in which any person other
10 than the defendant has an interest which the defendant
11 is not privileged to infringe.

12 And the state alleges that the green Jeep was
13 the property of or registered in the name of someone
14 named Glogower (phonetic) and was also used by the
15 deceased, Rashon Roy.

16 And the third element the State must prove
17 beyond a reasonable doubt, the defendant's purpose was
18 to deprive the person who owned the property -- the
19 Jeep -- of the property.

20 For the purpose of the statute, the term
21 "deprive" means specifically, one, to withhold or cause
22 to be withheld property of another permanently or for
23 so extended a period as to appropriate -- as to result
24 in a substantial portion of its economic value -- or
25 two, the term "deprive" means to dispose or cause

1 disposal of the property so as to make it unlikely that
2 the owner will recover it.

3 And again, I have defined the term
4 "purposely" for you.

5 If you find the State has proven each and
6 every one of these elements beyond a reasonable doubt,
7 that is, that the defendant knowingly took or exercised
8 unlawful control over the green Jeep, two, that the
9 green Jeep was the property of another, and three, that
10 his purpose was to deprive the other person of the
11 property, you should find the defendant guilty of theft
12 of the Jeep.

13 If the State has failed to prove any one of
14 these elements beyond a reasonable doubt, you should
15 find the defendant not guilty of that charge.

16 Now, the final charge in the case against the
17 defendant James Irwin is attempted aggravated arson.
18 The State alleges that on April 28th, 2002, in Jackson
19 Township, the defendant attempted to start a fire in
20 the gas tank of the green 1997 Jeep with the purpose to
21 destroy it.

22 The relevant portion of our state statute
23 pertaining to this offense provides as follows: A
24 person is guilty of aggravated arson if he starts a
25 fire on another's property with the purpose of

1 destroying the property or the structure of another.

2 The law determines "structure" to include a
3 car or vehicle; so for the purposes of this case, a
4 person would be guilty of aggravated arson if he
5 personally -- if he started a fire on another's
6 automobile with the purpose of destroying the
7 automobile.

8 In order for you to find the defendant guilty
9 of aggravated arson, the State would have to prove the
10 following elements which constitute that offense beyond
11 a reasonable doubt: One, that the defendant James
12 Irwin purposely attempted to set the Jeep on fire; two,
13 that his purpose in doing so was to destroy the Jeep;
14 and three, to accomplish this, the defendant purposely
15 did something which, under the circumstances as a
16 reasonable person would believe them to be, was an act
17 constituting a substantial step in a course of conduct
18 planned to culminate in the commission of the offense.

19 The step taken must strongly show that the
20 defendant's criminal purpose -- that is, it must be a
21 substantial and not just a very remote preparatory act,
22 and must show that the accused had a firmness of
23 criminal purpose.

24 The State in this regard alleges that the
25 defendant placed a wick-like object in the gas tank and

1 lit it, causing some fire damage to the area around the
2 tank; so that the State must prove, then, first of all,
3 that the defendant purposely attempted to set the Jeep
4 on fire, as I have defined "purpose" for you; two, that
5 his purpose in doing so was to destroy the Jeep, again
6 as I have defined "purpose" for you; and three, that he
7 purposely did something which, under the circumstances
8 as a reasonable person would believe them to be, was an
9 act constituting a substantial step in a course of
10 conduct planned to culminate in the destruction of the
11 Jeep.

12 If you find the State has proven each and
13 every element with regard to this particular offense
14 beyond a reasonable doubt, you should find the
15 defendant guilty of attempted aggravated arson. If the
16 State has failed to prove any one of the elements
17 beyond a reasonable doubt, you should find the
18 defendant not guilty of that charge.

19 Now, in a criminal case such as this, your
20 verdict with regard to each charge must be unanimous.
21 All 12 jurors must agree to return a verdict of either
22 guilty or not guilty with regard to any specific
23 charge.

24 Your verdict must represent the considered
25 judgment of each of you. It's your duty as jurors to

1 consult with one another and to deliberate with a view
2 to reaching an agreement, if you can do so without
3 violence to your individual judgment. Each of you has
4 to decide the case for yourself, but you should only do
5 that after you have impartially considered the evidence
6 with all your fellow jurors.

7 In the course of your deliberations you
8 shouldn't hesitate to re-examine your own views and
9 change your opinion if you are convinced it's
10 erroneous, but you should not surrender an honest
11 conviction as to the weight or effect of evidence
12 solely to please your fellow jurors or to get out of
13 here.

14 You are not here as partisans, you're here as
15 judges, judges of the facts. And your sole interest is
16 to ascertain the facts from the evidence in the case,
17 and you must do this without any bias, prejudice or
18 sympathy, and without reference to suspicion or
19 conjecture.

20 When you reach a verdict -- remember, it has
21 to be unanimous -- you will knock on the jury room
22 door, slip a note out saying you've reached a verdict,
23 not what it is, just that you've reached it. You will
24 be returned to open court to announce your verdict.

25 If, while you're deliberating, you have any

1 questions you wish to ask, you can write the question
2 on a slip of paper, knock on the door and slip the
3 question out, and I will answer it for you as quickly
4 as I can.

5 I am now going to answer the first two
6 questions that you might ask, 'cause most jurors do ask
7 them if I don't tell them this. Police reports and
8 statements are never admitted into evidence. So when
9 you're going through all of the various exhibits here,
10 if you are looking for someone's police report that was
11 referred to during their interrogation, examination, or
12 a statement, they're not in evidence.

13 It's the role of the attorneys in examining
14 the witnesses to elicit from them the relevant portions
15 of reports or statements that are admissible, and they
16 have all done that. They have done their jobs well.

17 So, the reports themselves never get marked
18 into evidence. So, what you see when you get in there
19 is what you have with regard to things that are marked
20 into evidence.

21 At this time, we'll reduce our jury.

22 THE CLERK: Juror in Seat Number 1, William
23 Nothnagel.

24 THE COURT: would you have a seat over here
25 in the front row, sir.

1 (Juror steps down.)

2 THE CLERK: Juror in Seat Number 7, Elaine
3 Ferrera.

4 THE COURT: And would you join him, please.

5 (Juror steps down.)

6 THE COURT: Now, our juror in Seat Number 2,
7 you're going to be the foreperson of the jury. Don't
8 get upset. It's nothing to get nervous about. All you
9 have to do is see to it that everybody has a chance to
10 have their say. You take the vote in the jury room,
11 and you will announce what the verdicts are with regard
12 to the charges here in open court.

13 And that's not going to be anything to get
14 upset, either. You're going to have with you a verdict
15 sheet with regard to each defendant, and what the
16 charges are with regard to each defendant. And below
17 each charge there is a place for you to check off "not
18 guilty" or "guilty."

19 I'll have a copy of that. When you return to
20 court with your verdict, I will ask you all the
21 questions. You just have to tell me what the jury
22 found. Okay?

23 Now I am going to ask the 12 of you, if you
24 would, to retire to the jury room at this time. Don't
25 start your deliberations until the exhibits are brought

1 in. They will be brought in shortly. Just go in and
2 relax for a little bit.

3 (Jury retires at 10:45 AM.)

4 THE COURT: Now, you two are still members of
5 the jury. You're just not part of the deliberating
6 jury at this time. Should anything happen where one of
7 them have to leave, one of you would go in and take
8 their place. So I'm going ask both of you, if you
9 would, just return to the Central Jury area and relax
10 until we hear from the jury.

11 If they have a question, you will brought
12 here to hear the question and the Court's answer. And,
13 of course, if one of them have to leave because of some
14 emergency, one of you will go in to take their place.

15 And since only one of you could go in and
16 take their place, I must instruct you not to deliberate
17 with each other as to what you think the findings are,
18 because we only want one of you, not two of you, to go
19 in. Okay? So you may return to Central Jury. We'll
20 be in touch with you as soon as we hear from the jury.

21 MR. KINARNEY: Excuse me. Before the
22 alternates leave, can we approach side-bar?

23 THE COURT: Yes.

24 (Side-bar conference not held.)

25 THE COURT: I'm going to ask the alternates

1 to please step outside.

2 (Alternates exit courtroom.)

3 THE COURT: I'm going to ask you what your
4 exceptions were.

5 MR. KINARNEY: Judge, I do have one
6 exception.

7 THE COURT: Mr. Heisler, exceptions to the
8 Court's charge?

9 MR. HEISLER: None, your Honor.

10 THE COURT: Mr. Welle?

11 MR. WELLE: None at the moment, your Honor.

12 THE COURT: Mr. Zager?

13 MR. ZAGER: Judge, I would renew my
14 objections.

15 THE COURT: Okay. I think I ruled on that.
16 Mr. Kinarney?

17 MR. KINARNEY: Thank you, your Honor. Judge,
18 I do have one exception. When your Honor talked to the
19 jury about their assessment of the credibility of
20 Ernesto Barber concerning the charges that he had in
21 this indictment, I would submit to the Court you also
22 should have included that they should assess his
23 credibility concerning the pending charges that he has
24 that he hasn't been indicted on yet.

25 I think when we talk about a hope or

1 expectation of favorable treatment, it would not only
2 be for the charge that your Honor's going to sentence
3 him on, but also for the pending charges he's in jail
4 on now.

5 THE COURT: well, I think by telling them not
6 only whether he was already received favorable
7 treatment, whether he hopes to receive that treatment
8 in the future, I think that adequately covered that
9 issue. But your exception is noted.

10 MR. KINARNEY: Thank you, your Honor.

11 THE COURT: Mr. Somers.

12 MR. SOMERS: None, your Honor.

13 THE COURT: Okay. Would all of you get
14 together and make sure the evidence is packed
15 appropriately, and only that that's been marked in goes
16 in there. And let's see, Andrew, would you go tell the
17 two jurors that they can return to Central Jury now,
18 and we'll be in touch with them.

19 THE LAW CLERK: Yes, sir.

20 (Recess taken.)

21 * * *

22 (The following takes place in open court.)

23 (Alternates present.)

24 THE COURT: For the record, we have a
25 question from the jury. And I have conferred with

1 counsel as to the response, and we have agreed upon it,
2 so jury out.

3 (Jury in the box at 11:55 PM.)

4 THE COURT: I have your question, which
5 reads: "If Barber set the Jeep on fire, is Irwin
6 guilty by association?"

7 No one can be found guilty by association of
8 anything. The only way anyone can be found guilty is
9 if the State proves each and every allegation of the
10 crime against them beyond a reasonable doubt, and that
11 the person is either the person who did the crime or is
12 an accomplice or is responsible as a conspiracy.

13 However, with regard to the charge that
14 pertains to Mr. Irwin, there is no charge that he was
15 an accomplice to anything. He is charged separately.
16 He was charged with theft of the Jeep, attempted arson
17 of the Jeep, and hindering apprehension.

18 And the State contends and the charge is that
19 Irwin set the Jeep on fire, and the State must prove
20 beyond a reasonable doubt that Irwin set Jeep on fire,
21 along with all the other elements of attempted arson,
22 for you to find Irwin guilty of that offense.

23 So there is no accomplice or conspiracy
24 responsibility with regard to that charge against Mr.
25 Irwin. So the allegation is, and must be proved, that

1 Irwin set that Jeep on fire or attempted to set the
2 Jeep on fire. Okay? I trust that answers your
3 question.

4 THE JURORS: Yes.

5 (Jury retires to continue deliberating.)

6 THE COURT: Thank you, alternates. You may
7 return to the Central Jury area.

8 (Alternates excused.)

9 THE COURT: All right. Anything further with
10 regard to --

11 THE ATTORNEYS: No, Judge.

12 THE COURT: Okay. We'll recess until we hear
13 further.

14 (Recess taken.)

15 (Jury excused for lunch at 12:25 PM.)

16 * * *

17 (The following takes place in open court.)

18 THE COURT: We have a request from the jury
19 for a read-back regarding the two shabazz brothers,
20 Ernesto Barber, and Detective Hayes. So we will call
21 the jury out.

22 (Jury in the box at 2:30.)

23 THE COURT: Would you two alternates come
24 forward? Everybody should move over just to the end.

25 (Alternates in the box.)

1 THE COURT: The alternates can sit on the
2 end. They are both there, okay. The alternates can
3 sit right there. This way, the court reporter -- you
4 have asked for the read-backs of the testimony of the
5 Shabazz brothers, Ernesto Barber and Detective Hayes.

6 Our court reporter who took the testimony of
7 the Shabazz brothers will do the testimony of their
8 read-back first.

9 (Whereupon the testimony of Hakeem Shabazz and Halim
10 Shabazz were read back by Nancy Iannini, CSR.)

11 THE COURT: I appreciate your attention. We
12 will have the court reporter who took the testimony of
13 Ernesto Barber and Detective Hayes at nine o'clock
14 tomorrow to complete the read-back tomorrow; and after
15 that, I'll answer the questions about the three types
16 of murder charges.

17 Your jury room will be locked. No one will
18 be going in there, and it will be kept closed. You
19 can, of course, go in and retrieve what you want now,
20 and have a pleasant evening and be back at nine o'clock
21 tomorrow morning. Everyone remain in place until the
22 jury leaves.

23 (Jury and alternates dismissed for the evening.)

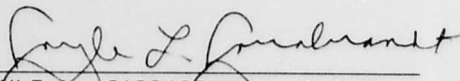
24 THE COURT: All right, counsel, 9:00
25 tomorrow.

1 (Court in recess for the evening.)

2
3 * * *

4 C E R T I F I C A T I O N

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6
7
8
9
10 I, GAYLE L. GARRABRANDT, C.S.R., License
11 Number XI00737, an Official Court Reporter in and for
12 the State of New Jersey, do hereby certify the
13 foregoing to be prepared in full compliance with the
14 current Transcript Format for Judicial Proceedings and
15 is a true and accurate non-compressed transcript to the
16 best of my knowledge and ability.

17
18
19
20 
21 _____
22 GAYLE L. GARRABRANDT, C.S.R.,
23 Official Court Reporter
24 120 Hooper Avenue
25 Ocean County Courthouse
Toms River, NJ 08753

10-12-04
Date



SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY
INDICTMENT NO. 02-9-1247
APPELLATE NO. A-006934-03T-2

STATE OF NEW JERSEY, :

Complainant, :

vs. :

RENATO SANTOS, GREGORY MAPLES,
MARVIN WORTHY and JAMES IRWIN, :

Defendants. :

STENOGRAPHIC
TRANSCRIPT
FILED
APPELLATE DIVISION
OCT 18 2004
Jon Flynn
CLERK

Place: Ocean County Courthouse
120 Hooper Avenue
Toms River, New Jersey
Date: May 18, 2004

B E F O R E :

THE HON. EDWARD J. TURNBACH, J.S.C.

TRANSCRIPT ORDERED BY:

RAYMOND S. SANTIAGO, ESQ. (Raymond S. Santiago, Esq.)

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OFFICIAL COURT REPORTER
OCEAN COUNTY JUSTICE COMPLEX
120 HOOPER AVENUE
TOMS RIVER, NEW JERSEY

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A P P E A R A N C E S C O N T I N U E D :

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I N D E X

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JURY RECHARGE

Page: 6

JURY VERDICT

Page: 18

1 (The following is heard without the presence
2 of the jury.)

3 THE COURT: All right. With regard to the
4 matter, and for purposes of the record, at the end of
5 the day yesterday, the jury sent a note out saying they
6 wanted to hear the testimony of Ernesto Barber, among
7 other testimony. And this morning, they revised their
8 request to say they "only wanted to hear Barber's
9 direct, Sunday morning going to High Point, up until
10 Jeep left."

11 Counsel for the defense had requested that
12 the jury also hear the cross-examination pertaining to
13 that time period. I think it's appropriate, and I've
14 agreed to do so, and all counsel have reviewed the
15 complete testimony of Barber and have agreed with
16 regard to that portion that would be read back to the
17 jury.

18 Okay. Now we need our alternates. Okay.
19 You can open the court, too, I guess.

20 (The alternates are escorted into the
21 courtroom.)

22 (The jury enters the courtroom from
23 deliberations at 10:30 a.m.)

24 THE COURT: Good morning to each of you.
25 I'm sorry for the delay, but we had to go

1 through the testimony with regard to Mr. Barber. At
2 the end of the day yesterday, you had indicated you
3 wanted to hear Mr. Barber's testimony. This morning
4 you revised that request and said, "We wanted to hear
5 only Barber's direct, Sunday morning going up to High
6 Point, until Jeep left."

7 Well, you're going to hear Barber's direct in
8 that regard. You're also going to hear the
9 cross-examination relating to that same time period.
10 So, you'll have everything that was questioned in that
11 particular area.

12 You also indicated you no longer wished to
13 hear Detective Hayes' testimony, so we're going to
14 proceed with the Barber aspects that you asked for.

15 (Whereupon, the readback of Ernesto Barber's
16 testimony began at 10:30 a.m. and ended at 11:30 a.m.

17 The exact testimony which was read back can
18 be found in the previously-prepared transcript dated
19 May 10, 2004, by Susan Kelly, C.S.R., C.R.R., on the
20 below-listed page numbers and page lines:

21 Page 7, line 2, through and inclusive to Page
22 36, line 7.

23 Page 52, line 10, through and inclusive to
24 Page 55, line 2.

25 Page 60, line 1, through and inclusive to

1 Page 69, line 18.

2 Page 75, line 16, through and inclusive to
3 Page 76, line 7.

4 Page 81, line 22, through and inclusive to
5 Page 82, line 13.

6 Page 93, line 19, through and inclusive to
7 Page 116, line 8.)

8 THE COURT: You also indicated you still want
9 to hear the definition of murder and manslaughter. Am
10 I correct? Okay.

11 The state charges the defendants Marvin
12 Worthy, Renato Santos and Gregory Maples committed the
13 criminal offense of murder in Lakewood on April 28,
14 2002, by purposely or knowingly causing the death of
15 Rashan Roy, or purposely or knowingly causing serious
16 bodily injury to Rashan Roy resulting in his death.

17 Our state statute pertaining to the crime of
18 murder provides:

19 "A person is guilty of murder if he: One,
20 caused the victim's death or serious bodily injury that
21 then resulted in death, and; two, that he did so
22 purposely or knowingly.

23 In order for you to find any one of the
24 defendants guilty of murder, the state is required to
25 prove each of the following elements which constitute

1 that crime beyond a reasonable doubt:

2 One, that the defendant you are considering
3 caused Rashan Roy's death or serious bodily injury that
4 then resulted in his death, or that the defendant you
5 are considering was an accomplice and equally
6 responsible for that act, as I've defined accomplice
7 responsibility; or that the defendant you are
8 considering entered into a conspiracy to commit the act
9 and is responsible for the murder of Rashan Roy, as
10 I've defined conspiracy and conspiracy responsibility
11 for you, and; two, that the defendant you are
12 considering did so purposely or knowingly, or was an
13 accomplice, as I defined the accomplice responsibility
14 for you, and possessed the same state of mind or is
15 responsible as a conspirator, as I defined that for
16 you.

17 One of the elements the state must prove
18 beyond a reasonable doubt is that the defendant acted
19 purposely or knowingly. A person acts purposely when
20 it is the person's conscious object to cause death or
21 serious bodily injury resulting in death. A person acts
22 knowingly when the person is aware that it is
23 practically certain that his conduct will cause death
24 or serious bodily injury resulting in death.

25 Now, the nature of the purpose or knowledge

1 with which a defendant acted towards Rasha Roy is a
2 question of fact for you, the jury, to decide. Purpose
3 and knowledge are conditions of the mind which cannot
4 be seen and can only be determined by inferences from
5 conduct, words or acts.

6 It is not necessary for the state to produce
7 a witness or witnesses who could testify that the
8 defendant stated, for example, that his purpose was to
9 cause death or serious bodily injury resulting in
10 death, or that he knew his conduct would cause death or
11 serious bodily injury resulting in death. It is within
12 your power to find that proof of purpose or knowledge
13 has been furnished beyond a reasonable doubt by
14 inferences which may arise from the nature of the acts
15 and the surrounding circumstances.

16 Such things as the place where the acts
17 occurred, the weapon used, the location, number and
18 nature of wounds inflicted, and all that was done or
19 said by a defendant preceding, connected with, and
20 immediately succeeding the events leading to the death
21 of Rasha Roy are among the circumstances to be
22 considered.

23 Although the state must prove that the
24 defendant acted purposely -- acted either purposely or
25 knowingly, the state is not required to prove a motive.

1 If the state has proved the essential elements of the
2 offense beyond a reasonable doubt, the defendant must
3 be found guilty of that offense, regardless of the
4 defendant's motive or lack of motive.

5 If, however, the state has proved a motive,
6 you may consider that insofar as it gives meaning to
7 the other circumstances. On the other hand, you may
8 consider the absence of motive in weighing whether or
9 not the defendant is guilty of the crime charged.

10 Now, a homicide or killing with a deadly
11 weapon, such as a firearm, in itself, would permit you
12 to draw an inference that the defendant's purpose was
13 to take life or cause serious bodily injury resulting
14 in death. A deadly weapon is any firearm which in the
15 manner it is used, or intended to be used, is known to
16 be capable of producing death or serious bodily injury.

17 In your deliberations, you may consider the
18 weapon used and the manner and circumstances of the
19 killing. And if you are satisfied, beyond a reasonable
20 doubt, that the defendant shot and killed Rashon Roy
21 with a gun, you may draw an inference from the weapon
22 used -- that is the gun -- and from the manner and
23 circumstances of the killing as to the defendant's
24 purpose or knowledge.

25 The other element the state must prove beyond

1 a reasonable doubt is that the defendant caused Rashon
2 Roy's death or serious bodily injury resulting in
3 death.

4 As I previously advised you, in order to
5 convict the defendant of murder, the state must prove
6 beyond a reasonable doubt that the defendant either
7 purposely or knowingly caused the victim's death or
8 serious bodily injury resulting in death.

9 In that regard, serious bodily injury means
10 bodily injury that creates a substantial risk of death.
11 A substantial risk of death exists where it is highly
12 probable that the injury will result in death.

13 In order for you to find the defendant guilty
14 of purposeful serious bodily injury murder, the state
15 must prove beyond a reasonable doubt that it was the
16 defendant's conscious object to cause serious bodily
17 injury that then resulted in the victim's death, that
18 the defendant knew that the injury created a
19 substantial risk of death, and that it was highly
20 probable that death would result.

21 In order for you to find the defendant
22 knowing caused serious bodily injury murder, the state
23 must prove beyond a reasonable doubt that the defendant
24 was aware that it was practically certain that his
25 conduct would cause serious bodily injury that then

1 resulted in the victim's death, that the defendant knew
2 that the injury created a substantial risk of death,
3 and that it was highly probable that death would
4 result.

5 Whether the killing is committed purposely
6 our knowingly, causing death or serious bodily injury
7 resulting in death must be within the design or
8 contemplation of the defendant.

9 Now, all jurors do not have to agree
10 unanimously concerning which form of murder is present,
11 so long as all believe it is one form of murder or the
12 other. However, for the defendant to be guilty of
13 murder, all must agree that the defendant either
14 knowingly or purposely caused the death or serious
15 bodily injury resulting in the death of Rashon Roy or
16 is responsible for that act pursuant to the law of
17 accomplice responsibility or conspiracy responsibility
18 as I've defined that for you.

19 If you find that the state has proven beyond
20 a reasonable doubt that the defendant you are
21 considering purposely or knowingly caused death or
22 serious bodily injury resulting in death, or is
23 responsible for that act pursuant to the law of
24 accomplice responsibility or conspiracy responsibility,
25 then you must find the defendant guilty of murder.

1 If, on the other hand, you determine the
2 state has failed to prove any one of the required
3 elements beyond a reasonable doubt, then you must find
4 the defendant not guilty of murder and go on to
5 consider whether a defendant should be convicted of the
6 crimes of aggravated manslaughter or reckless
7 manslaughter.

8 I, once again, remind you that each offense
9 and each defendant in this indictment and the evidence
10 pertaining to him should be considered by you
11 separately. The fact that you may find a particular
12 defendant guilty or not guilty of a particular crime
13 should not control your verdict as to any other offense
14 charged against that defendant, and it should not
15 control your verdict as to the charges against any
16 other defendant.

17 Now, with regard to aggravated manslaughter,
18 the state law pertaining to that offense provides, as
19 follows:

20 "A person is guilty of aggravated
21 manslaughter if he recklessly caused the death of
22 another person under circumstances manifesting extreme
23 indifference to human life."

24 So you see, right off the bat now, with
25 murder you're talking about purposeful or knowing

1 action. With aggravated manslaughter, you're talking
2 about reckless action. Okay?

3 In order for you to find any one of the
4 defendants guilty -- you are considering guilty of
5 aggravated manslaughter -- the state is required to
6 prove each of the following elements that constitute
7 that crime beyond a reasonable doubt:

8 That the defendant you are considering caused
9 Rashon Roy's death, or that the defendant you are
10 considering was an accomplice and equally responsible
11 for that act, or that the defendant entered into a
12 conspiracy to commit that act and is responsible on
13 that basis for it, and; two, that the defendant did so
14 recklessly, or was an accomplice who acted recklessly,
15 or is responsible as a conspirator, and; three, that
16 the defendant did so under circumstances manifesting
17 extreme indifference to human life, or was an
18 accomplice who acted under circumstances manifesting
19 extreme indifference to human life, or is responsible
20 as a conspirator.

21 Now, one element the state must prove beyond
22 a reasonable doubt is that the defendant acted
23 recklessly. A person who causes another's death does
24 so recklessly when he is aware of and consciously
25 disregards a substantial and unjustifiable risk that

1 death will result from his conduct. The risk must be
2 of such a nature and degree that considering the nature
3 and purpose of defendant's conduct, and the
4 circumstances known to the defendant, his disregard of
5 that risk is a gross deviation from the standard of
6 conduct that a reasonable person would follow in the
7 same situation.

8 In other words, you must find the defendant
9 was aware of and consciously disregarded the risk of
10 causing death. If you find that the defendant was
11 aware of and disregarded the risk of causing death, you
12 must determine whether the risk he disregarded was
13 substantial and unjustifiable.

14 In doing so, you must consider the nature and
15 purpose of the defendant's conduct and the
16 circumstances known to the defendant. And you must
17 determine whether, in light of those factors,
18 defendant's disregard of that risk was a gross
19 deviation from the conduct a reasonable person would
20 have observed in the defendant's situation.

21 Another element the state must prove beyond a
22 reasonable doubt is that the defendant acted under
23 circumstances manifesting extreme indifference to human
24 life. The phrase, "under circumstances manifesting
25 extreme indifference to human life," does not focus on

1 defendant's state of mind, but rather on the
2 circumstances under which you find he acted.

3 If, in light of all the evidence, you find
4 the defendant's conduct resulted in a probability, as
5 opposed to a mere possibility, of death, then you must
6 find he acted under extreme indifference to the value
7 of human life. On the other hand, if you find his
8 conduct resulted in only a possibility of death, then
9 you must acquit him of aggravated manslaughter and
10 consider the offense of reckless manslaughter which
11 I'll explain shortly.

12 The final element the state must prove beyond
13 a reasonable doubt is that the defendant caused Rashon
14 Roy's death. You must find that Rashon Roy would not
15 have died but for defendant's conduct. If you find the
16 state has proven beyond a reasonable doubt that the
17 defendant you are considering recklessly caused Rashon
18 Roy's death under circumstances manifesting extreme
19 indifference to human life or is responsible for that
20 act pursuant to the law of accomplice responsibility or
21 conspiracy responsibility, you must find the defendant
22 guilty of aggravated manslaughter.

23 If, on the other hand, you determine the
24 state has failed to prove any of the required elements
25 beyond a reasonable doubt, then you must find the

1 defendant not guilty of aggravated manslaughter and go
2 on to consider whether a defendant should be convicted
3 of the crime of reckless manslaughter.

4 Our state law pertaining to reckless
5 manslaughter provides, as follows:

6 "A person is guilty of reckless manslaughter
7 if he recklessly causes the death of another person."

8 In order for you to find any one of the
9 defendant's guilty of reckless manslaughter, the state
10 is required to prove each of the following elements
11 which constitute that crime beyond a reasonable doubt:

12 One, that the defendant caused Rashon Roy's
13 death, or that the defendant was an accomplice and
14 equally responsible for that act, or that the defendant
15 entered into a conspiracy to commit that act and is
16 responsible on that basis for it, and; two, that the
17 defendant did so recklessly, or was an accomplice who
18 acted recklessly, or who is responsible as a
19 conspirator.

20 So, you see the state must prove, again,
21 reckless conduct, the same reckless conduct that would
22 have to be proved for aggravated manslaughter. And the
23 state must prove the defendant they were considering
24 caused Rashon Roy's death as the actor or principal
25 perpetrator or accomplice or conspirator.

1 The basic difference between aggravated
2 manslaughter and reckless manslaughter is very simply
3 this. For reckless manslaughter, the state does not
4 have to prove that the defendant's conduct resulted in
5 a probability of death. In other words, if the
6 defendant's conduct resulted in a probability, as
7 opposed to a mere possibility, of death, you can find
8 that that would be a circumstance manifesting extreme
9 indifference to human life; all right?

10 That's the added element for aggravated
11 manslaughter, reckless conduct causing death and acting
12 under circumstances manifesting extreme indifference to
13 human life. If all three of those elements are
14 present, it would be aggravated manslaughter. If
15 merely reckless conduct and causing death are present,
16 that's reckless manslaughter.

17 All right. I trust that you all understand
18 that, and I invite you to return to your deliberations.

19 (The jury retires to the jury room to
20 continue deliberations at 11:45 a.m.)

21 THE COURT: Anything further, counsel?

22 MR. HEISLER: No, your Honor.

23 THE COURT: We'll recess for now.

24 (A recess was taken.)

25 (The following is heard without the presence

1 of the jury.)

2 THE COURT: All right.

3 I have a note that the jury has reached a
4 verdict. And I'll make it very clear that I don't know
5 what the verdict is, and nobody else does either, but
6 if there's any outburst, whatsoever, in this courtroom
7 at any time when the Court is taking the verdict, I
8 will clear the courtroom immediately.

9 Jury out.

10 (The jury enters the courtroom with a verdict
11 at 12:25 a.m.)

12 THE COURT: Members of the jury, I've
13 received a note from you that you've reached a verdict.
14 And while I address my questions to the jury, as a
15 whole, I'll ask the foreperson to respond on your
16 behalf.

17 We will take up first the State of New Jersey
18 versus Marvin Worthy.

19 With regard to question one, conspiracy to
20 murder Rashon Roy, how does the jury find?

21 JUROR NO. 1: Guilty.

22 THE COURT: All twelve jurors agree?

23 JUROR NO. 1: Yes.

24 THE COURT: Question two, murder of Rashon
25 Roy, how does the jury find?

1 JUROR NO. 1: Guilty.

2 THE COURT: All twelve jurors agree?

3 JUROR NO. 1: Yes.

4 THE COURT: Question three, possession of a
5 firearm for the purpose to use it unlawfully against
6 Rashan Roy, how does the jury find?

7 JUROR NO. 1: Guilty.

8 THE COURT: All twelve jurors agree?

9 JUROR NO. 1: Yes.

10 THE COURT: Renato Santos.

11 Question one, conspiracy to murder Rashon
12 Roy, how does the jury find?

13 JUROR NO. 1: Guilty.

14 THE COURT: All twelve jurors agree?

15 JUROR NO. 1: Yes.

16 THE COURT: Question two, murder of Rashon
17 Roy, how does the jury find?

18 JUROR NO. 1: Guilty.

19 THE COURT: All twelve jurors agree?

20 JUROR NO. 1: Yes.

21 THE COURT: Question three, possession of a
22 firearm with the purpose to use it unlawfully against
23 Rashon Roy, how does the jury find?

24 JUROR NO. 1: Guilty.

25 THE COURT: All twelve jurors agree?

1 JUROR NO. 1: Yes.

2 THE COURT: Gregory Maples.

3 Question one, conspiracy to murder Rashon
4 Roy, how does the jury find?

5 JUROR NO. 1: Guilty.

6 THE COURT: All twelve jurors agree?

7 JUROR NO. 1: Yes.

8 THE COURT: Question two, murder of Rashon
9 Roy, how does the jury find?

10 JUROR NO. 1: Guilty.

11 THE COURT: All twelve jurors agree?

12 JUROR NO. 1: Yes.

13 THE COURT: James Irwin.

14 Question one, hindering apprehension, how
15 does the jury find?

16 JUROR NO. 1: Guilty.

17 THE COURT: All twelve jurors agree?

18 JUROR NO. 1: Yes.

19 THE COURT: Question two, theft of a 1997
20 green Jeep, how does the jury find?

21 JUROR NO. 1: Guilty.

22 THE COURT: All twelve jurors agree?

23 JUROR NO. 1: Yes.

24 THE COURT: Question three, attempted arson,
25 how does the jury find?

1 JUROR NO. 1: Not guilty.

2 THE COURT: All twelve jurors agree?

3 JUROR NO. 1: Yes.

4 THE COURT: Anything further of the jury?

5 (No response.)

6 If not, ladies and gentlemen of the jury, on
7 behalf of the Superior Court System here in Ocean
8 County, and myself, personally, I want to thank you for
9 taking time out from your normal duties and
10 responsibilities which are serious enough, I'm sure,
11 and coming to the courthouse to decide the issues
12 presented in the case.

13 Our system of justice which works quite fine
14 has integrity and meaning only because it's based on
15 the judgment of the community, people such as
16 yourselves. Without your participation, what we do
17 here would be a meaningless exercise. So I sincerely
18 appreciate your sacrifice and your willingness to stay
19 beyond the normal week and be the judges of the facts
20 in this case.

21 I thank you very much, and I would ask all
22 fourteen of you, if you would, to just step into the
23 jury room at this time.

24 (The jury is excused from jury service.)

25 THE COURT: All defendants will be remanded

1 to jail without bail pending sentencing day.

2 Sentencing date will be --

3 THE COURT CLERK: July 9th.

4 THE COURT: July 9th is the sentencing date.

5 Everybody is remanded without bail pending sentence,
6 and this Court will be going to recess now.

7 MR. HEISLER: Thank you, your Honor.

8 MR. KINARNEY: Thank you.

9 MR. WELLE: Thank you.

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11 (The hearing was concluded.)

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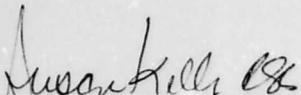
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C E R T I F I C A T E

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4 I, Susan Schaub-Kelly, C.S.R., License
5 Number XI01154, C.R.R., License Number 30XR00013600, an
6 Official Court Reporter in and for the State of New
7 Jersey, do hereby certify that the foregoing to be
8 prepared in full compliance with the current Transcript
9 Format for Judicial Proceedings and is a true and
10 accurate non-compressed transcript to the best of my
11 knowledge and ability.
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16 SUSAN KELLY, C.S.R., C.R.R.
17 Official Court Reporter
18 Ocean County Courthouse
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Dated: 9-8-04

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY
INDICTMENT NO. 02-9-1247
APPELLATE NO. A-006934-037-2

STATE OF NEW JERSEY,

Complainant,

vs.

MARVIN WORTHY, GREGORY MAPLES,
and JAMES IRWIN,

Defendants.

FILED
APPELLATE DIVISION
OCT 1 2004
Clerk

Place: Ocean County Courthouse
120 Hooper Avenue
Toms River, New Jersey
Date: July 9, 2004

B E F O R E :

THE HON. EDWARD J. TURNBACH, J.S.C.

TRANSCRIPT ORDERED BY:

RAYMOND S. SANTIAGO, ESQ. (Raymond S. Santiago, Esq.)

A P P E A R A N C E S :

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3 (Paul E. Zager, Esq.)
4 Attorney for Defendant G. Maples

5 JAMES R. KINARNEY, ESQ.
6 (James R. Kinarney, Esq.)
7 Attorney for the Defendant R. Santos

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1 THE COURT: Are we ready to proceed on the
2 sentencing in the matters of State versus Worthy,
3 Maples and Santos?

4 Mr. Welle, I think you were first during the
5 course of the trial, so . .

6 MR. WELLE: Fine, your Honor.

7 At this time, on behalf of Mr. Worthy, let me
8 say we've gone over the presentence report, and he
9 indicates to me that in all major respects, it is
10 accurate.

11 On behalf of Mr. Worthy, let me -- can we
12 wait until they're seated, Judge?

13 THE COURT: Certainly, yes.

14 MR. WELLE: As you can see from the
15 presentence report, your Honor, Mr. Worthy is a young
16 man with a limited contact with the criminal justice
17 system. He has no adult convictions. He's from a good
18 family. He grew up in north Jersey. His mother raised
19 him. He has a good education.

20 He did indicate to you and he was the only
21 one who took the stand in this case to tell his side of
22 the story which was that he was innocent, that he was
23 falsely accused, that somehow he was put into this
24 scenario where he didn't deserve it. He maintained
25 that from the beginning, and he maintains it now.

1 All I can say, in light of the conviction and
2 the sentencing requirements that you have in front of
3 you, is we would ask you, please, to give him the least
4 amount that you can. And that would be a thirty, with
5 a thirty in, and not thirty with life.

6 He's a young man. He is going to have to do
7 a considerable amount of time, if he's not successful
8 on appeal. And we think that he may in the future
9 still have a life in front of him when he gets out of
10 jail if that appeal, of course, is not successful.

11 I don't know if he wishes to address the
12 Court at this particular time, but we would ask for
13 your mercy in this particular case in your sentencing.

14 THE COURT: Mr. Worthy, is there anything you
15 wish to say?

16 (No response).

17 THE COURT: Mr. Zager, I believe you were the
18 next one in the order of presentation during the course
19 of the trial:

20 MR. ZAGER: Good morning, your Honor. Paul
21 Zager, Eatontown, on behalf of Gregory. Maples.

22 Judge, I reviewed the presentence report, and
23 my client has reviewed it, and -- excuse me. I find it
24 adequate for its purposes today, with one minor
25 notation, Judge. On his criminal record, on the second

1 page, there's an entry in the Lakewood Municipal Court
2 dated November 21st, 1997. My client contends that
3 that's not him, but it's his father.

4 THE COURT: Okay.

5 MR. ZAGER: Judge, my client went to trial
6 asserting his innocence. He was convicted. I
7 understand the verdict of the jury. My client still
8 maintains he's innocent. He intends to file an appeal.

9 At this point, Judge, based on the testimony
10 at the trial, although he contends that he was not
11 involved, I thin' the testimony was that the two
12 gentlemen standing -- sitting on either side of him had
13 more involvement with respect to what occurred in
14 Lakewood, other than what he did, as far as being I
15 guess you would call it the trigger man.

16 Judge, I know that the Court is bound by the
17 statutory framework as far as what the sentencing must
18 be. I'm going to ask the Court, as Mr. Welle did, to
19 impose what I understand to be the minimum sentence for
20 a conviction for murder, with the understanding that it
21 would be our contention that Count 1, conspiracy, would
22 merge with the murder charge.

23 My understanding is that the least amount of
24 sentencing allowed by statute is a period of thirty
25 years, with a thirty-year period of parole

1 ineligibility. Judge, I'm going to ask you to do that.

2 I've reviewed the aggravating and mitigating
3 factors. Although I guess they apply, but they don't
4 apply in the sense that I might be arguing for the
5 imposition of a mandatory period of parole
6 ineligibility, I would acknowledge, Judge, that on the
7 aggravating side that number 3, the risk he would
8 commit another offense, exists, and the need to deter.

9 On the other hand, Judge, on the mitigating
10 factors, given my client's position that he was not
11 involved in this, I think number 2, that he did not
12 contemplate any conduct would cause or threaten serious
13 harm, would apply.

14 And, Judge, as you can see from the
15 presentence report, on his jail credit time, in May of
16 2002, and, again, in November of 2002, he was aware
17 that there was a warrant for his arrest. His state of
18 mind was, I didn't do anything, so he turned himself
19 in. So based on that, Judge, I would suggest that
20 number 12 on the mitigating side, the willingness of my
21 client to cooperate with law enforcement authorities,
22 would also apply.

23 I think, Judge, at this point a thirty over
24 thirty would be appropriate, and I would ask you to
25 impose that.

1 THE COURT: Mr. Maples, is there anything you
2 wish to say?

3 (No response).

4 THE COURT: Mr. Kinarney?

5 MR. DEFENSE: Thank you, your Honor. James
6 Kinarney appearing on behalf of the defendant Renato
7 Santos.

8 Your Honor, I've gone over the presentence
9 report with the defendant. He finds it to be factually
10 accurate and sufficient, for the purposes of
11 sentencing, with one exception. Judge, on the,
12 "Assessment of Defendant'S Personality," etcetera, it
13 indicates, "The defendant was completely uncooperative
14 when interviewed for the present PSI."

15 I've discussed that with Renato. He
16 indicated to me he was feeling physically ill on that
17 day -- he had a headache, a stomachache -- and that
18 explains why the author of the report felt he was
19 completely uncooperative. I would ask your Honor not
20 to consider that.

21 I would also ask your Honor not to consider
22 that the defendant didn't testify. And I know you
23 won't, because I know you know that it's his
24 constitutional right. I only say that in light of
25 Mr. Welle's remarks that his client was the only

1 defendant to take the stand.

2 This defendant is a young man, Judge. He's
3 25 years old. Obviously, he's looking at, as a
4 minimum, thirty, with a thirty. I would submit to the
5 Court that he's young enough to be rehabilitatable. He
6 has received his GED while incarcerated, and I think
7 he's going to learn a severe lesson here.

8 I'm going to ask your Honor to merge the
9 conspiracy, which is Count 1, and also the possession
10 of a weapon for an unlawful purpose, which is Count 4,
11 into Count 2, which is murder. I'm going to ask your
12 Honor to show some mercy to this defendant, and I'm
13 going to ask your Honor for the minimum, thirty, with a
14 thirty.

15 And I only do that, Judge -- without going
16 through the aggravating and mitigating -- because even
17 the minimum for this type of crime is so severe that,
18 with that, the defendant will be about 53 years old.
19 Then he has that five-year -- because it's a NERA, he
20 has that five-year period of supervision. So that
21 punishment, I would submit to the Court, is sufficient.

22 Thank you.

23 THE COURT: Mr. Santos, is there anything you
24 wish to say?

25 DEFENDANT SANTOS: No.

1 THE COURT: Prosecutor?

2 MR. HEISLER: Judge, I believe the victim's
3 mother would like to address the Court, Sondra Roy.

4 THE COURT: Yes.

5 Stand behind the rail, if you will?

6 MS. ROY: To Marvin, Khaleef, and who is
7 known as Gregory, Red, I knew all three of you boys,
8 all of you. You ate at my house. You slept at my
9 house. You ran with my sons all the time. From me you
10 took a son, a grandson, a father, a brother, a nephew,
11 and a cousin from my kids.

12 Khaleef, to me you was like Judas, you
13 betrayed Jamal. He took you and Shakir as his own
14 brothers. He loved y'all as his own brothers. You
15 wouldn't see one of you in the mall without the other.
16 But yet still this is what y'all did, for Sonya and
17 Tosha that never have a brother to come to Florida
18 again to play with their kids or be with their kids,
19 for Tempest to not have a brother again. It hurts me
20 to say that Marvin, little Marvin, can have his dad
21 around him, and your son won't have his father around
22 him. And, Red, you won't be around your son.

23 It's hurting me inside, because I love you
24 guys, and then y'all took from me. Y'all took my first
25 born child. But -- like Peanuts said, we can forgive,

1 but we can't forget. But y'all got to get your souls
2 right with God, because if you're not right with God,
3 you never have peace within yourself.

4 That's all I have to say.

5 THE COURT: Thank you.

6 Mr. Heisler?

7 MR. PROSECUTOR: Judge, overall, I'll address
8 myself in the beginning to the overall circumstances
9 that would involve all three defendants.

10 Judge, these defendants are standing here
11 through counsel asking for the Court to give them
12 mercy. And what they are standing here convicted of is
13 nothing less than a cold-blooded execution, and it's a
14 cold-blooded execution over drugs. We were very
15 careful during the trial not to mention what it was
16 about to make sure there was no prejudice and what the
17 business they were all engaged in was, but it was
18 drugs.

19 And now we have this situation where, in
20 broad daylight on a Sunday morning, Rashan Roy was
21 executed in cold blood, shot four times, shot at more
22 than that, and now they are asking for mercy.

23 Every one of these defendants has had
24 significant prior contact with the justice system.
25 Mr. Santos has been convicted of two separate crimes,

1 although he was sentenced concurrently, and it has
2 escalated to this where we have gun play and an
3 execution on a Sunday morning in a residential
4 condominium complex.

5 There is no reason for this Court to show any
6 of these defendants the mercy that they did not show to
7 Rashan Roy. None of these defendants should ever walk
8 the streets again, Judge, and I would ask the Court in
9 each case to impose a life sentence.

10 THE COURT: All right.

11 Initially, with regard to this matter, I
12 would note that the defendants Maples and Santos have
13 filed pro se motions for a new trial contending that
14 the verdicts of guilty returned by the jury were
15 against the weight of the evidence.

16 Rule 3:20-1 provides that, "A trial judge may
17 grant a defendant a new trial if requested -- if
18 required in the interest of justice, but should not set
19 aside a jury verdict as against the weight of the
20 evidence unless, having given due regard to the
21 opportunity of the jury to pass upon the credibility of
22 the witnesses, it clearly and convincingly appears
23 there was a manifest denial of justice under the law."

24 The defendants Santos and Worthy were both
25 found guilty of conspiracy to murder Rashan Roy, and

1 the murder of Rashan Roy, and possession of a firearm
2 with a purpose to use it unlawfully against Rashan Roy.
3 Defendant Maples was only charged with conspiracy to
4 murder Rashan Roy and the murder of Rashan Roy. The
5 jury found all of them guilty of all the charges.

6 The jury's verdict obviously reflects a
7 finding of credibility with regard to the state's
8 witnesses, a determination certainly within its
9 province to make, based upon the evidence that was
10 presented. There was a great deal of evidence
11 establishing -- from which the jury could find and did
12 find that a conspiracy, ongoing in nature, existed
13 among the three defendants here to do physical harm and
14 murder Mr. Roy.

15 There's a great deal of evidence, both direct
16 and circumstantial, as presented to the jury in support
17 of the jury's verdict. I find no manifest denial of
18 justice, and the jury's verdict is well supported by
19 the evidence in the case, so I deny the motion.

20 MR. WELLE: Your Honor, if I may, at this
21 time, I was apprised by the mother of Mr. Worthy that
22 she had mailed a pro se motion on his behalf that I was
23 not aware of. I think what you've got was Santos' and
24 Maples'. So, I'm just putting that on the record.
25 Where it may be -- she says she sent it certified. So

1 I'm just saying, if it shows up, it would be the same,
2 but we wanted to let you know that there has been some
3 effort on behalf of the defendant to file such a
4 motion.

5 THE COURT: I will accept your representation
6 and acknowledge that a motion was filed by all three,
7 and I will deny that motion also for the same reasons
8 just stated.

9 MR. WELLE: Thank you, Judge.

10 THE COURT: Marvin Worthy, you have
11 forty-five days from today to appeal from the jury
12 verdict -- from the sentence the Court is about to
13 impose upon you as a result of a jury verdict of guilty
14 on Indictment 2-9-1247, Count 1, conspiracy to murder,
15 Count 2, murder, Count 3, possession of a weapon for an
16 unlawful purpose, second-degree.

17 The presentence report indicates the presence
18 of aggravating factor 3, the risk of another offense,
19 which I attribute to a continuous course of conduct and
20 a substance abuse history, as well as the overwhelming
21 involvement of substance abuse and substance dealing in
22 the present case, and, 9, the need to deter. There's
23 nothing present by way of mitigation.

24 For sentencing purposes, Count 1, conspiracy
25 to murder, is merged into Count 2, murder, and I

1 sentence you to the custody of the Commissioner of
2 Corrections for a term of thirty years, with a
3 thirty-year period of parole ineligibility. This
4 sentence is subject to the No Early Release Act, and
5 you'll be subject to five years parole supervision upon
6 release.

7 On Count 3, possession of a weapon for an
8 unlawful purpose, second degree, I note that this is a
9 Graves Act offense. I sentence you to the custody of
10 the Commissioner of Corrections for a term of ten
11 years, with a five-year period of parole ineligibility,
12 to run concurrent with the sentence just imposed.

13 There's a Violent Crimes Compensation Board
14 penalty of \$100 on Count 2, \$50 on Count 3; a Safe
15 Neighborhood fine of \$75 on each count; a LEOTEF of
16 \$30; you're required to submit a DNA sample for
17 classification.

18 Gregory Maples, you have forty-five days from
19 today to appeal from the sentence the Court is about to
20 impose upon you as a result of a jury verdict of guilty
21 on Count 1 of Indictment 2-9-1247, conspiracy to
22 murder, second-degree, and, Count 2, murder, first
23 degree.

24 For sentencing purposes, I note aggravating
25 factor 3, the risk of another offense, which I

1 attribute to a continuous course of conduct, a
2 substance abuse history, and, again, the overwhelming
3 involvement with substance abuse in dealing with the
4 present case, and, 9, the need to deter. There's
5 nothing present by way of mitigation.

6 For sentencing purposes, Count 1 is merged
7 into Count 2. On Count 2, murder, first-degree, you're
8 sentenced to the custody of the Commissioner of
9 Corrections for a term of thirty years, with a
10 thirty-year period of parole ineligibility. This
11 sentence is subject to the No Early Release Act, and,
12 upon release, you're subject to five years of parole
13 supervision.

14 There's a Violent Crimes Compensation Board
15 penalty of \$100; a Safe Neighborhood fine of \$75; a
16 LEOTEF, \$30; and you're required to submit a DNA sample
17 for classification.

18 Renato Santos, you have forty-five days from
19 today to appeal from the sentence the Court is about to
20 impose upon you as a result of a jury verdict of guilt
21 on Indictment 2-9-1247, Count 1, conspiracy to murder,
22 second degree, Count 2, murder, first degree, Count 4,
23 possession of a weapon for an unlawful purpose,
24 second-degree.

25 For sentencing purposes, I note aggravating

1 factor 3, the risk of another offense, which I
2 attribute to the history of substance abuse and, again,
3 the overwhelming involvement of substance abuse in
4 dealing with the present case, 6, the nature and extent
5 of your prior record, and, 9, the need to deter.
6 There's nothing present by way of mitigation.

7 For sentencing purposes, Count 1, conspiracy,
8 is merged into Count 2, murder, first degree. On Count
9 2, murder, first-degree, I sentence you to the custody
10 of the Commissioner of Corrections for a term of thirty
11 years, with a thirty-year period of parole
12 ineligibility. This sentence is subject to the No
13 Early Release Act, and upon release, you're required to
14 serve a five-year period of parole supervision.

15 Count 4, possession of a weapon for an
16 unlawful purpose -- this, again, is a Graves Act
17 offense -- second-degree, I sentence you on that to the
18 custody of the Commissioner of Corrections for a term
19 of five years, with five-year period of parole
20 ineligibility. This is to run concurrent with the
21 sentence just imposed.

22 There's a Violent Crimes Compensation Board
23 penalty of \$100 on Count 2, and \$50 on Count 4; Safe
24 Neighborhood fine, \$75, on each count; LEOTEF, \$30; and
25 you're required to submit a DNA sample for

1 classification.

2 At this time, any and all bail with regard to
3 the matter is discharged. Each of you are remanded to
4 the custody of the Commissioner of Corrections for a
5 net term of thirty years, with a thirty-year period of
6 parole ineligibility, subject to the No Early Release
7 Act.

8 MR. HEISLER: Thank you, your Honor.

9 THE COURT: All right. We'll take a brief
10 recess while the courtroom is cleared.

11

12 (The hearing was concluded.)

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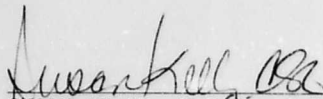
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C E R T I F I C A T E

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10 accurate non-compressed transcript to the best of my
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