

# Ex. 5

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: PART: 96

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The People of the State of New York,

Plaintiffs,

-against-

DOMINIC M. FRANZA,

Defendant.

AFFIDAVIT

Ind. No. 11987/91

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State of New York )  
                          ) ss.:  
County of Dutchess )

Dominic M. Franza, being duly sworn, deposes and says:

1. I am the defendant in the above-entitled proceeding. I make this affidavit in support of the instant application for an order, pursuant to GPL §440.10(1)(h), vacating the April 8th, 1992, judgment of conviction, upon the grounds that, (1) I did not receive a fair trial as a result of the misconduct of the prosecutors, and; (2) actual innocence, in violation of the Constitution of this State and the United States Constitution. N.Y. Const. Art. I, §§5-6; U.S. Const. 8th & 14th Amendment.

2. I was indicted on Three Counts of Attempted Murder in the Second Degree (P.L. §§110/125[1]); Two Counts of Assault in the First Degree (P.L. §120.10[1]); One Count of Possession of a Dangerous Weapon in the First Degree (P.L. §265.04[2]), and; One Count of Possession of a Weapon in the Third Degree (P.L. §265.04[2]).

3. At arraignment I entered a plea of "not guilty." I was

tried in N.Y. County Supreme Court before the Hon. Paul P.E. Bookson (Ret. Deceased). The case was submitted to a jury, which rendered verdicts of guilty on all of the attempted murder in the second degree counts, and the possession of a dangerous weapon in the first degree count.

4. On April 8th of 1992 I was sentenced to 28 to 84 years.

#### PREVIOUS CPL §440 MOTIONS

##### 1993

5. In 1993 I filed a CPL §440.10(1)(a-d)(f-g) motion, claiming the prosecutors were culpable (Attached hereto and marked as Exhibit "1" [1993 CPL §440 motion]).

6. It should be noted, I claimed, within the motion, the exhibits in support came from the prosecutors, further providing independent evidence (Ex. "1" pp. 46, 48, 53B, 77, 97, 129).

7. In opposition A.D.A. Sheindlin (Junior trial prosecutor) claimed the motion was "factually inaccurate" and "without merit," without making any demonstrative showing. As well, making procedural claims (Attached hereto and marked as Exhibit "2" [Opposition]).

8. As a result, Justice Bookson denied my CPL §440 motion. In particular holding (Attached hereto and marked as Exhibit "3" [Decision]):

Defendant's claims for a hearing or a new trial are based largely on completely unsubstantiated charges of fraud and collusion leveled against the D.A. and defense counsel, alleging fabricated, altered and withheld evidence resulting in his conviction. Attendant to this are claims of ineffective assistance of

counsel (pp. 2-3).

9. However, contrary to A.D.A. Sheindlin's claim, the District Attorney's office opposing my federal habeas petition making the same claims as in the CPL §440 motion and supported with the same evidence, admitted in their answer, memorandum of law in support, and within their opposition to my discovery motion that, I "indeed" used the People's discovery material in support of the CPL §440 motion (Attached hereto and marked as Exhibit "4" [Habeas petition]; Attached hereto and marked as Exhibit "5" p. 8 ¶16 [Answer]; Attached hereto and marked as Exhibit "6" pp. 5-6 [Memorandum of Law in support]; Attached hereto and marked as Exhibit "7" p. 2 ¶5 [Opposition to Discovery motion]).

10. I now support this motion with the same evidence within the CPL §440 motion. This Court will unquestionably find such to be clear and convincing evidence that, I did not received a fair trial as a result of the prosecutorial misconduct. As well, revealing actual innocence.

#### 2005

11. In 2005 I filed a CPL §440.10(1)(b) motion, claiming A.D.A. Sheindlin was culpable (Attached hereto and marked as Exhibit "8" [2005 CPL §440 motion]).

12. Using the same evidence within the 1993 CPL §440 motion, and new evidence, supported with the concessions made in federal court, I claimed the concessions proved the 1993 CPL §440 decision was procured by fraud and misrepresentation warranting the vacation of the 1993 decision, as A.D.A. Sheindlin lied to

the trial court as to the status of my exhibits in support. Thereby, presenting a material false statement to the trial court, and allowing the trial court to find my 1993 motion to be "based largely on completely unsubstantiated charges," when the motion was completely substantiated (Attached hereto and marked as Exhibit "8" [2005 CPL §440.10 motion]; Attached hereto and marked as Exhibit "9" [Addendum]).

13. A.D.A. Brancato (Senior trial prosecutor), in opposition, did not contest the concessions made in federal court, and claimed my motion was procedurally barred (Attached hereto and marked as Exhibit "10" [Opposition]).

14. It should be noted, A.D.A. Brancato did not dispute any of my evidence in support, as the concessions, thereby conceding the factual contents within as a matter of law. People v. Wright, 86 N.Y.2d 591, 596 (1995)("[n]ormally what is not disputed is deemed to be conceded.")(Ex. "10").

15. I made reply, throughly contesting A.D.A. Brancato's opposition, revealing misrepresentations as well (Attached hereto and marked as Exhibit "11" [Reply]).

16. Justice Arlene R. Silverman (Ret.) denied the motion and completely disregarded the concessions made in federal court. Contrary to the ground for relief I raised, Justice Silverman treated my motion as one to vacate the judgment of conviction when I was moving to vacate Justice Bookson's decision & order. Citing a host of procedural bars prohibiting review based upon the previous 1993 CPL §440.10 proceeding (Attached hereto and marked as Exhibit "12" [Decision]).

17. I now support this motion with the same conceded evidence within the CPL §440.10 motion. Once again, this Court will unquestionably find such to be clear and convincing evidence that, I did not receive a fair trial as a result of prosecutorial misconduct. As well, revealing actual innocence.

18. With respect to the decision above it is null & void for the following reason.

19. I mis-characterized Justice Bookson's October 19th, 1993, order of denial as a judgment, when it was not a judgment as a matter of statutory law subject to review under CPL §440.10 and CPL §440.30. CPL §1.20(15)("Judgment." A judgment is compromised of a conviction and the sentence imposed thereon and is completed by imposition and entry of the sentence.). Thus, moving under the statutory provision of CPL §440.10 was incorrect, as I was not statutorily authorized to seek relief under CPL §440.10 from a mis-characterized judgment.

20. In light of the above, Justice Silverman's decision & order must be regarded as null & void, without jurisdiction, as Justice Silverman was statutorily unauthorized to render a decision & order, as my motion was statutorily unauthorized for review under CPL §440.10 and CPL §440.30. The proper course was a dismissal of the proceeding.

It matters not what the general powers and jurisdiction of a court may be; if it act without authority in the particular case, its judgments and orders are mere nullities, not voidable, but simply void, protecting no one acting under them, and constituting no hindrance to the prosecution of any right. People ex rel. Tweed v. Liscomb, 60 N.Y. 559, 568 (1875).

If there was no legal power to render the judgment or decree, or issue the process, there was no competent court, and consequently no judgment or process. All is coram non iudice and void. id., at 571.

No court can give judgment for any purpose not authorized by law. id., at 591.

21. Thus, this Court must disregard Justice Silverman's decision & order as it is null and void.

#### FAIR TRIAL ANALYSIS OF INSTANT MOTION

22. The claimed culpability of the prosecutor's in the prior CPL §440.10 proceedings is not germane to the instant motion, "as the touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, not the culpability of the prosecutor[s]." Smith v. Phillips, 455 U.S. 209, 219 (1982):

Past decisions of this Court demonstrate that the touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, not the culpability of the prosecutor.... The Court thus recognizes that the aim of due process "is not punishment of society for the misdeed of the prosecutor but avoidance of an unfair trial to the accused.

23. Thus, the question before this Court is whether or not the prosecutors scrupulously respected my Constitutional guaranteed right to an untrammelled fair trial, not their culpability.

#### GOVERNING LAW CONTROLLING THIS MOTION DUE PROCESS

24. It is well established, "[t]he constitutional guarantee to due process of law provides criminal defendants with the

'fundamental right to a fair trial.'" Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 [1984]). People v. Henriquez, 3 N.Y.3d 210, 214 (2004); see, Caperton v. A.T. Massey Coal Co., Inc., 556 U.S. 868, 876 (2009); Cone v. Bell, 556 U.S. 449, 451 (2009); Danforth v. Minnesota, 552 U.S. 264, 269-270 (2008); Spencer v. State of Texas, 385 U.S. 554, 563-564 (2008); Lyons v. State of Oklahoma, 322 U.S. 596, 605 (1944).

#### PUBLIC INTEREST

25. Even "the public at large is entitled to assurance that there shall be full observance and enforcement of the cardinal right of a defendant to a fair trial." People v. Crimmins, 36 N.Y.2d 230, 238 (1975).

#### PRESUMPTION OF INNOCENCE

26. It is also well established, "[t]he presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under [the] system of criminal justice." Estelle v. Williams, 425 U.S. 501, 503 (1976):

The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment. Drope v. Missouri, 420 U.S. 162, 172, 95 S.Ct. 896, 904, 43 L.Ed. 103, 113 (1975). The presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of justice. Long ago this Court stated:

"The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." Coffin v. United States, 156 U.S. 432, 453, 15 S.Ct. 394, 403, 39 L.Ed. 481, 491 (1895).



## PROSECUTOR'S DUTY AND OBLIGATION

27. It is further established, "[a]s a further incident of [a] defendant's right to a fair trial, a prosecutor has an obligation to correct misstatements by a witness...." Thus, "a prosecutor may not sit by silently while [his or] her witness testifies falsely.... [I]f [a lie] is in anyway relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth (People v. Savvides, 1 N.Y.2d 554, 556-557, 154 N.Y.S.2d 885, 136 N.E.2d 853, supra.)." People v. Novoa, 70 N.Y.2d 490, 496-497 (1987); see, People v. Vilardi, 76 N.Y.2d 67, 76 (1990).

28. The Appellate Court for this department has held:

Under our system of law the prosecutor plays an especially sensitive and crucial role, serving both as an advocate and public officer charged with the duty not only to seek convictions but also to see that justice is done and as a public officer he or she owes a duty of fair dealing to the accused and candor to the courts (People v. Pelchat, 62 N.Y.2d 97, 105, 476 N.Y.S.2d 79, 464 N.E.2d 447).... "The greatest crime of all in a civilized society is an unjust conviction. It is truly a scandal which reflects unfavorably on all participants in the criminal justice system." People v. Ramos, 201 A.D.2d 78, 90 (1st Dept. 1994).

It is the People's obligation, when aware that their witness has been untruthful, to either make a statement to that effect or elicit from their witness an admission of the falsehood. People v. Novoa, 70 N.Y.2d 490, 496-497, 522 N.Y.S.2d 504, 517 N.E.2d 219. People v. Holder, 168 A.D.2d 284 (1st Dept. 1990).

[A] prosecutor must be mindful not only of his duty to the People, but also of his duty to the defendant in insuring an untrammelled fair trial. People v. Nunez,

29. In Connick v. Thompson, \_\_\_\_\_ U.S. \_\_\_\_\_ (2011), 131 S.Ct. 1350, 1355 the United States Supreme Court held:

The role of a prosecutor is to see that justice is done, Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935). "It is as much [a prosecutor's] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

30. In sum, "the [prosecutor] has a concomitant, constitutionally essential interest in assuring that the defendant's trial is a fair one," Sell v. United States, 539 U.S. 166, 180 (2003), as "[t]he constitution requires no more than that trials be fairly conducted and that guaranteed rights of defendants be scrupulously respected," McGautha v. California, 402 U.S. 501, 503 (1976).

#### STANDARD OF EVALUATION

##### STATE

32. As a matter of State law, it is further established, when a court finds that a defendant has not received a fair trial, "the ... court must reverse the conviction and grant a new trial, quite without regard to any evaluation as to whether the errors contributed to the defendant's conviction." [Thus], "[t]he right to a fair trial is self-standing and proof of guilt, however, overwhelming, can never be permitted to negate this right." People v. Crimmins, 36 N.Y.2d, at 238; see, People v. Jones, 47 N.Y.2d 409, 416 (1979); People v. Carracedo, 214 A.D.2d 404 (1st Dept. 1995); People v. Lombard, 4 A.D.2d 666, 668 (1st Dept. 1957).

Not only the individual defendant but the public at large is entitled to assurance that there shall be full observance and enforcement of the cardinal right of a defendant to a fair trial. The appellate courts have an overriding responsibility, never to be eschewed or lightly to be laid aside, to give that assurance. So, if in any instance, an appellate court concludes that there has been such error of a trial court, such misconduct of a prosecutor, such inadequacy of defense counsel, or such other wrong as to have operated to deny any individual defendant his fundamental right to a fair trial, the reviewing court must reverse the conviction and grant a new trial, quite without regard to any evaluation as to whether the errors contributed to the defendant's conviction. The right to a fair trial is self-standing and proof of guilt, however, overwhelming, can never be permitted to negate this right. Crimmins, 36 N.Y.2d, at 238.

33. Clearly, the standard of review applies to a trial court's review of a motion claiming a denial of the fundamental right to a fair trial.

#### FEDERAL

34. As a matter of Federal law, it is further well established, "when a prosecutor allows [false] testimony to go uncorrected, a showing of prejudice is required. But the Supreme Court has made clear that prejudice is readily shown in such cases, and the conviction must be set aside unless there is no "reasonable likelihood that the false testimony could have affected the judgment of the jury. United States v. Agurs, 427 U.S. 97, 103, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976); Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972)." Shih Wei Su v. Fillion, 335 F.3d 119, 126-127 (2nd Cir. 2003).

### ACTUAL INNOCENCE

35. With respect to actual innocence, I ask this Court to acknowledge and adopt the rulings in People v. Bermudez, 25 Misc.3d 1226(A)(N.Y. County 2009), People v. Wheeler-Wichard, 25 Misc.3d 690 (Kings County 2009), and People v. Cole, 1 Misc.3d 531 (Kings County 2003), which hold actual innocence is a cognizable ground for relief.

### INSTANT MOTION

36. In this case, the failure of the two prosecutors to fulfill their duty and obligation to insure that a fair trial was had and justice done is inexcusable. Under this circumstance I meet the standards for the relief above. This is so as the misconduct is so flagrant and pervasive as to compel the conclusion that I was deprived of a fair trial, as the two prosecutors never raised red flags when their witnesses testified untruthfully. Thereby, leaving the untruths uncorrected, which undermined the presumption of innocence. Making matters worse A.D.A. Brancato utilized the untruths in his summation before the jury. This is all proven below.

### TRIAL

#### Family / Meeting / Marriage / Gifts

37. In 1987, Miss Myra Mendez (Mrs. Franza) lived with her Parent's at 485 West 187 Street, Apt. 1D, in Manhattan (Washington Heights). Myra Mendez had three Brothers: Carlos Dacosta, Nelson Dacosta, and Wilfred Dacosta. I met Myra Mendez through Mirabel Matos a co-worker of Nelson Dacosta's wife (Ruthie Bless)(T: [Mendez]: 220-223, 249-250, [Franza]: 287-

288).<sup>1</sup>

38. In May of 1987, Miss Myra Mendez and I were wed, as encouraged by her Mother. I paid for the wedding and for her Father's Tuxedo. During the marriage we paid off her Parent's station wagon loan and a personal loan, further making payments on her Mother's life insurance, and buying a washer for them (T: [Mendez]: 251-253, [Franza]: 287).

#### Federal Firearms Licence

39. Mrs. Franza stated she knew nothing about me having a Federal Firearms dealer's licence, and that she was never listed as a co-proprietor on the application (T: [Franza]: 352).

#### Beatings / Staying At Brother's Apartment

40. In March or April of 1987, Mrs. Franza claimed I beat her up, in the station wagon and at home, for picking up the station wagon at the repair shop, and for paying \$197.00 for a muffler. She further claimed, I threatened her at home saying, quote, "you better be here when I get back if not, I'm going to kill you and bury you in the park and then I'm going to take care of your Parent's" (T: [Franza]: 290-299).

41. It should be noted, while Mrs. Franza claimed I was working and would have to rush from the house to the dealer, she stated I was waiting for her in front of the house (T: [Franza]: 291).

42. Thereafter, she left and stayed at a Hotel for the night, going to the Hospital the next day. Thereafter, staying with her Brother, Carlos Dacosta, at his basement apartment at 495 West 1- T: refers to trial transcript pages, which are on file with this Court. I will produce such only upon request of this Court.

187st. She thereafter went to the 47th Pct. and made a complaint, which resulted in my arrest. Later acquiring an Order of Protection, which was given with my consent (T: [Mendez]: 236-237, [Franza]: 290-301, 393; Attached hereto and marked as Exhibit "13" [Arrest warrant and P.D. reports]; Attached hereto and marked as Exhibit "14" [1989 Family Court records consent given]).

43. Thereafter, Mrs. Franza claimed I sent her red roses, and that within a week or two she came back to me. That I helped her move out of her Brother's basement apartment (T: [Mendez]: 236-237, [Franza]: 301-304, 342, 380-381).

44. Once again, Mrs. Franza claimed I beat her up on June 25th of 1990, for not introducing me to her co-worker she was talking too while waiting for my Father by the subway steps at 4:30 p.m., by her job, who failed to appear. That I beat her up on the way home while I was driving, and threatening her, quote, "if I ever catch you with someone, I'm going to kill you." Further threatening, "if you ever leave me I'm going to find you. Even if you go to Puerto Rico, I'm going to get you." She moved out on June 28th of 1990, and once again went to live with her Brother in his basement apartment (T: [Mendez]: 231-232, 236-237, 254, [Franza]: 305-313, 357-358, 369-370).

45. However, while Mrs. Franza stated the beating occurred on June 25th of 1990, on cross examination she remembered in June of 1990 my Mother was in the Hospital, and that I was at the Hospital the entire day and night. That she and I took her. Later saying she was not sure if I was there the entire night.

She was shown a Hospital bill for my Mother and acknowledged June 25th of 1990 was the day my Mother received said Medical attention. In spite of this Hospital bill she still claimed the beating occurred on June 25th of 1990 (T: [Franza]: 359-361, 364, 388-389, [Court]: 389; Ex. "8" p. 60 ¶199; Attached hereto and marked as Exhibit "15" [Hospital bill]).

#### **Mrs. Franza Completely Accessible**

46. During both times Mrs. Franza moved to her Brother's basement apartment she was completely exposed, walking in the street without incident. In fact, Mrs. Mendez stated Mrs. Franza had to go outside of her building and around the building to access the basement apartment, a desolate area (T: [Mendez]: 231-232, 236-237, 252, 258, [Franza]: 303, 369-372; Ex. "8" p. 33 ¶110; Attached hereto and marked as Exhibit "16" [Photos of courtyard & basement area]).

#### **Nelson Dacosta's Wife Leaving Him**

47. In June of 1990, Nelson Dacosta's wife, Ruthie Bless, left him, and took the Children with her to Chicago (T: [Dacosta]: 1609-1610).

#### **July 8th 1990 Incident**

48. On July 8th of 1990, ten days after Mrs. Franza left me, Nelson Dacosta testifying for the defense, a drug user, stated he made a Police report about a threatening phone call, which happened to be to P.O. Aponte. However, he denied saying that the person threatened him and his Family (T: [Aponte]: 152, 163-173, [Dacosta]: 1610-1613).

49. On cross, he admitted he indeed told P.O. Aponte about a threat on his life and Family. However, he claimed he lied about the threat. Making the complaint in the hopes a trace would be done, as a man was asking for his wife Ruthie. He thought his wife was having an affair. That a lady called later on claiming a misunderstanding, Ruthie owing them \$200.00 for Avon products (T: [Dacosta]: 1617-1620; Ex. "1" p. 74; Attached hereto and marked as Exhibit "17" [Complaint]).

#### July 16th 1990 Incident

50. On July 16th of 1990, eight days after Dacosta's complaint, at 7:15 p.m., two men went to Mrs. Mendez's apartment and asked for Nelson Dacosta. They identified themselves as Police Officers, showing I.D. to the effect. Both of these men being clean shaven, and not appearing Hispanic. The taller man being light skinned, and the other man being shorter, husky and dark skinned having a canvas bag. Mrs. Mendez did not open the door as she felt the badges were not real. She made these observations through the peephole of the door, and when she saw the men outside as they were leaving the building. She informed her Son Nelson Dacosta who denied any involvement with the men. She also told Debbie Dacosta (Carlos Dacosta's wife) about the incident. A Det. Giorgio was later informed after the shooting's of Mrs. Mendez and Mrs. Franza (T: [Mendez]: 257-265, [Giorgio]: 660-666, 728-730, [Dacosta]: 1610-1611).

#### July 17th 1990 Incident

51. The next day, July 17th of 1990, Mrs. Mendez while looking outside saw a floral delivery man holding a box with a



red ribbon. The man looking at buildings as if checking for an address, who walked away. The man wearing a large white jacket, sneaker's, white pants, and having a cap on his head (T: [Mendez]: 271-273, 284-285).

52. Fifteen minutes later, 7:15 p.m., which happened to be the exact same time the two men appeared at Mrs. Mendez's door from the day before, Mrs. Mendez claimed the same floral delivery man appeared at her door with the box of flowers. As a result she opened the door without hesitation. Closing the door, but not locking it, Mrs. Mendez went to see if Mrs. Franza wanted the flowers at the rear of the apartment, where she was taking a shower (T: [Mendez]: 222-228, 231, 263, 265, 270, 273, 281-282, 285, [Franza]: 313, 327).

53. At the Grand Jury Mrs. Mendez stated the man wrote flowers for Mrs. Franza. At trial she changed her testimony saying he did not write flowers for Mrs. Franza (T: [Mendez]: 265-270).

54. Mrs. Mendez claimed, this man entered the apartment and encountered her at the rear of the apartment in front of the bathroom door, with a gun in his right hand a dagger in the other. She claimed this man open fired at her at a distance while she was holding on to the bathroom door, and while she was engaging in a tug of war match with Mrs. Franza to keep the bathroom door closed. She stated she was shot five times, with one bullet still in her chest. As well, being cut two (2) times, once in the cheek and the neck (T: [Mendez]: 225-229, 233-234, 248, [Franza]: 313-314, 323-324).

55. When Mrs. Franza opened the bathroom door she observed her Mother falling down on the door frame, and the man for three seconds before being shot once. She claimed while the man was hovering over her she played dead. Thereafter the shooter leaving (T: [Mendez]: 228-230, [Franza]: 313-314, 324-325).

56. Lazaro Benitez, at approximately 7:20 p.m., after hearing three loud bangs, observed two (2) men running from 485 West 187 Street. The taller male being 6' and clean shaven, and wearing a fluorescent orange baseball cap with a black bill. The other male being 5'6" or 5'7", a dark Hispanic having a mustache, wearing a black and white striped shirt, clutching a canvas bag. Not mentioned at trial, in a Police report he stated he believed he saw the two men prior to the incident (T: [Benitez]: 79-87, 92-96, [Giorgio]: 661-666, 668; Ex. "1" p. 74; Attached hereto and marked as Exhibit "18" [Benitez's P.D. report & handwritten statement]).

57. At the apartment, Mrs. Franza claimed she waited until hearing nothing before moving. Thereafter, turning to her Mother who was gaging on her blood and dentures, telling her, "don't die, don't leave me." Sticking her fingers down her Mother's throat to clear her breathing passage. That as she placed her hand on her Mother's chest blood would gush out (T: [Mendez]: 229-230, [Franza]: 313-314, 325).

58. After tending to her Mother Mrs. Franza called 911, and once again tended to her Mother, whose eyes were white. Thereafter crawling to the front of the apartment for help (T: [Mendez]: 229-230, [Franza]: 313-314, 325).

notes were never entered into evidence (T: [Aponte]: 140-151, 158, [Alexander]: 176-180, 188-189, [Franza]: 314-315; Ex. "8" p. 14 ¶41; Attached hereto and marked as Exhibit "19" [Mrs. Franza's notes])).

62. It should be noted, Mrs. Franza's claimed description of the shooter did not match Mrs. Mendez's description of the shooter at all, nor matching Mr. Benitez's description, amazing.

63. Det. Giorgio claimed when he arrived he saw Mrs. Mendez being wheeled out of the apartment by E.M.S., thereafter seeing Mrs. Franza receive Medical attention, and her writing in a pad. Det. Bourges seeing Mrs. Franza writing on a wall. However, Mrs. Theis recognized Mrs. Mendez as being the second person taken out of the apartment. The identification of Mrs. Mendez as being the second person taken out of the apartment was confirmed by Mrs. Ferreira, who has known Mrs. Mendez for 6 to 7 years (T: [Theis]: 115-116, [Ferreira]: 128, 133-134, [Bourges]: 416-418, [Giorgio]: 562).

64. Det Giorgio claimed he first saw Nelson Dacosta when Mrs. Mendez was being removed from the apartment, and while Mrs. Franza was still in the apartment. Then he said he met Mr. Dacosta after he left the apartment. However, Mrs. Theis stated when Mr. Dacosta arrived at the shooting scene he was screaming and yelling, who broke free from the Police and entered the apartment. This being after Mrs. Mendez & Mrs. Franza were taken to the Hospital (T: [Theis]: 117, [Giorgio]: 614, 653).

65. It should be noted, Det. Giorgio stated he saw a box of flowers and the floral delivery note, which had directions to a

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65. It should be noted, Det. Giorgio stated he saw a box of flowers and the floral delivery note, which had directions to a

basement apartment if there was no answer. He proceeded there with Det. Bourges and Nelson Dacosta, meeting Debbie Dacosta. He claimed this floral delivery note was used by the shooter to gain entry into the apartment (T: [Bourges]: 418-420, [Giorgio]: 563-565, 580, 613-614, 641, 660, 668-669, 743-744; Ex. "1" p. 71; Ex. "8" p. 15 ¶44; Attached hereto and marked as Exhibit "20" [Floral delivery note])).

#### Evidence Recovered

66. Det. Osbourn, of the Crime Scene Unit, claimed he observed blood on the floor upon entering the apartment, and blood at the rear of the apartment. Further observing a deformed bullet in the rear hallway which was in that position when he first noticed it, and another bullet on the bathroom floor which was in that position when he first noticed it as well. Also, observing a floral box with a red ribbon on a chair with a handwritten note on top. Thereafter, speaking to Det. Montouri and P.O. Alexander, then photographing the apartment and the items above, twenty photos in all. He picked up the floral delivery note with tweezers and placed such in a plastic bag, further placing the floral box with the red ribbon inside of a paper bag. Giving the two (2) bullets, floral delivery note, and floral box with the red ribbon to P.O. Alexander to voucher. These items were entered into evidence (T: [Alexander]: 180-185, [Osbourn]: 515-525, 532-533, [Giorgio]: 668; Ex. "1" pp. 5-6, 8-9, 46-47; Ex. "8" pp. 15-16 ¶'s 44-46; Attached hereto and marked as Exhibit "21" 1-20 [Crime Scene Photos]).

67. After investigating Det. Osbourn typed up a report on

everything done. As well, revealing the order of photo taking, what he recovered, and the time he arrived at the shooting scene, 1940 hrs (Ex. "1" pp. 7-8, 46-47; Ex. "8" p. 16 ¶48; Attached hereto and marked as Exhibit "22" [Forensic report & handwritten notes]).

68. P.O. Alexander stated, when she walked into the property clerk's office to voucher the items, given to her by Det. Osbourn, the floral box and delivery note were still attached to one another. She could not remember if the floral delivery note was stapled or taped to the box (T: [Alexander]: 186, 193-195).

69. Det. Gilbert Ortiz, my arresting officer, claimed he saw the floral delivery note at the Pct., and that it was attached to the box. However, there being no staple marks on the box. Det. Giorgio stated, he thinks the note was loose on the box (T: [Giorgio]: 641, 677, [Ortiz]: 1478-1480).

70. P.O. Alexander was shown crime scene photo 6, claiming the photo fairly and accurately depicts how the floral box and the letter attached appeared the day of the shooting, when it was handed to her. This photo was entered into evidence. It should be noted, on cross, she stated when she arrived at the shooting scene the floral box was on the kitchen table, not on a chair, prior to the crime scene unit's arrival. The top of the box being sort of opened and seeing flowers inside. Her duty being the safeguard officer (T: [Alexander]: 185-189, 190-193; Ex. "1" pp. 3-4; Ex. "8" p. 17 ¶51; Ex. "21").

71. In spite of her partner's account, P.O. Alexander, P.O. Aponte claimed she saw the box of flowers with the red ribbon on

a chair right after her arrival (T: [Aponte]: 158-159).

72. Mrs. Mendez was shown crime scene photo 11 and Mrs. Franza was shown crime scene photos 14-15. Both of them claimed the photos fairly and accurately depict the apartment the day of the shooting. Such revealing: The foyer area at the rear of the apartment where the claimed shooting occurred; where the man was standing while firing; where Mrs. Mendez fell; where the bathroom is where Mrs. Franza was shot; where the phone is that Mrs. Franza called 911 from. Such photos were entered into evidence (T: [Mendez]: 232-234, [Franza]: 316-325; Ex. "1" pp. 4, 55-56, 61-62; Ex. "8" p. 17 ¶50; Ex. "21")

73. P.O. Aponte was shown crime scene photos 3 and 19. She claimed the photos fairly and accurately depicted where Mrs. Franza was found at the front of the apartment, and the wall where Mrs. Franza wrote on. She further stated the blood on the wall came from Mrs. Franza's hand. Such photos were entered into evidence (T: [Aponte]: 153-158; Ex. "1" p. 3; Ex. "8" p. 71 ¶51; Ex. "21").

74. Det. Osbourn was shown four (4) of his own crime scene photos 4, 6, 19, 20. That such photos fairly and accurately depict the condition of the apartment the day of the shooting. Such photos revealing: The front hallway toward the foyer area; where the floral box and note on the chair were; the flowers placed in the sink; where the bullet was on the bathroom floor. Such photos were entered into evidence (T: [Osbourn]: 517-519, 523-524; Ex. "1" pp. 4-5; Ex. "8" pp. 17-18 ¶'s 51-52; Ex. "21").

### Mrs. Mendez And Mrs. Franza At The Hospital

75. At the Hospital Mrs. Franza claimed nine (9) Doctors were trying to bring her Mother back to life, telling her verbatim, "yes, Mrs. Mendez, come on, you can do it, you can do it" (T: [Franza]: 315).

76. Mrs. Mendez claimed she was in the trauma center for 17 days, that she was in bad shape (T: [Mendez]: 230-231).

77. Mrs. Mendez also stated her right arm gets numb, and that her left hand is not used anymore as she can't hold anything (T: [Mendez]: 248).

### August 11th 1990 Incident

78. On August 11th of 1990, twenty five (25) days after the shooting's of Mrs. Mendez and Mrs. Franza, a pipe bomb was recovered in front of Nelson Dacosta's door, which was disarmed. The device having a firecracker as a detonator which was not lit (T: [Aponte]: 161-163, [Mendez]: 238, [Franza]: 381-382, [Giorgio]: 601-602, 666-667, 731, [Raymond]: 772-774, 785-787, 789, [Herbert]: 824-825, [Sadowy]: 1031-1046, [Dacosta]: 1615).

### August 24th 1990 Handwriting Exemplars

79. On August 24th of 1990, Det. Giorgio in his writing provided me with a copy of the claimed floral delivery note left at the shooting scene by the lone shooter. I voluntarily provided Det. Giorgio with ten (10) handwritten exemplars for comparison purposes. Det. Giorgio claimed he gave his copy and my exemplars to Det. Breslin (Document examiner). He also claimed he vouchered these documents. These documents were entered into evidence. It should be noted, Det. Breslin stated



he received the original floral delivery note the day after the shooting's, July 18th of 1990 (T: [Giorgio]: 580-596, 600, 676-680, 742, [Breslin]: 1327; Ex. "1" pp. 70-71; Ex. "8" p. 17 ¶49; Attached hereto and marked as Exhibit "23" [Det. Giorgio's copy & my exemplars])).

### Handwriting Analysis

80. Primarily, Det. Breslin explained the significance and function of a stereo microscope (T: [Breslin]: 1195):

Q. Okay. Now let me ask you: A stereo microscope, could you explain to us what a stereo microscope is?

A. A stereo microscope allows you to see depth. It gives you the extra. Where under a microscope you can only see length and width, this gives you a 3-D effect, if you will, where you can see depth in a particular writing or typewriting or original writing. Allows you to see depth in a particular thing.

81. Det. Breslin compared my exemplars against the alleged floral delivery note, and arrived at the conclusion they match one another. Thereby connecting me to the shooter. Using a stereo microscope he based his conclusion upon the strokes, pen stops, pen twist, the formation of the letters, size, relationship to one another, the speed of the writing (T: [Breslin]: 1197-1200; Ex.'s 20 & 23).

82. Det. Breslin prepared a Police Laboratory Analysis report, dated September 6th of 1990, and under the penalty of perjury stated my exemplars matched the floral delivery note (T: [Breslin]: 1329, 1442-1443; Ex. "1" p. 71; Attached hereto and marked as Exhibit "24" [9/6/90 P.D. report])).

83. Det. Breslin prepared an exhibit to further support his conclusion above. However, this exhibit was prepared from a file called "Mr. Franza's file", which was taken from my apartment during a search. Looking through a stereo microscope he based his identification on pen stops, pen twist, size, shape of letters, formation, pen movement, strokes, retracing, pressure changes, introductory ticks, hesitation points, starts, top strokes, slants, up strokes, down strokes, backward slants, pen ticks, introductory strokes (T: [Behan]: 875, [Breslin: 1200-1211]).

#### August 28th 1990 Incident

84. Nelson Dacosta denied receiving anything in the mail from a cemetery. However, not mentioned at trial, on August 28th of 1990, seventeen days after the pipe bomb was placed in front of Nelson Dacosta's door, Nelson Dacosta informed Det. Valdez that he received a card in the mail from a cemetery which referred to cemetery plots (T: [Dacosta]: 1626; Attached hereto and marked as Exhibit "25" [P.D. report cemetery plot]).

#### November 1989 Information Allegedly Given

85. In November of 1989, Mrs. Franza went to Puerto Rico for her Brother's funeral, Wilfred Dacosta, without me (broken leg). Prior to leaving she claimed to of given me her Grandmother's phone number, address 2629 Paseo Aguilla, Levittown, Catano, Puerto Rico, in case I needed to get a hold of her. Also giving me the phone number of her Aunt in Rio Piedras (T: [Mendez]: 280-281, [Franza]: 288, 334-337).

86. Mrs. Franza claimed, her Grandmother's name was Rosa

Lamboym Roman, because Roman was her Mother's maiden name, in spite of Miss Evelyn Lamboym being Mrs. Mendez's younger Sister (T: [Mendez]: 246, [Franza]: 310, [Lamboym]: 754, 757).

87. Miss Lamboym claimed her Mother's name was Rosa Lamboym Matos. Mrs. Mendez stated her Mother's name was Rosa Lamboym (T: [Mendez]: 244, [Lamboym]: 756).

88. Miss Lamboym claimed, she lived at 2629 Paseo Aguilla for 26 years, and that her Mother lived with her all of her life. Mrs. Mendez stated her Mother lived with her Sister at 1826 Paseo Aguilla (T: [Mendez]: 245-246, [Franza]: 335, [Lamboym]: 755-757).

89. Mrs. Franza claimed her Grandmother lived with Angeles Evelyn, Evelyn Norris, having two names. Mrs. Mendez claimed her Sister's name was Evelyn Norris Figueroa, Figueroa being her last name. Miss Lamboym stated her name is Evelyn Norris-Figueroa Lamboym (T: [Mendez]: 245-246, [Franza]: 335, [Lamboym]: 757).

90. Mrs. Mendez claimed she told Mrs. Franza, for the first time, that her Mother never married her father in the presence of A.D.A. Brancato (T: [Mendez]: 244-245, [Lamboym]: 756).

**February 4th 1991 Incident**  
**Documents In Connection**

91. On February 4th of 1991, seven months after the shooting incident, Cezar Rodriguez, testifying for the defense, while working for Federal Express at 600 West 116 street, accepted a package for shipment from a dark skinned 5'6" male having a Hispanic accent. Mr. Rodriguez did not pick me out in a line up at the Pct.. Nor did he pick me out at trial (T: [Giorgio]: 619,

688-689, [Behan]: 942, [Rodriguez]; 1717-1720).

92. Mr. Rodriguez was shown and recognized the Federal Express Airways Bill used for the shipment. He stated the package had the wrong weight which he corrected. The man wanting to pay cash, telling him cash was not accepted, only credit cards, checks or money orders. He gave the man directions to a store where a money order could be purchased, and that the man came back with the money order 2½ hours later. He recognized the handwritten Airways Bill number on the money order as his writing. He also stated, the signature "Julio Ortiz" was already on the Federal Express Airways Bill when the man presented the money order to him. As well, he stated the money order was already filled out when the man came in. It should be noted, at the grand jury Mr. Rodriguez stated the man filled out the money order in his presence, the Court precluding impeachment (T: [Colloquy]: 1499-1524, 1528-1546, [Rodriguez]: 1525-1528, 1716-1725).

93. A.T.F. Special Agent Chris Behan stated, the signature "Julio Ortiz" appeared on the Federal Express Airways Bill, and that the package was addressed to the Roman Family. Both the Federal Express Airways Bill and the American Express money order were entered into evidence through Special Agent Behan. As well, Special Agent Behan stated, the sender of the package was U.S.A. Electronics, and that pursuant to a search of my apartment a business card was found in my apartment from U.S.A. Electronics. This card was entered into evidence. It should be noted, Mrs. Franza stated, we brought VCR's to get fixed at

U.S.A. Electronics, this much is true (T: [Franza]: 338-339, [Behan]: 840-841, 846-847, 856-858, 862-863, 884-886, 890-891; Ex. "1" pp. 78, 98; Ex. "8" p. 36 ¶118; Attached hereto and marked as Exhibit "26" [Federal Express Airways Bill]; Attached hereto and marked as Exhibit "27" [American Express money order])).

94. Thomas Sullivan, senior manager for the security department of the Eastern Region for Federal Express, who gave the Federal Express Airways Bill to Special Agent Behan, was shown and recognized the document presented to him as a package tracking inquiry. He was also shown the Federal Express Airways Bill and claimed the package tracking inquiry was for the Federal Express Airways Bill shown. That the employee who tendered the package was Mr. Rodriguez. He also was shown the American Express money order, and claimed the money order had the Airways Bill number on it, which an employee is suppose to do. He further claimed, the customer was U.S.A. Electronics. He also claimed that, Airway Bills are mailed to their offices and each Airways Bill being serialized in sequences of elevens (11) one after the other. That Airbills before and after the Airways Bill shown were mailed from One Fordam Plaza in the Bronx. However, he did not check other numbers to see where they were mailed from (T: [Behan]: 857, [Sullivan]: 1104-1126).

95. A.D.A. Brancato tried to establish through Miss Gonzalez that, One Fordam Plaza was only a couple of miles from where I lived. Thereby, attempting to infer I acquired the Airways Bill (T: [Gonzalez]: 1593-1598).

already made on me. Lastly that all of her Family will be killed in Puerto Rico. This individual claimed to have lots of money and that they could not hide. This letter and envelope were picked up by Det.'s Giorgio and Ortiz from Mrs. Mendez. Such letter and envelope were entered into evidence (T: [Mendez]: 237-244, [Court Interpreter]: 510-511, [Giorgio]: 607-613, 667, 729, [Colloquy]: 690-713, 1628-1648; Ex. "1" p. 102; Ex. "8" p. 34 ¶114; Attached hereto and marked as Exhibit "29" [Letter & Envelope])).

101. The other letter was addressed to Nelson Dacosta. This letter threatened to kill his Family here and in Puerto Rico, if he did not return what he took with his friends. Knowing where his Family lives in Puerto Rico. That his friends returned some of his things. Further mentioning that a gift was sent to his Grandmother, and for him to suffer. This letter and envelope were picked up by Det.'s Giorgio and Ortiz from Mrs. Mendez. Such letter and envelope were entered into evidence (T: [Mendez]: 237-244, 274-277, [Court Interpreter]: 510-512, [Giorgio]: 607-613, 667-668, 729; Ex. "1" p. 102; Ex. "8" p. 34 ¶115; Attached hereto and marked as Exhibit "30" [Letter & Envelope / Voucher for both letters & Envelopes])).

102. Each letter had two (2) .03¢ stamps and one (1) .25¢ stamp. Mrs. Franza claimed she brought .03¢ stamps having a bald man with glasses on them. During a search of my apartment .03¢ stamps were found, and given to Det. Breslin. These stamps were entered into evidence (T: [Franza]: 375-376, [Behan]: 846-848, 855-856; Ex. "1" p. 103; Ex. "8" p. 52 ¶174; Attached hereto and

already made on me. Lastly that all of her Family will be killed in Puerto Rico. This individual claimed to have lots of money and that they could not hide. This letter and envelope were picked up by Det.'s Giorgio and Ortiz from Mrs. Mendez. Such letter and envelope were entered into evidence (T: [Mendez]: 237-244, [Court Interpreter]: 510-511, [Giorgio]: 607-613, 667, 729, [Colloquy]: 690-713, 1628-1648; Ex. "1" p. 102; Ex. "8" p. 34 ¶114; Attached hereto and marked as Exhibit "29" [Letter & Envelope])).

101. The other letter was addressed to Nelson Dacosta. This letter threatened to kill his Family here and in Puerto Rico, if he did not return what he took with his friends. Knowing where his Family lives in Puerto Rico. That his friends returned some of his things. Further mentioning that a gift was sent to his Grandmother, and for him to suffer. This letter and envelope were picked up by Det.'s Giorgio and Ortiz from Mrs. Mendez. Such letter and envelope were entered into evidence (T: [Mendez]: 237-244, 274-277, [Court Interpreter]: 510-512, [Giorgio]: 607-613, 667-668, 729; Ex. "1" p. 102; Ex. "8" p. 34 ¶115; Attached hereto and marked as Exhibit "30" [Letter & Envelope])).

102. Each letter had two (2) .03¢ stamps and one (1) .25¢ stamp. Mrs. Franza claimed she brought .03¢ stamps having a bald man with glasses on them. During a search of my apartment .03¢ stamps were found, and given to Det. Breslin. These stamps were entered into evidence (T: [Franza]: 375-376, [Behan]: 846-848, 855-856; Ex. "1" p. 103; Ex. "8" p. 52 ¶174; Attached hereto and

marked as Exhibit "31" [Stamps]).

103. A.D.A. Brancato stated:

Our theory is by sending the letter threatening to send something to the grandmother in Puerto Rico, that something being sent to the grandmother in Puerto Rico and proving that it came from the defendant in this case that we can prove that the defendant is the one who caused this bomb to be sent to the grandmother in Puerto Rico (T: [Brancato]: 701).

Our theory is the defendant is the cause of this letter going to Josephine Mendez' house and that in light of the evidence that I told you before, this forms part of the crime and the People's evidence of that crime (T: [Brancato]: 704).

#### **February 8th of 1991 Incident**

104. On February 8th of 1991, Miss Lamboy received the package from her neighbor. Opening the package containing a black case, she opened the black case and inch or two, she saw a wide pipe with cables inside. The Police were called and the device was disarmed (T: [Lamboy]: 763-767, [Garcia]: 1063-1102).

105. Miss Lamboy was shown a photo of a black case. She claimed the photo fairly and accurately depicted the black case sent. The photo was entered into evidence (T: [Lamboy]: 767).

106. Mrs. Franza looked at the photo above and claimed, the suit case looked familiar. Looking like the one in the pantry of our apartment. This testimony was elicited contrary to the court's ruling, and was completely leading in nature (T: [Franza]: 331-333, 344-352).



### February 10th Of 1991 Incident

107. On February 10th of 1991, Mrs. Mendez and Mrs. Franza informed Det. Giorgio that, a pipe bomb was sent to Puerto Rico. They gave him the names of two people, Angeles and Elba, who he could contact in Puerto Rico for information. He was given the telephone number of Mrs. Franza's Aunt in Rio Predrias, 809-765-4792, but could not recall if the number went to Angeles or Elba (T: [Giorgio]: 619-624, 732-733).

### February 11th Of 1991 Incident

108. In spite of the handwriting report in September of 1990 (¶82 herein), claiming my handwriting matched the handwriting on the floral delivery note, I was not arrested until February 11th of 1991. As previously mentioned, I was placed in a line up viewed by Mr. Rodriguez who did not identify me as the person he received the package from (¶91 herein). Det. Giorgio claimed he found a piece of paper having four (4) telephone numbers and names on me. The numbers and names for Puerto Rico being Levittown 809-784-1630 and Rio Predrias 809-765-4792. He stated he gave this piece of paper to Special Agent Behan (T: [Giorgio]: 619-620, 623-624, 688-689, 734-735).

109. Special Agent Behan stated he was at the 34th Pct. on February 11th of 1991, and that he received a piece of paper from Det. Giorgio, with numbers and names for Puerto Rico. This piece of paper was entered into evidence. He also stated, February 11th of 1991 was the date he first learned of the pipe bomb being sent to Puerto Rico. He also claimed he saw me at the Pct, and was present at my line up. As well, speaking to Mr.

C. Lund]: 1148-1186, [A.T.F. Firearms & Tool Mark Examiner Carlos J. Rosato]: 1651-1690; Ex. "1" p. 59; Ex. "8" P. 22 ¶68; Attached hereto and marked as Exhibit "32" [1st search warrant & affidavit]; Attached hereto and marked as Exhibit "33" [2nd search warrant & affidavit]).

111. In fact, Czarnopys stated, there was a whole lot of stuff that did not relate to anything (T: [Czarnopys]: 987).

112. It should be noted, I was a member of a gun club, and lawfully reloaded my own ammo for use at the range. The two different types of gunpowder used in the pipe bombs did not match the gunpowder found in my apartment (T: [Franza]: 328-331, 334, 352-353, 376, [Bourges]: 423, 432-433, [Giorgio]: 657-658, [Raymond]: 811-812, 815-816, [Behan]: 865, 894-895, 921-924, [Czarnopys]: 958-966, [Gonzalez]: 1588-1590).

113. A handwritten book list was claimed to have been found in my apartment. This list contained topics on gunsmithing, silencers, special weapons, and various topics on explosives, including WWI and WWII. None of the books were found in my apartment. Nor, were there any testimonies revealing the pipe bomb designs came from any of the books on the list. The only book found was a book on silencers, which was never claimed to have been in the list. This list was entered into evidence (T: [Behan]: 850-855, 921-923, [Lund]: 1155-1160; Ex. "8" p. 58 ¶192; Attached hereto and marked as Exhibit "34" [List]).

114. It should be noted as well, Special Agent Behan did not even seek out any of the books on the list. He never made an effort to inquire if I purchased or owned any of the books in

C. Lund]: 1148-1186, [A.T.F. Firearms & Tool Mark Examiner Carlos J. Rosato]: 1651-1690; Ex. "1" p. 59; Ex. "8" p. 22 ¶68; Attached hereto and marked as Exhibit "32" [1st search warrant & affidavit]; Attached hereto and marked as Exhibit "33" [2nd search warrant & Affidavit]).

**111.** In fact, Czarnopys stated, there was a whole lot of stuff that did not relate to anything (T: [Czarnopys]: 987).

**112.** It should be noted, I was a member of a gun club, and lawfully reloaded my own ammunition for use at the range. The two different types of gunpowder used in the pipe bombs did not match the gunpowder found in my apartment (T: [Franza]: 328-331, 334, 352-353, 376, [Bourges]: 423, 432-433, [Giorgio]: 657-658, [Raymond]: 811-812, 815-816, [Behan]: 865, 894-895, 921-924, [Czarnopys]: 958-966, [Gonzalez]: 1588-1590).

**113.** As for the list claimed to have been found in my apartment, this list contained topics on gunsmithing, silencers, special weapons, and various topics on explosives, including WWI and WWII. None of the books were found in my apartment. Nor, were there any testimonies revealing the pipe bomb designs came from any of the books on the list. The only book found was a book on silencers, which was never claimed to have been in the list. This list was entered into evidence (T: [Behan]: 850-855, 921-923, [Lund]: 1155-1160; Ex. "8" p. 58 ¶192; Attached hereto and marked as Exhibit "34" [List]).

**114.** It should be noted as well, Special Agent Behan did not even seek out any of the books on the list. He never made an effort to inquire if I purchased or owned any of the books in

the list. No investigation at all. It was established through Agent Lund that, the books in the list were available to the general public (T: [Behan]: 1696-1697, 1699-1702, [Lund]: 1172-1174).

115. As for the firecrackers found in my apartment, it was claimed the firecrackers were similar to the one used in the pipe bomb placed at Nelson Dacosta's door (¶78 herein). Agent Czarnopys did not investigate where the firecrackers were manufactured or sold. These firecrackers were entered into evidence (T: [Behan]: 875-876, 879-941, [Sadowy]: 1040, [Czarnopys]: 982-984, 994-995).

116. Note, there were no testimonies revealing that, these firecrackers were sold in limited quantities or that they were not sold in New York, thereby making them exclusive.

#### Handwriting Analysis

##### Federal Express Airways Bill

117. Det. Breslin, having over one hundred pages of handwritten documents from the searches, could not connect my handwriting to the Federal Express Airways Bill or to the American Express money order (T: [Breslin]: 1330-1337, 1340-1350; Ex. "1" p. 96; Ex. "8" p. 37 ¶124; Attached hereto and marked as Exhibit "35" [Det. Breslins October 28th, 1991 report]).

##### November 6th 1991 Handwriting Exemplars

118. On November 6th of 1991, I gave Det. Giorgio handwriting exemplars to have compared against the handwriting on the Federal Express Airways Bill, American Express money order, and

the handwriting on the envelopes containing the threatening letters. Such exemplars were entered into evidence (T: [Giorgio]: 615-619, [Breslin]: 1415-1419; Ex. "1" p. 98; Ex. "8" p. 37 ¶121; Attached hereto and marked as Exhibit "36" [Exemplars]).

### Handwriting Analysis

#### Federal Express Airways Bill

119. Det. Breslin compared my exemplars against the handwritten name "Julio Ortiz" on the Federal Express Airways Bill, and arrived at the conclusion my handwriting matched the signature "Julio Ortiz". Thereby connecting me to the shipment of the pipe bomb. Using a stereo microscope he based his conclusion upon retraces, introductory strokes, connecting strokes, pen twist, pen stops, and downward motions. He also prepared an exhibit to further support his conclusion, which was entered into evidence (T: [Breslin]: 1212-1226).

#### American Express Money Order

120. Det. Breslin also compared my exemplars against the handwriting on the American Express money order, and arrived at the conclusion they match. Thereby connecting me to the shipment of the pipe bomb. Using a stereo microscope he based his conclusion upon, introductory strokes, introductory ticks, retracing, ending strokes, drag strokes, ending ticks, and terminal strokes. He also prepared an exhibit to further support his conclusion, which was entered into evidence (T: [Breslin]: 1226-1236, 1416-1417).

### Notice

121. It should be noted, a review of Det. Breslin's December 13th, 1991 report reveals, he reached the conclusion that my handwriting matched the handwritten name "Julio Ortiz" on the Federal Express Airways Bill, and the handwriting on the American Express money order, using a host of documents (T: [Breslin]: 1307-1309, 1328-1330, 1333-1334, 1340-1341, 1346-1348, 1350-1355, 1420-1421, 1441, 1448-1455; Ex. "1" p. 96; Ex. "8" p. 37 ¶124; Ex. "34"; Attached hereto and marked as Exhibit "37" [Det. Breslin's December 13th, 1991 report]).

### Envelopes

122. Det. Breslin compared my exemplars against the handwriting on the envelopes containing the threatening letters. With the use of an enlargement he concluded there were only strong similarities. That there were over writings which prevented an identification. Also, not being able to make a connection between the two envelopes as being written by the same person. The demonstrative exhibit was entered into evidence (T: [Giorgio]: 615-616, [Breslin]: 1263-1266, 1303-1306, 1428-1429, 1444-1446, 1451-1455).

### Stamps

123. Det. Breslin compared the .03¢ stamps allegedly found in my apartment against the .03¢ stamps on the envelopes containing the threatening letters, and arrived at the conclusion they match. Looking through a stereo microscope he based his identification on the fiber connections. He claimed, in spite of a connection, a stamp is out of alignment, being higher, but still matching nonetheless. That he moved the stamps off center

as people's eyes tend to match them or fill the gap. That people can make their own alignment. He also prepared an exhibit to further support his conclusion, which was entered into evidence (T: [Behan]: 855-856, [Breslin]: 1264-1303, 1427, 1429-1440, 1463-1470; Ex. "31").

### Indented Writing

124. Det. Breslin explained the operation and function of E.S.D.A. (Electro Static Detention Apparatus). The process being used to raised indented writing (T: [Breslin]: 1195-1106, 1237-1241).

125. It should be noted, a piece of paper was claimed to have been recovered from my apartment, which was entered into evidence. Det. Breslin claimed, he was in A.D.A. Brancato's office and noticed indented writing on the piece of paper when Sunlight hit the paper. He raised the word "Julio Ortiz" and a number off the paper. As well, he raised pedigree information pertaining to Nelson Dacosta. He also stated, he believes he saw the word shoot. However, he could not tell how many pages were in-between the original writing and the indented writing (T: [Behan]: 843, 846-850, 859-861, [Breslin]: 1237-1250, 1256-1263, 1424-1426).

126. It should be further noted, this number went to my friend named "Julio Ortiz", who I met on the street. An investigation was conducted on him. He testified on my behalf (T: [Franza]: 335, 337, [Ortiz]: 1733-1743).

### Summation

127. A.D.A. Brancato, commented on defense counsel's closing

called my apartment on July 17th of 1990 (day of shooting), leaving a message for Mrs. Franza on the answering machine, apprising something happened at her Mother's apartment and to immediately come over, not knowing Mrs. Franza was one of the victims; that Mr. Francis stated I told him on July 17th of 1990, after 7:00 p.m. (Shooting at 7:15 p.m.) I received a message on my answering machine, and that I said Mrs. Franza was shot. Mrs. Francis stating I said something happened to Mrs. Franza. A.D.A. Brancato made it appear I had knowledge I was not suppose to have known at the time, thereby incriminating me (T: [Brancato]: 1867-1873).

131. All the above in spite of the fact, when Mr. Francis stated I said Mrs. Franza was shot, it was claimed I left in my car a Red Mustang parked behind Mr. Francis's car and that they did not see my friend Tracy Jenkins, which proved what Mr. & Mrs. Francis stated was completely wrong. This is so as I arrived at the shooting scene in a black car with New Jersey plates, with a black male later identified as Tracy Jenkins, and that I was the passenger in the vehicle. As well for the fact, Det. Ortiz and Bourges saw me get into my car in a garage area, which I rented, and drive off when they took me home. Mrs. Francis upon further questioning stated she believed she got the information on what happened the next day. It should be noted, Mr. & Mrs. Francis were visited for the first time by Det.'s Giorgio and Ortiz seven months after the shooting's. It is beyond question A.D.A. Brancato made an intentional misrepresentation before the jury (T: [Theis]: 111-113, 118-



called my apartment on July 17th of 1990 (day of shooting), leaving a message for Mrs. Franza on the answering machine, apprising something happened at her Mother's apartment and to immediately come over, not knowing Mrs. Franza was one of the victims; that Mr. Francis stated I told him on July 17th of 1990, after 7:00 p.m. (Shooting at 7:15 p.m.), I received a message on my answering machine, and that I said Mrs. Franza was shot. Mrs. Francis stating I said something happened to Mrs. Franza. A.D.A. Brancato made it appear I had knowledge I was not suppose to have known at the time, thereby incriminating me (T: [Brancato]: 1867-1873).

131. All the above in spite of the fact, when Mr. Francis stated I said Mrs. Myra Franza was shot, it was claimed I left in my car a Red Mustang parked behind Mr. Francis's car, and that they did not see my friend Tracy Jenkins, which proved what Mr. & Mrs. Francis stated was completely wrong. This is so as I arrived at the shooting scene in a black car with New Jersey plates, with a black male later identified as Tracey Jenkins, and that I was the passenger in the vehicle. As well for the fact, Det.'s Ortiz and Bourges saw me get into my car in a garage area which I rented, and drive off, when they took me home. Mrs. Francis upon futher questioning stated she believes she got the information on what happened the next day. It should be noted, Mr. & Mrs. Francis were visited for the first time by Det.'s Giorgio and Ortiz seven months after the shooting's. It is beyond question A.D.A. Brancato made an intentional misrepresentation before the jury (T: [Theis]: 111-113, 118-

124, [Ferreira]: 131-132, 134-137, [Aponte]: 151-153, [Bourges]: 420-434, [Mrs. Francis]: 439-453, 455-457, [Mr. Francis]: 459-476, [Giorgio]: 580, 632-633, 654-655).

### Court's Charge

132. In light of the testimonies and evidence presented, the court told the jury there was no direct evidence of any type in my case connecting me (T: [Court]: 1917-1918).

133. As well, the court charged the jury as follows:

As the sole and exclusive judges of the facts, it is your sworn duty to decide the guilt or non-guilt of this defendant solely on the evidence admitted during the trial and to pass judgment upon the evidence in the determination of all the issues (T: [Court]: 1909).

You must not, under any circumstances, indulge in speculation or guess work, nor are you to consider anything outside of the evidence. In other words, ladies and gentlemen, don't try to be detectives and don't try to conjecture what you would do or what should have been done or what might have been done or what could have been done. It is your own recollection, understanding and evaluation of the facts presented by the evidence at this trial, that's what controls and that's regardless of what counsel on either side may have said with respect to the facts. And that, of course, that would be regardless of anything I said with respect to the facts. And again, not that I intend to (T: [Court]: 1909-1910).

Under our system, trials are conducted by taking the testimony of witnesses who are examined under oath directly by the side that calls them and the adverse party has the right to cross examine the witness. The sworn testimony elicited on both direct and cross examination, plus whatever exhibits the Court permitted to be received and marked in evidence is all the evidence that there is in this case. And it is only on this evidence that you

are to make the final determination of the facts (T: [Court]: 1911-1912).

Questions by themselves are not evidence. It is the answers given to the questions that constitutes evidence (T: [Court]: 1916).

134. The court further charged the jury on how to access the testimonies. While the testimonies were contradictory, such contradictions were reconciled against me in light of the court's charge, evidenced by the verdicts of guilty (§'s 40-41, 44-45, 52-53, 59-64, 66, 68-71, 84, 86-90, 92-93, 97, 123 herein)(T: [Court]: 1913-1917, [Verdicts]: 1994-2001).<sup>2</sup>

### Deliberations

135. Out of all the evidence presented, during deliberations the jury's sole testimonial read back request requested Det. Breslin's initial analysis concluding my handwriting matched the handwriting on the floral delivery note (§81 herein). The jury wanted Det. Breslin's report with respect to the initial finding (§82 herein), and was told it was not entered into evidence. In conjunction with the read back the jury was given an exhibit using the file "Mr. Franza's file," which had nothing to do with the initial finding (§83 herein)(T: [Jury Request]: 1966-1974, 1989-2001).

136. It is beyond question, by the jury asking for a reading of Det. Breslin's testimony, the jury showed they were attentive and remembered the case well enough to know which part of Det. Breslin's testimony would be relevant to an implied question. The focused question was whether I was involved in the shooting  
2- "Jurors are presumed to follow legal instructions they are given." People v. Baker, 14 N.Y.3d 266, 274 (2010).

141. Previously mentioned as well, Det. Osbourn claimed he only recovered two (2) bullets, a floral box with a red ribbon, and a floral delivery note (which I was claimed to have written), as reflected in the alleged crime scene photos he took. Giving the items recovered to P.O. Alexander to voucher, which P.O. Alexander claimed she did. Such items being mentioned in his forensic report and handwritten notes (¶'s 66-68 herein)(Ex. "21").

142. Previously mentioned as well, P.O. Alexander, P.O. Aponte, Det. Ortiz, and Det. Giorgio, claimed to have seen the floral box and floral note (¶'s 66, 68-71 herein).

143. Previously mentioned as well, Mrs. Mendez, Mrs. Franza, Det. Osbourn, P.O. Alexander, and P.O. Aponte claimed the crime scene photos shown fairly and accurately depicted the apartment the day of the shooting's. Outlining the evidence recovered and what transpired (¶'s 70-74)(Ex. "21").

144. Below it is revealed all the testimonies above, being false, went uncorrected by A.D.A.'s Brancato & Sheindlin.

145. Mrs. Mendez's Certified Medical records proved, she sustained in excess of five (5) gunshot wounds, and that all of her gunshot wounds were through and through. This is blatantly revealed without the need of an expert to say so, as a simple counting of the gunshot wounds, mentioned as .5cm and 1cm, to different parts of her body proves such (Ex. "1" pp. 48-50; Ex. "8" p. 19 ¶58; Attached hereto and marked as Exhibit "38" [Certification and Delegation of Authority]; Attached hereto and marked as Exhibit "39" [Gunshot wounds]; Attached hereto and marked as Exhibit "40" [Through & Through]).

146. Mrs. Franza's Certified Medical records proved, she sustained one (1) gunshot wound from a .22 caliber weapon, and that the gunshot wound was through and through. Once again, this is blatantly revealed without the need of an expert (Ex. "1" pp. 49-50; Ex. "8" p. 19 ¶59; Attached hereto and marked as Exhibit "41" [Certification and Delegation of Authority]; Attached hereto and marked as Exhibit "42: [Gunshot wound]; Attached hereto and marked as Exhibit "43" [Through & Through])).

147. It is conclusive, the Certified Medical records prove the testimonies mentioned in ¶'s 140-143 herein were false, and went uncorrected by A.D.A.'s Brancato and Sheindlin, thereby denying me of a fair trial.

148. Most definitely, the crime scene testimonies were false, as the Certified Medical records conclusively prove it was a physical impossibility for Det. Osbourn to have only recovered two (2) bullets at the scene. Clearly, it was a physical impossibility, as well, for Det. Osbourn to have recovered a floral box with a red ribbon, and floral delivery note at the shooting scene which I was claimed to have written. Nowhere are there any numerous bullets seen in the crime scene photos as there should have been, as all the gunshot wounds were through and through, a physical impossibility. Nor, is there any ballistic damage or blood splatter from an exit wound shown anywhere in the apartment, another physical impossibility. Not even one bathroom tile is cracked from any bullet impact, another physical impossibility. After all, Mrs. Mendez was claimed to have been standing in front of the bathroom door

while being shot, which means the bullets went through her and through the bathroom door into the bathroom (Ex. "'21"). Clearly, the crime scene was redone. Once again, A.D.A.'s Brancato and Sheindlin did not correct the false testimonies, thereby denying me of a fair trial.

149. Most important of all, A.D.A.'s Brancato and Sheindlin did not correct Det. Breslin's false testimony claiming my handwriting matched the handwriting on the alleged floral delivery note, which was a physical impossibility in light of the conclusive Certified Medical records proving the non-existence of the floral delivery note at the shooting scene, thereby denying me of a fair trial (§'s 81-82 herein).

150. Clearly, had Det. Breslin's false testimony been corrected by A.D.A.'s Brancato and Sheindlin I would have been acquitted, as the corrected testimony would have proven I had nothing to do with the shooting incident, thereby further placing Det. Breslin's credibility, with respect to his other conclusions, in serious question. Instead, A.D.A.'s Brancato and Sheindlin kept quiet and allowed the jury to receive Det. Breslin's uncorrected read back testimony concluding my handwriting matched the handwriting on a non-existent floral delivery note, thereby depriving me of a fair trial (§'s 119-120, 122-125, 135-137 herein).

151. The above misconduct alone should suffice for the granting of a new trial. Clearly, A.D.A.'s Brancato and Sheindlin are not entitled to my conviction.

152. With respect to Mrs., Mendez's conclusive Medical

while being shot, which means the bullets went through her and through the bathroom door into the bathroom (Ex "21"). Clearly the crime scene was redone. Once again, A.D.A.'s Brancato and Sheindlin did not correct the testimonies, thereby denying me of a fair trial.

149. Most important of all, A.D.A.'s Brancato and Sheindlin did not correct Det. Breslin's false testimony claiming my handwriting matched the handwriting on the alleged floral delivery note, which was a physical impossibility in light of the conclusive Certified Medical records proving the non-existence of the floral delivery note at the shooting scene, thereby denying me of a fair trial (§'s 81-82 herein).

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151. The above misconduct alone should suffice for the granting of a new trial. Clearly, A.D.A.'s Brancato and Sheindlin are not entitled to my conviction.

152. With respect to Mrs. Mendez's conclusive Medical

records, it should be noted, Mrs. Mendez's Medical records prove the two (2) different wound sizes, 1cm & .05cm, came from two (2) different weapons. Mrs. Theis heard three (3) to four (4) very loud bangs like a sledge hammer hitting furniture. Mr. Benitez heard three (3) loud bangs like an aluminum bat hitting metal (T: [Theis]: 103-104, [Benitez]: 79, 86, 92-94). What they heard was clearly the large caliber weapon discharging. It is clear, for them not to have heard the small caliber weapon discharging proves this gun was a semi-automatic weapon, with a silencer. After all, there were numerous discharges and no one heard them.

153. Under the circumstances above, where are the shell casings in the crime scene photos. After all, Mrs. Mendez stated the shooter left after the shooting's (Ex. "21")(T: [Mendez]: 228).

#### Further Misconduct

154. Previously mentioned, Mrs. Mendez stated she was shot at a distance. Further, stating she was in the trauma center for seventeen days, in bad shape. And, that her left hand is not used anymore, as she can't hold anything. Mrs. Franza stating that, her Mother was being brought back to life by nine (9) Doctors at the Hospital. These claimed testimonies were all false that went uncorrected (¶'s 54, 75-77 herein)

155. Mrs. Mendez's conclusive Certified Medical records prove, she was fully awake, responsive, and having 98% survival rate upon arrival at the Hospital as her Trauma Score revealed (Ex. "1" p. 65; Ex. "8" p. 21 ¶64 herein; Attached hereto and



marked as Exhibit "44" [Trauma score & record page]).

156. As well, Mrs. Mendez's conclusive Medical records prove, during her stay she was combative and agitated. Threatening to kill herself and choke herself if she was not allowed to call her Husband, and if anybody came next to her. That she was pulling out her I.V. lines, resulting in her being placed in two point restraints. Lastly, that she has no problems with her hands, no gross motor or sensory problems (Ex. "1" pp. 55-56; Ex. "8" p. 21 ¶64 herein; Attached hereto and marked as Exhibit "45" [Medical record pages]).

157. As well, Mrs. Mendez's Medical records prove, she was not shot at a distance, as her conclusive Medical records prove she had carbon particles on her left hand (Ex. "1" p. 60; Ex. "8" p. 21 ¶65 herein; Attached hereto and marked as Exhibit "46" [Medical record page]).

158. Once again, A.D.A.'s Brancato and Sheindlin did not correct the false testimonies, thereby denying me of a fair trial.

#### Further Misconduct

159. Previously mentioned, Mrs. Mendez and Mrs. Franza claimed, they were shot at the rear of the apartment, by one man. Once again, these claims were false that went uncorrected (¶'s 54-55 herein).

160. An NYPD Catch Unit report, dated two (2) months after the shooting's, conclusively proves Mrs. Mendez gave two (2) separate descriptions for the perpetrators of the shooting incident, M/H/25-30 yrs. 5'6"-5'7" / M/W/35-40 yrs. 5'9". Mrs.

Mendez stated the man from the day before the shooting (§50 herein) was short, husky and dark skinned with a canvas bag. Mr. Benitez stated, the shorter man he saw the day of the shooting was a dark Hispanic clutching a canvas bag (§56 herein). Clearly, this report proves Mrs. Mendez and Mrs. Franza lied about a lone floral delivery man shooting them. It was the same two men, claiming to be Police, who appeared at Mrs. Mendez's apartment looking for her Son Nelson Dacosta the day before the shooting's, the canvas bag is the tell-tale sign. This is a blaring fact, as Mrs. Debbie Dacosta made a Police report, and reported Mrs. Mendez told her the two (2) men from the day before the shooting, at 7:30 p.m., stated they would be back, further that one of the males had a knapsack on his back. They sure did come back around the same time the next day (§'s 50, 52, 54 herein)(Ex. "1" pp. 57, 72; Ex. "8" p. 23 §72 herein; Attached hereto and marked as Exhibit "47" [Catch Unit report]; Attached hereto and marked as Exhibit "48" [Debbie Dacosta P.D. report])).

**161.** It should be noted, Mrs. Mendez stated the shorter male was clean shaven from the day before, Mr. Benitez stated the shorter male had a mustache (§'s 50, 56 herein). It is obvious Mrs. Mendez lied in an attempt not to place this man at the shooting scene. After all, she lied about the shooting scenario, as well Mrs. Franza (§'s 51-55, 57-58 herein).

**162.** Further proof there were two men in the apartment is as follows.

**163.** NYPD reports, dated July 18th, 1990, August 16th & 28th

of 1990, and February 6th of 1991, reveal two (2) men were being sought in connection with the shooting's (Ex. "1" pp. 57-58; Ex. "8" p. 23 ¶71; Attached hereto and marked as Exhibit "49" [NYPD reports]).

164. Nelson Dacosta stated in the August 16th, 1990 report:

Decosta reco[u]nted that the day after the incident (7-17-90) two men came to his mother's apartment. He was not sure whether they were the same two from the day before. He said that they gained access by using the ruse of delivering flowers to his sister Myra. It was at this time that his mother Josephine and his sister, Myra, were both shot.

165. Further proof there were two (2) men in the apartment, and additionally proving Mrs. Mendez was shot when she opened the door at the front of the apartment, and that Mrs. Franza was at the rear of the apartment when the Police arrived, is as follows.

166. Mrs. Franza in her Crime Victim Board application, prepared two (2) months after the shooting's, stated:

Someone said flowers when mother opened the door they pushed her in and shot her 5 times (2 in the face) and when I came to the rescue I got shot in my face (Ex. "1" p. 58; Ex. "8" p. 22 ¶69; T: [Franza]: 378-380; Attached hereto and marked as Exhibit "50" [Crime Victim Board application]).

167. During my arraignment, 2/12/91, A.D.A. Alberto Lorenzo stated:

The mother-in-law opened the door and the delivery man started firing at both her and the defendant's wife, who his wife at the time was exiting a bathroom (Ex. "8" p. 23 ¶74; Attached hereto and marked as Exhibit "51" p. 3 [Arraignment transcript]).

168. A D.A. Data Sheet stated:

On 7/17/90 wife was staying with her mother when a "delivery man" came to door claiming he had flowers for defendant's wife. Mother-in-law opened door and delivery man started firing at her and defendant's wife, who was exiting bathroom (Ex. "1" pp. 58-59; Ex. "8" p. 23 ¶73; Attached hereto and marked as Exhibit "52" [D.A. Data sheet]).

169. A Puerto Rico P.D. report, dated February 13th of 1991 (SAIC-4-1-1-149), stated, when Mrs. Mendez opened the door she was shot. This information coming from Mrs. Mendez's Sister Miss Lamboy (Ex. "1" p. 60; Ex. "8" p. 22 ¶70; Attached hereto and marked as Exhibit "53" p. 4 ¶1 [P.R.P.D. report]).

170. An affidavit in support of a federal search warrant, with information provided by Det.'s Giorgio and Ortiz, stated:

On or about July 17, 1990 in the evening, a man carrying a dozen roses knocked on the door of the residence where Domenic Franza's wife and mother-in-law were living. Josephine Mendez, the mother, opened the door and the man shot her three times. The man then proceeded to the bathroom and shot Myra Mendez Franza once (Ex. "1" p. 59; Ex. "8" p. 22 ¶68; Ex. "32" pp. XM4U-XM5U & pre-trial page 55 [Search warrant and affidavit]).

171. An affidavit in support of a federal arrest warrant recited the same information above (Ex. "1" p. 59; Attached hereto and marked as Exhibit "54" p. 3 ¶3(b) [Arrest warrant & affidavit]).<sup>3</sup>

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3- As a result of the arrest warrant a detainer was lodged against me. On August 20th of 2002, the arrest warrant was dismissed without prejudice. The federal court's docket sheet, dated 5/8/08, reflects the warrant was never reinstated. As five years have passed the statute of limitations prohibits a federal prosecution (Attached hereto and marked as Exhibit "55" [Detainer]; Attached hereto and marked as Exhibit "56" [Certified dismissal]; Attached hereto and marked as Exhibit "57" [Certified docket sheet]).

172. A.D.A. Brancato in opening before the jury, stated Mrs. Franza was at the rear of the apartment when the Police arrived (Ex. "1" p. 126; Ex. "8" p. 24 ¶75; T: [Brancato]: 39-40).

173. There you have it, there were two men involved, and Mrs. Mendez was shot at the front of the apartment, not at the rear of the apartment as she claimed, and Mrs. Franza was shot at the rear of the apartment where she was found, not at the front of the apartment as claimed, consistent information. Clearly, the shooting scenario given was not true. The false uncorrected testimonies revolving around the shooting incident were definitely made to conform to the recreated crime scene, as viewed within the recreated crime scene photos (¶'s 52, 54-55, 57-59, 61-63, 65-77).

174. The above is further evidenced by the fact Mrs. Mendez and Mrs. Franza gave conflicting descriptions of the shooter (¶'s 51, 61 herein), which by the way did not match Mr. Benitez's observation of the two men he saw (¶56 herein). Simply, Mrs. Mendez and Mrs. Franza forgot their matching lines. In fact, the conflicting descriptions of the shooter were in conflict with a Mr. Lantigua's description of a floral delivery man seen by him the day of the shooting's. Mr. Lantigua on the day of the shooting, at 7:00 p.m., observed a Hispanic man, light skinned 20-25 yrs old, wearing a white shirt, white short's, and a white painter's cap. The man carrying a white flower box with a red ribbon walking into 485 West 187 street. He did not observe this male leaving the building. Once again, Mrs. Mendez and Mrs. Franza forgot their matching lines. This is

what happens when the truth is not being told (Attached hereto and marked as Exhibit "58" [Lantigua's P.D. report & handwritten statement])).

175. Clearly, these two (2) men must have seen the floral delivery man, seen by Mr. Lantigua, and decided to use this approach to gain entry into the apartment, and succeeded. Either, Mrs. Mendez fell for the ruse, or she decided to confront these men. Whatever the scenario the door was opened and she was pushed in and shot.

176. It is conclusive, the documents prove all the testimonies mentioned in ¶'s 51-52, 54-55, 57-59, 61, 63, 66-74, 159 herein were false, and went uncorrected by A.D.A.'s Brancato and Sheindlin, thereby denying me of a fair trial.

177. Once again, the above misconduct alone should suffice for the granting of a new trial. Clearly, A.D.A.'s Brancato and Sheindlin are not entitled to my conviction.

178. With respect to the documents proving Mrs. Mendez was shot at the front of the apartment, it should be noted, where is the massive ballistic damage at the front of the apartment, and where is the blood splatter as there should have been, as all of her numerous gunshot wounds were through and through according to her conclusive Certified Medical records. Where are the shell casings. Clearly the crime scene was recreated (¶'s 145 herein)(Ex. "21" photos 1-3).

179. With respect to the documents, as well, such explain why Mrs. Mendez's conclusive Certified Medical records reveal she had carbon particles on her left hand. Clearly, when she was

pushed into the apartment, by the two (2) men, she put her hand up in defense and was shot in the hand at extreme close range, not at a distance at the rear of the apartment as she claimed (¶'s 54, 157 herein).

180. Once again, A.D.A.'s Brancato and Sheindlin did not correct the false testimonies, thereby denying me of a fair trial.

#### Further Misconduct

181. Previously mentioned, Mrs. Mendez, Mrs. Franza, P.O. Aponte, P.O. Alexander, and Det. Osbourn claimed, the crime scene photos shown, taken by Det. Osbourn, accurately depicted the apartment the day of the shooting's. Such reflecting the two bullets, floral box with the red ribbon, and the floral delivery note. As well, reflecting where the alleged shooting took place at the rear of the apartment, and where Mrs. Franza was allegedly found at the front of the apartment. Once again, these claims were false that went uncorrected (¶'s 70, 72-74 herein).

182. While the above has clearly been proven to have gone uncorrected, I will now go into the physical impossibilities within the recreated crime scene photos, that are shocking.

183. The photos of the street outside of 485 West 187 Street reveal un-obstructed open sky above the seven story buildings. The Certified report from the U.S. Naval Observatory, prepared by the Chief Astronomer stated, Sunset on July 17th of 1990 (day of shooting's) was at 8:24 p.m.. The Weather analysis report, from Compu-Weather, stated on July 17th of 1990 there was still daylight outside at Sunset. This analysis was based upon a

review of the Certified reports from the following areas: N.Y. Central Park, LaGuardia Airport, and; Kennedy International Airport (Ex. "1" pp. 9-11; Ex. "8" pp. 24-25 ¶'s 78-80; Attached hereto and marked as Exhibit "59" [Photos of street]; Attached hereto and marked as Exhibit "60" [Certified Naval report]; Attached hereto and marked as Exhibit "61" [Com-Pu weather report]; Attached hereto and marked as Exhibit "62" [Certified Weather reports]).

184. Recreated crime scene photo 13 reveals a clock on the table. The blowup of the clock reveals the time to be 8:14, ten minutes before Sunset. Recreated crime scene photos 12, 9, 7, 4, which were taken earlier reveal it to be nighttime outside. A physical impossibility according to the Certified documents. It is conclusive the photos were not taken the day of the shooting's (Ex. "8" p. 25 ¶81; Ex. "21"; Attached hereto and marked as Exhibit "63" [Photo 13 blowup]).

185. Recreated crime scene photo 9 dispels any notion that the camera was not working properly. If you look real good at the window you can barely see a man in the street illuminated by the flash of the camera. A viewing of the blowup of photo 9 reveals the man, somewhat clearer. Since this camera barely picked up this man in the dark it most surely would have picked up any daylight outside, had there been any. After all film is light sensitive (Ex. "8" p. 26 ¶82; Attached hereto and marked as Exhibit "64" [Photo 9 blowup]).

186. Recreated crime scene photos 14, 11, 5, 3-1 (rear of apartment to the front of the apartment) reveal, the area where



Mrs. Franza would have had to of crawled across to get to the front of the apartment, as she stated she did (¶58 herein). As previously mentioned, Mr. Diaz claimed the woman he saw at the front of the apartment, who he could not identify, was full of blood (¶59 herein). P.O. Aponte and P.O. Alexander claimed they found Mrs. Franza at the front of the apartment bleeding from a facial wound, thereafter the paramedics arriving three (3) to five (5) minutes later (¶61 herein). Mrs. Franza stated, she could not stop the blood from coming out of her mouth, at the front of the apartment (¶61 herein). If all the above was true, then why is there hardly any blood on the carpet toward the front of the apartment. As well, why isn't there any massive amounts of blood shown at the front of the apartment. A physical impossibility according to the testimonies (Ex. "21").

187. Note, recreated crime scene photo 19 reveals, the wall at the front of the apartment where Mrs. Franza was claimed to have written on (¶'s 61, 63 herein). Notice the blood streaks and the pencil writing. Now, look at recreated crime scene photo 3, you can see the blood streaks but the pencil writing is gone (Ex. "21").

188. Further note, as previously mentioned, Mrs. Franza was claimed to have been bleeding profusely at the front of the apartment (¶61 herein), and P.O. Aponte claimed the blood on the wall, that Mrs. Franza was claimed to have written on, came from Mrs. Franza's hand (¶'s 61, 73 herein). If so, then why aren't there blood smears on Mrs. Franza's notes she was claimed to have written (¶61 herein). A physical impossibility according

to the testimonies. Had there been blood on these notes it would have copied black, as red is a dark color (Ex.'s "8" p. 14 ¶41, "19" & "21").

189. Recreated crime scene photos 11 & 14 reveal, the rear of the apartment where Mrs. Mendez falsely claimed she was shot. E.M.S. paramedics would of had to of stepped in the massive amount of blood on the floor in order to assist her. There are no footprints in the blood (Ex. "21").

190. Recreated crime scene photo 11 reveals, a lamp and table next to the wall having two (2) red dots stains. The blue blanket touching the left leg of the table, revealing the left leg is extremely close to the baseboard of the wall having the two (2) red dot stains. The first door to the left is a bedroom. Recreated crime scene photo 13 is such bedroom. You can see the wall having the two (2) red dot stains, and plenty of open space to the right. The lamp and table are gone (Ex. "21").

191. Recreated crime scene photo 15 reveals, on the tile floor to the right center of the rug there is a white object which is covering the tile grout line. Recreated crime scene photo 14 reveals, the white object is gone, the tile line being un-obstructed (Ex. "21").

192. Recreated crime scene photo 20 reveals, a bullet on the bathroom floor. Det. Breslin stated the bullet was in that position when he first noticed it (¶66 herein). Recreated crime scene photos 14 & 15, which were taken earlier as Det. Osbourn's false forensic report and false handwritten notes show, reveal the bullet is gone, and the rug being moved down covering the

area where the bullet was. A physical impossibility according to Det. Osbourn's own testimony (Ex. "21").

193. Recreated crime scene photo 4 reveals, a gold chair next to the wall unit with nothing on the back rest. Recreated crime scene photo 2 reveals, the back rest of the chair has a white object draped over it. A good look reveals this (Ex. "21").

194. Recreated crime scene photo 5 reveals, a black box under the table. Recreated crime scene photo 8 reveals, the black box is gone (Ex. "21").

195. Recreated crime scene photo 8 reveals, two (2) black objects and one (1) silver object on the table next to the lamp. Recreated crime scene photo 7 reveals, one (1) black object is gone, the closest one to the lamp (Ex. "21").

196. Recreated crime scene photo 4 reveals, the chair with the floral box with the note on top. The back rest of the chair having a blue object draped over it. The back rest butted tight front against the stereo cabinet, with the blue object covering the side of the stereo cabinet. Recreated crime scene photo 6 reveals, the chair was considerably moved back, as the side of the stereo cabinet can now be seen (Ex. "21").

197. Recreated crime scene photo 11 reveals, a white material object on the floor with a blood stain in the shape of an "S" or "5". Recreated crime scene photo 14 reveals, the shape is completely different (Ex. "21").

198. Recreated crime scene photos 1 & 3 reveal, the tops and bottoms of the frames are different from one another, for porcelain pictures in the same location. The blowups of the

crime scene photo 14, where Mrs. Mendez claimed she was shot, a lie. The Court recognized the claimed blood was wiped and smeared. Clearly, this was done to enhance the effect upon the jury (Ex. "21"; T: [Court]: 321).

202. It is evident, these recreated crime scene photos reveal numerous physical impossibilities which prove they were not taken the day of the shooting's. Clearly, the false uncorrected testimonies revolving around the shooting incident were definitely made to conform to the recreated crime scene photos, as viewed within the recreated crime scene photos containing these physical impossibilities within themselves. This is what happens when the truth is not being told, an undeniable fact evidenced by the recreated crime scene photos.

203. Thus, it is conclusively proven, A.D.A.'s Brancato and Sheindlin did not correct the material testimonies of their witnesses, and most assuredly further denied me of a fair trial.

204. Once again, the above misconduct alone should suffice for the granting of a new trial. Clearly, A.D.A.'s Brancato and Sheindlin are not entitled to my conviction.

#### Furthet Misconduct

205. As previously mentioned, Det. Osbourn claimed he gave the two (2) bullets, floral box with the red ribbon, and the floral note to P.O. Alexander to voucher. P.O. Alexander stated she walked into the property clerk's office to voucher the items. Once again, this claim was false that went uncorrected (¶'s 66, 68).

206. A viewing of the voucher for the floral box with the red

crime scene photo 14, where Mrs. Mendez claimed she was shot, a lie, the court recognized the claimed blood was wiped and smeared. Clearly this was done to enhance the effect upon the jury (Ex. "21"; T: [Court]: 321).

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206. A viewing of the voucher for the floral box with the red

ribbon and the floral delivery note reveals, the property clerk never signed for the items (Ex. "1" p. 71; Attached hereto and marked as Exhibit "67" [Voucher]).

207. Once again, A.D.A.'s Brancato and Sheindlin did not correct this false testimony, thereby further denying me of a fair trial.

208. It should be further noted, Det. Giorgio acknowledged the voucher shown was prepared by him. Such being for his copy of the floral delivery note, and my handwritten exemplars given on August 24th of 1990. A viewing of the voucher reveals the property clerk never received the items (§79 herein)(T: [Giorgio]: 581-582; Attached hereto and marked as Exhibit "68" [Voucher]).

209. I will now go onto the Puerto Rico incident.

#### Further Misconduct

210. As previously mentioned, Special Agent Behan stated, he was at the Pct. when I was arrested, and placed in a line up viewed by Mr. Rodriguez, and that he spoke to Mr. Cezar Rodriguez who related to him what he saw, heard, and did in relation to the shipment of the pipe bomb to Puerto Rico (§109 herein). As well, previously mentioned, Det. Breslin stated, my exemplars matched the name "Julio Ortiz" on the Federal Express Airways Bill (§119 herein). Once again, Det. Breslin's testimony was false that went uncorrected.

211. A handwritten Fax from Special Agent Behan (I am familiar with his writing), dated February 12th of 1991 (day after arrest), stated verbatim, "Package shipped by male who

signed Julio Ortiz on the shipping label" (Ex. "8" p. 42 ¶140; Attached hereto and marked as Exhibit "69" [Fax]).

212. An Investigative report prepared by Special Agent Behan, dated February 20th of 1990, stated verbatim, "The package had been sent from the federal express office on 116st, New York, N.Y. on 2/4/91, by an unknown male who signed the name "Julio Ortiz" to the airbill" (Ex. "8" p. 42 ¶141; Attached hereto and marked as Exhibit "70" [Report]).

213. It is beyond question, I did not write the name "Julio Ortiz" on the Federal Express Airways Bill. It was a short dark skinned 5'6" male, having a Hispanic accent (¶91 herein). It is clear, Mr. Rodriguez's testimony was tampered with as he said the man came in with the Airways Bill already filled out (¶92. herein).

214. Once again, A.D.A.'s Brancato and Sheindlin did not correct the false testimony, thereby denying me of a fair trial.

215. Once again, the above misconduct alone should suffice for the granting of a new trial. Once again, A.D.A.'s Brancato and Sheindlin are not entitled to my conviction.

#### Further Misconduct

216. As previously mentioned, Det. Breslin stated, he employed a stereo microscope on the Federal Express Airways Bill, and saw retraces, introductory strokes, connecting strokes, pen twist, pen stops, and downward motions, thereby concluding my handwriting matched the handwriting on this document (¶119 herein). Once again, this testimony was false that went uncorrected.

217. A viewing of Federal Express Airways Bill #8607-9497-2129 reveals, the order of the copy's from the first to last page: Senders copy; manifest billing copy; origin copy; customs copy; destination copy, and; recipient copy. Special Agent Raffa, of A.T.F., stated there are four (4) to five (5) copy's in an Airways Bill (Attached hereto and marked as Exhibit "71" [Federal Express Airways Bill]; Attached hereto and marked as Exhibit "72" pp. 313-314 [Raffa's pre-trial testimony]).

218. In light of the above, Det. Breslin most surely did not have the senders copy, as a viewing of the Federal Express Airways Bill proves (§93 herein; Ex. "26" [Manifest Billing copy]). Clearly, the senders copy bears the inked handwriting as it is the first copy, which is clearly needed to see pen twist, etc. (§119 herein). What Det. Breslin did was use a carbonless copy to make his analysis, where there is no ink. An analysis cannot get anymore bogus than this.<sup>4</sup>

219. Once again, A.D.A.'s Brancato and Sheindlin did not correct the false testimony, thereby denying me of a fair trial.

220. Once again, the above misconduct alone should suffice for the granting of a new trial. Once again, A.D.A.'s Brancato and Sheindlin are not entitled to my conviction.

#### Further Misconduct

221. As previously mentioned, Det. Breslin prepared an exhibit to further support his conclusion that, my exemplars 4- While this is an updated Federal Express Airways Bill, the order is still the same. I submit the D.A.'s office will not claim they had the senders copy, thereby conceding, People v. Wright, 86 N.Y.2d 591, 596 (1995)("normally what is not disputed is deemed to be conceded").



matched the name "Julio Ortiz" on the Federal Express Airways Bill (¶119 herein). Once again, this false testimony went uncorrected.

222. This exhibit was made with an exhibit numbered "61 A-B", two (2) yellow lined papers which were entered into evidence. Numbered exhibit "61 A" was identified as K-9 (T: [Stipulation]: 1184-1186, [Breslin]: 1212-1219, 1347-1348, 1449-1450).

223. Previously mentioned as well, Det. Breslin prepared an exhibit, using my exemplars, to support his conclusion that, my exemplars matched the handwriting on the American Express money order (¶'s 118, 120 herein).

224. A viewing of Det. Breslin's October 28th, 1991, report reveals, the Federal Express Airways Bill being identified as "Q-5", and the American Express money order being identified as "Q-6". As well, revealing a host of known exhibits, a majority of which were not even mentioned at trial. Such were marked as "K1 to K-21". Det. Breslin stated verbatim, "[s]ome strong similarities exist between the questioned writing appearing on the evidence Q3 thru Q6 and the known writing appearing on the evidence K1 - K13, K15A-B, K16D and K21 (Ex. "35").

225. A viewing of Det. Breslin's December 13th 1991, report reveals, the Federal Express Airways Bill being identified as "Q-5", and the American Express money order being identified as "Q-6". As well, revealing the same identified known writing, K1 to K22. Including the new November 1991 exemplars (¶118 herein) marked K22 to K26. Det. Breslin stated verbatim, "[t]he

questioned writing appearing on the evidence Q-5 and Q-6 were written by the author of the known writing appearing on the evidence K1 - K13, K15A-B, K16A-D and K21 - K26 (Ex. "37").

226. These reports, which were never entered into evidence, proved Det. Breslin made identifying matches with the same documents he could not previously make a match with, unbelievable. In particular "K-9".

227. It should be noted, A.D.A.'s Brancato and Sheindlin had these reports in their possession before trial started. A viewing of the top of the reports reveal, "RCV BY: NY COUNTY DA'S OFFICE ;10:30AM". As well, such was established at trial (T: [Breslin]: 1307-1309, 1328-1330, 1333-1334, 1340-1341, 1346-1347, 1350-1351, 1354, 1441).

228. Once again, A.D.A.'s Brancato and Sheindlin did not correct the false testimony, thereby denying me of a fair trial.

229. Once again, the above misconduct alone should suffice for the granting of a new trial. Once again, A.D.A.'s Brancato and Sheindlin are not entitled to my conviction.

230. All the below should be noted.

231. A viewing of the voucher for the Federal Express Airways Bill (§26 herein) reveals, the property Clerk never signed for the item (Attached hereto and marked as Exhibit "73" [Voucher]).

232. A viewing of the voucher for the American Express money order (§27 herein) reveals, the property Clerk never signed for the item (Attached hereto and marked as Exhibit "74" [Voucher]).

233. A viewing of the voucher for my exemplars (§118 herein) reveals, the property Clerk never signed for the items (Ex. "1"

p. 102; Attached hereto and marked as Exhibit "75" [Voucher]).

234. It should be noted, with respect to the money order such places itself in serious question, as well Mr. Rodriguez's and Det. Breslin's credibility, as evidenced below.

235. As previously mentioned, Mr. Rodriguez claimed to have written the Federal Express Airways Bill number on the money order that, the man presented to him for payment (¶'s 91-92).

236. The money order at the very top says verbatim, "THIS DOCUMENT CONTAINS AN ERASURE SENSITIVE FACE, ATTEMPTED ALTERATIONS WILL APPEAR WHITE." The money order reveals the background of the handwritten areas are white. This includes the area where the Airbill number is that Mr. Rodriguez claimed he wrote, as well the areas that Det. Breslin claimed I wrote (¶120 herein)(Ex. "27")

237. Special Agent Behan stated, he filled out the voucher for the American Express money order on June 5th of 1991. He claimed "we" received the money order pursuant to a subpoena, and that he gave such to Det. Breslin (T: [Behan]: 884-886).

238. A viewing of the voucher for the American Express money order, as previously mentioned, reveals the property Clerk never signed for the item (¶232 herein)(Ex. "1" p. 98; Ex. "74")

239. A viewing of the endorsement side of the money order reveals, the letters UPNB or UPN8 (Ex. "27"). Federal Express by its letter informed such letters are not used to identify Federal Express offices, domestically or internationally (Attached hereto and marked as Exhibit "76" [Letter]).

240. Mr. Rodriguez stated, the man came back and paid for the

shipment on February 4th of 1991 (¶'s 91-92 herein). This means the money order would have been machine dated with the same date. A viewing of the money order reveals, at the top of the money order below the "Y" of the word money there is a "02", the "0" being slanted. Right after the "2" is a hyphen then another slanted "0". The number to the right of this "0" is clearly handwritten, not machined as the other numbers. It is clear, the machined number that was in this area was completely erased and a handwritten number in its place. The handwritten number appears to be a sloppy "2" or "7", days that do not correspond to the alleged issuance date. Whether this area reflects the issuance date or not it surely reveals tampering (Ex. "27")(T: [Rodriguez]: 1717-1721).

241. Further, a viewing of the money order reveals the machined amount cannot be seen at all, amazing (Ex. "27").

#### Further Misconduct

242. Previously mentioned, Mrs. Franza stated she gave me the address of her Grandmother, 2629 Paseo Aguilla, and her phone number. As well, the phone number of her Aunt, in case I needed to get a hold of her. Mrs. Franza lied as to giving me the address of her Grandmother (¶85 herein).

243. As well, Special Agent Behan stated the package was addressed to the Roman Family. This too was a lie (¶93 herein).

244. Below it is revealed the testimonies, being false, went uncorrected by A.D.A.'s Brancato and Sheindlin.

245. As a reminder, Miss Lamboy stated she received a notification slip from Federal Express, which was on her gate.

Such indicating she had a package, having her name, address 2629 Paseo Aguilla, and telephone number 809-784-1630 (¶97 herein)

246. The Package Tracking Inquiry for the shipment revealed, the package had an incorrect recipient address, and the wrong postal code (¶94 herein)(Ex. "1" pp. 78-79, 82, 93; Ex. "8" p. 39 ¶129; Ex. "28").

247. A Puerto Rico P.D. report, prepared by two investigators, revealed, Sergeant Pagan assigned to the Levittown Pct. was in charge of the scene, and informed them of the artifact (Ex. "1" p. 81; Ex. "8" p. 39 ¶131; Attached hereto and marked as Exhibit "77" p. 1 ¶2 [P.R.P.D. report 4-1-1-149 2/13/91]).

248. A Puerto Rico Newspaper named El Nuevo Dia, dated 2/9/91, revealed, Sgt. Pagan told them the package had the name of Miss Lamboy, and that she lives alone (Ex. "1" p. 80; Ex. "8" p. 38 ¶127; Attached hereto and marked as Exhibit "78" [El Nuevo Dia]).

249. A Puerto Rico Newspaper named El Vocero, dated 2/9/91, revealed, Sgt. Pagan informed them the explosive was addressed to 2615 Paseo Aguilla. That the employee for Federal Express had the package for three (3) days, and that he could not deliver the package until a neighbor, named Pantoja, could direct him where to go, who was willing to pay for the package and take such to its owner. That the person who the package was addressed to opened the package (Ex. "1" p. 80; Ex. "8" p. 38 ¶127; Attached hereto and marked as Exhibit "79" [El Vocero]).

250. A Puerto Rico Newspaper named El Nuevo Dia, dated

2/10/91, revealed, Miss Lamboy stated she has lived alone for many years. Incidentally, she said she does not know the origin of the Roman Family, and that no one by that name has ever lived at her address (Ex. "1" p. 82; Ex. "8" p. 40 ¶135; Attached hereto and marked as Exhibit "80" [El Nuevo Dia]).

251. A Puerto Rico P.D. report (Ex. 77) revealed, Miss Lamboy's telephone numbers were 786-1923 and 786-5141. That Elba Pantoja of 2615 Paseo Aguilla was obviously not involved in the incident, and entered the situation when the Police called upon her to communicate the event to her, and asked her for her safety to abandon her residence. When the Police called upon her she was watching T.V. in the last room, and that she was very sorry she had no information about the matter (Ex. "77" pp. 3 ¶4, 4 ¶3).

252. A Puerto Rico P.D. report revealed, Miss Lamboy opened the black case and saw a strange object. That she informed her neighbor and Joven Pantoja personally coming over to her residence (Ex. "1" p. 81; Ex. "8" p. 39 ¶131; Attached hereto and marked as Exhibit "81" p. 4 ¶5 [P.R.P.D. report 4-1-1-148 2/13/91]).

253. It is beyond question, Mrs. Franza and Special Agent Behan told untruths that went uncorrected. The package had an incorrect recipient address, wrong postal code, and had Miss Lamboy's name, and had the incorrect telephone number for Miss Lamboy. All this when the package was claimed to have gone to the Roman Family at 2629 Paseo Aguilla, with Miss Lamboy's alleged phone number, from inception, as reflected on the

application shows she was listed as a co-proprietor and that she signed her name on the application. A viewing of the check Mrs. Franza made shows the signature's match one another. I attest this is her signature (Ex. "8" p. 59 ¶196; Attached hereto and marked as Exhibit "82" [Application]; Attached hereto and marked as Exhibit "83" [Check]).

260. As previously mentioned, the floral delivery note had a direction to a basement apartment if there was no answer. This direction stated verbatim, "Address 485 West 187 st Apt 1D or Basement Apt in rear ring bell Apt to left" (¶65 herein)(Ex. "20"). Well, a viewing of Ex. "16" reveals there is no button to press for any bell in the area.

261. The voucher for the threatening letters sent to Mrs. Mendez's address reveals, the property Clerk never signed for the items (¶'s 100-101 herein).

262. The falsities just don't stop.

#### My Conduct

263. As for my conduct throughout the entire investigation, I did nothing else but cooperate with all the request of Det. Giorgio and Ortiz. I even provided them with my own polygraph examinations. The only time I did not cooperate was the day of my arrest, and that's because I had enough of their conduct at the Pct. (Attached hereto and marked as Exhibit "84" pp. 127-135, 138-157, 171-173, 176-179, 226-228, 234-235, 237-243, 250-253, 273-275, 277-278, 350-362 [Pre-Trial transcript pages]; Attached hereto and marked as Exhibit "85" [Polygraphs])

264. I would like to mention, after the shooting's I was

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264. I would like to mention, after the shooting's I was



taken to the 34th Pct., and was detained there for questioning until 1:30 a.m., then I was driven home by Det.'s Bourges and Ortiz who wanted to retrieve my answering machine tape. At the Pct. all I wanted to do was go to the Hospital to see my wife. I was quite upset, and when Det. Giorgio asked me about my whereabouts around the time of the shooting's, which is recorded on paper, I said I went to the drugstore to buy golden trojans. What I did was call him a s--m bag, he did not catch on to my message. While my friend Tracy Jenkins went to buy pizza to bring back to my apartment, I went to the drugstore to buy cotton balls and peroxide as I was almost out of these items. I had two (2) white dogs, and the fur around their eyes must be cleaned with frequency as the moisture from their eyes tends to discolor the fur around their eyes. It should be noted, Mrs. Francis stated, on the day of the shooting's I told her I was going to the drugstore, and that she saw me leave in my car and return with a white bag in my hand, five to ten minutes later. This just before the shooting's (T: [Bourges]: 422-424, 429, 431-432, [Francis]: 440-443; Ex. "64" pp. 134-135, 148-149, 171-173, 227-231; Attached hereto and marked as Exhibit "86" [Mrs. Francis's signed statement])).

**For This Court's Information Only**  
**Not As A Basis For This Motion**

265. During pre-trial Det. Giorgio stated on cross examination, he received information, sometime after August 27th of 1990, that claimed my handwriting matched the handwriting on the floral delivery note. Knowing this he did not place me under

arrest. That I was at liberty for six (6) months after the information was received (Ex. "84" pp. 254-261).

266. That when the handwriting came back as being mine he did not place me under arrest on the advice of A.D.A. Brancato. Conferring with A.D.A. Brancato regarding the case, inquiring if there was enough probable cause to arrest me. The court took judicial notice of this fact, "on the advice of A.D.A. Brancato Det. Giorgio did not make the arrest" (Ex. "84" pp. 259-261).

267. That there was no forensic evidence and evidence connecting me to the pipe bomb left at the residence of Nelson Dacosta at the time of the my arrest (Ex. "84" pp. 261, 267, 279-280).

268. That there was no forensic evidence linking me, as the author, to the threatening letters sent to Mrs. Mendez at the time of my arrest. There being no typewritten analysis done on the typewritten letters. No eyewitnesses connecting me to the letters. That by virtue of his comparison of the handwriting [on the envelopes] he felt it was my writing. There being no other evidence, and still not placing me under arrest in spite of the feelings conveyed by Mrs. Franza and her Family, because of his prior conversation with A.D.A. Brancato (Ex. "84" pp. 182-183, 261-265, 267, 282-283, 299-300).

269. That he received information on February 10th of 1991 that a bomb was sent to Puerto Rico. In spite of the feelings of Mrs. Franza and her Family he did not place me under arrest. There being no forensic evidence or evidence connecting me to the bomb sent to Puerto Rico at the time of my arrest. Having an

instinct it was my work. That A.T.F. Agents themselves told him they had no forensic evidence and evidence connecting me to the Puerto Rico incident (Ex. "84" pp. 265-267, 281-282).

270. That he did not arrest me based upon an answer to a question pertaining to a Julio Ortiz. It was after conferring with A.D.A. Brancato that my arrest was effected (Ex. "84" pp. 267-270).

271. That the only forensic evidence that existed at the time of my arrest was the handwriting comparison of my exemplars against the floral delivery note, which was found to have matched the handwriting on the floral delivery note by Det. Breslin (Ex. "84" p. 283).

272. With respect to the Federal search warrants and Federal arrest warrant it should be noted, the mention of the comparison claiming my handwriting matched the handwriting on the floral delivery note within the Federal search warrant affidavits and the Federal arrest warrant affidavit, was the linchpin in securing such warrants. Without this mention the warrants would of not issued (Ex.'s 32-33, 54).

\*\*\*\*\*

273. It is beyond question, I have been denied of a fair trial by the numerous instances of prosecutorial misconduct, as A.D.A.'s Brancato and Sheindlin have failed in their duty and obligation to protect my right to a fair trial, thereby affecting the public's interest and my presumption of innocence. I have clearly met the fair trial analysis, the governing law controlling this motion, thereby meeting the standard of

hold that my conviction must be vacated on the ground of actual innocence. Clearly, had the jury of known of the clear and convincing evidence of innocence, and the prima facie evidence, not one juror would have voted to convict me. What the jury did was convict me after receiving the read back of Det. Breslin's analysis concluding my handwriting matched the handwriting on the floral delivery note which did not exist.

278. In sum, no credible testimonies and evidence connect me to the crimes. No credible testimonies and evidence support a finding that I orchestrated the crimes. No legitimate connection has been shown to exist between the perpetrators and me.

279. With respect to A.D.A.'s Brancato and Sheindlin, the appropriate criticism warranted is that they engaged in prosecutorial misconduct, by turning a blind eye to their discovery material which proved I was innocent.

280. I call upon the District Attorney's office to perform their duty under People v. Steadman, 82 N.Y.2d 1, 7 (1993), Berger v. U.S., 295 U.S. 78, 88 (1935), and Friedman v. Rehal, 618 F.3d 142, 159 (2nd Cir. 2010), to join in this application and not hide behind inadvertently made mistaken judicial decisions for a basis of defense.

281. Lastly, I now would like to bring to the Court's attention the following below.

282. At sentencing defense counsel and me addressed the court, although simple in tone, now speaks volumes (Attached hereto and marked as Exhibit "87" [Sentencing transcripts]):

Mr. Franza['s] position continues to be they were not his victims, the remorse he feels that these things ever happened

hold that my conviction must be vacated on the ground of actual innocence. Clearly, had the jury of known of the clear and convincing evidence of innocence, and the prima facie evidence, not one juror would have voted to convict me. What the jury did was convict me after receiving the read back of Det. Breslin's analysis concluding my handwriting matched the handwriting on the floral delivery note which did not exist.

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(Page 12).

Mr. Franza maintains his innocence to the degree that this Court can ever believe that to be mitigating. I offer that. Beyond that, there is nothing I can say on Mr. Franza's behalf. I believe Mr. Franza himself wishes to address the Court (Page 12).

Second of all, there have been a lot of lies in this trial, okay, and there's really no way for me to be proving these things but what I will mention to the Court, one thing that I'd like to mention is that on the note left at the scene of the shooting's, there was a mention there that there was a bell to ring, to go to apartment in the rear and ring bell. There's no bell there, your Honor. If I wrote that note I would know that (Page 12).

283. Those words sounded hollow to the court in 1992, for understandable reasons, but they had the resounding ring of truth then and now.

284. What has happened is a travesty of justice, and must be immediately corrected by this Court at once. The District Attorney's office should not be given an extension of time to respond to this motion, as they are not entitled in light of the circumstances herein, and the misconduct of A.D.A.'s Brancato and Sheindlin. Nor, should the District Attorney's office be allowed to conduct a fishing expedition which is prohibited, People v. Gruden, 42 N.Y.2d 214, 205, 216, 218 (1977). In reality this Court should forthwithly force an immediate response from the District Attorney's office.

285. I apprise the Court that I will file a reply, and will prepare such immediately as soon as I have received the

opposition. I call upon the D.A.'s office not to send any opposition addressed to correctional staff at the facility, asking them to serve me with the opposition, as A.D.A. Brancato has done in the past. this is unnecessary as all legal mail entering the facility is logged in and signed for by an inmate in the log book.

286. I respectfully ask this Court to hold decision until my reply is received by this Court.

287. Lastly, I apprise this Court that I do not want counsel assigned until asked for by me, in the event a hearing is ordered. I do not waive my appearance, and never will.

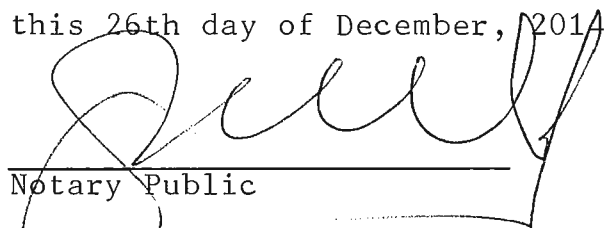
WHEREFORE, I pray for an order of this Court vacating the April 8th, 1992, judgment of conviction and ordering a new trial on the basis that I was denied a fair trial, or in the basis of actual innocence without a new trial being ordered. This Court must not be a silent accomplice to this injustice, the integrity of this Court must not be tarinshed.

Most Respectfully

  
Dominic M. Franza  
92A3659

Subscribed to and sworn to before me

this 26th day of December, 2014

  
Notary Public

**PETER E CARDWELL**  
Notary Public, State of New York  
No. 01CA6248895  
Qualified in Dutchess County  
Commission Expires Sept. 26, 2015