

Ex. 1





SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

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The People of the State of New York, : NOTICE OF MOTION  
Plaintiffs, : TO VACATE JUDGMENT  
-against- : C.P.L. §440.10  
Dominic M. Franza, : INDICTMENT #  
Defendant. : 11987/90

-----X

PLEASE TAKE NOTICE that upon the annexed affidavit of Dominic M. Franza, duly sworn to the 17<sup>th</sup> of June, 1993, and upon the Accusatory Instrument, Pretrial, Trial Transcripts, Rosario Material, Newly Discovered Evidence, and all proceedings previously held herein, Defendant will move this Court at Criminal Term Part 32 thereof, at the courthouse located at 111 Centre st, New York, N.Y., on the 2 day of Aug, 1993 at 9:00 A.M., or as soon thereafter as counsel may be heard, for an order pursuant to Criminal Procedure Law §440.10 (1A)(1B)(1C)(1D)(1F)(1G)(1H) vacating the Judgment entered against the above - named Defendant on the 8th day of April 1992, or, in the alternative, for an order for a hearing to determine whether such Judgment should be vacated on the following grounds:

1) 440.10 (1A) The Court did not have jurisdiction of the action.

2) 440.10 (1B) The judgment was procured by Fraud on the part of the Prosecutor, persons acting for, in behalf of prosecutor.

3) 440.10 (1C) Material Evidence adduced at a Trial resulting in the judgment was False and was, prior to the entry of judgment, known by the Prosecutor to be False.

4) 440.10 (1D) Material Evidence adduced by the People at a trial resulting in the judgment was procured in violation of the Defendant's rights under the Constitution of this State, and the United States.

5) 440.10 (1F) Improper and prejudicial conduct not appearing in the record occurred during trial resulting in the judgment which conduct, if it had appeared in the record, would of required a reversal of the judgment upon an appeal therefrom.

6) 440.10 (1G) New Evidence has been discovered since the entry of judgment based upon a verdict of guilty after trial, which could not have been produced by the Defendant at trial even with Due Diligence on his part and which is of such character as to create a probability that had such evidence been received at trial the verdict would of been more favorable to the Defendant; provided that motion based upon such ground must be made with due diligence after the discovery of such alleged new evidence.

7) 440.10 (1H) The judgment was obtained in violation of a right of the Defendant under the Constitution of this State, U.S. Constitution.

Together with such other and further relief as the Court  
may deem proper.

Dated: June 11  
1993

Domestic M. Frangola

92A3659

P.O. BOX 500

ELMIRA, N.Y.

14902-500

DEFENDANT, PRO-SE

To: Honorable Robert Morgenthau, Esq.

District Attorney of

Manhattan County

New York, N.Y.

To be Notified 10 days after filing.

WABC-T.V.

60 MINUTES

WCBS-T.V.

20/20

WNBC-T.V.

GOV. CUOMO

WNEW-T.V.

MAYOR DINKINS

WPIX-T.V.

NEW YORK TIMES

WWOR-T.V.

NEW YORK POST

VARIOUS RADIO STATIONS

NEWSDAY

GERALDO RIVERA

DAILY NEWS

PHIL DONAHUE

VILLAGE VOICE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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The People of the State of New York, : AFFIDAVIT IN SUPPORT  
Plaintiffs, : OF NOTICE OF MOTION  
-against- : TO VACATE JUDGMENT  
Dominic M, Franza, : INDICTMENT # 11987/90  
Defendant. :

-----X  
State of New York )  
County of New York ) SS.:

1) Dominic M, Franza, being duly sworn, deposes and  
says:

I am the Defendant in the above-entitled proceeding.  
I make this affidavit in support of a motion, pursuant  
to section 440.10, subdivision (1A)(1B)(1C)(1D)(1F)(1G)(1H),  
to vacate the judgment of conviction herein, upon the  
grounds that:

1) 440.10 (1A) The Court did not have jurisdiction  
of the action.

2) 440.10 (1B) The judgment was procured by Fraud  
on the part of the Prosecutor, persons acting for, in behalf  
of prosecutor.

3) 440.10 (1C) Material Evidence adduced at a Trial  
resulting in the judgment was False and was, prior to the

entry of judgment, known by the Prosecutor to be False.

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6) 440.10 (1G) New Evidence has been discovered since the entry of judgment based upon a verdict of guilty after trial, which could not have been produced by the Defendant at trial even with Due Diligence on his part and which is of such character as to create a probability that had such evidence been received at trial the verdict would of been more favorable to the Defendant; provided that motion based upon such ground must be made with due diligence after the discovery of such alleged new evidence.

7) 440.10 (1H) The judgment was obtained in violation of a right of the Defendant under the Constitution of this State, U.S. Constitution.

2) I was indicted for 3 counts of Attempted Murder (P.L. §110/125.25[1]), 2 counts of Assault in the First Degree (P.L. §120.10[1]), 1 count of Criminal Possession of a Dangerous in the First Degree (265.04), 1 count of Criminal Possession of a Weapon in the Third Degree (P.L.

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\$265.02[2])). At arraignment I entered a plea of "not guilty". I was tried in this Court before Hon. Paul P.E. Bookson on the 14 of February, 1992. The case was submitted to a jury, which rendered a verdict of guilty.

3) On the 8th of April, 1992, I was sentenced to 8 1/3rd to 25 years on each count of Attempted Murder, each to run consecutively to each other, one count of Possession of a Dangerous Weapon in the First Degree, sentenced to 3 to 9 years to run consecutively to Attempted Murder sentence. The total is a minimum of 28 years to a maximum of 84 years

4) Various Crime Scene Photos were taken by Det Osbourn (T-516) and entered into evidence through various witnesses, as well Det Osbourn.

Ex#5, entered into evidence through P.O. Alexander who recognized the photo being the wall where Mrs Franza wrote on (front foyer), and the photo fairly and accurately represents that portion of the wall on the day of the shooting 7/17/90 (T-156).

Ex#6, entered into evidence through P.O. Aponte who recognized the photo as being the foyer where Mrs Franza was lying down when she first entered the Apt (front foyer), and the photo fairly and accurately represents how the foyer looked when Mrs Franza was found on 7/17/90 day of shooting.

Ex#7, entered into evidence through P.O. Alexander

who recognized the photo of the flower box and note attached, and that it fairly and accurately depicts how the box and letter attached to it looked on 7/17/90 when it was handed to her (T-185).

Ex#13, entered into evidence through Mrs Mendez who recognized the photo as being the foyer (rear foyer) where she was shot, showing through the photo where the bathroom is and the Bedroom (T-232), bedroom where the phone is, and that the photo fairly and accurately depicts the apartment on the day of shooting (T-233), also indicating where shooter was standing when he fired at her.

Ex#14, entered into evidence through Mrs Franza, who recognized the photo to be the foyer that leads to the bathroom and the bedroom, and the photo fairly and accurately depicts the apartment of the day she was shot (T-322).

Ex#15, entered into evidence through Mrs Franza, who recognized it as being the bathroom where she was taking a shower, and photo fairly and accurately depicts the bathroom on 7/17/90 (T-316), entered into evidence (T-322).

Ex#27, entered into evidence through Det Osbourn, who recognized photo being flowers he took out of box and placed in the kitchen sink to photograph, and the photo fairly and accurately depicts how the flowers appeared when he took them out of the box (T-523).

Ex#28, entered into evidence through Det Osbourn who recognized it to be a photograph he took of a deformed

lead bullet on the floor of the bathroom, the bullet was in that position when he first noticed it, and the photo fairly and accurately depicts the view as he saw it the night of the shooting (T-524).

Ex#30, entered into evidence through Det Osbourn, who recognized it to be a photo he took an oval view from the front hallway toward the foyer area toward the back living room, and a box of flowers on a chair, and the photo fairly and accurately depicts the condition of the apartment when he first entered on 7/17/90, indicating where the flower box and note was when he first entered the apartment, on the chair (T-518).

Ex#7, already in evidence, Det Osbourn acknowledges taking photo and recognized photo to be a close up of flower box and note on chair, same chair in Ex30 (T-519).

Det Osbourn testified for the prosecution on direct and was asked if he was working on 7/17/90 between the hours of 8:00 to 9:00 p.m., which his answer was yes, he responded to 485 w 187st apt, once he arrived he was directed to apt 1D upon entering apt (T-515), he noticed box of flowers on chair in foyer area and observed blood on the floor in that area and in the rear bedroom as well, also observing two deformed lead bullets on the floor, one in the rear hallway, one in the bathroom, also observed a note on top of flower box, after making visual inspection of the apartment and having a conversation with Det Mountouri and P.O. Alexander who was the safeguard officer,



he proceeded to photograph the apartment and different pieces of evidence, flowers and bullets (T-516), Det Osbourn testified to taking 20 photos of the apartment (T-524).

Det Osbourn testified at scene he put his initials on the floral note, put note in a zip lock bag, gave it to P.O. Alexander to send to lab for print check, shown Ex #26 I.D. (T-520), recognized it to be the same Handwritten note or delivery slip on the flower box that he gave to P.O. Alexander, Ex#26 in evidence (T-520), shown Ex#29 A&B recognized it to be the box and red ribbon after packaging the note, opened box and removed flowers (T-521), put flowers in kitchen sink then put red ribbon inside box in paper bag, gave it to P.O. Alexander to send to lab Ex#29 A&B in evidence (T-522), gave P.O. Alexander aside from note, box, ribbon, gave two deformed lead bullets to voucher (T-525).

P.O. Alexander testified she was given property to voucher flowers, note, all was in her control, letter attached to box, both have same voucher # (T-180), property given to voucher was two spent bullet found in apartment, box of flowers, note, Det Osbourn gave her bullets to voucher, bullets were in her custody (T-181), voucher # for bullets 877028, voucher # for letter and flower box 877027 in her custody and control same voucher # (T-182), shown Ex# 8 recognized it to be bullets she vouchered given to her by Det Osbourn, Ex# 8 in evidence (T-184).

P.O. Aponte testified seeing flowers on chair in

apartment when she went in (T-159), Mrs Mendes testified seeing man with flowers box with a red ribbon through peephole when man knocked on door (T-224), Det Giorgio acknowledged a note and flower box which had directions to another location, shown Ex#7 Det Giorgio answered it is the flower box and note he made reference to (T-563), saw flower box and note at scene (T-641).

The Crime Scene Photos, flower box with ribbon, delivery slip , and bullets are a fabrication.

Motion Ex #1, shows 1928 hrs (7:28 p.m.) 34th base notified for squad and crime scene to respond Peoples Rosario #1428.

Motion Ex #2, are Det Osbourns handwritten notes written at the crime scene, page one shows he received call at 1935 hrs (7:35 P.M.), dispatched 1935 hrs (7:35 p.m.), arrived at scene 1940 hrs (7:40 p.m.), arriving at scene Det Osbourn spoke to Det Mountouri and P.O. Alexander.

Motion Ex #2, Page 2, shows the information given to him from Det Mountouri and P.O. Alexander, as well the order of photo taking 1 through 20 as it was being done.

Motion Ex #2, page 3, shows the order of photo taking, also showing the ballistics for two rounds mentioned G-1 and G-2, one white flower box, one note attached to box, as well where dusting was done for prints, showing results for one lift.

Motion Ex #2, page 4, shows sketch of apartment.

Det Osbourn testified typing up report on everything

done at scene (T-529), Motion Ex #3, is the Forensic report made from Motion Ex #2 showing the time responded 1935 hrs (7:35 p.m.), the order of photo taking, as well finger print results, showing 20 color negatives, mentioned one flower box packaged for prints, one handwritten delivery slip packaged for prints, saying both given to P.O. Alexander shield #3375 34th pct for vouchering and forward to lab, the summary of case shown reflects the information given by Det Mountouri and P.O. Alexander at scene, report signed by Det Osbourn People rosario # 1437.

Motion Ex #4, Crime Scene Unit Supplemental, mentions ballistic evidence recovered, G-1 one deformed lead semi-wadcutter bullet recovered from rear hallway, G-2 one deformed lead bullet semi-wadcutter bullet recovered from bathroom floor 6" L/R from left wall, 26" from door jamb, ballistic evidence to P.O. Alexander shield #3375 34th pct for vouchering, report signed by Det Osbourn Peoples Rosario #1433.

As mentioned previously Det Osbourn testified arriving at scene made visual inspection talked to Det Mountouri and P.O. Alexander then proceeded to photograph apartment and different pieces of evidence, flowers and bullets (T-516), Motion Ex #2, page one, shows Det Osbourn arriving at 1940 hrs (7:40 p.m.), making a visual inspection of apartment would take about 5 minutes, reviewing the Forensic report summary of case section reveals the information given by Det Mountouri and P.O. Alexander, receiving this

information could not of taken more than 5 minutes, setting camera up 5 minutes for a total of 15 minutes making the time around 7:55 p.m. when photo taking started. 20 photos were taken (T-528), of course Det Osbourn when he arrived brought his camera and dusting equipment, within 30 minutes the photographing should of been completed well before 8:24 p.m.. Det Atkinson was assisting as well they were partners.

Motion Ex #5 are the Crime Scene Unit Photos taken by Det Osbourn, 1 through 20 in the order they were taken as Det Osbourns notes reflect and Forensic report.

Motion Ex #6 is a report from the Department of Defense, Department of the Navy, U.S. Naval Observatory, Washington, D.C.. It states Sunset was at 8:24 p.m. on 7/17/90 (day of shooting), prepared by the Chief Astronomer and Certified as well, Page 3 of said document gives the following definition of Twilight; after Sunset there are intervals of time, Twilight, which there is Natural Light provided by the upper atmosphere, which does receive direct Sunlight and reflects part of it toward the Earths surface. The major determinants of the amount of Natural Light during Twilight are the state of the atmospheric generally and local weather conditions in particular.

Motion Ex #7 is a report from the U.S. Department of Commerce, National Climatic Data Center, National Weather Service Certified report dated 3/25/93, This report is for Kennedy and Laguardia Airports Weather conditions -----

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throughout the day.

Report from Kennedy Airport shows various cloud activity throughout day, from 9:50 p.m. to 3:50 p.m. in column #13 there is cloud coverage noted, this cloud coverage is not noted in column #22 showing it to be outside the vicinity of Kennedy Airport.

Report from Laguardia Airport shows various cloud activity throughout day, from 10:50 a.m. to 4:50 p.m. in column #13 there is cloud coverage noted, Defendant has personally spoken to Laguardia Airport Weather Station and was informed this cloud coverage is based outside the range of 4 miles of the vicinity of the Airport, this explains why in report from Kennedy Airport the cloud coverage from column #13 is not noted on column #22 of Kennedy Airport report, this cloud coverage mentioned at Kennedy Airport for the hours of 12:50, 1:50, 3:50 has been picked up at Laguardia Airport in column #22 showing it to be within the vicinity of Laguardia Airport, column #13 observes cloud activity outside the vicinity of Airports.

Both Airports from 6:50 p.m. to 12:50 a.m. shows no further cloud activity outside the range of Airport.

At Laguardia Airport from 7:50 p.m. to 12:50 a.m. Cirrus clouds are present in sky as column #23 shows, Cirrus clouds at 22,000', winds South-South West shown in Degrees 220° in column #9, no Weather or obstruction to vision noted.

Motion Ex #8, is from same agency noted previously, this report is dated 4/1/93 for Central Park, from 1:00 a.m. to 3:00 p.m. the sky was clear, viewing the middle of the paper shows symbols for column #3 showing C-to mean clear, at Laguardia and Kennedy Airports there is sky cover ranging from 2/10ths to 9/10ths which unaffected Central Park and shows cloud coverage mentioned to be far east of Central Park, from 3:00 p.m. to 6:00 p.m. in Central Park the sky was partly cloudy, the amount of sunshine for each hour was 50 minutes under Partly Cloudy conditions, Defendant was informed by Laguardia Airport for 50 minutes of sunshine to be present for each hour under partly cloudy conditions the sky cover would be 4/10ths with thin clouds, this shows Far East of Central Park received the most sky cover.

From 6:00 p.m. to 7:00 p.m. the sky over Central Park was Clear, while over Laguardia Airport which is the closest Airport to Central Park shows at 6:00 p.m. dense cirrus clouds 9/10ths sky cover, at 7:00 p.m. thin overcast sky cover 10/10ths, this further shows the heavy sky cover to be Far East of central Park.

Motion Ex #6, shows Sunrise for 7/17/90 at 5:39 a.m., report from Central Park shows from 5:00 a.m. to 6:00 a.m. 21 minutes of Sunshine, and the Sunshine is registered at the exact time of Sunrise, this is due to the Suns rays striking the Earth at an angle which made it visible at Sunrise at the moment, the Suns rays shined down the streets

from the East, from 7:00 p.m. to 8:00 p.m. there is 15 minutes of Sunshine registered, this is due to the Sun's rays striking the Earth at a different angle opposed to Sunrise, due to this angle the Sun's rays were restricted from shining down the street and the tall buildings to the West of Central Park cut off Sunshine to the Area earlier.

Sunset was at 8:24 p.m. the Sun had not set, whether the Sun had set or not there was an abundance of Natural Light outside to illuminate the sky, report from Laguardia Airport shows no further cloud activity from 5:50 p.m. to 12:50 a.m., in column #13 just Cirrus clouds shown in column #23, Central Park continues to have partly cloudy condition as previously mentioned from 3:00 p.m. to 6:00.p.m. showing 50 minutes Sunshine for each hour under partly cloudy conditions, there was no change in cloud activity noted anywhere which would suggest other sky conditions other than 4/10ths sky cover over Central park for the hours of 3:00 p.m. to 1:00 a.m..

There was no Weather or obstruction to vision anywhere for Central Park, report shows 88% of Sunshine for day, no further cloud activity noted anywhere, and the crime scene is well within 4 miles of Central Park, this report shows a beautiful day outside temperature was in the mid 80's, Motion Ex 38 2nd from last page shows the 18, 19, 20th of July to be beautiful days as well.

From Central Park observatory a Northern view is in excess of 4 miles, had there been any other cloud activity

it would of been noted in column #13 in Central park report, the mass of sky cover was well Far east of central park, the sky over the crime Scene was beautiful.

The Crime Scene location 485 West 187st is between Laurel Hill and Amsterdam Avenues, the building is on the North-East corner, to the East there is a park that slopes downward, then there is the Harlem River, there is about 1/2 mile distance from the Bronx to the building, it is all open space no tall buildings or anything around to obstruct natural Light from reflecting in this area, this is a large space.

The street of 485 West 187st has no buildings taller than 5 storys, as well the next two blocks to the West have buildings no taller than 5 storys, no skyscrapers to hamper natural Light just open sky above, from laurel hill to Wadsworth Avenue is a three block distance, this three block distance is level on top of a very high hill the view Westerly is very good, to the West open sky nothing to obstruct Natural Light.

For the day of 7/17/90 the Weather over the Crime Scene was very good all day, no threatening skies to hamper Natural Light at all, therefore from 7:55 p.m. to 8:24 p.m. there was an abundance of natural Light outside. The Sun had not set yet until 8:24 p.m., and even after Sunset 8:24 p.m. there is Natural Light outside in fact till 8:57 p.m. Civil Twilight as Motion Ex#6 states.

As mentioned previously Cirrus clouds were present



throughout the day, Cirrus clouds are; detached clouds at elevation of 18,000' and higher, they take the forms of delicate white filaments, strands, hooks these are called Cirrus clouds, they usually have a fibrous appearance. Cirrus clouds are thin, white to light gray ice-crystal clouds often in streamers, not covering the entire sky. Cirrus clouds are often elongated in several separate segments in the same direction across the sky.

These clouds will not hamper Natural Light. In fact the Cirrus clouds were at 22,000' 4 miles up, on 7/17/90, as the Sun approaches the horizon to the West it will shine Sunshine under the Cirrus clouds with absolutely no problem. Therefore there was no hampering at all of any natural Light from 7:55 p.m. to 8:24 p.m. and into Twilight as well.

Another factor to be considered, is the intensity of Sunshine and Natural Light on 7/17/90 at Sunset.

Motion Ex #9, page 65 states the following with respect to the Earth:

The axis is actually tilted by  $23^{\circ} 26'$ , and the direction of the tilt is such that on or about June 21st (the Summer Solstice) the North Pole is tilted  $23^{\circ} 26'$  toward the Sun, and six months later is tilted  $23^{\circ} 26'$  away from the Sun. As a result, as the Earth moves around the Sun in its annual orbit, solar rays arrive on the planet at changing angles.

From our perspective on earth, the Sun's daily track across

the sky reaches varying angles above the horizon, achieving its highest angle in the Northern Hemisphere at noon on June 21st. (At 23° 26' North latitude-the same angle as the axis tilt-the Sun passes directly overhead on this Date.) On the same day, the Sun spends more hours above the horizon than any other date.

The lengths of the seasons are not equal, because the path of the Earth around the Sun is not a circle, but an ellipse. In 1609, Johannes Kepler observed that varying gravitation causes the Earth to move faster when it is closest to the Sun (near Perihelion) and slower when it is farther away (around its Aphelion). Since Perihelion occurs in early January, the quickened orbit makes the Autumn and Winter seasons in the Northern Hemisphere slightly shorter in astronomical terms than spring and summer. The precise duration of the Northern seasons are: 92.76 days of spring, 93.65 days of Summer, 89.84 days of Autumn, and 88.99 days of Winter, totaling 365.24 days a year.

Even though the Earth is closest to the sun in January, the Sunlight striking the Earth is only 6% stronger than at July's Aphelion-not enough to offset the much larger effect of the tilted axis.

Motion Ex #9, asserts defendants position with respect to Central Park report, as being the reason why at Sunrise there was Sunshine, before Sunset there was not, the changing angles of solar rays, the Sun's track above the Horizon at varying angles, because -----

of the angle and buildings to the West is why there was only 15 minutes of Sunshine. Even so there was plenty of Natural Light outside.

Due to the Earth being tilted toward the Sun and the longest day of the year is 6/21, and at that point the Earth moves SLOWER around the Sun, there is very very little difference in intensity of the Sun's rays (Brightness) lost from 6/21 to 7/17.

As mentioned even though the Earth is closest to the Sun in January the Sunlight striking the Earth is only 6% stronger than at JULY'S APHELION-NOT ENOUGH TO OFFSET THE MUCH LARGER EFFECT OF THE TILTED AXIS. For this reason as well, Twilight is more prolonged as well. Therefore more Natural Light at Twilight.

Motion Ex #6, #7, #8, #9 show absolutely no reason for there not to be Natural Light outside from 7:55 p.m. to 8:24 p.m., and beyond.

Motion Ex #5, reflect the Crime Scene Unit Photos 1 through 20, taken by Det Osbourn as his prior testimony demonstrates, as well as his handwritten notes Motion Ex #2, and Forensic report Motion Ex #3. Looking at photo #12, #9, #7, #4 it is NIGHTTIME OUTSIDE A PHYSICAL IMPOSSIBILITY.

To further show these photos are a complete fabrication photo #13 shows an Electric Radio Clock with an Electrical outlet to the left of the table showing the time to be 8:14 p.m. "ten minutes before Sunset". Figuring -----  
(Photo #13 must be viewed under an enlarger off of the original Photo Defendant possesses to see 8:14 p.m.)

1 minute before each photo taken to adjust the camera puts any photo before Photo #13 even earlier, photo#13 8:14 p.m., photo #9 8:11 p.m., photo #7 8:09 p.m., photo #4 8:06 p.m. well before sunset.

The prosecution will say there is a T.V. Guide in photo #8 that reflect the T.V. Guide for the week of the 7/17/90, the T.V. Guide is for the week of 7/17/90 but this sheds no proof to the Prosecution, Motion Ex #11 is the exact T.V. Guide in photo #8, Defendants Mother Gladys Franza upon request of defendant was able to aquire 2 T.V. Guides from T.V. Guide a year later, Mrs Franza aquired the copies from T.V. Guide themselves, if Defendants Mother aquired a copy of the T.V. Guide a year later so could of the prosecution as well as Det Osbourn.

Viewing the Crime Scene Photos shows absolutely no signs of overexposure or underexposure, only well balanced photos. The N.Y.P.D. uses 35mm cameras Nikon, an in-depth understanding of the entire process of photo taking will show the proper process was done.

Any assertion by the Prosecution of a malfunction is a falsity, Det Osbourn took the photos and the N.Y.P.D. development revealed exactly what was photographed.

The following will reveal proper techniques, as well as the process from photo taking to development to printing.

How sensitive the film's coating is to light determines the speed of the film. A fast film requires less light to make an image than a slow film. Photographers must know the speed of the film they are using in order to determine proper exposure, whether with daylight or with artificial light, such as electronic flash. basically the higher the film speed number, the faster the film, i.e., the more sensitive it is to light. Color film, however, is designed either for use with daylight (plus electronic flash and blue flash bulbs or cubes) or artificial light, which is often termed tungsten light. Wether it is daylight-or tungsten type film, each can give good color results under other light conditions if the proper conversion filter is used and the film speed is changed accordingly. It must be kept in mind that the ISO/ASA numbers tell how fast one film is in relation to other films. For instance, a film rated ISO/ASA 50 is twice as sensitive to light as an ISO/ASA 25 film. Similarly, film of ISO/ASA 400 is twice as fast as one rated ISO/ASA 200. Which means it takes twice as much light to make an exposure with ISO/ASA 200 film as it does with one rated ISO/ASA 400. A miscalculation in setting the proper ISO/ASA will cause an improper exposure-one that is too dark (overexposed) or too light (underexposed).

Shutter speed must be set to the specified number ISO/ASA film used, to make sure the proper amount of specified light reaches the film for a proper exposure,

shutter speeds indicate how long light is allowed through the opened shutter onto the film. Depending on which direction the dial is turned to the next shutter position, will either double (2X) or half ( $\frac{1}{2}$ ) the amount of light which reached the film at the previous setting. Thus, switching from 1/125 to 1/250 second, will cut in half the amount of time the light has to reach the film. As such, it will decrease the amount of light by one-half ( $\frac{1}{2}$  X), therefore underexposing the film.

Or, switching from 1/125 to 1/60 second, will double the amount of time the light has to reach the film. Therefore increasing the amount of light two times (2X), in this situation will overexpose the film, too much light will reach the film, making the film Dark, the interrelationships of shutter speeds and ISO/ASA (film speed) are interrelated with lens openings.

Companion to the shutter speed in regard to exposure is the lens opening (Known also as the aperture or diaphragm). The relative size of the lens opening is indicated by numbers called F/Stops. F/Stop numbers are as follows; F/1.2, F/1.4, F/2, F/2.8, F/4, F/5.6, F/8, F/11, F/16, F/22, F/32. Basically, the F/Stop number indicates the relative amount of light which is allowed to pass through the lens. The lower the number the greater the amount of light passing through the lens. A higher number, such as F/16, indicates a small amount of light is passing through the lens. How much light passes through

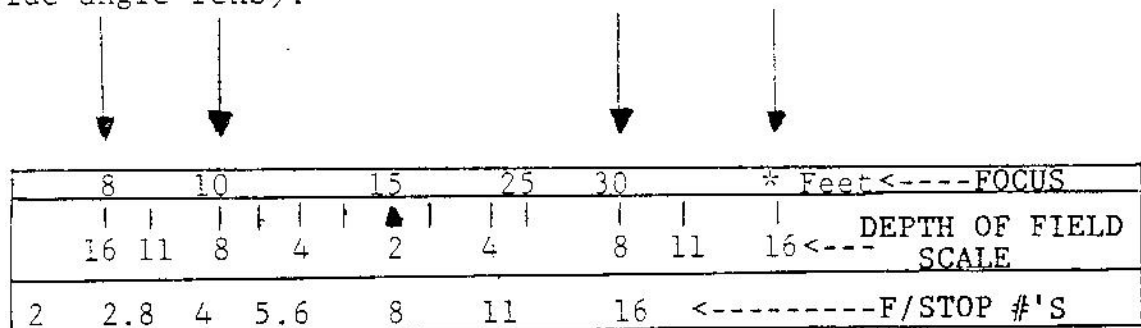
the lens is relative to the change from one F/Stop to another. Moving from one F/Stop number to the next closest F/Stop either doubles (2X) the amount of light passing through the lens or cuts the amount of light in half ( $\frac{1}{2}$  X). It depends on which direction the F/Stop is moved, toward the wider lens opening (smaller F/Stop number) or toward the smaller lens opening (larger F/Stop number).

For example, if the F/Stop is at F/8 then moving it to the next larger opening, F/5.6, will double the amount of light that passes through the lens. Thus the film receives twice (2X) the amount of light at F/5.6 as it does at F/8. In this manner will overexpose the film. Going from F/8 to the next smaller opening, F/11, cuts the light coming through the lens in half ( $\frac{1}{2}$ ). So getting one-half ( $\frac{1}{2}$  X) the amount of light reaching the film at F/11 as was at F/8, in this manner would underexpose the film.

As previously mentioned, moving left or right from one shutter speed to the next closest one either doubles or halves the amount of light. Because changing the lens opening from one F/Stop to the next closest one also doubles or halves the amount of light, this shows F/Stops and Shutter speeds are mathematically interrelated in regard to exposure. And, very important, they determine Depth of Field-how much of picture will be in focus. A wrong calculation in shutter speed in relation to the F/Stop will either overexpose or underexpose the film, conversely a wrong F/Stop setting in relation to shutter speed will

also overexpose or underexpose the film, both have to be fixed for a proper exposure. A viewing of the Crime Scene Pictures shows a proper balance in contrast and color, clarity, depth of field, correct exposure settings throughout.

Depth of field deals with how much more of the picture will also be in focus (foreground to background) with a point focused upon, viewing the Crime Scene Pictures the point focused is about 7 to 10 feet (foreground) due to the clarity throughout the pictures, a smaller F/Stop opening (higher number) increased depth of field, which is why the extreme foreground is in focus as well, conversely the wider the F/Stop (lower F/Stop number) the less depth of field, wide angle lenses, have better depth of field, these pictures were taken with a wide angle lens. The following example is based upon a 50mm lens (not a wide angle lens).



The depth of field on this 50mm lens. With the lens focused at 15 feet and its opening at F/8, the subject area from 10 to 30 feet away will be in focus (see black arrows). If the F/Stop is reduced to F/16, depth of field

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increases and subjects from 8 feet to infinity (\*) will be sharply focused (see red arrows).

The depth of field scale is not just a way to check how much of a picture will be in focus. For instance, if it is necessary to have only a specific area in focus, focusing must first be on the closest object wanted to be sharp and that distance must be noted on the focusing scale. Then refocusing must be done on the most distant object wanted in focus and that footage should be note on the focusing scale. Now the focusing ring must be turned untill the distances noted fall within a matched set of numbers on the depth of field scale. The lens opening must be set to the F/Stop number corresponding to the selected pair of numbers on the depth of field scale. Finally , the correct shutter speed must be determined for the correct F/Stop used, this method will produce a photo desired with the correct focus and range in mind.

Viewing the Crime Scene Pictures shows a wide angle lens being used, wide angle lenses, have a shorter focal lenght than normal lenses. Popular sizes include 35mm, 28mm, 24mm, 21mm. They include a great field of view than a normal lens, and so subject image size is less with a wide-angle than a normal (50mm) or telephoto lens. A great factor for wide angle lenses is that because they have a great depth of field, focusing is less critical and sometimes even unnecessary. A 28mm lens, for example, will be in focus from 5 feet to infinity at an average F/Stop

of F/8. At F/16, the range increases down to  $2\frac{1}{2}$  feet through infinity, due to infinity in the background it is unnecessary to focus in on an object in the background, especially 5 to 50 feet, setting the focus at 7 to 10 feet and using a wide angle lens will bring the extreme foreground and background into focus, making it totally unnecessary to focus in the background. An F/Stop of F/8 or F/11 was used to get such a depth of field, For comparison, a normal 50mm lens at F/8 has a depth of field of only 5 to  $7\frac{1}{2}$  feet with the lens focused at 6 feet.

Viewing the Crime Scene Photos shows a wide angle lens being used in all the pictures, the depth of field is excellent as well. Picture # 9 demonstrates the depth of field very well. Notice how vivid the foreground is, of most importance is the background, the depth of field is excellent a very close look through the window will show a man, who is standing across the street 45 feet away in a white shirt, which was luminated by the flash, a clear definition of the shirt can be seen. Showing the camera was adjusted properly to get such a great depth of field focused. This further shows had there of been natural light outside outside it would of registered on the film, if the man in the white registered, so would of natural light as well of registered. The vividness of the foreground and the background demonstrates a wide angle lens being used, the vividness is present throughout the pictures showing a properly adjusted camera.

35mm Camera's shutter speed for proper synchronization with electronic flash, is usually 1/60 or 1/125 second, some models permit speeds to even 1/250 second. Cameras with focal plane shutters include 35mm SLR's. Because the curtains of such shutters must be out of the way completely when the flash goes off, a relatively slow shutter speed usually is required. The maximum speed allowed varies according to camera design and often is no faster than 1/60 second. a few focal plane cameras are even limited to 1/30 second when using electronic flash, although newer models as previously mentioned sometimes allow shutter speeds up to 1/125 and even 1/250 second, 1/30 to 1/125 are slow exposure films requiring longer exposure times, 1/125 to 1/250 are faster films requiring less time for exposure, but are slower in relation to higher numbered films, even higher speed films can be used ISO/ASA 400 and ISO/ASA 1000 setting the shutter speed using an electronic flash using a correct F/Stop for correct exposures, the number varies according to the ISO/ASA speed of the film being used and the light output of the flash unit.

Two major types of flash are manuel and automatic. With a manuel electronic flash unit the exposure is determined by setting the camera's lens opening F/Stop. Figured first is the distance between the flash and the area to be photographed, reference to a chart on the flash unit that indicates the correct F/Stop to use, according

to the speed of the film in the camera.

More advanced and more popular is the autoflash unit, which automatically figures flash exposures. All is needed is to preset the F/Stop, based on the flash range and speed of the film being used. Viewing the Crime Scene Pictures shows a balanced flash through the pictures. Showing the flash synchronized with the lens opening, and ISO/ASA shutter speed of the film, wether a manuel or autoflash was used.

The flash technique used by Det Osbourn is present in all pictures taken, Picture #1 shows the flash unit to be mounted on the right side of the camera due to the shadow present on the right side of the picture frame and door frame, had the flash been mounted above the lens this shadow would not be present, this area would of been luminated had the flash been mounted above the lens, also the flash is pointed foward at a low flash setting.

Picture #2 the flash shadow shows on the right side showing the flash mounted on right side, the flash is aimed toward the right wall, which is why there is poor lumination in the background, even the background being poorly luminated the backgroung can be seen under the very poor light conditions the wall unit, various white objects in wall unit, figurines on top of wall unit, chair to left of wall unit which has white object on it, the fact these objects can still be seen demonstrate the depth of field was excellent to capture these objects even with very poor

light.

Picture #3 the flash unit is now on the left side of the camera aimed to to left side of the wall, the light bouncing of the wall to luminate the area.

Picture #4 The shadow is casted into the living room on the right side shows the flash unit on the right side of the camera, the flash is aimed foward, the foreground is luminated amply, from the camera to the gold chair the lumination is good, beyond the gold chair the light decreases, the window in the background shows a fan at the bottom half of the window, the top half has a Venetian blind between there is an open section of window which shows no natural light outside, this section is also shaded by the shadow from the flash had there been any natural light outside it would of registered in this area for sure, there is none.

Picture #5 shows the flash to be aimed foward slightly high, from the camera to 10 feet is luminated nicely.

Picture #6 the flash was at low light, the timing between the flash and the shutter was off to create the proper light conditions for this exposure.

Picture #7 the flash is mounted on the left side of the camera, the shadows produced by the flash is on the right side showing the flash on the left side, the flash is bounced of the right wall, viewing the closest lamp table on the right side shows the heaviest concentration of flash showing the flash set in this area, of mention

in picture #8 shows this lamp is off and had nothing to do with the light present, bouncing the light gives depth to the living room. The window to left shows no natural light outside, the window is open to the right shows no natural light outside as well, the window has a screen but there is a space in-between the screen and window that is unobstructed, what is seen above the screen is a window guard, this is an open space unobstructed view to the outside, had there been natural light outside it would of showed in this area, had there been natural light outside the glare from the flash on the right window would not be present, natural light would of neutralized this glare, this shows there was no natural light outside at all, a further showing there was no natural light outside is there is a lamp on in the background, which has casted an outline of the curtain on the glass, this lamp is a very low light source, natural light would of surely neutralized this low light shadow casted on the glass, this demonstrates there was no natural light outside.

Due to the fact the flash is bounced off the wall, Exposure for this picture is figured by determining the distance the light travels from the flash to wall to area photographed, and then increasing the exposure by opening up the lens about two F/Stops (smaller number) for a proper exposure, viewing this photo shows this procedure was used, had it not been this picture would of been underexposed, From the camera to where the flash is set is about 10 feet,

bouncing the flash to reach the areas of the living room adds another 15 feet, the total distance for the flash to travel is now 25 feet, the F/Stop has to be compensated for the excess light travel, opening the lens to accept more light for a proper exposure is required, opening up the lens allows more light to enter the camera for a proper exposure, therefore increasing the sensitivity of the film to any light source, meaning if there was any natural light outside it would of registered even more so on the film, there is no natural light registered at all. Of course, had any light source entered the lens while the shutter is open, and the F/Stop opened to a wider setting, it will be recorded on the film, proof is the lamp light on.

Due to the fact a wide angle lens is used in this photo, the depth of field is in infinity, looking at the window no images are seen, had there been natural light outside a light colored object would of registered had there been one.

Picture #8 shows the flash mounted on the left side, the shadow is now cast to the right side, the flash is focused foward luminating the foreground well, the background a lightly lighter shade.

Picture #9 the flash is mounted on the right side, camera held side up, the flash is foward luminating the foreground and and background quite well, the glare is present again on the glass, again had there been natural light outside this glare would of been neutralized, there

is a space in-between the screen and the window, this area is an unobstructed outside view, there is no natural light present.

A very close look at the screen will reveal a man in a white long sleeve shirt which was luminated by the flash (white reflects light), the man is standing across the street which is about 45 feet away, the building that is behind the man is not visible just the man. This demonstrates the depth of field was excellent to of exposed this man 45 feet away, as well as showing there was no natural light, surely had there been natural light outside the man as well as the building behind the man would be clearly visible, there was no natural light outside.

N.Y.P.D. uses Kodak quality films ISO/ASA types VR100, VR200, VR400, VR1000, Vericolor III Pro type S 160, all produce good color results regardless of the type of light, with a color temperature of 5500K, and is balanced for use with an electronic flash.

Photographing inside is a low light situation, which has to be corrected by artificial light (electronic flash). For low light situations ISO/ASA 400 speed film , or sometimes the supersensitive ISO/ASA 1000 films, are especially useful for a number of reasons. A faster shutter speed can be used to stop action and avoid blurring caused by accidental camera movement. Another advantage of fast films is that one can shoot at a smaller F/Stop lens opening to improve depth of field and get more of the subject area



in focus. "These high speed films also extend the useful range of an electronic flash".

This picture shows an excellent depth of field with clarity, the definition of the man's shirt proves the depth of field was excellent. There is no natural light outside and the man's white long sleeve shirt is luminated, this shows the useful range of the flash was extended showing a higher ISO/ASA was used, a combination of a higher ISO/ASA film which extends the useful range of an electronic flash, and wide angle lens, with a smaller F/Stop lens opening, all improve depth of field, this is the reason a man's shirt in darkness is visible, this shows a higher ISO/ASA film was used.

Had there been any natural light outside it would of registered on the film having all the qualitys above, the man would of been fully luminated as well the surroundings.

Looking at picture #2 notice the wall unit in the background in darkness due to the flash being pointed at the right wall, notice the white objects that are luminated in the wall unit, the white objects give off a bluish shade, the man in picture #9 gives off the the same bluish color, this is proof the useful range of the flash was extended, due to the qualities mentioned above. lens.

Picture #10 the flash is on the right side, the flash is aimed at the ceiling, looking at the right partition two shadows are produced, the dark shadow which is a direct

shadow from the flash, second shadow is an indirect shadow being casted from another directing the ceiling.

Picture #11 the flash is on the right side, shadow casted on the left side, camera is held side up, the flash is pointed to the right side and slightly up, looking at the lamp and table a shadow is casted below the lamp shade, as well the table, shows the flash slightly aimed upward. The open room in the background is luminated poorly, the white Venetian blind is closed in the room casting a bluish color, just as in the wall unit and man, this is a further showing of the extended useful range of the flash, had the flash been pointed foward this room would of been luminated much better, as well the door which leads into the bathroom, which is to the right of the open room.

Picture #12 the flash is on the left side aimed foward, shadow casted to the right side, there is no natural light outside, this window faces east into an vast area of open space, 40 feet from this window there are green trees, had there been natural light outside these trees would be seen, there is total darkness, with the flash aimed foward and natural light outside these trees would of been visible.

Picture #13 the flash is on the left side, the shadow casted on the right side, the flash is aimed foward, luminating the background past the door nicely.

Picture #14 the flash is on the right side, the shadow is on the left side, the flash is aimed at the ceiling

bouncing down, looking at the door jams between the bathroom and bedroom, the top half is brightly luminated, the bottom half is less brilliant, had the flash been aimed foward the light would be even on the door jams, as well the bathroom and bedroom would of received much more light.

Picture #15 the flash is on the right side, shadow casted on the left side, the flash aimed foward and slightly down at low light.

Picture #16 the flash is on the right side, shadow casted on the left side, the flash is aimed foward at low light.

Picture #17 the flash is on the right side, shadow casted on the left side, flash aimed down.

Picture #18 there is no flash, this picture was taken with the fluorescent light in the kitchen, picture #9 shows this light.

Picture #19 this picture was taken in low light, in order to capture the pencil writing on the wall in the front foyer.

Picture #20 this picture was taken with the fluorescent light in the bathroom.

Detective Osbourn employed many flash techniques, in order to make sure each picture was evenly luminated, each picture required different techniques for a proper balance of lighting, viewing the Crime Scene Pictures shows very good contrast in all the pictures, showing a proper setting in all aspects of picture taking, the 35mm camera

was working very well, whether manually operated or automatic.

Conversion Filters were previously mentioned, conversion filters are designed for color balance for specified daylight films using artificial light, conversely as well, artificial light is often termed Tungsten light, whether daylight or tungsten type film, each can give good color results under other light conditions, provided a proper conversion filter is used.

A variety of conversion filters are needed to accommodate a variety of light sources. Light source have different color temperatures. Which often are indicated in Kelvins (K). Color filters are identified by number and letter designation.

Many professional portrait studio lights have a color temperature of 3200K, while a #2 photoflood lamp, used by many amateurs, is rated 3400K. Therefore, for each tungsten light source of a different Kelvin (K) value, a different type of color film, or a filter will be necessary in order to accurately reproduce the colors of the area photographed as they were seen.

Light from most electronic flash units, with a color temperature of 5500K, is balanced for use with daylight films, Detective Osbourn did not use photoflood lights or tungsten-halogen lights requiring a film with a color temperature of 3200 to 3400K.

The film was correctly balanced to the light source,

using a conversion filter requires an increase in exposure, and a slower shutter speed or a wider F/Stop. Had there been an increase in exposure, and a slower shutter speed or wider F/Stop, the depth of field would be affected, the extended useful range of the flash as well, as well the man would of not been seen, even so had there been natural light outside it would of registered. The man being seen shows a proper balanced light source of 5500K with the film used, which did not affect the depth of field, a viewing of the man in picture #9 shows no filter was used.

Conversion filters are designed to allow color films balanced for one light source to be used with another light source.

There are also Light-Balancing Filters numbered 81, 81A, 81B, 81C, 81D, 82, 82A, 82B, 82C which are used to correct or balance the light from the area to be photographed so it is rendered on the film with the same coloration seen when making the photograph. Use of such filters may be necessary if the light from the area to be photographed is not exactly of the color temperature for which the film was designed, such is not the case here.

Generally, such filters require an increase in exposure from 1/3rd to 2/3rd F/Stop, again affecting the depth of field. Filters # 81A and 81B will diminish the blue cast to photographs taken with an electronic flash. Throughout the Crime Scene Pictures this blue cast is seen,

it is hardly diminished, picture #2 the white objects in the wall unit have a deep blue cast, Picture #9 the man has a deep blue cast, picture #11 the Venetian blind has a deep blue cast, no such filter was used throughout the pictures. Filter #'s 81C, 81D, 82A, 82B, 82C do not apply these are for different light sources other than a flash, and do not apply.

There are filters which will give good color balance under fluorescent light. Pictures under such lighting will be green, high speed color negative film produce acceptable color result including fluorescent lighting, without the use of filters. Picture #18 shows the greenish color no filter was used, as well in picture #20 there is a fluorescent light in this bathroom.

The Ultraviolet filter, commonly called a UV or Haze filter, cuts down the ultraviolet light unseen by photographers but to which all photographic films are sensitive. Especially with scenic views, this filter also improves photographs by diminishing (but not eliminating) visible haze. The film factor for this filter is 1X which means the exposure is the same as when not using the filter. This is an outdoor filter where the sun's ultraviolet ray interfere with films sensitivity, this filter does not hamper light in any form, what is seen is what is photographed.

The Polarizing filter acts much the same way Polaroid sunglasses do to cancel glare and reflection from shiny

surfaces. When used with color film, polarizing filters help to enrich the colors of the area photographed by removing or reducing reflections. Such a filter does not reduce the reflection from actual metal surfaces. But it will cut reflection from painted metal, as well from glass, water, wood, plastic, and other reflective surfaces.

Polarizing filters also darken the sky, enriching it on color film. The amount of darkening and increase in blueness depends on the camera's angle to the sun; results are most effective when the camera lens is aimed at right angles to the sun.

Polarizing filters are for outside use, using this filter inside would of casted a dark blue shadow throughout the Crime Scene Pictures, even at close range, no such dark blue shadow is present at close range. In picture # 7 and 9, the glare on the glass is ever present as well.

Polarizing filter has a filter factor from 2.5X to 3X. The lens opening must be opened an additional  $1 \frac{1}{3}$  F/Stop if the filter factor is 2.5X and  $1 \frac{2}{3}$  F/Stop if the factor is 3X. This would also affect the depth of field.

A Neutral Density filter is used occasionally to reduce exposure. A neutral density filter appears gray and cuts the amount of light reaching the film. It does not alter the light in any other way. Such filters are available in a variety of densitys, depending on how much light is wanted to be eliminated.

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Other times a neutral density filter is used in bright light conditions to allow a wide F/Stop when limited depth of field is required. Or under bright light conditions when a fast film is being used, as at the beach with Tri-X (ISO/ASA 400) or Kodacolor 1000 (ISO/ASA 1000).

This filter was not used as well, Neutral Density filters affect depth of field, viewing the Crime Scene Picture shows no such disturbance to the depth of field. Polarizing filters used indoors with an electronic flash will hamper the depth of field. Had any of these filters been used natural light would be present.

In regard to film speed, color "slide" films can be pushed (termed push process) to allow pictures to be made with less light than otherwise would be possible. Pushing a film is done by setting the exposure meter at two or four times the film's usual ISO/ASA film speed, then having the film overdeveloped accordingly. The amount of a film can be pushed is limited. Kodak Ektachrome 400 film normally has an ISO/ASA of 400, but it can be increased to ISO/ASA 800 if the film receives special processing. This increase of two times the film speed allows use of one F/Stop less than normal. The same is true for Ektachrome 160 (tungsten). Its speed can be pushed from ISO/ASA 160 to ISO/ASA 320, with special processing.

Kodachrome color "slide" film cannot be pushed to a higher ISO/ASA, "nor is it recommended to push color negative film, such as Kodacolor". However, color negative



film's normally have a greater exposure latitude (about one F/Stop), and in low light situations exposures can be made at double their film speeds and still get acceptable color prints without any push processing of the film.

Viewing the Crime Scene Pictures shows very good contrast throughout, even if the film exposure was at double the speed, Pushed or not.

Color "negative" film's have an advantage over color slide films because untrue colors can be corrected later when color prints are being made from "negatives". Whether film exposure at double the speed with special processing (Pushing) or a greater exposure latitude of one F/Stop, or untrue colors corrected as prints are being made, had there been natural light outside it would registered on the film. The film used by the N.Y.P.D. is "Negative type film type VR as mentioned previously.

Viewing the Crime Scene Pictures shows well balanced lighting conditions throughout the vast areas to be covered, it is physically impossible to of kept the viewing areas at the same distance from the flash, which explains the background being slightly darker. Even so the contrast is excellent, being the background is slightly darker had there been natural light outside it would of registered.

The Crime Scene Pictures shows the negatives have not been overexposed during photo taking, had too much light reached the film the pictures would be dark, the foregrounds would be dark due to the flash being closest

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to the foreground, such is not the case, the vast areas in the backgrounds absorbed the flash as a viewing will show, thereby making the chances to overexpose the areas an impossibility, the depth of field was not affected, the man in picture #9 proves this. Viewing the pictures show proper light techniques and settings throughout the pictures to avoid overexposure, the film was not overexposed. Had the film been overexposed corrective printing in the darkroom often allows prints of good contrast to be made from overexposed negatives, even during corrective printing had it been done natural light would be present.

Overexposed negatives may be the result of using a lower, incorrect ISO/ASA film speed, such is not the case here, or the light readings were wrong, such is not the case here, or a mistake in the F/Stop setting too wide or the shutter speed, such is not the case here.

As well the film has not been underexposed, the right balance of flash under the various conditions is present throughout the pictures, corrections to make an acceptable print of good contrast "often" can be done in the darkroom during printing. Had not enough light reached the film the depth of field in the background would be greatly affected as well the pictures as a whole. Such is not the case here, the man in picture #9 shows this to be true, if the man was registered on the film so would of natural light been present also.

Underexposed negatives could be the result of too little light being available or too high an ISO/ASA film speed number set on the exposure meter, or reading the light incorrectly or a wrong F/Stop number too small, or the shutter speed too fast. Such is not the case here, again natural light would of registered.

The term "Contrast" should be understood in order to properly comprehend its exact meaning, in relation to photography:

Contrast: The range of brightness of a subject; also, the range of density in a negative, print or slide.

Density: The relative darkness of a negative or print; a dense negative will not allow much light to pass through it; a dense print will not reflect much light.

The printing process requires an enlarger to be used in conjunction with enlarging papers. Enlargement of a 35mm negative to 8X10 inch size (such is the size of the Crime Scene Pictures) is about 8X magnification.

Regardless of the quality of the lens, the correct focal length must be set for the size of the negatives. It must be comparable to the focal length of the lens on the camera. that means 35mm negatives require 50mm or 60mm enlarging lens.

The most common type of illumination system used in enlargers is called condensor-diffusion. This type concentrates the light from a frosted enlarging bulb through twin condensor lenses. It produces the sharpest, most

contrasty print, although imperfections of the subject area, or negative, show up in detail too.

Viewing the Crime Scene Pictures shows sharp, contrasty, no imperfections an excellent print.

True condensor enlargers do not use diffused light source. Diffusion illumination systems scatter the light rays from the enlarger bulb through frosted or ground glass. The result is a less sharp and less contrasty image, which is popular with portrait photographers. Also, blemishes on th subject area, or negative, are diffused and therefore less evident.

This type was not used, the images produced are the complete opposite of this enlarger.

While most diffusion and condensor-diffusion enlargers use a frosted incandescent or tungsten-halogen bulb, some diffusion enlargers have a fluorescent light source. These are sometimes called cold-light enlargers; they do not work well with variable contrast or color printing papers because their light is bluish.

Viewing the Crime Scene Pictures shows this type was not used, it would of produces the opposite effect needed. As viewing the Crime Scene Pictures strongly suggest a condensor-diffusion enlarger type was used.

As mentioned enlargers work in conjunction with printing papers.

After the negatives have been developed they are ready for printing, they are placed in the negative carrier in

the enlarger, the enlarging bulb is turned on for focusing. The lens on the enlarger is opened to its widest F/Stop number (the enlarger lens works the same way as the lens opening of a camera) so the image can be seen as brightly as possible. Adjusting the height of the enlarger head to the image size desired, and turning the focus control until the image is sharp.

Stopping down the enlarger lens to F/8 increases the depth of field of the negative, and corrects minor enlarger focusing errors. Viewing the Crime scene Pictures shows an excellent depth of field as picture #9 demonstrates, this shows the enlarger lens was at F/8 to of picked up the man in Picture #9. Natural light as well would of registered it picked up the man, the enlarger was adjusted properly, as well as the light. also If the image on the negative itself is out of focus, reducing the enlarger lens F/Stop will not make the picture any sharper. Once the adjusting process is done the enlarging paper is placed under the enlarger for a print to be made.

Enlarging papers are made in specific contrast grade, or they are of variable contrast. This allows good contrast prints from negatives of good or poor contrast. When manufacture is by contrast grade, a paper often is numbered to indicate the type of negative contrast for which the paper was designed. The scale ranges from extreme to insufficient contrast. A grade 1 paper, for example, is for negatives of very high (hard) contrast, while a grade

4 to 5 paper works best with negatives of very low (soft) contrast. Grade 2 and 3 are for negatives of average (good) contrast.

Variable contrast papers yield different contrast grades with the use of filters. A numbered filter is placed in the enlarger to alter light and therefore the contrast. For its variable contrast papers, Kodak has a 7 filter set graded in half-steps from 1 to 4

Viewing the rear of the Crime Scene Pictures indicates Kodak professional film was used. There is no number to indicate it is a grade or variable contrast (or Multigrade) paper.

Had the print paper been of a variable contrast type, a filter would be needed to alter the light and therefore the contrast. Viewing the Crime scene Pictures the proper filter was used with the variable contrast paper. Clarity is present throughout the pictures, Contrast is excellent, the depth of field as well. Had there been a great density in the contrast due to the negatives, the mans white shirt would not be present in picture #9, the mans white shirt is present, had there been natural light outside it would of registered as well.

An alternative way to control contrast without such filters is by using a Dichroic color filter head on the enlarger; its normal role is control color balance when making color prints. Had this method been used this device was adjusted properly as well.

Had a graded print paper been used the proper variable contrast number was used, the filter is not needed as well, for all the foregoing reasons stated previously had there been natural light outside it would of registered.

Using filters to achieve a proper balance of contrast from a negative, as well a proper grade paper to achieve the same is called corrective action in the darkroom. Whether corrective action was done or not had there been natural light outside it would of registered on the film.

Kodak recommends development times for their print papers, if the photo paper had been overexposed, it will develop too fast during the recommended time for devolopment. And if you pull it from the developer before the time recommended, the print may lack contrast or be spotted because of inadequate development. Another print must be made with less exposure. Such is not the case, even if the film was overexposed and an additional exposure was made with less exposure, still the depth of field is good, the man in the white shirt in picture #9 is still there, had there been natural light outside it would of registered. The print was not overdeveloped.

Had the print been underexposed and failes to develop adequately in the recommended time, there is little hope of getting a good print even by keeping it in the developer longer. Making a print with more exposure is the best way to try and get an acceptable print. for the foregoing

reasons above had there been natural light outside it would of registered. This also shows the enlarger was adjusted properly and working fine.

The Crime Scene Pictures are the finished product of, photo taking throughout development. Proper adjustments throughout from begining to end, proper film exposure (negatives) from begining to end, proper print developing from begining to end, in all aspects. A well handled film, following strict adherence to the manufacturers (Kodak) specifications for all phases of photo taking throughout development.

Any other pictures that demonstrate different are due to exposure manipulation (Tampering), such as Dodging, which is done to lighten an area of a print, which requires a special technique. The technique is as follows, during the regular exposure making a print, part of the negative image is held back by a dodger (most often a homemade disk of cardboard taped to the end of a thin sturdy wire). By holding the dodger between the enlarging lens and photo paper, the selected area is kept from receiving too much exposure and becoming too dark.

Burning in involves the addition of light to an area of the print that would otherwise be underexposed. After the regular exposure is made, additional exposure time is given to a selected area. Usually a hole is cut in a piece of cardboard, and the cardboard is held between the lens and photo paper. This holds back the negative image



except where it passes through the hole. To keep a circle from showing on the print, the cardboard must be kept moving slightly all during the exposure so the burned in area blends with the rest of the print.

Had any dodging or burning in been done it would of been tampering. The Crime Scene Pictures are reproductions of exactly the way the pictures were taken. Any other reproductions are the product of tampering just described.

These Crime Scene Pictures were given to the defense by the Assistant District Attorney, had there been any dodging there would of been natural light outside. Had there been any burning in done the man in the white shirt would not be visible, due to the fact the man in the white shirt is visible if there was natural light outside it would of showed. Again these pictures are a finished product and show the exact condition these photos were taken naturally, whether taken by a manual or automatic 35mm camera.

There were only 20 pictures taken of the Crime Scene, Det Osbourn testified to this (T- 524).

Q- Approximately how many photographs of the Apt did you take that night.

A- Twenty

Det Osbourn testified typing up a report on everything done at the Crime Scene and investigatory phase as well (T- 529), Motion... report Exhibit #3 1 through 2 reflects this. Motion Ex # 2 1 through 2 reflects Det Osbourns notes

handwritten at the Crime scene, reflecting the information typed on the Forensic report. Both Exhibits above reflect only 20 photos were taken at the Crime Scene by the Det Osbourn.

Bracketing was not done, to bracket, two or more exposures are made that are over and under the exposure taught to be correct.

For instance, if 1/125 second at F/8 is estimated to be the correct exposure, shoot frames at F/5.6 and F/11. This minimizes the chance of missing a picture because of improper exposure. Bracketing two stops each way is even better insurance.

Bracketing also can be done by varying shutter speeds. An exposure of 1/125 second at F/8 by shooting two more frames at 1/60 and 1/250 second, minimizes the chance of missing a picture because of improper exposure as well.

This is a method used mainly with manual 35mm cameras to ensure a proper exposure was made, and get a proper picture. With a manual camera, one has to guess due to the fact the camera does not have built in meters, these meters inform the photographer of proper setting for a proper exposure, this is the reason for bracketing, unless hand held meters were used, an automatic camera will let the photographer know the proper settings for exposure, with its built in meters. Because only 20 pictures were taken with such clarity strongly indicates an automatic 35mm camera was used.

These photos are not from 7/17/90 (date of Crime), Det Osbourn went back to the scene much later, for it to be dark at 8:14 p.m. outside indicates these photos were taken in the Fall or Spring. There were never any Flowers or Delivery note left at the scene.

A further showing these photos are a Fabrication is Det Osbourn testified he observed two deformed lead bullets, one in the rear hallway, one in the bathroom (T-516), Ex #28, Det Osbourn testified as taking this photograph which reflect a view of a deformed lead bullet on the floor of the bathroom, and this bullet was in that position when he first noticed it, and this photo depicts the view as he saw it that night, in Evidence (524).

Motion Ex #2, #3 show Ex #28 as being photo #20 the last photo taken, Motion Ex #5, viewing photo #20 shows this bullet therefore any photo taken prior would reveal this bullet in that position, photo #14, #15 are before photo #20, the bullet is gone, A PHYSICAL IMPOSSIBILITY.

Det Osbourn testified in never recovering any other bullets aside from the two recovered at the scene (T-525).

Mrs Mendez testified being shot 5X, left hand, wrist (T-225), face, chest, 2X in the arm (6X ?)(526).

Motion Ex #12, are Mrs Mendez medical records from Harlem Hospital where she was taken as well as Mrs Franza when they were shot, Rosario Material #'s 301, 302, 303, 304, 395, 396, 292, 293 all reflect gun shot wounds, the wounds shown are in excess of 5 gun shot wounds sustained

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by Mrs Mendez, the gun shot wounds are described as .5cm gun shot wounds, Rosario material #198, is the sole exception it mentions a .5cm gun shot wound on the left cheek, 1cm gun shot wound on the right cheek, 1cm gun shot wounds to the chest, This would indicate an entry wound of .5cm to the face and an exit wound of 1cm, the wounds to the chest would suggest 2 guns were used, but, .5cm is consistent throughout the reports.

Motion Ex #13, reflect Mrs Franza medical records from Beth Isreal Hospital where she was transferred, Rosario Material #'s 1623, 1625, 1629, 1634, 1636, 1637, 1641, 1684 all reflect a small caliber gun shot wound at close range low velocity to face, Rosario material #1639 the Chief Resident of Hospital diagnosed the wound as a small caliber.

These various Medical records are from 7/17/90 day of admission to day of discharge for Mrs Mendez, Mrs Franza admission records from Harlem Hospital defendant does not have, defendant requested to be furnished with them and was denied by defense counsel. Record reflect examinations by various Doctors .

.5cm is equivalent to a .22 caliber (~~--11--~~), there were never any .38 caliber semi-wadcutter bullets at the crime scene. 38 Caliber wound is bigger than .5cm.

Motion Ex #12, Rosario material # 297 reflects all Gun Shot Wounds were through and through, as well special mention of gun shot wound to left palm through and through,

Rosario Material #298, makes mention of a lcm gun shot wound to the right shoulder and lcm gun shot wound in the rear of right shoulder a through and through, again making mention of left hand as a through and through.

Motion Ex #13, shows Mrs Franza receiving one gun shot wound to the face, through and through.

.22 caliber was used, there was in excess of 6 rounds fired in apt, all gun shot wounds were through and through, the Crime Scene Pictures taken by Det Osbourn reflect 2-.38 semi-wadcutters recovered, as well Motion Ex's 2, 3, 4. A PHYSICAL IMPOSSIBILITY.

Due to the fact there was an abundance of shots fired, and were through and through, Mrs Mendez testified as standing in front of bathroom door holding on to the door knob (T-228), there should of been damage to the bathroom door as well blood being splattered on the door as bullets were leaving the body, Mrs Mendez being shot in the left hand holding on to the door knob there should of been blood smeared around the door knob, Motion Ex #5 pictures #14, #15 show nothing as such. In fact none of the photos does it reflect damage anywhere. A PHYSICAL IMPOSSIBILITY.

There has been physical tampering as well of the Fabricated Crime Scene Photos Motion Ex #5, as follow:

1) Photo #8, the table which has the lamp has three remote controls on it, two black remotes, one silver one behind the two black remotes, photo #7 shows a small T.V., cable box, V.C.R. for which these remotes are used, photo

#8 the black remote to the left is thick a close observation reveals it blocking out some of the silver remote buttons, photo #7 shows same table now there is one black remote and one silver one, the thick remote is gone. A PHYSICAL IMPOSSIBILITY. Photo #8 remotes on table #7 on color magazine

2) Photo #11, shows a pink garment on the floor, this pink garment has a mark in blood shaped in the form of a 5 or S, there is also blood at the top tip of the garment, photo #14 shows garment the 5 or S shape is gone as well as the blood at the top tip of garment. A PHYSICAL IMPOSSIBILITY. Photo #11 was entered into evidence through Mrs Mendez Ex #13 (T-233).

3) Photo #4, shows the chair that the flower box rest upon, the chairs back support is butted against the stereo holder, the left side of the stereo holder is covered by the blue garment on the chair, photo #6 is a close up of said chair with the flowers, the left side of the stereo holder is visible the chair has been moved back considerable and is not in the same position as photo #4. Photo 4 was introduced through Det Osbourn and admitted into evidence as Ex #30 (T-518), photo #6 was introduced through P.O. Alexander and admitted into evidence as Ex #7.

4) Photo #4, shows at the base of gold chair a black string in the shape of an 8, photo #8 shows the string in a different shape.

5) Photo #5, shows under black table to left there is a black box under the the table, photo #8 shows table

now there is no box under it.

6) Photo #4, shows nothing on Gold chair in living room, Photo #2 shows Gold chair to have a large white object on it, Motion Ex #14, is a blow up of area showing white object on it. Photo #4 was entered into evidence through Det osbourn as Ex #30 (T-518).

7) Photo #11, shows a lamp table with a lamp right against the wall which has 2 small blood stains, viewing the shadow shows the table very close against the wall, to the left of the photo 1st door on left is open, photo #13, shows the door that is open and in the viewing range the 2 blood stains on the wall previously mentioned, the lamp table and the lamp are gone.

8) Photo #4, shows in the wall unit top left shelf a gold picture frame, a close look will reveal the rear and right side of the shelf, the frame is slanted backwards and the top of the frame is out of sight, defendant knows for a fact the shelf is not wider than 2', from the rear corner to the visible top of the frame is about 5", the frame is an  $8\frac{1}{2}$  X  $11\frac{1}{2}$ ,  $8\frac{1}{2}$  plus 5" equals  $13\frac{1}{2}$ " therefore the left of the frame is  $13\frac{1}{2}$ " into the shelf, Photo #8 top left shelf shows a photo of Mrs franza's wedding day, the view is in excess of 1' the left of the gold frame should be visible, it is gone.

9) Photo #3, shows front foyer where Mrs Franza was allegedly found showing blood on wall, Photo #19 shows wall with blood and writing this is the same wall in photo

#3, photo #2 shows wall on right side now blood is gone on wall. Photo #3 testified through P.O. Aponte as being the area where Mrs Franza was, entered into evidence as Ex #6 (T-154), the same photo #3 it was testified as well the wall where Mrs Franza wrote on (T-155), the writing on the photo was done by defense counsel at trial.

10) Photo #1, shows a picture frame on the inside of apartment on right side, the frame is oval left to right, Motion Ex #15 is a blow up of said picture in the shaded area the top and bottom of the frame can be seen clearly in the shaded area as well as whats in the center of the picture, photo #3 shows picture on wall, Motion Ex #16, is a blow up of said picture the frame is smaller there is an figurine in picture not present in photo #1, as well the top and bottom of frame are not the same as photo #1.

11) Photo #18, shows flowers from box.

These photos show many physical Impossibilities beyond belief, These Crime scene Photos taken by Det Osbourn are a complete fabrication and have been tampered with as well.

The testimony of the Prosecution witnesses has been tailored to the Crime Scene Photos as follows.

Mrs Mendez stated a man with flowers came to her door, she looked through the peephole and opened the door but did not lock it, she knocked on the bathroom door and asked Myra if she wanted flowers (T-224).

Mrs Mendez stated she heard a big noise at the front



12) Photo #6 From the left bottom corner of note to right corner of box the distance is 3 1/8", From left side of note to right side of box is 2". The distance is greater from left side of note to right side of box. Photo #4 from the right side of box to chair a greater distance can be seen opposed to area covered by chair to Right side of box, the left side of the note should be visible to left of chair, it is gone, it is not on the box.

In photo #6 the floral note is not stapled to the box, nor taped, the floral note is neatly placed on the box aligned perfectly. The shooters surely did not take the time out to place it so neat, this was done by Det Osbourn intentionally, the Prosecution left the impression the shooter left this note on the box, a total fabrication.

13) Photo #15, to the right of the rug in the middle there is a White Square object on the floor, Photo #14, the White Square object is gone.

14) Photo #1 the gray mat on the floor has two double peaks in the front and rear, these peaks are spaced apart, Photo #3 the front peaks are butted against one another, the rear peaks are gone the gray mat is flat against the wall, the gray mat is completely in a different shape, the papers and plastic on floor are moved as well. These are the same photos that Defendant mentioned regarding the photo on the wall which is not the same shown in these

photos.

15) Motion Ex #66 which is Photo #11 shows the garment mentioned earlier with the blood stains in an S or 5 shape with the blood at the Right tip top, notice the shape the garment is in the creases folds, Motion Ex #67 which is Photo #14 shows the same garment with the S or 5 shape gone as well the blood at the Right tip top gone, notice the shape the garment is in the creases the folds, it is in a completely different shape.

16) Photo #14, Motion Ex #67 shows in entrance to bedroom to left two white objects on the left side of clothing holder which has a blue bottle on top, at the bottom there are two blood stains visible on the white object, below the two blood stains there are three very small blood stains as well. The white object at the top had a multitude of black marks on it, notice the shape the white object is in as well.

Photo #17 shows the side of the clothing holder in bedroom, the sneakers represent the bottom object the two blood stains as well the three small blood stains are gone, the white object at the top the multitude of black objects are gone, the shape as well is completely different.

Defense counsel never elicited any of these PHYSICAL IMPOSSIBILITY. These Photos were in possession of Defense counsel before Pretrial.

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door, the door slammed she knew something was wrong, she was in front of the bathroom door, the man came inside she didn't move she stayed at the bathroom door, the same man at the door came over her and started shooting, she saw Myra naked, she was concerned the man would rape or kill her, she closed the bathroom door, Myra opened the door, she closed it again until she fell after being shot 5X in the left hand, in the wrist (T-225).

In the face claiming the bullet came out the back of her head, one bullet still in her chest, two in the arm, man was standing against the wall in the foyer that goes into the bathroom (T-226).

Mrs Mendez indicated man was standing from where she was testifying from to where the 1st juror was (10'), holding on to the door so Myra will not get hurt, and man shot her (Mrs Mendez), claimed man had gun in right hand and a dagger in the left hand, cut her two times, indicating the neck (T-227).

Mrs Mendez stated she was standing by the bathroom holding on to the door, while man was shooting at her, shot 5X after the last 5 shots she fell, then Myra came out man shot her then ran, stated man cut her with dagger 2X on the face indicating 2 holes (T-228).

Indicating left cheek and neck, Mrs Mendez claimed to of been cut in the struggle, then stated after that "THEY" said I was cut but did not know whether "HE" cut her, claimed 6 shot were fired in apartment, claimed Myra

crawled to the bedroom and called (T-229) 911 (T-230).

Shown Ex #13, Motion Ex #5, photo #11, as where the shooting took place, indicating where the bedroom is where the sheet is on the floor (T-233).

Claiming the bedroom to be the room where the phone is, offered into evidence as Ex #13 (T-233).

Indicating where man was standing at the blue rag on the floor by baseboard of floor, claimed to of been standing by white rug, falling in-between the bedroom and the bathroom (T-234), this photo was marked by defense attorney at trial reflecting the above on photo.

Mrs Franza testified on 7/17/90 day of shooting at 7:00 p.m. she was taking a shower at her Mother apartment, her Mother knocked on the bathroom door and asked her to open the door, her Mother saying there were flowers for her, then Mrs Franza heard her Mother in a struggle, heard pop noises, she turned off the water and tried to open the door, but her Mother would yank it toward her, then after about a minute struggle or so she finally opened the door and noticed her Mother falling on the door frame, and a man was standing there she looked at him for 3 seconds, the man lifted his hand and shot her in the face, claiming to of fallen backwards and played dead, she felt (T-313).

The man hover over her, she waited till she heard nothing, she then crawled to her Mother who was gaging with blood, her dentures were choking her, she stuck her

fingers down her throat and tried to clear her, she placed her hand on her chest and blood would gush out, she then crawled to the phone in the bedroom and called 911 telling them she was shot as well as her Mother, by that time her Mothers eyes were white, she then crawled to the front door entrance and called for help, her neighbor came and closed the door then Police came, claiming to of left her mother in the bathroom area (T-314).

In the foyer, claiming the Police asked her what happened, she could not talk no more because of the pain, felt swelling and her jaw was just hanging could not control it, claiming to of been shot on the left side of face and bullet exiting the back of her head, claiming she could not stop the blood from coming out of her mouth, as well to of written on the wall, the Police gave her a pen and proceeded to write on the wall, then she was taken away on a stretcher, she further claimed in the emergency room she was put next to her Mother who had 9 Doctors trying to make her come back to life (T-315).

Shown Ex #15, Motion Ex #5 photo #15, who recognized it to be the bathroom where she was taking a shower and it was like that on 7/17/90 (T-316).

Shown Ex #14, Motion #5 photo #14, she stated it to be the foyer that leads to the bathroom and bedroom, claiming her Mother to of been lying on the floor in front of the doors, Ex # 14, #15 in evidence (T-322).

She states for a moment somebody was standing hovering

over her, taken to Harlem Hospital (T-325).

Claiming defendant sent flowers to her in the past (T-327).

Sent red Roses (T-328).

Always sent her red Roses when we broke up (T-343).

In short Mrs Mendez testified a man with flowers was at the door, being shot in the rear foyer by the same man at the door, holding on to the bathroom door while she is shot, the man being as she testified through the photos as well in Court demonstration indicate the man being 10' away from her when the man shot her, after she was shot 5X she fell down, just she was shot and fell on the floor.

Mrs Mendez then stated she was cut in struggle, and indicated "they" said I was cut but did not know she was cut, claiming 6 shots were fired total.

Mrs Mendez stated there was a man at the door there were two, Mrs Mendez stated she was shot in the rear foyer, she was shot in the front foyer at entrance to apartment, Mrs Mendez stated she had a struggle it was at the entrance to the apartment, Mrs Mendez stated only 6 shots were fired there was in excess of 6 shots fired

Motion Ex #17, is a C.A.T.C.H. unit report case #4005, dated 9/21/90 2 months after shooting, complaint # 14920 same as shooting, Mrs Mendez gave descriptions for two perpetrators for shooting, reporting officer was Det Morrow Tax #859744.

Motion Ex #18, Rosario Material # 1767, is a report done by Det Valdez, dated 8/16/90 one month after shooting

in which Det Valdez interviewed Mr "Dacosta" who gave the following information, Mr Dacosta stated his Mother Mrs Mendez did not admit two men into her apartment, she became suspicious when they referred to him as Dacosta and suspected they were not Police officers, Dacosta recounted the day after the incident 7/17/90, two men came to his Mothers apartment, he was not sure whether they were the same two from the day before, he said "THEY" gained access by using the rouse of delivering flowers to his sister Myra, it was at this time his Mother and Sister were both shot, hearing of the incident he rushed into the apartment.

Motion Ex #19, Rosario Material #1775, is a report done by Det Valdez, dated 8/24/90, in which stating TWO" suspects are being sought in an investigation conducted by the 34th Pct Det Squad.

Motion Ex #20, Rosario Material #1738, is a report done by Det Raymond, dated 2/6/91, stating Mrs Mendez and Mrs Franza shot by person(s) unknown.

Motion Ex #21, Rosario material #'s 2212 through 2217, is a report faxed to Mr Brancato on 2/19/92, it is from the New York State Crime Victims board sent by L. Levinson, Mrs Franza gave the following information, she described the crime scene as follows; someone said flowers when Mother opened the door "THEY" pushed her in and shot her 5X, 2 in the face, and when I came to the rescue I got shot in my face point blank.

Motion Ex #22, Rosario Material #1976, is a D.A. Data

sheet which was prepared before arraignment (2/12/91) stating on 7/17/90 Mother-in-law opened door and delivery man started firing at her and defendant wife, who was exiting bathroom.

Motion Ex #23, Rosario Material # 1323, 1329 and alleged affidavit, is a Federal Search Warrant, dated 2/11/91, stating Mrs Mendez opened the door and the man shot her 3X, the man then proceeded to the bathroom and shot Myra Franza once before leaving (KM4U), this information was provided by Det Giorgio of the 34th Pct DeT Squad who was the investigating officer.

Motion Ex #24, Rosario material #'s 2187 through 2190, 1343, dated 2/13/91, is a copy of the 2nd Federal Search Warrant and affidavit, stating, On then evening of 2/11/90, the Honorable Leonard Brenikow, U.S. Magistrate Judge for the Southern District of N.Y., issued a Search Warrant on Oral testimony authorizing the search of the subject premises. The facts supporting that warrant are set forth in the attached complaint, and are incorporated by reference herein. A copy of that warrant itself, with the return is also attached.

Motion Ex #25, Rosario Material #'s 1824 through 1828, is a copy of a Federal Arrest Warrant lodged against the defendant filed in the U.S. District Court, dated 2/13/91, said complaint referred to in Motion Ex #24 is attached to this arrest warrant which states; Josephine Mendez, the Mother of Myra Mendez Franza, opened the door and the



man shot her 3X. The man then proceeded to the bathroom and shot Myra Mendez Franza once.

Motion Ex #26, Rosario Material #'s 724 through 727, dated 2/13/91, is a P.O. report from Puerto Rico, it states Evelyn Figueroa Lamboy Mrs Mendez's sister gave the following information her sister Mrs Mendez answered a knock at the door that was for a delivery of flowers, when she opened the door she was shot.

Mrs Mendez testified man was about 10' away from her as the Court demonstrations and references to a photo shows when he started shooting at her, the gun was far away,

Motion Ex #12, Rosario Material #293, states left hand has .5cm gunshot wound on down side of hand with Carbon Particles, Rosario Material #303, states, left hand has a .5cm wound on the hand with Carbon Particles Surrounding the wound.

This proves Mrs Mendez was holding the gun, being 10' away it is a PHYSICAL IMPOSSIBILITY to get Carbon Particles surrounding the wound, when Mrs Mendez opened the door and saw a gun and was pushed into the apartment she grabbed the gun.

Mrs Mendez further stated as man was shooting at her she was holding on to the door knob, then her body was side ways, all the bullets were in the front not sideways.

The foregoing shows the shooting of Mrs Mendez at the front of the apartment, Mrs Mendez was never in the rear of the apartment the struggle was in the front of

the apartment.

Mrs Mendez slipped when she said they said I was out, there were two men in the apartment in the front not the rear.

Motion Ex #12, Rosario Material #'s 286, 300, 385 shows multiple stab wounds as well, she was cut at the entrance to front door the struggle was at that location.

Mrs Mendez's testimony was an intentional falsehood,  
Perjures

Mrs Franza gave the same testimony as Mrs Mendez. The testimony with respect to the location of her Mother was a falsehood as well the actions tending to her Mother, she further testified calling Police then crawled to the front of the apartment where door is, then her neighbor came and closed the door the police then came, claiming to of written on the wall then taken to Harlem Hospital, at hospital she claimed her Mother was next to her who had 9 Doctors trying to make her come back to life.

Mrs Franza testified to Ex 14, Motion Ex #5 photo #14 and Ex #15, Ex #15, Motion Ex #5 photo #15, and were entered into evidence.

Motion Ex #1, shows Mrs Franza calling Police at 1921 hrs (7:21 p.m.), left line at 1921 hrs (7:21 p.m.), at 1923 (7:23) Call Back was used 2X line busy indicating she was on the phone at this location supposedly for 3 minutes.

Motion Ex #5, photo 14, shows bathroom and bedroom to left where phone is, Mrs Franza testified after being

shot in the bathroom she went into the bedroom and called police, photo #17 is inside the bedroom, the phone is on the table, the phone is hung up properly, the 911 operator used a call back 2X and the line was busy, being the phone was busy indicates Mrs Franza called someone else then hung up, this shows she was at this location for 3 minutes supposedly.

P.O. Aponte testified trying to go past Mrs Franza and was told not to by LT Lynch (T-142). Then P.O. Aponte proceeded to the kitchen to call the # Mrs Franza wrote on the wall, and was unable to get an answer (T-151), had this of been true then Mrs Franza hung up the phone.

Mrs Franza further testified she crawled to the front of apartment, the path she had to crawl to get to the front of the apartment is as follows; out of room photo #14, down rear foyer photo #11, across floor in this area to front foyer photo #5, to front foyer where she was allegedly found photo #2, #3 where she wrote on wall photo #19.

P.O. Aponte testified when she first arrived at the scene she entered the apartment and saw a naked lady Bleeding from the face (T-141). she was Bleeding at the time, Paramedics still had not arrived (T-150).

P.O. Alexander testified she arrived at scene with P.O. Aponte, saw woman lying on the floor in the hallway shot in the face and was Bleeding (T-177). Hole in her face Blood coming out (T-178).

Leonard Diaz (neighbor) testified found body naked

FULL OF BLOOD BLEEDING A LOT on her hands and knees (T-214).

Mrs Franza testified SHE COULD NOT STOP THE BLOOD FROM COMING OUT OF HER MOUTH (T-315).

The foregoing shows Mrs Franza allegedly bleeding profusely, viewing the crime scene photos allegedly from her path shows blood in the bathroom, an abundance in the bedroom especially where the phone is there is a pool of blood there showing where Mrs Franza was allegedly calling Police she lost a lot of blood in 3 min she was there. Going toward the front door there is no blood anywhere that indicates a heavy flow where she was allegedly found and bleeding profusely as the testimonies demonstrate, there should be as much blood in this area as in the bedroom, there is absolutely no such showing. Mrs Franza was allegedly at the front foyer for at least 5 minutes before Paramedics arrived therefore there should be far more blood in this area than the bedroom, there is even less in the front foyer than the bathroom.

Had anyone of given Mrs Franza anything to put to her face to control the bleeding before the Paramedics arrived it would of been in the Crime Scene Pictures, or something to cover her being she was allegedly naked it would of been there as well, the Paramedics most certainly would of discarded anything that was given to Mrs Franza to control the bleeding and properly bandage the wound, the stretcher has clean linen on it as well as a blanket to cover Mrs Franza properly for transportation, the -----

Paramedics would of discarded any such cover Mrs Franza had, Mrs Franza was taken under sterile conditions from the Crime Scene, the Photos only show empty wrappers.

Mrs Franza was never at the front of the apartment, Mrs Franza never crawled down the hallway, she remained in the rear of the apartment, defendant asserts Mrs Franza never made it out of the bedroom.

With respect to Ex #14, Motion Ex #5 photo #14, this Court was correct in saying the blood in this photo was wiped and smeared (T-321), the Blue blanket came from the bedroom this is where Mrs Franza allegedly was calling from, the smearing was intentionally done to make it seem as if Mrs Mendez was there as she testified to. Had Mrs Mendez of been in this location and Mrs Mendez being a big woman would require at least 3 to 4 persons to lift her onto the stretcher, it is impossible in lifting her to of not stepped in the blood shown in photo #14, there are no foot tracks anywhere this blood is fresh, there is absolutely no tracking at all, A PHYSICAL IMPOSSIBILITY.

Mrs Franza was in the bedroom and Mrs Mendez was at the front foyer.

P.O. Aponte testified Mrs Franza wrote on the wall, Motion Ex #5 photo #19 (T-142), wrote sent (T-143-146), Det handed her a pad she wrote on pad (T-147), Ex #9 A&B are the notes she wrote (T-150), these notes were never in evidence.

P.O. Alexander testified after Myra wrote then

Paramedics arrived showing at least 5 minutes passed.

Det Giorgio testified when he arrived at scene he saw Mrs Franza write on a pad (T-562).

The foregoing is the product of an intentional fabrication with reckless disregard for the truth. These testimonies were highly inflammatory and prejudicial, Mrs Franza was never at the front foyer and never wrote anything.

Mrs Franza further testified her Mother was tended by 9 Doctors and Doctors were trying to bring her Mother back to life.

Mrs Mendez was conscious at all times when she was brought into Harlem Hospital until she left, always alert, responsive, responding to questions, she was discharged on 8/1/90, 14 days after shooting.

Motion Ex #12, Rosario Material #'s will show the above to be true, 286, 289, 293, 300, 301, 303, 304, 305, 307, 308, 310, 318, 319, 320, 322, 323, 329, 330, 334, 338, 344, 345, 346, 348, 349, 350, 351, 352, 353, 355, 357, 360, 362, 364, 366, 368, 370, 371, 373, 374, 377, 380, 383, 386, 390, 392, 394, 398, 401, 406, 407, 410.

A TRAUMA score was done on Mrs Mendez's survival rate, it was 98% Rosario Material #'s 413, 414 reflect this.

Mrs Mendez threatened to kill herself 2X, 7/23/90, report states; patient awake, but significantly agitated and combative, threatening to kill herself if not allowed to call her husband. Exam: patient refused. Patient reaction

probable 2° to post traumatic stress disorder, I do not believe that she is delirious or confused, she is aware and oriented to time and place #352, 7/23/90 Mrs Mendez stated; I'm going to choke myself if you come near me, holding I.V., removed splint on left arm, exposed bullet wound on left arm #357, ordered and placed on 2 point restraints, pad side wall and board to prevent injury #358, Psy saw her when talked to she just stares #359, 7/25/90 kept on 2 point restraints.

Mrs Mendez was injured severely but not to the point where she had to be brought to life as Mrs Franza stated, her wounds were not life threatening as a 98% survival rate strongly suggest, Mrs Franza testified falsely and intentionally.

Mrs Mendez testified her left hand is not used anymore, she can't hold anything anymore (T-248).

Motion Ex #12, RosarioMaterial #'s 298, 306, 342, 354, 364, 397, 319, 334, 359, 401, 402, 302 shows no gross motor or sensory loss, lungs clear, no respiratory distress, low risk of cardiac arrest, moves all extremities well.

Mrs Mendez testified falsely and intentionally.

Mrs Franza testified in April or March of 89 she went to live with her brother and her Parents, she slept at her Brothers and ate at her Mothers, she went to live with her Brother because of the beating in 89 (T-290).

She got order of protection Defendant got arrested, argument was over me (Mrs Franza) making decision to pick

up station wagon, so he (Defendant) wouldn't rush from the house to the dealer, went to get wagon he was outside apartment waiting for me in front of house, said who the hell are you to get the car, furious that I made a decision upon myself (T-291).

He was angry, cursed and started to hit me, hit me in the car grabbed by the hair, swung neck sideways, hit in the arms, hit in the knees 10X within the car, angry for getting car without permission (T-292).

After hitting went to dealer, angry because price to change muffler was 197.00 and he wanted to make sure, drove back home started to argue (T-293).

Started to hit me again (T-294).

Stated before defendant went out she was threatened (T-298).

Stated defendant said, you better be here when I get back because if your not I'm going to kill you and bury you in the park and take care of your parents, (T-299).

Mrs Franza mentioned in 89 she came back because defendant said he would not hit her, and we would go to Counseling (T-342).

Defendant drove to Courtesy Oldsmobile service department with Mrs Franza at 6:30 a.m. and left Mrs Franza with the station wagon, defendant would then leave for work, the purpose of leaving Mrs Franza there was to get the car in the shop before others, first come first serviced so the car would be ready later on in the day, Courtesy



Oldsmobile is one mile north of defendants apartment on Bronx River Road, defendant lives on Bronx River Road.

Mrs Franza stated she got station wagon so defendant would not rush from the house to the dealer, this indicated defendant would pick up the wagon, this makes absolutely no sense, defendant always on the way home from work would take the train #2 four more stops north of natural stop Allerton ave White Plain Road to 233rd st White Plains Road to pick up wagon when it is being serviced, then proceed home, due to the service department closing at 4:30 p.m. to 4:45 p.m. defendant would go directly to dealer from work, defendant would get out of work at 3:30 P.M. arrive at home at around 4:10 to 4:15 p.m. defendant had no time to waste going home to go to dealer.

Had defendant of went home then gone to pick up wagon would either require defendant to get back on the train for an additional 4 stops, or defendant drive in his car with Mrs Franza to the dealer within one mile and on same road as dealer is on, then upon picking up car required Mrs Franza to drive one car and defendant the other car home within one mile. This makes absolutely no sense to of gone home then to dealer, the dealer is only 5 blocks away from the train station of 233rd st White Plains Road.

Mrs Franza stating defendant was outside apt waiting for her is a fabrication.

Mrs Franza stated to defendant in the morning at the service department being she was home due to being on a

leave of absence would pick up the wagon, so that defendant would not have to rush to the dealer.

Defendant concedes arguing with Mrs Franza about the price of the muffles which included an additional pipe \$197.00 was paid, defendant told Mrs Franza she should of been suspicious of this before paying \$197.00 for services, defendant then went to dealer which was just closing to inquire about the service rendered, defendant returned home, Mrs Franza was gone.

Defendant denies any beating it made absolutely no sense to carry on an argument over a muffler into a full blown fight. Mrs Franza stated defendant threatened her life saying you better be her when I get back, if your not I'm going to kill you and bury you in the park, and take care of your parents, Mrs Franza mentioned going to a Counselor in which we both participated.

The Marriage Counselor was Dr Gertrude Asher, 2500 Johnson ave, Riverdale, N.Y. 10463, defendant wrote Dr Asher and asked her if Mrs Franza said to her if she said to her defendant threatened her as saying defendant would kill her and bury her in the park and take care of her parents, Motion Ex #27, is Dr Ashur's response who could not remember Mrs Franza saying anything like that, only Mrs Franza expressing her fear of defendant. An accusation of killing and burying in the park and killing parents would stand out in anyone's mind surely Dr Ashur, at counseling it was agreed upon by Mrs Franza and defendant

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for Dr Asher to talk about what was said by each of us, there was nothing secret about one said about the other, Mrs Franza never mentioned anything as such being threatened, Mrs Franza returned back home within 3 days she came back saying how sorry she was for leaving and causing defendant to spend the night in jail, and wanted to make it up to defendant, Mrs Franza confessed to defendant inflicting injury to herself doing so wrongfully to get a reason for a Divorce.

Defendant swears to this as the truth.

Defendant concedes having arguments no more or less than an average couple, no marriage is perfect, defendant asserts at no time did he threaten Mrs Franza as such.

Mrs Franza testified falsely in this regard also, her testimony was Highly Prejudicial and inflammatory.

Det Giorgio testified he asked defendant for Handwriting exemplars 8/24/90, shown Ex #22, Motion Ex #28 Rosario Material #'s 1196, 1197, 1198, 1199, 1420, acknowledged it to be voucher prepared by him of his sample of the flower note and my exemplars (T-581).

Stated exemplars were done on 8/24/90 (T-582).

Asked defendant for 10 exemplars (T-584).

Hand delivered exemplars to Det Breslin, asked for exemplars to be examined (T-591), Motion Ex #'s 2077, 1387 shows lab request from Det Giorgio.

Acknowledged Handwriting sample he gave defendant to copy from, voucher and sample 1- sheet done by Det

Giorgio, 4 sheets by defendant, both entered into evidence as Ex #22, Motion Ex #28 (T-593).

Motion Ex #30, reflects Det Ortiz received Handwriting exemplars from defendant, turned delivery note and exemplars to N.Y.P.D. Lab for comparison, report done by Special Agent Chris Behan.

Det Breslin was asked during his involvement in this case if he was asked by Det Giorgio of the 34th Pct to compare what's in evidence as Ex #22, Motion Ex #31 (Alleged floral note) to writing that was provided (T-1197), by Dominic Franza, his answer was yes sir I was, Shown Ex #22 Motion Ex #28 (T-1198).

Looking at 2 pieces of paper as Ex #22 Motion Ex #28, stated he received Ex #26, Motion Ex #31 Rosario Material #1188, from P.O. Alexander, was asked by Det Giorgio to Compare Ex #22, Motion Ex #28, to Ex #26 Motion Ex #31 (T-1199).

Stated defendant wrote note left at scene of shooting, Motion Ex #35 report from Det Breslin saying as such (T-1200). Motion Ex #32 Rosario Material #'s 1183, 1181 vouchers for note and flower box, prepared by P.O. Alexander. Motion Ex #33 Rosario #'s 1185, request for lab exam for the note and flower box by P.O. Alexander for note.

During 2nd Search a file called Mr Franzas file was taken Ex #45 in evidence (T-882), various Franzas within file were used to make a comparisons to Ex #26 Motion Ex #31, Chart was used to make comparisons Ex #62 in evidence, demonstrations were made to the jury (T-1200-1211).

Motion Ex #34 Rosario Material #'s 1187, 1186, 1148,

received exemplars from Det Giorgio given by defendant, in which Det Breslin fabricated a note to make a comparison and made a report, this report was made at a much later date that testified to. All vouchers and lab request are fabricated.

There was never any floral delivery with a delivery note, Mrs Mendez testified on 7/16/90 someone rang her bell from the inside, looked through the peephole and saw 2 men (T-259).

Mrs Mendez did not open the door, there appeared to be two Hispanics , one was dark one was light one taller than the other, the light skinned tall man had no facial hair, had acne one tooth was cracked wearing nothing on his head, straight hair short (T-260).

Other male was darker and shorter, husky no hair on the face clean shaven, wearing nothing on his head, the husky man had a knapsack on his back (T-261).

Never opened the door showed a phoney badge, identified themselves as police officers, asked for her son Nelson Dacosta then left, opened kitchen window and- (T-262).

Took a good look at them, they walked though park and never saw them again (T-263).

Motion Ex # 36 Rosario Material # 1418, and Motion Ex #37 Rosario Material #1424 both reflect incident of two men at Mrs Mendez's apartment on 7/16/90 day before shooting at 7:30 p.m..

On 7/17/90 at 7:20 p.m. Mrs Mendez And Mrs Franza

were shot by two men not one, one of the two men on 7/16/90 was there on 7/17/90, one of the men had to of been new for the reason had Mrs Mendez seen the same man from the day before she would not of opened the door, the new man said flower delivery then Mrs Mendez opened the door and was pushed into the apartment, fighting with these men she was then shot and stabbed, knowing her Daughter was in the apartment is the reason she fought, the men then proceeded to the rear of the apartment looking for Nelson Dacosta encountering Mrs Franza shooting her 1X, had these men of been looking for Mrs Franza she would of been shot more than 1X, there was absolutely nothing from stopping these men from Murdering Mrs Franza had that been their intent. Had defendant of hired these men to Murder Mrs Franza what was stopping them from doing as such, one of these men went to the location 2X 7/16/90, 7/17/90 the men at the scene had all the time in the world to Murder Mrs Franza had that been their intent. This is what happened on 7/17/90.

Mr Benitez testified for the Prosecution stating, on 7/17/90 at 7:20 p.m. he was at crime scene outside in the street waiting for a friend to go to the movies and was waiting for him outside, Mr Benitez had went to his friends apartment and was waiting for him outside, friends name was Johnny Lantigua, heard 3 loud bangs (T-79).

Saw 2 men running out of 485 W 187st, saw the face of one man, he had a mustache, the other was a bit clean

shaven and had a baseball cap on, one man was 6' tall the other was 5'6" or 5'7" tall. the taller man was wearing a baseball cap a fluorescent orange baseball cap with a black bill (Mrs Mendez said white cap)(T-80).

The skin was light black or dark Hispanic, the shorter man was wearing a black and white striped shirt, he was light or dark Hispanic, the "SMALLER" man had a canvas bag that he was clutching like a football (T-81).

Motion Ex #38, reflects P.O. report done by Det Bourges in which he interviewed Mr Benitez dated 7/17/90 day of shooting which was identical to testimony given in which this report Mr Benitez states he believed the taller man was carrying a knapsack, Motion Ex #'s 36, 37 from incident of 7/16/90 one man had a knapsack, Mrs Mendez stated one man the smaller man had a knapsack on his back (T-261).

The same man who had the knapsack on 7/16/90 was there on 7/17/90, Mrs Mendez saw him from the day before, of the two men from 7/16/90 one returned the next day with another man who said flowers, Motion Ex #'s 36, 37 mentions men saying on 7/16/90 they would be back they did the next day at the same time. The Prosecution put Mr Benitez on the stand to make it seem as if his testimony was wrong in light of what Mrs Mendez would of testified to.

10 days prior to the shooting on 7/8/90 P.O. Aponte took a report from Mr Nelson Dacosta, in which she reported complainant RECEIVED A PHONE CALL AND A MAN VOICE STATED I'M GOING TO KILL YOU AND YOUR FAMILY, Motion Ex #39 reflect (Mr Nelson Dacosta was questioned about said report during Defense.)

this, this man was looking for Mr Dacosta and his family and had men helping him, Mr Dacosta was in big trouble with someone. Mrs Franza testified Mr Dacosta's wife Ruthie Dacosta left for Chicago 2 to 3 months before shooting, she left with her children for a reason (T-386).

One of the men said flowers delivery and the defendant sent flowers in the past was the beginning for the formation of the floral delivery note at a much later date.

The Prosecution was fully aware of the fabricated evidence, and testimony from day one till sentencing, and allowed all to be mislead into believing a scenario that was fictitious, the scenario was that of Mrs Mendez being shot trying to save the life of her Daughter, then Mrs Franza tending to her Mother then proceeding to the front door.

The role of savior was utilized to enhance the case, this was Extremely prejudicial and Highly Inflammatory to the defendant. Prosecutor allowed a mockery of justice to continue knowing the evidence was false.

Defense counsel had in it's possession all the Rosario Material mentioned as Motion Exhibits excluding #'s 6, 7, 8, 9, 10, 11, 14, 15, 16, 27. Defense counsel did not want to Controvert what took place in the apartment claiming there was little probative value of these photographs establishing a position of the shooter vis-a-vis the victim (T-318).

Defense counsel Stipulated as follows through A.D.A.



Sheindlin; it is hereby stipulated by the People of the State of New York and the Defendant that if Dr N. Qwiloh, Chief Resident, Harlem Hospital, testified, Dr. Qwiloh would testify that on 7/17/90, Josephine Mendez was admitted to Harlem Hospital suffering from five gunshot wounds.

The first gunshot wound was located in Josephine Mendez's facial area and caused a fractured jaw.

The second gunshot wound was located in Josephine Mendez upper chest area.

The third and fourth gunshot wounds were located in Josephine Mendez right arm.

The fifth wound, the fifth gunshot wound was located in Josephine Mendez left forearm.

Dr, I believe it is, Qwiloh would further testify that Josephine Mendez required Medical treatment in Harlem Hospital until 8/1/90.

Dr. Qwiloh would further testify that Josephine Mendez would have died if not Medically treated for her gunshot wounds.

The People then rested (T-1473).

Not Controverting the crime scene left the impression there was nothing wrong, it was as testified to. The stipulation to Mrs Mendez's medical records many gunshot wounds were left out as well stab wounds, most important the gunshot wounds were through and through, as well .5cm gunshot wounds showing a .22 caliber was used, and the gunshot wound to Mrs Mendez's hand that she testified to

as being crippled to in trial, which Medical records show to have "CARBON PARTICLES" surrounding the wound which would of shown she was holding the gun, as well the wound's were THROUGH & THROUGH. This stipulation was intentionally done to conceal the true facts from being placed in the record. It would of destroyed the Prosecutions case totally and showed the Crime Scene Photos as well testimonies to be a fabrication. Only two bullets were recovered at the scene Mrs Mendez received 5 gunshot wounds as testified to, then where are the rest of the bullets.

Defense counsel was fully aware of these facts. Defense counsel had a set of Rosario Material given by the Prosecution which showed there was more hidden. Defense counsel did not object to the Prosecutions evidence in its entirety. Defense counsel did not controvert the crime scene. Defense counsel stipulated to Mrs Mendezs and Mrs Franzas Medical records (T-1472). Defense counsel was non-productive. Defense counsel failed to represent Defendant properly. Defense counsel allowed a Mockery of Justice to be put before this Court as well as the Prosecutor's. Defense asserts an intentional fabrication by the Prosecutor's and Defense counsel working with the Prosecution.

5) The Documents produced by the Prosecution was fabricated with respect to the Explosive device mailed through Federal Express to Puerto Rico.

Det Giorgio testified on 2/10/91 he was informed by Mrs Mendez & Mrs Franza a bomb was sent to Puerto Rico,-----

and he was given a Tele # of an Aunt (T-620).

Agent Behan testified he learned of the bomb on 2/11/91, later on in the day, Agent Behan stated the pipe bomb was sent via Federal Express to the ROMAN Family in Levittown, P.R., (T-840-841).

Agent Behan was shown Ex #39, Motion Ex #44 Rosario material #'s 2182, 1410, 2012, recognized it to be Federal Express Airways Bill #400-0602-5224, stating this Air Bill has his initials and he received Airways Bill on 2/20/91 from Thomas Sullivan, who works for Federal Express as a Security officer, Agent Behan stated to of made a request for Airways Bill Ex #39 entered into evidence (T-857).

Mr Thomas Sullivan testified and was shown Ex #59 for I.D. Motion Ex #45, who recognized it to be a Tracking Inquiry which indicated this particular package number (bomb), where its been, the times its been received into the system, and where it intimately wound up the destination, Mr Sullivan stated when somebody wants to mail a package through federal Express each package is assigned an Air Bill #, and the Air Bill # is entered into a computer (T-1106).

Mr Sullivan was asked if what he referred to as the Package Tracking Inquiry Ex #59, Motion Ex #45, are the computer records from the information which is recorded in the computer in the regular course of business, answer; yes sir, it was, shown Ex #39, Motion Ex #44 (T-1107).

Mr Sullivan stated Ex #39 Air Bill # is 400-0602-5224,

Mr Sullivan was asked if the package Tracking Inquiry pertains to the Air Bill specifically Ex #39 in evidence, answer was yes sir, stating as well the package was received at 2:45 p.m. on 2/4/91 at the F.L.U.E. facility, package was taken by employee #93118 who is Cesaz Rodriguez (T-1108).

Mr Sullivan stated F.L.U.E. facility is located at 600 West 116st in Harlem, Manhattan, Mr Sullivan was asked when an employee receives a Money Order for a package what does the employee do, answer; the employee should cross reference the Air Bill number to the Money order (T-1109).

Mr Sullivan was shown Ex #36, Motion Ex #46 Rosario Material #'s 1279, 1283, who acknowledged it to be the an American Express Money Order with the marking indicating the Air Bill # 400-0602-5224 (T-1110). Mr Sullivan further indicated those are the numbers on the Air Bill (T-1111).

Investigator Jesus Manuel Garcia, Police Agent for Puerto Rico testified for the Prosecution, Agent Garcia was asked if on 2/8/91 did there come a point that he received a call to go and see a lady who he learned later to be Miss Evelyn Lamboy, answer, yes sir, Agent Garcia stated he went to see the woman in Levittown P.R. Paseo Aguilla 2629, Agent Garcia said he saw her, Agent Garcia stated his partner was Agent Haddock, Agent Garcia was then asked did there come a time after speaking with Miss Evelyn that he and Agent Haddock went over to the device, answer; WELL WAS NECESSARY FOR ME TO INTERVIEW EVELYN

BECAUSE, ACCORDING TO THE SERGEANT, THE SERGEANT SAID THIS WOMAN RECEIVED, Defense counsel objected, Witness said Okay, Court don't tell us according to somebody else, A.D.A "OKAY" (T-1067).

The Airways Bill alleged to of been used in the mailing was Doctored as well the American Express Money Order, Ex #39, Motion Ex #44, Ex #36, Motion Ex #46 are fabrications.

Agent Garcia testified it was necessary for him to interview Miss Evelyn because, according to the Sergeant, the Sergeant said this woman received- defense counsel objected.

What Agent Garcia was about to say was Sergeant Vincente Pagan Navedo of Police Headquarters for Levittown had informed him the explosive was addressed to 2615 Paseo Aguilla, Motion Ex #47 Rosario Material #'s 766, 2094, is a Newspaper EL VOCERO which reflects Sergeant Vincente Pagan Navedo from Police headquarters of Levittown stating the above, the Sergeant further stated in this Newspaper, an employee from federal Express stated to the Police it was 3 days HE had the package and could not deliver it until one of the neighbors of the residence which could direct the package belonging to the person it belonged to, PANTOJAS decided to pay for the cost of the carting in order to bring it to the owner, date of newspaper was 2/9/91 day after the bomb was found.

Agent Garcia was told by Sergeant Pagan Navedo the

package had the name of Evelyn Figueroa Lamboy, this information is reflected in Motion Ex #48 Rosario Material #'s 2093, 765, from EL NUEVO DIA Newspaper dated 2/9/91 day after bomb was found.

This is the information that Agent Garcia received and was about to testify to before defense counsel objected.

Agent Garcias partner Raul Haddock and Oscar Torres stated in a report ELBA DE PANTOJA PASEO AGUIILLA 2615, Levittown stated; she did not know anything about the situation when the Police went to her to tell her what happened, the Police told her for her safety to abandon her residence, at the time Police went to see her she was watching T.V. in the last room, she informed them she could not give them any information about what happened, Motion Ex #49 Rosario #'s 724-727, reflects this P.R. Police report dated 2/13/91, directed to Agent Garcia.

Miss Lamboy stated she proceeded to open the package, taking from the inside of the interior a black suitcase, opened it a little and observed a strange object inside, she stated she informed her neighbor, JOVEN FRANCISCO PANTOJA who went to her house and did the same to see what was inside the suitcase, and said it was a bomb of bad taste, Motion Ex #50 Rosario material #'s 730-734, P.R. report reflects this dated 2/13/91, directed to Agent Garcia.

Motion Ex #'s 47-50 show the explosive went to 2615 Paseo Aguilla to the PANTOJA Family, this is why the Police

told Miss Pantoja to abandon her residence for her safety, because the Police did not know what was going on, Miss Lamboy called Joven Pantoja to look inside the package, 2614 to 2629 is 14 houses away, the reason why Miss Lamboy called Pantojas was the package had the Pantojas address, but the package had Miss Lamboys name and she wanted to make sure if this was meant for the Pantoja Family or her.

Ex # 59 Motion Ex #45 is the Package tracking Inquiry from Federal Express, which was never entered into evidence by the Prosecution or Defense Attorney, it shows package tendered on 2/4/91, payment received \$45.00, on 2/5 the report says INCORRECT RCPT ADDRESS, address 2629 Aguilla, Postal code 00949, on 2/6 Rcpt not in /business closed, on 2/7 customer requested future delivery, 2/8 delv'd to address other than Rcpt delivered to 2630 Aguilla next house. Jury never knew there was an incorrect rcpt address.

Motion Ex # 48, Sergeant Vincente Navedo stated Miss Lamboy lives alone.

Motion Ex #51, Miss Lamboy stated she does not know the origin of the ROMAN family, she lives alone after many years at this location (2629 Paseo Aguilla), everytime she states no one by the name ROMAN ever lived at her address, this Newspaper article stated they believe there was a wrong address on the package, Newspaper dated 2/10/91.

Miss Lamboy testified she lives at 2629 Paseo Aguilla and lived there for 26 years (T-754-755).

Miss Lamboy stated she has three sisters, Josephine

Mendez, Angeles Roman, Elba Roman, stating Elba Roman Passed Away, MOTHERS NAME IS "ROSA LAMBOY MATOS", her Mother never Married the Father of her three sisters (ROMAN) (T-756).

Miss Lamboy stated the tele # where she lives is 809-784-1630, and it was the tele # on 2/4/91 under the name Evelyn Figueroa Lamboy, stating her Mother lived with her all her life, Mother Passed away in 11/24/91 said that was wrong it was 11/24/90 (T-757).

Miss Lamboy stated Mr ROMAN never lived with her, stating Mr ROMAN passed away 15 years ago (T-758).

Miss Lamboy stated on 2/5/91 when she arrived to her house around 7:30 in the evening, she noticed in the gate of her house there was a notification from Federal Express INDICATING "SHE" had a package that they (Federal Express) had come to deliver it but they had not been able to deliver it because no one was home, she headed home and didn't pay attention to the note because she had not ordered anything, placing the note on the table and went to bed, Miss Lamboy was asked if the paper indicated what the contents of the package was, she answered, yes, the package indicated that it was a valuable -valuable camera, it indicated that it was being sent from New York, "EVEN HAD MY NAME", my tele number on, all the address, and I had to pay a certain sum of money (T-759).

On 2/6, Miss Lamboy stated she went to work, when she returned her neighbor from 2630 Paseo Aguilla indicated to her another employee from Federal Express came and had



tried to leave a package, and did not leave the package because no one was home, her neighbor indicated she was willing to pay the \$45.00 but did not have the money (T-760).

Miss Lamboy then proceeded to head to the home of her other sister, ELBA, and indicated to her she was going to speak on the phone because her phone was out of order, and she conversed with her sister Angeles, and explained to her that "SHE" had a note from Federal Express that INDICATED THAT SHE HAD a package of a camera (T-761).

On 2/7 Miss lamboy called Federal Express from work, and explained to them about the package, Federal Express indicated to her to leave the Money with the neighbor, then Miss Lamboy gave Federal Express the address of the neighbor Olga Segatta 2630 Paseo Aguilla, when she went home she made out a check and gave it to her neighbor (T-762).

On 2/8 Miss lamboy states when she returned from work her neighbor brought the package over (T-765).

Miss Lamboy shown Ex #34 (defendant asked for a copy from defense counsel and was denied) who recognized it to be a copy of the Document she received on 2/5/91 INDICATING THAT SHE HAD a package and they had not been able to leave it at her house, Ex #34 in evidence (T-767-768).

Looking at Ex #34 Miss Lamboy was asked by the Prosecution if her tele number on Ex #34 was her tele

number, Mrs lamboy said yes it was 809-784-1630, as well she was asked her home address, she stated it was correct 2629 Paseo Aguilla, and she was asked to say who the sender was on the note, she said the typewritten name of the sender was U.S.A. Electronics.

DEFENSE COUNSEL DID NOT CROSS EXAMINE.

Mrs Mendez stated her Mothers name is ROSA LAMBOY, she never used the name Roman, her Mother never married her Father (T-244).

Mrs Mendez stated her Mother lived with her sister Evelyn Norris lamboy, who is born of a different father (T-245-246).

Mrs Lamboy stated she does not know the origin of the ROMAN Family, she lives alone for many years, no one by the name Roman ever lived at her residence, she has lived at 2629 Paseo Aguilla for 26 years, her Mothers name is ROSA LAMBOY MATOS, her Mother never married the Father of her three sisters, Mr ROMAN never lived at her address, Mr Roman passed away 15 years ago.

Mrs Mendez stated her Mothers name is ROSA LAMBOY, her Mother never used the name ROMAN (her Mother was in her 80's when she passed away), her Mother never married her Father. (T-244)

Since for 26 years the name ROMAN is not used, not known by Miss Lamboy, then why did the Pantojas want to pay for the package and take it to the owner if at 2629 Paseo Aguilla there has never been a ROMAN Family, it was

because the package had the address of the Pantojas 2615 Paseo Aguilla, and the reason the Pantojas knew who the owner was the package had the name of Miss Lamboy, this is the reason the Police went to see Mrs Pantoja and advised her to abandon her residence.

The package was mailed 2/4/91, arrived in P.R. 2/5/91 to 2615 Paseo Aguilla, Pantojas decided to pay for the package, but being the package was valued at \$800.00, and being Miss Pantoja was not the recipient the delivery man could not leave the package with Mrs Pantojas, especially 14 houses away 2615 to 2629, Pantojas gave direction, wanting to pay for package and take it to its owner indicates she knew the recipient of the package (Miss Lamboy).

The delivery man then went to 2629 Paseo Aguilla to deliver the package, finding no one home he left Notification on Miss Lamboy Gate, Miss Lamboy testified as seeing this note on 2/5, she further stated this note had her NAME on it, her address, tele #, this information was given by Mrs Pantojas to the delivery man to deliver the package.

This information given is reflected in the package tracking inquiry Ex #59, Motion Ex #45 which says incorrect Recpt Address reflecting correct address 2629 Paseo Aguilla, showing the package had the wrong address initially then correction was made 2/5, same day delivery man went to 2615 Paseo Aguilla Pantojas.

On 2/5 Miss Lamboy testified she found a note in her

gate coming home from work, she did not pay the note any attention and went to bed.

On 2/6 she went to work when she returned her neighbor told her Federal Express was there to deliver a package, then she went to her sisters house and used the phone, claiming her phone was out of order, she spoke to her sister Angeles and told her she had received a note indicating she had a package of a camera.

On 2/7 she then called Federal Express and explained to them about the camrera, Federal Express then told her to leave money with her next door neighbor, she told Federal Express to sent package to 2630 Paseo Aguilla, she would leave the money there, going home she left a check at 2630, the package tracking inquiry reflects customer requested future delivery.

On 2/8 the package was delivered to 2630 Aguilla as package tracking inquiry indicates on 2/8, from 2/5 to 2/8 are three days which accounts for the three days the package was in Federal Express custody.

Miss lamboy was shown Ex # 34 (Notification from Federal Express on 2/5) and recognized it to be a copy of the note she received on 2/5 from Federal Express, she was asked by the prosecution if her tele # was on the paper which she said yes it was, as well her address, and who the sender was, but the prosecution never asked her if her name was on the note, this was done to conceal the fact Miss Lamboy already testified her name was on the

note, hoping the jury forgot.

Ex #39, Motion Ex #44, shows the Federal Express Airways Bill with the name "ROMAN FAMILY" for recipient.

If package had Roman Family on it, and Miss Lamboy not knowing the origin of the Roman family, and no one lives at her address by the name Roman, her Mother is not named Roman, never carried the name Roman, then how did Pantojas know who it was, the name on the package was Miss Lamboys, as well would Federal Express leave a package worth \$800.00 with Miss Lamboy if she does not know the origin of the ROMAN Family, Federal Express would of returned the package to the sender, the package had Miss Lamboys name.

Ex #39, Motion Ex # 44 shows Federal Express Airways Bill receipt as ROMAN FAMILY, tele # 809-784-1630, 2629 Paseo Aguilla 2n SECE, Levittown, Catano, P.R. 00632, Ex #59, Motion Ex #45 shows package tracking inquiry, showing INCORRECT RECPT ADDRESS, then it states 2629 Aguilla, it was wrong recpt address as stated, would 2629 Aguilla be wrong address if Miss Lamboy accepted package. Package had her name on it, and Federal express leaving the package, Mr Sullivan was never asked what the Name was on the Airbill. Defense counsel never asked as well.

Miss Evelyn Figueroa Lamboy testified her Mother lived with her all her life (T-757), Mrs Mendez testified her Mother lives at 1829 Paseo Aguilla with her Sister Evelyn Norris Figueroa (T-245-246).

Mrs Franza states her Brother died on 11/16/89 and went to P.R. for his funeral, and defendant did not accompany her to P.R., we never went to P.R. together, Mrs Franza was asked if in Nov of 89 did she supply the defendant with any information where she could be reached, answer, yes, asked could you please tell us "what information" you provided him (T-334).

Answer, "my Grandmothers phone number," "I believe my Aunt, the address 2629 Paseo Aguilla, Levittown, Catano, P.R.," Mrs Franza was asked who did your Aunt live with-did you Grandmother live with back in 89 when you went to P.R., answer, with an Aunt ANGELES Evelyn. Evelyn Norris, she has two names (T-335).

A.D.A. Brancato said to Mrs Franza, you indicated that when you went to P.R. for your Brothers funeral that you gave your Husband your Grandmothers Telephone #, did you give him any other telephone #, answer, I may of given him my others Aunts telephone #, asked where did your other Aunt live, answer, Rio Piedras, asked where did your Grandmother live, answer, Levittown (T-336).

Motion Ex #51, Miss Evelyn Figueroa lamboy, stated to the Press she lives alone for years, Mrs Franza stated she gave defendant her Grandmothers phone #, and the address of an Aunt 2629 Paseo Aguilla, A.D.A. Brancato asked her who did your Aunt live with-did your Grandmother live with, answer, with an Aunt ANGELES Evelyn. Evelyn Norris, she has two names, then Mrs Franza stated she might of given

defendant the number of another Aunt in P.R., she States Grandmother lives in Levittown.

Mrs Franza stated she gave the defendant the telephone number of her Grandmother and the address of an Aunt 2629 Paseo Aguilla, two different places, then Mrs Franza reversed stating her Grandmother lives in Levittown.

Mrs Franzas Grandmother lived with ANGELES Evelyn. Evelyn Norris, she was correct her Grandmother lived with ANGELES who is the Aunt in Rio Piedras, who does not have two names, Evelyn is Evelyn, Angeles is Angeles, realizing her mistake she later changed saying her Grandmother lived in Levittown, Miss Lamboy stated she lives alone for many years.

Defendant did not go to P.R. in Nov of 89 for Mrs Franzas Brothers funeral, due to in Sept, 5th, of 89 Defendant broke his right leg working and was wearing a full leg cast, Defendant was given the telephone number of Miss ROSA LAMBOY MATOS in Rio Piedras, and the phone number of the Quinnois Family Mrs Franzas cousins, it served no useful purpose to of given Defendant any address, defendant was not going any where with his broken leg, Mrs Franza flew back home in one week from P.R..

Det Giorgio testified when arresting defendant, he found a piece of paper with telephone numbers, one he recognized to be from Rio Piedras which he received from Mrs Franza and Mrs Mendez, the number given was 809-765-4792, but did not receive anymore numbers from Mrs Franza

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and Mrs Mendez, on the piece of paper he saw the word Levittown and telephone number 809-784-1630 (T-620-624).

Agent Behan testified he received from Det Giorgio a piece of paper with words written and numbers, Levittown 809-784-1630, Rio Piedras 809-765-4792 (T-842), marked into evidence #35 B, Motion Ex #52 Rosario material #'s 1176, 1385 (T-845).

Agent Behan testified during the first Search a piece of paper was recovered bearing the words, Levittown and Rio Piedras, 809-784-1430 and 809-765-4792 (T-858), paper entered into evidence #35 C, Motion Ex #53 Rosario Material #'s 1175, 1177 (T-861).

Mrs Franza stated she gave the defendant the telephone number to her Grandmother, and the address of an Aunt 2629 Paseo Aguilla, then reversed saying her Grandmother lives in Levittown.

Miss Lamboy stated her telephone number on Ex #34 (Notification from Federal Express on 2/5) was 809-784-1630 which is the same telephone number on Ex #39, Motion Ex #44, Federal Express Airways Bill.

Motion Ex #'s 49-50, are Police reports from P.R., which reflect Miss Lamboys telephone number as 809-786-1923, report dated 2/13/91, this information was recorded much earlier, these reports contain information previously mentioned the day the bomb was found, her telephone number is not 809-784-1630, this number goes to the Quinnois Family Mrs Franzas cousins.

Mrs Franza was correct when she said she gave defendant



her Grandmothers telephone number, and Grandmother was living with ANGELES (Rio Piedras), Evelyn Norris does not have two names, there was no mistake when she said ANGELES, ANGELES IS ANGELES, EVELYN IS EVELYN, she slipped and tried to cover up.

The telephone number she gave for her Grandmother was 809-765-4792 for Angeles in Rio Piedras, 809-784-1630 is for the Quinnois Family in Levittown, it is not Miss Lamboys number, defendant was never given Miss Lamboys number or address.

Mrs Franza stayed at her Grandmothers house in P.R., they are very close and Mrs Franza being in P.R. would not stay with "anyone else".

Mrs Franzas Grandmother "never" lived in Levittown, Miss Lamboy told the press she lives alone for many years.

Mrs Mendez acknowledged her Mother was ill for a long time, she had cancer, and the cancer was terminal, and prior to Nov 90 she had been in the Hospital, and her Sister took care of her (T-279).

Mrs Franza acknowledged sending an Orthopedic walker to her Grandmother in P.R. on 1/90, this was due to her Grandmother having difficulty walking, Miss Lamboy works all day and could not take care of her Mother, being terminally ill how could Miss Lamboy take care of her Mother, it was Mrs Angeles Quinnois.

Mrs Mendez testified she never told her daughter that her Mother was not married to her Father, told her daughter

for the first time when A.D.A. Brancato was over her apartment (T-244-245).

Mrs Franza testified she believed in her mind, she believed that her Grandmothers name was Rosa Lamboy Roman because her Mothers maiden name was Roman (T-310), Mrs Franza knew Miss Evelyn Figueroa Lamboy is the youngest Sister of her Mother, therefore indicating her Grandmother was married to Mr Lamboy and her name would not be Roman anymore but Lamboy, common sense, Mrs Franza is a smart woman she would of known this, her assertion is baseless, Miss Lamboy said her Mothers name was ROSA LAMBOY MATOS ?? (T-756).

This left the impression Mrs Franza knew her Grandmother as Roman, and defendant being Mrs Franzas Husband must of known this as well being Family, being Ex #39, Motion Ex #44, shows ROMAN Family the Prosecution was trying to show the only persons that knew Rosa Lamboy Matos as Roman was Mrs Franza and the defendant, as well the address and telephone number as Mrs Franza testified to of given the defendant. A total fabrication.

Had Mrs Franza given to the defendant the Grandmothers telephone number and address, name as Roman, then how did the bomb go to 2615 Paseo Aguilla, how is phone number different, how did the package have the name of Miss Lamboy if this package was meant for the Grandmother.

Ex #59, Motion Ex #45, Package Tracking Inquiry shows INCORRECT RECPT ADDRESS, had Mrs Franza of given the address

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of her Grandmother it would of not been an incorrect receipt address.

Had the name of Roman Family been on the package, Miss Lamboy not knowing the origin of the Roman family, no one ever lived at her address by the name Roman, lives alone for many years, Mother never carried the name Roman, and all the reasons previously mentioned, Miss Lamboy would of not been given the package, Federal Express would not of left a package worth \$800.00 with someone not belonging to it, Federal Express would of called the sender to check who the recipient was.

The explosive was sent to 2615 Paseo Aguilla initially with the name Evelyn Lamboy, had the name and the address been wrong Federal Express would of surely checked with the sender, delivery would of been canceled.

Miss Rosa Lamboy Matos never lived at 2629 Paseo Aguilla, she lived in Rio Piedras with Angeles Roman Quinnois her daughter, Miss Lamboy, Mrs Mendez, Mrs Franza testified falsely and intentionally.

Defendant stated on page 86, 3rd paragraph, the delivery man received Miss Lamboys address, phone number from Mrs Pantojas, with respect to Miss lamboys phone number it was changed to make it appear it was her phone number and show defendant had this number in his possession, with respect to the address the defendant asserts page 86, 3rd paragraph to be as said. Had Miss Lamboys phone number of been correct defendant asserts page 86, 3rd paragraph

to be as said.

Mrs Franza acknowledged in January of 91 she knew her Grandmother Rosa lamboy had cancer, at the time she was living with the defendant, and mailed an orthopedic walker to her Grandmother, as well periodically informed to her Grandmothers condition (T-366-367).

Defendant was apprised of her condition as well and knew Miss Rosa Lamboy would not see the next year. In December of 89 Miss Rosa lamboy was hospitalized and diagnosed as having colon cancer and it was terminal, upon leaving the hospital in 1/90 miss Rosa Lamboy had great difficulty walking and was mailed an orthopedic walker, which in Feb of 90 miss Rosa Lamboy could not use and was bed ridden, she was not expected to live more than 4 months.

Defendant does not have Miss Rosa Lamboys Medical Records, should they be summoned it will show it as such, it would further show defendant had knowledge of Miss Rosa Lamboys condition and would not see January of 91, defendant knew Miss Rosa Lamboy would not see 91 and stands convicted of Att Murder of a woman who defendant knew would be dead in 91. Mrs Franza in 5/90 told defendant she will die soon.

Motion Ex #49 and 50, shows information stating the package had the direction to 2629 Paseo Aguilla Roman Family, as well the delivery man saying different as how the package was delivered. Delivery man as well Roman Family, address was fake and intentionally entered in the P.R. reports, the same reports reflect exactly what happened

as well.

Ex #39, Motion Ex #44, has been re-done to reflect Roman Family and address 2629 Paseo Aguilla, as well JULIO ORTIZ matching defendants exemplars given pursuant to a Court Order. On 11/6/91 Ex #23, Motion Ex #54 Rosario Material #'s 1271-1277, Det Breslin prior to exemplars given could not identify authorship, after exemplars were given Det Breslin stated defendant wrote Federal Express Airbill JULIO ORTIZ.

Det Breslin acknowledged he received Ex #39, Motion Ex #44 (T-1211-1212), and receiving from Det Giorgio Ex #23D, compared the requested writing with 2 page document Ex #61 A & B, against the writing that appears at the bottom of the Federal Express Airways Bill, which bears the name JULIO ORTIZ, arrived at the conclusion defendant did in fact write the name JULIO ORTIZ on the Federal Express Airways Bill (T-1212-1213), Det Breslin prepared Ex #64 and made a demonstration to the jury as to how they match (T-1213-1226).

Det Breslin made various demonstrations on the authorship on the Federal Express Airways Bill, when the Airways Bill was Doctored, Det Breslin could not arrive at authorship even having hundreds of pages of defendants known writing, as soon as exemplars were submitted Det Breslin arrived at authorship, the exemplars taken on 11/6/91 were used to Doctor the Federal Express Airways Bill, again defendant asserts Det Breslin participating

in this fraud, there may of been on the Federal Express Airways Bill the name JULIO ORTIZ, but defendant asserts he did not write it. This was an elaborate scheme to further connect defendant to the crime.

Defense counsel was fully aware and had all the Rosario material pertaining to this section, defense counsel did not question Miss Lamboy at all, or even ask her as to her Mothers medical condition, most important defense counsel had in its possession Ex #39, Motion Ex 44, the Package Tracking Inquiry, and did not enter it into evidence or utilize it at all. This Exhibit would of shown a major discrepancy in the testimony given, and revealing the true facts, as well had Miss Lamboy been impeached with her statements given to the press and information to the Police in P.R., the truth would of been revealed, this would of revealed the package did in fact go to another address as previously mentioned.

The Prosecution was in possession of all the Rosario material, and was fully aware of the false evidence and testimony given by his witnesses, the Prosecution allowed a mockery of justice to continue in front of this Court.

It is inconceivable defense counsel did not see the information given in the Rosario material, and not attacking it properly to reveal the truth, nor was Mr Sullivan from Federal Express even asked what name was on the Airways Bill, the truth was concealed.

The Prosecution tried to draw an inference the Airways

Bill came from 1 Fordam Plaza (BRONX) and was mailed from Manhattan, therefore being the defendant lives in the Bronx trying to draw the inference defendant went to 1 Fordam Plaza and acquired an Airways Bill, and had someone mail the package in Manhattan (T1115-1122).

Then demonstrations were done to show defendant wrote JULIO ORTIZ on the Airways Bill, the prosecution was fully aware of what they were doing.

Defendant asserts an intentional fabrication by the Prosecution and Federal Authorities, and defense counsel working with the prosecution. Defense counsel allowed the Chain of Custody to be broken, the delivery man in P.R. should of been called, as well Cesar Rodriguez who tendered the package.

In connection with the mailing of this explosive device to P.R. there was an American Express Money Order that was allegedly used to pay for this package to be mailed, Ex #36, Motion Ex #46 entered into evidence, this Money order's number supposedly 21-212-545-289.

On 11/6/91 pursuant to a Court Order defendant gave Det Giorgio exemplars of the American Express Money Order, as well the Federal Express Airways Bill, prior to these exemplars were given Det Breslin could not conclude authorship until the exemplars were given.

Det Breslin was asked to make a comparison to the senders name and address on the Money order Ex #36, Motion Ex #46 to exemplars given on 11/6/91, Det Breslin prepared

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Ex #63, and made a demonstration to the jury and arrived at the conclusion defendant wrote the American Express Money Order (T-1226-1236).

Defense counsel called Cesar Rodriguez for the defense, Mr Cesar Rodriguez as this Court is fully aware was the employee for Federal Express that tendered the package and stated in the Grand Jury as follows:

shown G.J. Ex #9

Q-what do you recognize it to be.

A-this is the Money Order he brought back with him and then filled it out.

Q-Is there an identification number that you printed on that Money order to correspond to the number on the receipt that the man had when he came in with the package.

A-yes.

Q-now, do you know if the man wrote that out in your presence or was it written out before he came in.

A-Okay, he wrote it in there, right in the presence.

Q-and what name is on the Money Order.

A-JULIO ORTIZ

Q-what address is given

A-750 West 181st, N.Y. N.Y. 10033

moved into evidence

This Court is fully aware defendant did not write the American Express Money Order, and refused defense counsel to impeach his own witness for the reasons stated in Motion Ex #55.



The Prosecution was required to show the chain of custody was not broken, Defense counsel allowed the chain to be broken, the Prosecutor did not call Mr Cesar Rodriguez because of his Grand Jury testimony.

Defendant asserts this was intentionally done by defense counsel and Prosecution in order to keep Mr Cesar Rodriguezs testimony out. It is inconceivable to have the Prosecution not show the chain of custody from being tendered to delivery and Police Custody. Had the Prosecution called as they should of Mr Cesar Rodriguez then the defense would of on cross impeached Mr Cesar Rodriguez with his Grand Jury testimony, this would of showed Det Breslin was wrong before the Jury, raising a reasonable doubt as to all his comparisons. Defendant charges Defense counsel working with the Prosecution.

Defense counsel had in its possession 2/13/92 a response from American Express stating money order #21-212-545-289 was purchased for College Stationary 2951 Broadway N.Y. N.Y., and was presented for payment on 2/8/91, this information was furnished in response to Subpoena Duces Tecum dated 2/12/92, this information was faxed to Defense counsel in which American Express reflects a check #212-545-280 not 89, this is a different check, this should of been explored in light of check 89, Motion Ex #56 reflects this. Which money order paid for this package 280 or 289 most important, defense counsel did nothing.

Miss Lamboy testified she received notification from Federal Express stating she had to pay a certain sum of money (T-759), left check with her next door neighbor at 2630 Paseo Aguilla (T-762), P.R. Police report Motion Ex #'s 49, 50 show the check was for the amount of \$45.00 and \$7.82 in tax personal check #2630. This payment was for Import Tax.

This is the same package Mrs Pantojas wanted to pay for and take it to its owner, the same package Federal Express delivery man had for three days, the same package in Ex #59, Motion Ex #45.

Defendant charges the Prosecution and Federal Authorities as well Defense counsel, and P.R. Police trying to conceal the truth, there was a major discrepancy involving Documents for this package. Defendants asserts had everything been on the level there should be absolutely no discrepancies at all from day one to day of trial.

The truth communicated between agency's should be the same and consistent throughout, the reason the reports differ from one agency to the other was due to each agency trying to cover up, fabrication of evidence was formed. But the truth can be pieced together.

Defendant bases this assertion on the fact Motion Ex #'s 49, 50 P.R. reports totally left out the fact the package went to 2615 Paseo Aguilla and had Miss Lamboys name. P.R. Police intentionally put the ROMAN Family as being the recipient for the package and went along with the fraud, as well putting 2629 Paseo Aguilla.

Ex #39, Motion Ex #44, Ex #36, Motion Ex #46 were all fabricated to reflect as being used in the mailing of this explosive device to P.R..

6) Two letters were mailed to Mrs Mendez at her address, these letters were fabricated and used against defendant, the letters were typed and the envelopes were handwritten, defendant asserts a fabrication.

Mrs Mendez testified she received letters on 2/7/91, one addressed to Myra in care of herself, one to Nelson Dacosta addressed to her address (T-237-238), shown Ex #10, Motion Ex #42 recognized it to be the letters she received, opened them, shown Ex #11, Motion Ex #40 recognized it to be letter addressed to her son (T-241), shown Ex #12, Motion Ex #41 recognized it to be letter to Myra, turned letters and envelopes over to Det Giorgio and Ortiz, letters had the name JULIO ORTIZ 750 W 181st N.Y. N.Y. 10033.

Det Giorgio testified receiving letters and envelopes from Mrs Mendez on 2/7/91 with Det Ortiz (T-608). Det Giorgio recognized letters and envelopes to be the one he received from Mrs Mendez (T-609).

Det Giorgio was shown Ex #32, recognized it to be letters and envelopes he received from Mrs Mendez, Marked Ex #32 A, B, C, D in evidence (T-613).

Shown Ex #23 (T-615), recognized it to be top sheet of voucher prepared by him 11/6/91 of exemplars (T-616).

Det Breslin acknowledged preparing Ex #67, which represent the two envelopes Mrs Mendez received Ex #32-A-C, Motion Ex #42, Ex #67 in evidence, prepared Ex #68, reflecting a sheet of stamps found in defendants apartment during search, Ex #68 in evidence, Det Breslin made a demonstration to show how the three cent stamps match on the letters sent to Mrs Mendez, various Exhibits were introduced to demonstrate the three cent stamps matched (T-1264-1306).

Defense counsel during cross examination attacked Det Breslin in his comparison to the stamps, Det Breslin testified there was no distortion in his enlargements and that the stamps match from the stamps found in defendants apartment to the ones on the letters sent to Mrs Mendez, defense counsel had in its possession Motion Ex #58, which are reproduction of the demonstration in a smaller form, these were never entered into evidence, had the jury of seen these Motion Ex #58 there would be no question, they do not match, defense counsel argued the point when Motion Ex #58 could of done the job showing the stamps do not match.

Det Breslin throughout trial asserted defendant writing was present everywhere, stamps matching as well, the sole exception was the letters that contained the threatening letters, Det Breslin stated there were strong similarities defendant wrote these as well, Det Breslin played a major role in this fraud and fabricating evidence under the

direction of Det Giorgio and the Prosecutor's.

Det Breslin was shown Ex #35D, stated it was given to him by Agent Behan (paper bearing the name JULIO ORTIZ found in 1st search), shown Ex #65, Det Breslin stated it is a portion of Ex #35D, it reflect Ex 65 (T-1241-1243).

Det Breslin stated he raised the word S.H.O.O.T. off of Ex #35D Motion Ex #59, along with other writings, found the name of Nelson Dacosta and address, description, wives name, Mother (T-1260-1263), the word shoot was not in line with Nelson Dacostas information, defense counsel did nothing about this.

The word shoot is associated with a shooting competition, as Det Breslin testified E.S.D.A. is very sensitive and will go through 4 to 5 sheets down (T-1238).

The Prosecution tried to draw the inference the word meant shoot being associated with Nelson Dacosta, this was intentionally done and defense counsel did nothing to contest this, no showing was done to show it was not in line.

With respect to the threatening letters sent to Mrs Mendez, defendant asserts they are a fabrication, the threatening letters make mention of a sending of a gift to Nelson Dacostas Grandmother, nothing was ever received in the Grandmother name, the package had the name of Miss Lamboys as well having the wrong address.

An explosive device was mailed, upon arrival the fabrication was formed, Mrs Franza knew the only person

defendant knew was her Grandmother, defendant has talked to her many times. Therefore due to this fact the Grandmother came into the picture, Miss Rosa Lamboy never lived with Miss Lamboy, the fabrication was formed to make it appear as if Rosa Lamboy lived with Miss Lamboy. An intentional fraud was placed before this Court.

From the beginning of trial to the end a fraud was placed before this Court with full knowledge of the Prosecutors as well Defense counsel, defense counsel had far enough Rosario Material to protect defendants rights and failed to.

Defense was in Possession of said Rosario material during Pretrial with the exception of Mrs Franzas Claim to the Crime Victims Board, which was exculpatory and turned over late to the defense, defense counsel did not state a Brady violation asking for sanctions. Defense counsel had in its possession at Pretrial the exact Rosario material at trial and did not utilize any of it, had defense counsel of utilized the Rosario material and done his studying this Mockery of Justice would of never went to trial, no Motion were made as such, no Motions were made to attack the Grand Jury for Legal insufficiency, it is inconceivable defense counsel did not see that a Mockery of Justice was before this Court. It is impossible for defense counsel not to of seen the multitude of items moved in the crime scene photos and ask proper questions, defendant charges defense counsel with intentional misrepresentation creating

ineffective assistance of counsel, Prosecution placed before this Court a fraud.

7) Before Pretrial this Court granted the following Hearings:

- 1) HUNTLEY
- 2) MAPP-DUNAWAY
- 3) CONTROVERT SEARCH WARRANT

This Court noted since a Dunaway hearing has already been granted with respect to defendants arrest, defendant will have an opportunity to explore the IDENTICAL FACTUAL MATTER. Motion Ex #60 reflects this.

At Pretrial the testimony of Det Giorgio was identical to his Trial Testimony.

Det Giorgio testified Mrs Franza stated to him at Harlem Hospital defendant threatened her and sent shooter (P.T.-138).

Det Giorgio testified asking defendant for handwriting on 8/24/90 (P.T.-154).

Det Giorgio testified asking defendant for exemplars to compare defendants writing to the floral delivery note left at the crime scene (P.T.-157).

Det Giorgio testified what part flowers played in shooting, as well note left at scene (P.T.-158).

Det Giorgio testified he copied note and gave it to defendant to copy from 8/24/90 (P.T.-160).

Det Giorgio read the note alleged to of been left at the scene of shooting (P.T.-200).

Det Giorgio sent note to Det Goodwin, then Det Breslin, no prints (P.T.-203).

Det Giorgio testified he hand carried defendants exemplars, as well his copy he wrote and gave it to Det Breslin (P.T.-203).

Det Giorgio testified he handed exemplars to Det Breslin from 8/24/90 on 8/27/90, stating Det Breslin said they were similar needed more time to examine them further (P.T.-204).

Det Giorgio testified he received report on 9/5/90, and was informed by Det Breslin defendant wrote note (P.T.-205).

The only Forensic evidence produced by the prosecution was the above. Defendant arrested 6 months later.

Det Giorgio testified when he saw writing on envelopes of threatening letters he recognized it to defendants writing from the exemplars given on 8/24/90 (P.T.-186)(P.T.-300-302).

Defendant gave exemplars to a fictitious note that was used against defendant.

This Courts decision and orders conclusion of law, this Court found there was an abundance of evidence linking defendant to the crimes currently charged in the indictment amounting to Probable Cause to Arrest. At that moment defendant was placed under arrest at approximately 5:30 p.m.. Motion Ex #63 reflects this.

This Court found the Police reliable knew that:

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1) Myra Franza and Josephine Mendez had been Shot in an attempt to murder them.

such is not the case at all, these men were not sent to murder Mrs Franza.

2) A card with defendants handwriting was dropped by the shooter.

There was never any card left at the scene of the crime which contained defendants handwriting.

3) Defendant admitted sending flowers and card to his Mother-in-laws apartmant.

Defendant admitted sending flowers to his Mother-in-laws, but at no time did defendant admit sending a card this is erroneous, the record is barren of any claim as such.

4) R&R florist was a bogus business name,

That is quite correct.

5) Defendant admitted having serious marital problems up until the moment of the attempted murder and wanted Myra to return to him.

Defendant never admitted to having serious marital problems, defendant admitted having problems, defendant has always resolved his problem with his wife, defendant stated in his statements he had suggested a seperation of a couple of months.

6) Defendant admitted calling Myra on her beeper 50 times a day prior to July 17,1990.

This is a statement told to Det Giorgio that was taken

literally, at no time does defendants phone records reflect anything as such, any attention given to this asserting is very misplaced. Motion Ex #61 reflect this

7) Prior to the shooting, Myra and her family had been threatened by defendant with respect to her effort to leave defendant.

The record is barren of any such claim that the Mendez family was threatened by the defendant, Det Giorgio never testified anyone from the Mendez family making any such claim, defendant denies any such claim to Mrs Franza as well.

8) Immediately following the shooting Nelson Dacosta punched the defendant while publicly calling him an assassin.

This assertion throws absolutely no proof of defendants involvement.

9) On August 11, 90 a pipe bomb was left outside Nelson Dacostas door.

This is quite correct and there was never any proof this was the work of the defendant.

10) Letters were sent to Josephine Mendez threatening her family in new York and P.R.. The letters included a threat of a gift would be sent to myra's grandmother in P.R..

This letter was fictitious

11) One of these letters was addressed to Nelson Dacosta, Det Giorgio was informed that the defendant was one of the few people who knew Nelson by that name.

Det Giorgio never testified as checking this assertion

to be as said, Det Ortiz testified never conducting an independent investigation (P.T.-349), defendant was not protected from the possibility of an intentional fabrication due to the fact Mrs Franza and Mrs Mendez believed defendant sent shooters. There was never any testimony from any Det showing this to be true it was taken at face value, defendant assert this to be a fabrication as well, any attention to such a claim is meritless.

12) A few days following the receipt of the threatening letters a pipe bomb was received by the Roman family in P.R.. The bomb was sent to the Grandmother's address

This was totally false, there was never any Roman family in P.R.

13) The sender of the pipe bomb and the letters was purportedly a JULIO ORTIZ, when defendant was questioned on Feb 11, 91 he at first denied knowing a JULIO ORTIZ but quickly reversed himself.

This is true defendant worked with JULIO ORTIZ around two years before arrest, defendant then one and a half years later saw Mr JULIO ORTIZ for one hour, drove him home, defendant does not know any other JULIO ORTIZ, this is the reason he denied knowing JULIO ORTIZ, upon quickly remembering such person defendant admitted he did, defendant did not have to answer this question posed to him but did, Mr JULIO ORTIZ is not one of the defendants close personal friends. This is not the product of a guilty mind, any such assumption is erroneous

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14) Defendant is admittedly a firearms expert and has access to guns.

There are many other persons with such qualifications, should this Court mean defendant has access to gun powder to make a bomb, such an inference might be justified if it had been shown conclusively that the defendant made the explosive, and that no other person could of made the bomb, but no such evidence was given, the evidence tended to show that the defendant had the material (GUN POWDER WHICH DID NOT MATCH AS THIS COURT IS FULLY AWARE OF) to make a bomb, but the defendant was not shown to be the only person in possession of Gun Powder, Indeed, it is common knowledge that many such persons possess GunPowder. Therefore the naked similarity of the defendant possessing Gunpowder proves nothing (People v. Moulineux 169 N.Y. 264 P 316), in fact in N.Y. Pistol Gunpowder can be purchased in any gun supply shop as well as mail order, any assertion by this Court in this regard if this is what the Court was trying to say is wrong.

The sheer volume of evidence which Det Giorgio had at the moment he placed defendant under arrest was NILL, at the moment of defendants arrest the Police were not justified in their assumption with the constellation of facts that defendant was the cause of these crimes.

At Pretrial the prosecutor was fully aware the evidence and testimonies were false, this case was adjourned for one year, the prosecutor knew from day one, defense counsel

had in its possession enough Rosario material to attack properly at Pretrial and bring to this Courts attention a fraud was being placed before it.

The same evidence produced at Pretrial was the same evidence produced at trial, the Prosecution handed over Rosario material at Pretrial, defense counsel was in possession and did not utilize any of it.

This Courts decision and order in the first paragraph found the testimony of Det Giorgio, Det Ortiz, A.T.F. Agents Raffa, Behan, Dipirro wholly credible.

In this Courts Finding of Fact this Court stated the following: The facts adduced at the hearing are not substantially disputed by either side. The Court credits in its entirety the testimony of the Government witnesses in response to both the direct and cross examination as no discrepancies of any consequence were elicited.

1) This assertion by the Court proves defendants assertion, defense counsel has in its possession enough Rosario material to prevent a Mockery of Justice from going any further and did nothing.

2) THIS COURT WAS FOOLED INTO BELIEVING THERE WAS PROBABLE CAUSE AND EVERYONE WAS TELLING THE TRUTH, YOUR HONOR WAS USED AS A CLOWN.

This Court further stated: The Court was presented with hard facts for the most part; facts are not in dispute. The same events which gave rise to Probable Cause to Arrest, were supplied to the Court.

Had defense counsel attacked properly this Mockery of Justice would of not went further, and the search warrant would of been suppressed and should of been.

Defense Counsel further allowed a mockery of justice to be placed before this Court, the 1st Search Warrant and Affidavit dated 2/11/91 was entirely improper for Judicial Review, Motion Ex #23.

In reviewing 1st Search Warrant and Affidavit dated 2/11/91, the alleged Search Warrant affidavit clearly shows A.U.S.A. Mc Ennany as the affiant. The affirmation of defense counsel shows the correct manner in which the Search Warrant was Procured, in which it stated A.U.S.A. McEnanny orally applied for and was issued a Search Warrant, to Search the residence of Dominic M, Franza at 3320 Barker Ave, Bronx, N.Y., Motion Ex #62 shows this.

Mr McEnanny made his application allegedly before Federal Magistrate Leonard Bernikow, and through the sworn oral testimony of Agent Gerald T, Raffa. This was totally correct viewing this alleged Search Warrant transcript will show it as such. Due to this fact it was A.U.S.A. McEnnany who should of testified in regard to this Search Warrant, he did not testify at all, it was Agent Raffa who testified at the suppression hearing. In essence what transpired at the suppression hearing was a Darden hearing, the Search Warrant was Bolstered. Agent Raffas testimony was unwarranted at the suppression hearing, Agent Raffa was not the procurer, defense counsel allowed this and

did absolutely nothing to stop this.

What was before this Court the entire hearing was a transcript certified by A.U.S.A. Sharon Davies 7 months after the Search Warrant was issued, there was never any transcript from the Court as showing it as an OFFICIAL COURT RECORD, as a reading of the transcript will show it was never recorded by the Magistrate. In fact the document bears no letterhead, signature, certification or anything which would authenticate it as having been made by the issuing Magistrate.

(P.T.-74), your Honor asked if there was a recording of the conversation, and never hearing it, defense counsel, you have it before you, your Honor, I have it before me ?? I don't have any recording in front of me, nor have I heard any recordings, defense counsel you have a transcript of a recording, and that does not reflect anybody reading anything, it reflects a conversation A.U.S.A. McEnnany asked Agent Raffa certain questions he answered yes or no and they made application for a Search Warrant, this shows A.U.S.A. McEnnany was the procurer and Agent Raffa acting as an informer.

(P.T.-86), your Honor said reading the transcript that is attached it does not seem he's (Agent Raffa) using anything opposed to A.U.S.A. McEnnany, A.D.A. Brancato said he knows what happened then went off record. Your Honor was quite correct it was A.U.S.A. McEnnany who was the procurer Agent Raffa was acting in the capacity as an

informer, Agent Raffa should of never been on the stand, defense counsel did nothing to stop this.

In reviewing this alleged Search Warrant transcript, the Legislative requirements have not been met as well C.P.L. 690 Statutes As defendant mentioned before this transcript bears no letterhead, signature, certification or anything which would authenticate it as having been made by the issuing magistrate. For all practical purposes no record had been preserved for independent review by this Court.

An applicant is required to identify himself to the judge and state the purpose of the application (C.P.L. 690.36 [2]). The Judge must then place under oath the applicant, and any other person providing information in support of the application, and must record the oaths and remaining communication's (C.P.L. 690.36 [3]). The Judge also have the entire record transcribed, then certify and file it within 24 hours of issuance (C.P.L. 690.36 [3]). The record equally establishes that the Statutory procedures for the issuance of the Warrant upon Oral testimony were not followed in several respects, the applicant never stated the purpose of the Warrant first to the magistrate, the Magistrate never recorded the conversation, the Magistrate never transcribed the record or certified it, in fact the transcript makes mention that a copy of the duplicate, original Warrant to be given to the Magistrate, and transcript as soon as they have one prepared pursuant to Rule 41.



This is proof that the magistrate did not follow the prescribed procedure in the issuance of the Search Warrant. C.P.L. 690.36 is identical to Federal Rule #41 subdivision 2, 1972 Amendment states, if testimony is taken it must be recorded, transcribed, and made part of the affidavit or affidavits. This is to insure an adequate basis for determining the sufficiency of the evidentiary grounds for the issuance of the Search Warrant if that question should arise, 1977 Amendment states; subdivision (C)(2) provides that a Warrant may be issued on the basis of an Oral statement of a person not in the physical presence of the Federal Magistrate. Telephone, radio, or other electronic methods of communication are contemplated. For the Warrant to properly issue, four requirements must be met:

(1) The applicant-a Federal law enforcement officer or an Attorney for the Government, as required by subdivision (A)-must persuade the Magistrate that the circumstances of time and place make it reasonable to request the magistrate to issue a Warrant on the basis of oral testimony.

(2) The applicant must orally state facts sufficient to satisfy the probable cause requirement for the issuance of the Warrant. (See subdivision (C)(1).) This information may come from either the applicant Federal Law officer or the Attorney for the Government or a witness willing to make an oral statement. The oral testimony must be

recorded at this time so that the transcript affidavit will provide an adequate basis for determining the sufficiency of the evidence if that issue should later arise.

It is contemplated that the recording of the oral testimony will be made by Court reporter, by a mechanical recording device, or by a verbatim contemporaneous writing by the Magistrate.

(3) The applicant must read the contents of the Warrant to the Federal magistrate in order to enable the magistrate to know whether the requirements of certainty in the Warrant are satisfied. The Magistrate may direct that changes be made in the Warrant. If the Magistrate approves the Warrant as requested or as modified by the Magistrate, he then issues the Warrant by directing the applicant to sign the Magistrate's name to the duplicate original Warrant. The magistrate then causes to be made a written copy of the approved Warrant. This constitutes the original Warrant. The Magistrate enters the time of issuance of the duplicate original Warrant on the face of the Original Warrant

4) Return of the duplicate original Warrant and the Original Warrant must conform to subdivision (D). The transcript of the sworn oral testimony setting forth the grounds for issuance of the Warrant must be signed by the affiant in the presence of the magistrate and filed with the Court.

This alleged Search Warrant Transcript was never signed by the Affiant in the presence of the Magistrate. This

is an intentional avoidance of the rules requirements. The recording, transcribing, certifying and filing requirements of the Statute are designed to insure the regularity of the process of applying for a Search Warrant and to preserve the integrity of the record for review in any ensuing Criminal Litigation, whether State or Federal.

The record produced was not an OFFICIAL COURT RECORD, with the safeguard's attendant upon preserving the record for purposes of legitimate challenge to the Warrant or Appellate Review, C.P.L. 690.40 (1), is identical to the requirements of C.P.L. 690.36 (3) two legislative purposes have been identified as underlying the requirements of C.P.L. 690.40 (1), that THE COURT ITSELF RECORD OR SUMMARIZE the witness statement on the record: first, assurance of the regularity of the application process, and second preservation for Appellate review of the grounds upon which a Search Warrant is issued. Plainly, however, conduct cannot be considered as in "substantial compliance" with the Statutory standard when the legislative purposes in adopting the Statute have not been met.

There were never any notes presented in Court to show the Magistrate made an attempt to make a contemporaneous record required by statute. Just an alleged transcript certified by A.U.S.A. Sharon Davies 7 months after the Warrant was issued, that is what was entered in substitute of the Court original Record. The Prosecution foreclosed.

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The defendant bases his assertions on People v, Taylor 73 NY<sup>2</sup>D 683, People v, Grandell 108 A.D.<sup>2</sup>D 413 3rd Dept, People v, McGriff 142 A.D. <sup>2</sup>D 934 4th Dept.

It is inconceivable defense Attorney not to of known the law with respect to Warrant requirements, defense counsel was fully aware and allowed this Court to decide the issue of the Search Warrant based upon an unofficial record, most of all allowing this Court to rule on an unofficial record, there was never any Official Record showing the record was preserved for the purposes of a legitimate challenge to the Warrant, or for proper Appellate Review.

A second Search Warrant was issued, Motion Ex #24, on the basis of the 1st Search Warrant and making reference to the record of the 1st Warrant, the facts supporting the 1st Search Warrant are nowhere , the record mentioned is void, there was never any Official Court Record produced.

Reversal is not required as a result of technical noncompliance with the requirements of C.P.L. 690.36 (3). Thus, the important Prophylactic objectives reflected in the requirements of C.P.L. 690.36 as well C.P.L. 690.40 militate against dismissing the total failure to comply therewith presented here as a mere technical irregularity. Being the Govn't improperly recorded the alleged conversation would mean the Magistrate would of had to of made a contemporaneous record, this record was never produced.

Reading the alleged transcript in a normal mode of communication will take exactly 20 minutes, which the Search Warrant shows 20 minutes was taken to finish the application process, unless the Magistrate knows shorthand it is inconceivable for a record to of been made, had the Magistrate taken longhand notes it would of taken much longer for the Magistrate to make a proper record, defendant asserts the Magistrate never made any contemporaneous record and relied on the recording that was allegedly done.

More than ten years has passed, since the enactment of the procedure for issuance for a Search Warrant on Oral testimony, as for rule 41 it has been in excess of ten years, a procedure that evidences even less of an effort to comply with the statutory mandate can be considered neither conscientious nor substantial compliance. Thus, substantial failure to comply with this statute is wholly unlike other statutory violations.

It is inconceivable that an A.D.A. would produce an unofficial record in such a proceeding, surely had the Search Warrant been officially done and all was proper the proper documents would of been produced, there is absolutely no reason not to of presented the proper documents, and enter into evidence the proper documents so the defense could of properly attacked the Warrant.

Defendant asserts there was never any Search Warrant issued on 2/11/91, it is a total fabrication, had all been proper the correct document would of been presented by

the prosecution, defendant charges the Prosecutor and Defense counsel working together to conceal the fact there was no Search Warrant. It is inconceivable defense would allow an improper Search Warrant to be used against the defendant, this Court mistakenly ruled and decided the issue of the Search Warrant without an Official Record placed before it. This Court did not suppress warrants.

This was intentionally done, it is inconceivable for any defense attorney not to attack the true validity of any Warrant, defendant was entitled to complete suppression, various items found in defendants apartment that should off been properly suppressed.

Defendant asserts if in fact a Search Warrant was issued the Magistrate failed to preserve the record properly, the situation strongly suggest a Warrant was not issued.

This was Intentional Misrepresentation, Ineffective Assistance of Counsel on defense attorneys part.

A further showing is defense counsel allowed the 1st Search Warrant dated 2/11/91 to be entered into evidence being improper, the Court Original was never produced in Court, what was submitted was a copy of the Duplicate Warrant, the Original Warrant filled out by the Magistrate was never produced. Defense Attorney stipulated to the Duplicate warrant as being the Original.

(P.T.-42), Peoples Ex #1 in evidence was a copy of the Duplicate Warrant filled out by A.U.S.A. McEnnany it

was not the Court Original. The following testimony transpired at a Voir-Dire due to the fact Ex #1, Motion Ex #23 shows Agent's Raffa and Dippero signing certification of return, and defense counsel having Motion Ex #64 showing Agent Raffa signing only.

Q- Agent, is this an original ?.

A- No, I don't think it is an Original.

Q- Does an Original exist ?.

A- I would say yes.

Q- Isn't it required as both a manner of Federal Agency Policy and a policy of the U.S. Attorneys office to maintain both the Originals and the affidavit itself ?.

A- Yes, you return the Original to the U.S. Attorney who issued it and they would keep a copy of the affidavit.

Q- And a copy of your affidavit, there's an Original of that as well ?.

A- Yes, over at the U.S. Attorney's office.

Q- Did you make any effort to obtain the Original.

A- No.

On each Search Warrant Motion Ex #'s 23, 64 it never showed it was returned, there is no Magistrates signature, Agent Carrie Dippero testified she made the return on this Search Warrant to Magistrate Barbara A. Lee.

Defense counsel was questioning the factual validity of these copies vis-a-vis signatures. The A.D.A. indicated that he would bring the Original copy and show it to defense counsel in the presence of the Court, this Court stated,

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not a question of only the Original, now it was actually returned and filed, defense counsel stated, well it would INFER IT WOULD BE A Court Original.

(P.T.-67), Defense counsel Judge a few matters first of all, during the break, Mr Brancato (A.D.A.) was able to obtain a copy of the Original Search Warrant filed in the Southern District, U.S. District Court. I've examined it . I have examined the copy of it. I'm prepared to stipulate for the purpose of this hearing the photo copy is a true and accurate copy of the original so the Original can be returned. It was the Duplicate Original that is alleged to of been filed, it is not the Court original filled out by the Magistrate.

(P.T.-85), defense counsel stated, I have no objection stipulating that Peoples Ex #1, Motion Ex #23, should now be a copy of what was made as the Original Search Warrant. Court- If it's the same thing.

Mr Brancato (A.D.A.)- This is the One, so you want it augmented with 1 and 1A.

Defense counsel- Yes.

P.T. Pages- 42-53, shows it was the Duplicate Warrant not the Court Original done by the Magistrate, never was one produced in Court to show the Search Warrant was actually issued. Prosecution foreclosed.

This is inexcusable, THE COURT ORIGINAL WAS NEVER PRODUCED in a proceeding as such. A proceeding being proper in every aspect the Court Original should of been present,



so there is no question as to the validity of the Search Warrant. The return of the Duplicate original Warrant is to be returned to the Court and made part of the Court file, it is not kept in the U.S. Attorney office. Defense attorney allowed a copy of Duplicate original to "INFER" it would be a Court Original this is inexcusable.

When a Search Warrant is issued on Oral testimony, the Judge is required by law to fill out the Search Warrant, Form AO 93A, Rev 6/82, Search Warrant on Oral Testimony Form says at the bottom:

The Original Warrant is to be completed by the Federal Judge or U.S. Magistrate at the time the Warrant is read to him/her, verbatim, over the phone. The form in the hands of the affiant is the Duplicate Original. The Federal Judge or U.S. Magistrate is to enter the exact time the Warrant is issued and sign the Warrant. The Affiant, as per the Oral instructions of the Federal Judge or U.S. Magistrate, will enter the same information on the Duplicate Original. The affiant's Certification is to be completed by the Agent. When the Agent executes the Warrant in accordance with rule 41 (C)(2)(F), He/She should enter the exact time the Warrant was executed.

These are the instructions to be followed by all, at no time was the Original from the U.S. Magistrate produced it was the Duplicate Original filled out by A.U.S.A. McEnanny that was produced.

It is inconceivable in a proceeding the Court Original

was not produced, and the Duplicate substituted in its place, the Court Original with the Magistrates Signature should of been produced. Defense counsel allowing a Duplicate.

Defendant asserts a fraud by the Prosecutor and Federal Authorities, as well Defense attorney participating in a fraud, there was never any Warrant issued on 2/11/91, had the proceeding been all proper there was no reason no to produce the Court Original signed by the Judge.

This was Intentional Misrepresentation, Ineffective Assistance of Counsel.

8) The Grand Jury testimony was the same at Trial, Pretrial Testimony, the same evidence was produced in order to gain an Indictment. The testimonies and evidence was planed before defendants arrest, being the testimony was the same throughout the proceedings and shown to be false indicated all was planned well before defendants arrest.

This Court is fully aware of the Grand Jury testimony, this Court in-camera reviewed the minutes, defendant does not have to go into this area showing false testimony was place at the Grand Jury Proceedings, as this Court is fully aware of what transpired.

A.D.A Brancatos Opening Statement was identical to the testimony given word for word, Mr Brancato made references to shooters leaving behind .38 slugs, flowers and note, Mr Brancato stated there were .38 slugs again semi-wadcutter bullets at scene and are bullets used for

target practice and defendant belongs to a gun club and target shoots, Mr Brancato stated Mrs Mendez was in a Coma for several weeks. (T-46-54)(T-42).

The .38 Caliber slugs were taken during the first Search of defendants apartment and then photos were taken at the Crime Scene, these Crime Scene Photos Were taken Months after the Actual Crime, defense counsel was told by defendant the bullets mentioned are used by N.Y.P.D., even the Court Officer in your Honors Courtroom, it is standard ammunition to be used, defense counsel did nothing to stop this inference, there were numerous times mentioned these bullets were left at the scene as well through testimony defendant a gun club member, highly inflammatory, and prejudicial. Defendant made no bullets for shooters.

As Mrs Mendez's Medical records show she was never in a coma, Mr Brancato throughout opening made reference to evidence that was false and was fully aware.

Mr Brancato slipped stating at that point that Mrs Theis is telling her Mother "call Myra" she does not know that Myra is in the "BACK ROOM" of the apartment with a bullet hole in her cheek. (T-39-40).

When Mrs Theis told her Mother to call the Police Mrs Theis was already upstairs and talking to Police at the scene.

Mrs Franza was in the rear of the apartment Mrs Mendez was in the front.

A.D.A. Brancato at closing talked through the evidence

produced at trial which was fabricated, Mr Brancato made mention Mr Cesar Rodrigues not paying attention not noticing the date on the check 4/4/91, this was done being Mr Cesar Rodriguez could not identify defendant as sending bomb trying to draw an inference Mr Rodriguez was wrong, of course when this bomb was mailed Mr Rodriguez was questioned immediately and gave a description of sender within a day or two, defendant has gone through the files and cannot find any report reflecting as such, the prosecution never handed it to the defense, as well as this Court knows 7 days after the sending defendant was arrested and Mr Rodriguez could not indentify defendant, defendant did not mail bomb and this Court is fully aware defendant did not write American Express Money order, Mr Brancato bringing out the fact Mr Rodriguez did not pay attention to the Money order was wrong and defense counsel did nothing to stop this, Mr Brancato should of explored this on Cross, this was highly prejudicial and highly inflammatory defense counsel did nothing.

The Prosecution placed before this Court a fraud with willful intent, the following have conspired and committed Perjury in the First Degree against the right's of the Defendant:

- 1) MRS FRANZA
- 2) MRS MENDEZ
- 3) DET GIORGIO
- 4) DET ORTIZ

- 5) DET BRESLIN
- 6) DET OSBOURN
- 7) P.O. ALEXANDER
- 8) P.O. APONTE
- 9) MR LEONARDO DIAZ
- 10) A.D.A. BRANCATO
- 11) A.D.A. SCHEINDLIN
- 12) AGENT BEHAN
- 13) AGENT RAFFA
- 14) A.U.S.A. SHARON DAVIES
- 15) A.U.S.A. McENNANY
- 16) Miss Lamboy

Defense counsel as well having enough Rosario Material could of filed a Motion for Legal Insufficiency of the evidence before the Grand Jury, and did not.

9) There was an abundance of evidence which would of dispelled the Prosecutions case, which was in possession of defense counsel, what was given by the Prosecution and never presented it in which no use was made. The presumption left upon all was false and misleading in every sense of the word and meaning, the D.D. 5's which were produced matched the testimony with respect to the flowers and note as well all the vouchers all intentionally Fabricated, as well as the Crime scene Pictures were taylored to the testimony.

Due to the fact the Crime Scene Pictures were Fabricated and the testimony elicited by the Prosecution with respect to these photo's was false, can only mean

there was and are D.D.5's and photo's that reflect exactly what happened, and was never given up to the defense, therefore a MAJOR BRADY VIOLATION has transpired, there were Specific request as well as Non-Specific request for all Brady Material as well all Rosario Material, Motion Ex #65, the Rosario Material produced was false.

A Mockery of Justice of CONSTITUTIONAL MAGNITUDE and beyond had happened which cannot be condoned, the presumption left, the regularity of the process, as well proper Jurisdiction was never legally in order for any Criminal Proceeding to commence in any Court of law, in this State or anywhere in this Country, the Prosecution allowed the Grand Jury to hand down an Indictment based upon legally Insufficient evidence.

The defense had evidence in its possession that was given up that could of done the job despite the Intentional Suppression and Fabrication of evidence, and false D.D. 5's, Etc, Defense counsel could of made an excellent attempt and successful attempt in seeing Justice done and stopping a mockery of Justice from occurring

In short the Prosecution was Deliberately Withholding Exculpatory evidence (Documentary, Real, Forensic, Etc), which was avaiilable to the Prosecution and did not produce, This can only give rise to the Presumption that the evidence was held back because it would be unfavorable to the Prosecution's case.

The strongest inference against the Prosecutions

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evidence in the record must be drawn.

The Direct Examination conducted by the Prosecution of its own witnesses was the product of a Deliberate and Intentional attempt to mislead the Court and Jurors, as well Grand Jury, thereby creating Jurisdiction for further action in a Court of law.

Defense counsel had past Recollections recorded that were never used in Cross Examination to impeach the prosecutions witnesses. This surely could of been used to its full potential, none were used to show the falsehoods in the Prosecutions witnesses. The Cross Examination of the Prosecutions witnesses fell far below an Acceptable Standard given what the defense had in its possession despite what was withheld by the Prosecution.

It is Law, A defendant in a Criminal Prosecution is Guaranteed the Right to Confront witnesses through Cross Examination. U.S. Const. 6th Amendment. New york Const. Article 1, section 6. The Confrontation Clause functions to ensure the reliability of testimony in Criminal Trials, surely a proper Cross-Examination and Impeachment of the Prosecutions witnesses at the stage of Trail with what was given would of severely damaged the Credibility, and Reliability of the Prosecutions witnesses.

In U.S. v. Owens 108 S. CT. 838, the Supreme Court reasoned that the Confrontation Clause Guarantees only an opportunity for effective Cross-Examination and not a successful Cross-Examination. There is no Confrontation

Clause issue so long as there is an opportunity to Cross-Examine the witnesses at Trial, defense had the opportunity to Cross-Examine on such matters as a witnesses Bias, lack of attentiveness, sensory defects and bad memory, impeachment is sufficient to vindicate defendants Confrontation Clause rights.

Due to the fact the evidence was a fabrication as well Rosario Material, and Brady Material Withheld, and Perjury by the Prosecutions witnesses, despite all this defense counsel could of protected defendants rights with what was given and failed to.

The Cross-Examination was not Effective nor Successful, Far below an Acceptable Standard, defense counsel could of protected the right's of the defendant, the Prosecution as well in Withholding Evidence, Fabricating Evidence, Producing False Documents impaired defendants right's to conduct a meaningful defense as well a proper Cross-Examination, whether or not defense counsel conducted a proper Cross-Examination or not. Defendants Constitutional Right's were Violated.

Defendants Right to Compulsory Process (6th Amendment) was Violated as well, it is law in all Criminal Prosecutions, the accused shall enjoy the right.... to have Compulsory Process for obtaining witnesses in his favor. The Supreme Court has interpreted this Clause as establishing at a minimum the following two protections. First, Criminal Defendants have the right to the



Government's assistance in compelling witnesses favorable to the Defense at trial. Second, Criminal Defendants have the right to present to a Jury evidence that might influence the determination of guilt (Taylor v. Illinois, 108 S.Ct. 646, Chamber v. Mississippi, 410 U.S. 284, Washington v. Texas, 38 U.S. 14,)), surely this contention applies to Pretrial as well.

While the Compulsory Process Clause gives the Defendant the right to present evidence on his behalf, due to the Misconduct of the Prosecutor severely hampered the Defense in conducting a proper Defense upon proper trial evidence, Compelling witnesses favorable to the Defense which in essence would of been the Prosecutions witnesses had they told the truth, and evidence to dispell guilt.

Had the Prosecutor presented the Real evidence it would of been most favorable this would of dispelled guilt totally, as for any of this evidence deemed inadmissible is absurd, as well privileged. Defendants Right to conduct a proper Defense was severely hampered, even so Defense counsel could of done something, defense counsels Representation fell far below an acceptable standard.

Due to the trial, Pretrial Evidence being fabricated none of it worthy of being presented in Court, the testimony as well the evidence was to be objected to at all stages, all was let in without the proper objection stating the proper grounds, this was extremely Prejudicial and cannot be deemed harmless error.

There had been a blatant violation of C.P.L. 240, C.P.L. 240.20 (1)(C)(D)(E)(H), C.P.L. 240.60, Federal Rule 16, the reports given cannot be deemed full compliance with the Rule, the Rosario Material was given by the Prosecution meaning the Prosecutor knew and allowed his witnesses to commit Perjury, there was more than what was given, the statements that were given indicate there was more of the same type given to Det Giorgio and Det Ortiz, as well the Federal Agents but are nowhere. D.D.5's withheld.

The Prosecutor acted in bad faith in not complying with the Rule, and a deliberate attempt to hamper the Defense, Failure by the Prosecution to turn over Rosario Material which it possesses constitutes Per Se Error requiring Reversal of Conviction.

In essence had the Prosecutor presented the proper and real evidence it would of been all Brady Material, the Prosecution would of had nothing to try Defendant with, the Prosecutions case was extremely weak, there was no case at all, there were Specific request and General request made in Defendants omnibus Motion which was properly filed by defendants first attorney Mr Mark Heller, Esq., all was withheld, and fabricated evidence was produced in its place, all the withheld evidence was most definitely Material, People v. Vilardi, 76 NY2D 67; U.S. v. Aguars, 427 U.S. 97, Non-Disclosure would be considered Constitutional Error requiring new trial if the evidence would tend to exculpate the defendant, the evidence withheld

was quite material in every sense of the word and meaning, but this goes even further it was an intentional misdeed, the Prosecutions witnesses committed Perjury and the Prosecutor allowed it all as well defense counsel.

This was an intentional fabrication to get a conviction, the law was totally disregarded the Constitution of the United States as well New York's Constitution was trampled upon, defendants Right's were Violated Due Process was Nullified

No Conviction of an offense is valid in a Criminal Prosecution unless it is based upon trial evidence, which is legally sufficient and which establishes beyond a reasonable doubt every element of such offense and the Defendants commission thereof (C.P.L. §70.20).

The A.D.A has never met the requirements stated above, therefore this Conviction must fall, the Burden of proof was never met.

This Court never had Subject Matter Jurisdiction, the evidence before the Grand Jury was insufficient to hand down an Indictment.

The Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984) devised a Two Prong test to determine whether an Attorney did not represent a Client Effectively at Trial in Violation of the 6th Amendment.

Under the First Prong, a Court evaluates whether Defense Counsel Representation was "Reasonable" in light of all the Circumstances. If the Court finds that Defense

Counsel's Performance fell below this Standard, the Court will then determine whether there is a "Reasonable Probability" that the result of Defendant's Trial would have been different had it not been for Defense Counsel's Ineffective Representation. Defendant overly contends to have met this Two Prong Test. Bringing out Motion Ex #'s 36, 37, 38, 39 at trial hardly meets the requirement, defense counsel had evidence of innocence and used none. Evidence withheld as well.

Defense counsel's representation and Prosecutors allowed defendant's New York Constitutional Rights as well as United States Constitutional Rights to be Violated:

ARTICLE 7

4TH AMENDMENT

5TH AMENDMENT

6TH AMENDMENT

8TH AMENDMENT

14TH AMENDMENT SECTION 1

Defendant's Arrest was without PROBABLE CAUSE, The Law is clear, there must be a basis for such Suspicion as a Predicate for the Police Action, Mere "Hunches" or "Gut" reactions are insufficient, People v. Pacheco, 107 A.D.<sup>2</sup>D 473, 486 NYS<sup>2</sup>D 950, 1st Department (Page 3).

PROBABLE CAUSE must rest upon "Specific" and "Articulable" Facts, Credible Objective Evidence, and the inferences that flow therefrom, People v. Hicks, 68 NY<sup>2</sup>D 234, 508 NYS<sup>2</sup>D 163.

The Quantum of evidence required to establish PROBABLE CAUSE to Arrest need not reach level of evidence necessary to support conviction, but it must constitute more than

Rumor, Suspicion or even strong reason to suspect, U.S. v. Fisher, 702 F<sup>2</sup>D 372.

The Record is Barren of any evidence which would connect Defendant with the investigation in which the Police were engaged, the Defendant was Arrested on the Basis of Rumor, and Suspicion. The Evidence produced was fabricated, testimony as well, at the time of defendants Arrest there was no PROBABLE CAUSE.

The Warrantless Arrest and Search of Defendants Apartment Pursuant to Search Warrants base upon the same PROBABLE CAUSE, was Violative of the State and Federal Constitutions (N.Y. Const, Art 1, § 12; U.S. Const. 4th Amend.), Dunaway v. New York, 442 U.S. 200, 99 S. CT. 2248; Wong Sun v. U.S., 371 U.S. 471, 83 S. CT. 407; Henry v. U.S., 361 U.S. 98, 80 S. CT. 168; Brineger v. U.S., 338 U.S. 160, 69 S. CT. 1302; Carroll v. U.S., 267 U.S. 132, 45 S. CT. 280.

The Prosecution never made a full disclosure of the falsity. The Prosecutor did not fu-fill his obligation to the Court and Defendant. As well dealing fairly with the defendant, and Candor to the Court, a duty he violates when he obtains a conviction based upon evidence know to be false, violating Due Process. This duty also rest upon the Prosecutor during all stages of proceedings relating to the Indictment. Defendant was never fairly or Justly accused, as well fairly and impartially Tried. From the record it can be determined the Prosecutor was fully aware.

The Prosecutor sat by and permitted a Trial Jury to decide a Criminal action on evidence known to be false, and allowed the proceeding to continue. Defendant has a procedural right to challenge an Indictment founded upon inadequate or improper evidence which is of Constitutional deminsion.

The evidence at all stages failed to meet the legal standards, a fact known by the Prosecutor when he proceeded to Trial. A Judgment obtained in such circumstances must be reversed. The integrity of the Criminal Justice System is impaired if a Prosecutor may proceed even after the A.D.A. learns that the Conviction was based upon an Empty Indictment.

The Case Law is Very Strong in this Area People v. Pelchat, 62 NY<sup>2</sup>D 97, People v. Alexander, 136 A.D.<sup>2</sup>D 332, (1st Department), People v. Figueroa, 167 A.D.<sup>2</sup>D 101, 561 NYS<sup>2</sup>D 428 (1st Department), but the circumstances in this case goes even further than the above cases, It is impossible of Defense Counsel to of missed all of Defendants Exculpatory evidence and realized the Prosecution was withholding evidence.

The Tier of Facts after hearing and seeing all the evidence produced against Defendant, the Tier of Facts asked for a read back of Det Breslins testimony with respect to his comparison of Defendants known writing to the floral note left at the scene of the shooting.

There were Two request (Grand Jury Ex 1, 2), after

the read back, 20 seconds the Tier of Facts returned a GUILTY VERDICT, had the Tier of Facts felt the other circumstantial evidence sufficient to render a GUILTY VERDICT no read back would of been requested.

The Tier of Facts Convicted Defendant on the basis of a fabricated note, REVERSAL IS MANDATED.

Defendant is entitled to a REVERSAL "ON THE LAW" for LEGAL INSUFFICIENCY OF THE EVIDENCE. The Prosecutor failed to introduce Evidence of one or more of the necessary elements of this Crime for which Defendant stands convicted, the Prosecution failed to introduce Evidence of Defendants participation or Hiring Assassins, as well as Manufacturing and Mailing of this explosive device to P.R..

Defendant is entitled to a REVERSAL "ON THE FACTS" DEFENDANTS GUILTY VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE. A Reasonable Jury would of found Defendant INNOCENT, due to the Facts and Evidence produced at Trial was fabricated had the Tier of Facts known this Defendant would of been ACQUITTED OF ALL CHARGES, there was never any evidence that was legally sufficient produced before the Tier of facts.

Defendant is entitled to DISMISSAL WITH PREJUDICE.

10) The Grounds for relief raised upon this Motion has not previously been determined on the merits upon a prior Motion or proceeding in a Court of this State, or upon an Appeal from the Judgment, or upon a prior Motion or proceeding in a Federal Court.

WHEREFORE, I respectfully request that my Conviction be VACATED on the Ground that There was no Probable Cause for Arrest or Search, The Prosecution produced False Evidence and Testimony with Knowledge and willful intent to deceive Defendant and Court, Withholding Exculpatory Evidence from the Defense, Fabrication of Rosario Material in relation to the Shooting and Documents relating to the Explosive sent to P.R., Defendant Receiving Ineffective Assistance of Counsel, and all the reasons set forth in this Motion. I ask that this Court GRANT this Motion in its Entirety, upon the Grounds that THERE WAS NO PROBABLE CAUSE FOR DEFENDANTS ARREST OR SEARCH, LEGAL INSUFFICIENCY OF THE EVIDENCE, THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE, DISMISSING THE INDICTMENT, SUPPRESS SEARCH WARRANTS UNOFFICIAL RECORD PRODUCED, INEFFECTIVE ASSISTANCE OF COUNSEL, AND THAT THIS COURT VACATE THIS CONVICTION "WITH PREJUDICE", or that this Court Order a Hearing Pursuant to §440.30 (5), and that this Court Grant such other and further relief as it may deem just and proper.

*Dominic Franza*

Sworn to before me this

12<sup>th</sup> day of June, 1993

*James P. Thompson*

NOTARY PUBLIC

JAMES P. THOMPSON  
Notary Public, State of New York  
No. 4964781 Chautauque County  
Commission expires Aug 14, 1993

DOMINIC M, FRANZA

92A3659

P.O. BOX 500

ELMIRA, N.Y.

14902-500

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