Ex. 8

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: PART 32

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The People of the State of New York,

Plaintiffs,

-against-

DOMINIC M. FRANZA,

Defendant.

----------X

NOTICE OF MOTION

IND. NO. 11987/91

PLEASE TAKE NOTICE, that upon the annexed affirmation of Dominic M. Franza, duly sworn to the 29th day of September, 2005 (and documents attached thereto), and upon the accusatory instrument and all the proceedings heretofore had herein, a motion will be made in Supreme Court of New York County, Part 32 thereof, at the Courthouse located at 111 Centre Street, New York, N.Y., on the 24th day of October, 2005, at 9:00 A.M. for an order pursuant to CPL §440.10(1)(b)(h) vacating the October 19th, 1993, judgment denying CPL §440.10(1)(b)(c)(h) relief; or in the alternative, for an order for a hearing to determine whether the judgment should be vacated on the following ground: The October 19th, 1993, judgment was procured by misrepresentation and fraud on the part of the prosecutor.

Dated: September 29th, 2005.

Most Respectfully

Dominic M. Franza

Dominic M. Franza
92A3659
Green Haven Corr. Facility
P.O. Box 4000
Stormville, N.Y. 12582-0010

cc: Robert M. Morgenthau, Esq.
N.Y. County D.A.
1 Hogan Place
New York, N.Y. 10013

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK ; PART 32

----------x

The People of the State of New York,

Plaintiffs,

AFFIDAVIT

-against-

IND. NO. 11987/91

DOMINIC M. FRANZA,

Defendant.

----------X

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

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

1. I am the defendant in the above-entitled proceeding. I make this affidavit in support of the instant application for an order pursuant to CPL §440.10(1)(b)(h) vacating the October 19th, 1993, judgment denying CPL §440.10(1)(b)(c)(h) relief on the ground the judgment was procured by misrepresentation and fraud on the part of the prosecutors. Violating my entitlements to substantive due process and liberty interest fundamental rights due to the interference. Washington v. Gluckberg, 521 U.S. 702, 720 (1997); Dent v. West Virginia, 129 U.S. 114, 123 (1889). The fact the previous decision on my CPL §440.10 was affirmed on direct appeal does not preclude review under CPL §440.10(1)(b)(h). This is well established law:

> If defendant is aggrieved by the "manner" in which the prior appeal was decided, she can move the vacate any order or judgment obtained by fraud or misrepresentation. "Courts traditionally have inherent power to vacate orders and judgments obtained by fraud and misrepresentation. ***" People v. Stewart, 230 A.D.2d 116, 656 N.Y.S.2d 210, 215 (1st Dept. 1997).

> In fact, accepting the facts as given by the dissent as true, there appears to be no reason defendant cannot move pursuant to that section with respect to the prior judgment affirmed by us. Thus, CPL §440.10(1) reads, in pertinent part, Id., 215:
>
> > At any time after the entry of a judgment the court in which it was entered may, upon the motion of the defendant, vacate such judgment upon the ground that: *** (b) The judgment was procured by duress, misrepresentation or fraud on the part of the court or a prosecutor or a person acting for or in behalf of a court or a prosecutor; *** Id., at 215.
>
> It is well established that courts have inherent power to vacate orders and judgments obtained by fraud and misrepresentation *** People V. Calderon, 79 N.Y.2d 61, 65 (1992).

2. The within motion presents an opportunity for this Court not only to avert a tragically unjust outcome, but to reaffirm its commitment to neutral and independent adjudication and to a balanced adversary process. Dispelling any semblance of an impropriety. As the conduct of the prosecutor had a direct and palpable effect in preventing this Court from fully and fairly adjudicating the validity of my previous CPL §440.10.

3. The prosecutor's conduct revolved around a misrepresentation of a crucial fact upon which he knew the Court would rely in its determination. Which, this Court did accept and rely there-on. Under the circumstances, this Court's judgment rendered in such reliance would have been otherwise but for said misrepresentation. This judgment so obtained is subject to vacatur. See, e.g., People v. Calderon, supra, at 65-67.

4. The following facts and law applicable thereto are set forth to show that the prosecutor misrepresented a crucial fact in opposition to my CPL §440.10, that altered and affected this

Court's judgment. Thereby, violating my entitlement to substantive due process and liberty interest protection.

PRELIMINARY

5. I was indicted by the Grand Jury of New York County and accused of the following crimes. Three counts of Attempted Murder in the Second°, in violation of Penal Law §§110/125.25(1). Two counts of Assault in the First°, in violation of Penal Law §120.10 (1). One count of Possession of a Dangerous Weapon in the First°, in violation of Penal Law §265.04 (2). One count of Possession of a Weapon in the Third°, in violation of Penal Law §265.02(4).

6. I stood trial pursuant to said indictment before the Hon. Paul P.E. Bookson (Ret.), Acting Supreme Court Judge of New York County, Part 32. The case was submitted to a jury, which rendered a verdict of guilty on the three counts of Attempted Murder in the Second°, and on the one count of Possession of a Dangerous Weapon in the First°.

7. On April 8th, 1992, I was sentenced to eight and a third to twenty five years on each Attempted Murder in the Second° count, each to run consecutive. Three to nine for the Possession of a Dangerous Weapon in the First° count, to run consecutively to the other counts.

APPLICABLE LAW

8. Since the right to substantive due process and liberty interest, and a judgment free from misrepresentation and fraud are guaranteed by both the State and Federal Constitutions (N.Y. Const., Art. 1§6, 11; U.S. Const., 14th Amendment; People v.

Calderon, supra, at 65-67; Miller v. Pate, 386 U.S. 1, 2-7 (1967)). I respectfully submit that under all the circumstances revealed by this motion and the evidence in support, I did not receive a judgment free from misrepresentation and fraud. Thereby, denying me of my constitutional entitlements to substantive due process and liberty interest.

9. Since at least 1935, it has been established law of the United States Supreme Court that a conviction obtained through testimony the prosecutor knows to be false is repugnant to the constitution. See, Mooney v. Holohan, 294 U.S. 103, 112, (1935). In Napue V. Illinois, 360 U.S. 264, 269 (1959), the United States Supreme Court extended the test formulated in Mooney v. Holohan, holding, "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." In Miller v. Pate, supra, at 2-7, the United States Supreme Court reversed the conviction, due to the prosecutor "misrepresenting the truth."

10. The above principle of law is so in order to reduce the danger of false convictions. We rely on the prosecutor not to be simply a party in litigation whose sole object is the conviction of a defendant before him or her. The prosecutor is an officer of the court whose duty is to present a forceful and truthful case to the jury, not to win at any cost. See, Jenkins v. Artuz, 294 F.3d 284, n. 2 (2nd Cir. 2002)(noting the duty of the prosecutors under New York Law "to seek justice, not merely to convict"):

> The prosecutor's role differs from that of a lawyer representing a private client. He "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice is done" (Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314). "He may prosecute with earnestness and vigor - indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones" (id.)(see also, Code of Professional Responsibility, EC 7-13; ABA Standards for Criminal Justice, Prosecution Function, Standard 3-1.1). It is the prosecutor's absolute "duty to correct what he knows to be false and elicit the truth" (People v. Savvides, 1 N.Y.2d 554, 557, 154 N.Y.S.2d 885, 136 N.E.2d 853), for society gains "not only when the guilty are convicted but when criminal trials are fair" (Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196, 10 L.Ed.2d 215). People v. Rice, 69 N.Y.2d 781, 782-783 (dissent)(1987).
>
> Egregious misconduct of this kind by the prosecutor "undermines confidence, not, only in his profession, but in government and the very ideal of justice itself" (Code of Professional Responsibility, EC 7-13, n. 1, McKinney's Cons. laws of N.Y., Book 29, Judiciary Law, pp. 474-475), offends the dignity of the court and perverts the adversarial system. But worse, such behavior contradicts the purpose of the criminal system and deprives a defendant of "a trial that could in any real sense be termed fair" (People v. Savvides, 1 N.Y.2d 554, 557, 154 N.Y.S.2d 885, 136 N.E.2d 853, supra). Id., at 783.
>
> Prosecutors occupy a dual role as advocates and as public officers and, as such, that are charged with the duty not only to seek convictions but also to see that justice is done. In their role as public officers, they must deal fairly with the accused and be candid with the courts *** Moreover, the prosecutor's duty extends to correcting mistakes or falsehoods by a witness whose testimony on the subject is inaccurate. People v. Steadman, 82 N.Y.2d 1, 7 (1993).

11. A casual reading of this motion will show a determined effort by the two prosecutors to avoid the principles of law and the accepted standards of conduct above. Also, the intentional misrepresentation before Judge Bookson.

FACTS

12. On July 20th, 1993, I filed a CPL §440.10(1)(b)(c)(h) motion (Attached hereto as Ex. "1"). While my CPL §440.10 was inexpertly drawn, it does set forth allegations and evidence that my imprisonment resulted from fabricated evidence and testimonies, knowingly by the two prosecutors to gain my conviction. E.g., Brady v. Maryland, 373 U.S. 83, 86 (1963). These allegations supported by evidence charge a deprivation of rights guaranteed by the State and Federal constitutions, which would entitle me to be released from custody. Miller v. Pate, supra, at 2-7; Napue v. Illinois, supra, at 269-270.

13. Within my CPL §440.10, I numerously mentioned, that the exhibits I supplied to support the motion were discovery materials, turned over to defense counsel at trial (Ex. "1" pp. 46, 48, 53B, 77, 97, 129).

14. The prosecutor in opposition claimed in particular, my motion was factually inaccurate and without merit. The opposition was only one page and two lines of a second page long, without any evidentiary support (Attached hereto as Ex. "2").

15. On September 1st, 1993, a proceeding was had with one of the trial prosecutor's and my then appellate attorney. Judge Bookson read a five page letter from me, in which I objected to being assigned counsel. As well, appellate counsel objecting to being assigned. I claimed the assignment was pre-mature under the circumstances. Appellate counsel at my instruction told Judge Bookson I was opposing the timeliness of the response. Lastly,

that I am opposing any proceeding without my presence. It was established, the D.A.'s office would have me present on the next date (Attached hereto as Ex. "3" [9/1/93 transcript]; Attached hereto as Ex. "4" [Letter to Court]).

16. On September 27th, 1993, a proceeding was had in which I was present. Both trial prosecutors were not present. Filing in was A.D.A. Squirrel who did not know if Judge Bookson had a copy of the opposition. Nor, did he know if I had a copy of the opposition. Appellate counsel handed Judge Bookson my reply to the people's opposition. Judge Bookson would not allow me to argue the motion due to the prosecutors not being there. Judge Bookson claimed a decision would be reached on the 18th of October, ending the proceedings (Attached hereto as Ex. "5" [9/27/93 transcript]; Attached hereto as Ex. "6" [reply to opposition]).

17. On October 19th, 1993, Judge Bookson held, my motion was "completely unsubstantiated," Wishful thinking," "self-serving" and "without merit." That no grounds exist to necessitate a hearing. Lastly, that the evidence of my guilt was overwhelming (Attached hereto as Ex. "7").

18. It should be noted, I filed two motions for summary judgment prior to the opposition being filed, without any opposition from the people being made. Nor, did Judge Bookson render any decisions (Attached hereto as Ex. "8" [8/23/93 summary judgment motion]; Attached hereto as Ex. "9" [9/14/93 summary judgment motion].

19. In sum, I claimed the exhibits I provided in support of my CPL §440.10 came from the prosecutors at trial. The prosecutor claimed the motion was factually inaccurate and without merit. As a result, Judge Bookson found my CPL §440.10 "completely unsubstantiated." That no grounds exist to necessitate a hearing. That my motion was "self-serving," "wishful thinking," and "without merit." That the evidence was overwhelming as to my guilt. Judge Bookson was mislead by the prosecutor in opposition, as the motion was supported by evidence from the prosecutor, which the prosecutor intentionally failed to concede too.

20. Within the respondent's affirmation in opposition to my Federal Writ of Habeas Corpus, the D.A.'s office admitted the evidence I provided in my CPL §440.10 came from them (Attached hereto as Ex. "10" [D.A.'s answer to my Habeas Corpus]):

> In a pro se motion dated June 17th, 1993, petitioner sought to set aside the verdict (Exh. 6.). Petitioner referred to various police reports disclosed prior to trial and to photographs offered in evidence at trial. He argued his innocence based upon his personal evaluation of those materials, as bolstered by newspaper and weather reports which were not entered into evidence. At ¶16.

21. In opposition to my motion for Federal Discovery, pursuant to rule 6. The D.A.'s office once again admitted the evidence I provided in support of my CPL §440.10 came from them (Attached hereto as Ex. "11" [D.A.'s opposition to my discovery motion]):

> Indeed, using the discovery items as exhibits, petitioner repeatedly filed motions with the state courts (see respondent's Affirmation ¶¶16, 21, 23). At ¶5, see also ¶4.

22. The prosecutor never admitted that my CPL §440.10 was indeed substantiated with documents from their office, as I numerously claimed. The prosecutor remained silent on this point before Judge Bookson, and opted to say my claim was factually inaccurate, when it was not. The prosecutor's opposition clearly influenced Judge Bookson's judgment. This is evidenced by Judge Bookson's decision holding my motion was, "completely unsubstantiated." Judge Bookson clearly thought I was presenting un-authenticated and altered documents in support of my motion. My Motion was completely substantiated, not self-serving, not wishful thinking and not without merit. There were grounds that necessitated a hearing. Lastly, the evidence was not overwhelming, as will be shown later.

23. This conduct of the prosecutor before Judge Bookson clearly demonstrated how the prosecutor conceived a plan to deceive Judge Bookson. This deceit was both imprudent and unethical. Violative of disciplinary rules and both fundamentally and gratuitously vitiative of the adversary process. The conduct in opposition once again, had a direct and palpable effect in preventing Judge Bookson from fully and fairly deciding the validity of my motion. Had the prosecutor disclosed the true state of affairs, I would have been in a more tenable position than the one in which I found myself, as a result of the prosecutor's misrepresentation.

24. Not only did the D.A.'s office plan to deceive Judge Bookson, they also deceived the Appellate Division of the First Department. In opposition to a motion I filed in the Appellate

Division seeking permission to file the CPL §440.10 exhibits. The D.A.'s office claimed:

> Assuming that, as defendant states, the documents he submits were part of the record before the lower court on his motion to vacate, then the people agree that they should properly be part of the record on his appeal from the motion. However, whether the copies of the documents are authentic and unaltered, and their import as far as defendant's appeal goes, can only be determined after a review of the entire case, and the People make no concession here as to those issues (Attached hereto as Ex. "12" ¶2 [10/4/96 opposition]).

25. Once again, the D.A.'s office opposed another motion seeking to file the CPL §440.10 exhibits. The D.A.'s office claimed:

> And, although acknowledging the propriety of including documents filed with the Article 440 motion, in a September 10, 1996 responsive motion, the People did not concede that the exhibits defendant sought to include in the record were either authentic or unaltered (Pro se Exhibit "C," ¶2). Apparently finding that defendant had not met his burden to authenticate the exhibits, this Court denied the motion on October 17, 1996, as defendant concedes (¶12)(Attached hereto as Ex. "13" ¶2 [4/17/97 opposition]).

26. A viewing of the appellate decision, People v. Franza, 239 A.D.2d 210, 211 (1st Dept. 1997), shows the Court denied my motion to file the CPL §440.10 motion exhibits. What did the D.A.'s office say in Federal Court. That, my CPL §440.10 motion was substantiated with discovery documents and other evidence in support. This is a fact (¶¶20-21).

27. The N.Y. County D.A.'s office fully knowing my motions were substantiated with documents from their office, remained silent on this point, and opted not to concede the authenticity of all these exhibits. These two oppositions clearly

influenced the judgment of the Appellate court, evidenced by the decision.

28. Once again, the D.A.'s office's conduct before the Appellate court demonstrated how they conceived a plan to deceive the Appellate court. This deceit was both imprudent and unethical. Violative of disciplinary rules and both fundamentally and gratuitously vitiative of the adversary process.

29. Their conduct in opposition once again, had a direct and palpable effect in preventing the Appellate court from fully and fairly deciding the validity of my motions. Had the D.A.'s office disclosed the true state of affairs, I would once again, been in a more tenable position then the one in which I found myself, as a result of the D.A.'s misrepresentation.

30. As a result of the prosecutor's misrepresentation and patent falsification of judicial process, the prosecutor succeeded in keeping critical important information from Judge Bookson. The fact my CPL §440.10 was substantiated with evidence from the prosecutors at trial. It is clear, that the result of the serious abuse of process was to alter the course of litigation in a most consequential and unfair way. I was deprived of my strongest arguments before Judge Bookson. Judge Bookson issued a decision which he would undoubtedly not have made but for the prosecutor's failure to disclose the actual state of affairs.

31. Once again, Judge Bookson clearly thought I was presenting un-authenticated and altered documents before him to support my motion. Just as the Appellate court did, thanks to the

prosecutor and the D.A.'s office's failure to admit the authenticity of the exhibits I provided in support of my motion. Judge Bookson would not have found in particular, the Certified Medical records of Mrs. Mendez and Mrs. Franza, and all the other evidence I provided in support of my Motion to be factually inaccurate, had the prosecutor admitted the fact my evidence came from him. The reason he did not admit this before Judge Bookson, is because these documents proved he gained my conviction on the intentional use of false evidence and testimonies.

32. Once again, had Judge Bookson been apprised by the prosecutor in opposition, that my motion was substantiated by his discovery materials. Judge Bookson clearly would not have held my motion was "completely unsubstantiated," but completely substantiated. The content of the documents as a whole would have been unquestionable credible, after all they came from the prosecutors at trial.

33. In sum, the litigation of my CPL §440.10 was tainted by the prosecutor's misrepresentation and fraud. The opportunity to test the constitutionality of my CPL §440.10(1)(b)(c)(h) grounds were seriously subverted by the prosecutor's conduct. My right to litigate and receive a proper decision by Judge Bookson was palpably and inexcusably compromised. The prosecutor did not correct and make a full disclosure of the falsities (Ex. "1" pp. 136-137).

34. Under the circumstances above, had the prosecutor acknowledged the true state of affairs, Judge Bookson would have clearly found, I met the first three prongs of the four as to my

CPL §440.10(1)(b)(c)(h) grounds. That: 1), material false evidence and testimonies were introduced at my trial; 2), that the material false evidence and testimonies was or should have been known to the prosecutors to be false; 3), that the material false evidence and testimonies went uncorrected by the prosecutors, who were duty bound to correct. Su v. Filion, 335 F.3d 119, 127 (2nd Cir. 2003).

SHOOTING INCIDENT

35. The fraudulent material testimonies and evidence before Judge Bookson were as follows:

36. The shooting's of Mrs. Mendez and Mrs. Franza occurred on July 17th, 1990, at 485 West 187 Street, Apt. 1D, around 7:00 P.M. (Ex. "1" p. 55; Attached hereto as Ex. "14" pp. 222-228 [Mendez], 313 [Franza][trial transcript pages provided. This Court has access to the complete record]). This is true as testified too.

37. A man claimed to have flowers for Mrs. Franza. Mrs. Mendez went to see if Mrs. Franza, her Daughter, wanted the flowers at the rear of the apartment, where she was taking a shower (Ex. "1" pp. 7, 53, 55, 57; Ex. "14" pp. 224-225, 272-273, 281-282 [Mendez], 313, 327 [Franza].

38. This man was claimed to have entered the apartment encountering Mrs. Mendez at the rear of the apartment. Holding a gun in his right hand and a dagger in his left hand. Shooting Mrs. Mendez five times at a distance and Mrs. Franza once. Cutting Mrs. Mendez on her left cheek and neck during a struggle. Mrs. Mendez being shot in the left hand wrist area, face, twice

in the arm and once in the chest (Ex. "1" pp. 48, 53-54, 57, 60-61; Ex. "14" pp. 225-229 [Mendez], 313-314 [Franza]).

39. Mrs. Mendez claimed to have engaged in a tug of war match with Mrs. Franza for a minute or so to keep the bathroom door closed, while being shot at. In order to prevent Mrs. Franza from being shot or raped. Mrs. Mendez stated she was standing sideways as she was being shot at, as she was holding on to the bathroom door knob (Ex. "1" pp. 50, 54-55, 57, 60; Ex. "14" pp. 225-229 [Mendez], 313 [Franza]).

40. After opening the door Mrs. Franza claimed she observed her Mother falling on the door frame, then being shot herself. She played dead, feeling the shooter hovering over her. She claimed to have waited until hearing nothing, then crawling to her Mother. Clearing her Mother's throat of blood and dentures. Blood gushing out of her Mother's chest, telling her, don't die, don't leave me (Ex. "1" pp. 55-56; Ex. "14" pp. 313-314 [Franza]). She thereafter claimed she called 911 and returned to her Mother, whose eyes were white (Ex. "1" pp. 55-56; Ex. "14" pp. 229-230 [Mendez], 314 [Franza]).

41. Mrs. Franza claimed she thereafter crawled to the front of the apartment, where she was claimed to have been found bleeding profusely by police. Mrs. Franza herself stated she could not stop the blood from coming out of her mouth. At the front of the apartment Mrs. Franza claimed she wrote on a wall and pad provided by a Detective (Attached hereto as Ex. "15" [Mrs. Franza's notes in pad]). Mrs. Franza claimed to have given a description of the shooter and claiming I sent the shooter

because she left me, providing other information. The paramedic's were claimed to have arrived three to five minutes after Mrs. Franza was found at the front of the apartment (Ex. "1" pp. 56, 62-65; Ex. "14" pp. 141-151, 158 [P.O. Aponte], 177-180 [P.O. Alexander], 314-315 [Franza], 562 [Det. Giorgio]).

42. Det's Giorgio and Bourges both claimed they saw Mrs. Mendez being wheeled out of the apartment by E.M.S., and seeing Mrs. Franza receive Medical attention. Det. Bourges claimed to have seen Mrs. Franza write on a wall. Det. Giorgio claimed to have seen Mrs. Franza write in a pad (Ex. "1" pp. 65; Ex. "14" pp. 417-418, 427 [Det. Bourges], 562 [Det. Giorgio]).

43. At the Hospital Mrs. Franza claimed, nine Doctors were trying to bring her Mother back to life. Telling her, Yes, Mrs. Mendez, come on, you can do it, you can do it (Ex. "1" pp. 56, 65; Ex. "14" pp. 315-316 [Mrs. Franza]).

44. It was claimed, shortly after the shooting's the crime scene unit arrived. Det. Osbourn of the crime scene unit claimed, he noticed blood on the floor upon entering the apartment, blood at the rear of the apartment and blood in the bed room. He claimed to have noticed two lead bullets on the floor, one in the rear hallway the other in the bathroom. Also, he claimed to have noticed a box of flowers on a chair, and on top of the box a handwritten note (Ex. "1" pp. 5-8; Ex. "14" pp. 515-516 [Det. Osbourn]; Attached hereto as Ex. "16" [Floral delivery note]).

45. Det. Osbourn claimed, after making a visual inspection of the apartment he talked to a Det. Montoya and P.O. Alexander, then proceeding to take twenty photos of the apartment, which

viewed the two lead bullets, floral box and the floral delivery note (Ex. "1" pp. 5-6, 8, 46-47; Ex. "14" pp. 516, 524 [Det. Osbourn]; Attached hereto as Ex. "17" [Crime Scene Photos 1-20]).

46. Det. Osbourn claimed to have taken into evidence the two lead bullets, floral box with a red ribbon and the floral delivery note. He claimed to have given them to P.O. Alexander to voucher and to send the floral box to the lab for fingerprint analysis. It should be noted Det. Osbourn stated, he took the flowers out of the box because they would rot or mold. He then claimed he put the red ribbon inside of the box. The two bullets, floral box with the red ribbon and the floral delivery note were entered into evidence (Ex. "1" p. 6; Ex. "14" pp. 180-185 [P.O. Alexander], 515-516, 519-525 [Det. Osbourn; Ex. "17" [Photos 6, 11, 20]).

47. It should be noted, Det. Giorgio stated he saw the box of flowers at the crime scene and the floral delivery note, which had directions to another address. He claimed this note came from the man who used the floral delivery note to gain access to the apartment (Ex. "1" p. 7; Ex. "14" pp. 563-564, 580, 641, 660, 668-669, 743-744 [Det. Giorgio]).

48. Det. Osbourn claimed to have typed up a report. Such revealing the layout of the apartment, the order of photo taking, the evidence recovered and what time he arrived at the scene, 1940 hours (Ex. "1" pp. 7-8, 46-47; Ex. "14" p. 529; Attached hereto as Ex. "18" [Det. Osbourn's Forensic report]; Attached hereto as Ex. "19" [Det. Osbourn's handwritten notes]).

49. Document examiner Det. Breslin claimed, the handwriting exemplars I gave Det. Giorgio to compare to the floral delivery note matched. Thereby, connecting me to the shooting's. It should be noted Det. Breslin claimed, he was given the floral delivery note on July 18th, 1991, by P.O. Alexander. Which, happened to be the very next day after the shooting's (Ex. "1" pp. 70-71; Ex. "14" pp. 591-594, 600 [Det. Giorgio], 1197-1211, 1327 [Det. Breslin]; Attached hereto as Ex. "20" [My handwritten exemplars claimed to have matched the floral delivery note (Ex. "16").

50. Both Mrs. Mendez and Mrs. Franza claimed, the crime scene photos shown reflected the state of the apartment the day of the shooting's. Where the lone shooter was standing at the rear of the apartment. Where they were shot and fell at the rear of the apartment. Where the phone is at the rear of the apartment. Such photos were entered into evidence (Ex. "1" pp. 4, 55-56, 61; Ex. "14" pp. 232-234 [Mendez], 316-325 [Franza]; Ex. "17" [Photos 11, 14-15]).

51. P.O. Aponte, P.O. Alexander, Det. Giorgio and Det. Osbourn claimed, the crime scene photos shown reflected the state of the apartment the day of the shooting's. Where the floral box with a delivery note on top were on a chair. Where the lead bullet on the bathroom floor was. Where Mrs. Franza was found at the front of the apartment. Where the wall was that Mrs. Franza wrote on, with blood on it. The flowers that were in the floral box in the kitchen sink. Such photos were entered into evidence (Ex. "1" pp. 3-5; Ex. "14" pp. 153-158 [P.O. Aponte], 177-187

[P.O. Alexander], 517-525 [Det. Osbourn], 563-564, 668-669 [Det. Giorgio]; Ex. "17" [Photos 3-4, 6, 18-20]).

52. Det. Osbourn in particular claimed, when he was shown a crime scene photo of the bullet on the bathroom floor, that he observed the bullet on the bathroom floor in that location when he first noticed it. He also claimed, he noticed the bullet in the rear hallway (Ex. "1" pp. 4-5, 48; Ex. "14" pp. 524-525 [Det. Osbourn]; Ex. "17" [Photo 11, 20]).

53. After the prosecution rested, A.D.A. Brancato conceded the case revolved around handwriting, and handwriting being used to identify the perpetrator (Ex. "14" pp. 1507-1508).

54. During A.D.A. Brancato's opening statement and closing argument, he outlined the testimonies and evidence recovered surrounding the shooting incident. Condemning me (Ex. "14" pp. 32-38, 42-47, 1845-1846, 1848-1864, 1866-1867, 1869-1870, 1873, 1875-1879, 1884, 1890-1891, 1902).

55. During deliberations the jury requested a read back of Det. Breslin's testimony claiming, my handwriting matched the handwriting on the floral delivery note. Thereafter, convicting me. This was the juries only request for a read back of testimony (Ex. "14" pp. 1967-1971, 1973-1974, 1991-2001). This was quite pivotal.

56. The above material testimonies and evidence recovered were graphic and convincing, but in reality such were all a complete fabrication. The below evidence from the prosecutors as I claimed, which they did not admit to as coming from them before Judge Bookson, proved the fabrications.

57. Remember, Mrs. Mendez testified to having been shot five times and Mrs. Franza once. Det. Osbourn testifying he recovered only two bullets at the crime scene, as the crime scene photos reflect.

58. Mrs. Mendez's Certified Medical records, which have been yellow highlighted for your viewing convenience (Attached hereto as Ex. "21" [Certification and Delegation of Authority for Medical records]), proved she sustained in excess of five gunshot wounds (Ex. "1" pp. 48-49; Attached hereto as Ex."22" [Gunshot wounds mentioned]). All the gunshot wounds being shown to be through and through (Ex. "1" pp. 49-50; Attached hereto as Ex. "23" [Through and through mentions]). Just count the number of times the gunshot wounds are mentioned as .5cm and 1cm to different parts of the body. Mrs. Mendez claimed there was only one gun used by one man. There were two guns used, not one.

59. Mrs. Franza's Certified Medical records, which have been yellow highlighted for your viewing convenience (Attached hereto as Ex. "24" [Certification and Delegation of Authority for Medical records]), proved she sustained one gunshot wound from a small caliber weapon (Ex. "1" p. 49; Attached hereto as Ex. "25" [Gunshot wound mentioned]). The gunshot wound being through and through (Ex. "1" pp. 49-50; Attached hereto as Ex. "26" [Through and through mention]).

60. These Certified Medical records unquestionably prove the testimonies and evidence recovered were a complete fabrication. It was a physical impossibility for Det. Osbourn to have

recovered only two bullets at the crime scene, as reflected in the crime scene photos and forensic report. Which, by the way reflected the shooting's to have occurred at the rear of the apartment (Ex's. 18-19; Ex. "17" [Photos 11, 20]). Had these photos been taken the day of the shooting's, as claimed, there should have been well in excess of six bullets recovered and viewed in the crime scene photos, as all the gunshot wounds were through and through. Look at the crime scene photos, these bullets are nowhere to be found. Absolutely, nowhere are there any bullet holes shown anywhere in the door or walls or blood being splattered. After all these bullets passed through them. There is not even blood on the bathroom door knob. After all, Mrs. Mendez stated she held on to it (Ex. "17" [Photos 14-15]). Look at the bathroom tiles, not one is cracked from the impact of any bullet. Nor, are there any bullet holes in the closed window (Ex. "1" p. 50). These facts alone destroy the prosecutor's case.

61. If Mrs. Mendez was being shot at while she was holding on to the bathroom door in the closed position, then the bullets would of had to of gone through the door as they passed through her. Meaning, all the bullets should have been recovered in the bathroom, and there being a tremendous amount of damage inside the bathroom. There is none. Under the circumstances, how did a bullet make it to the rear of the hallway outside the bathroom.

62. It is clear, the crime scene was re-done. These crime scene photos, which reflected the shooting's to have occurred at the rear of the apartment were not taken the day of the shooting's, as claimed.

63. It should be noted, Mrs. Mendez stated she was sideways holding on to the bathroom door, as she was being shot at. Nowhere do her Medical records reflect any gunshot wounds being sustained from a sideways position (Ex. "1" p. 60; Ex's. 21-23).

64. It should be further noted, Mrs. Mendez's Medical records proved she was fully awake, responsive and having a 98% survival rate at the Hospital, as her Trauma score upon arrival indicates. She was not being brought back to life as Mrs. Franza claimed (Ex. "1" pp. 65-66; Attached hereto as Ex. "27" [Trauma score and record mention]).

65. It should be further noted, Mrs. Mendez's Medical records further proved she was not shot at a distance as she testified too. Her Medical records proved, she had carbon particles surrounding the gunshot wound on her left hand. You only get this if the gun is extremely close (Ex. "1" p. 60; Attached hereto as Ex. "28" [Carbon particles surrounding left hand]). Question, if she was shot in the hand, why isn't there blood on the bathroom door knob. Also, how could she hold on to the door knob (Ex. "17" [Photos 14-15]).

66. These Certified Medical records proved the crime scene was re-done. The evidence and testimonies a complete fabrication. These crime scene photos were not taken after the shooting's. And, what is viewed in the crime scene photos, a floral delivery note I was claimed to have written. Thereby, connecting me to the shooting's. The jury used this as the basis to convict me (¶55).

67. I further provided evidence that proved the crime scene was re-done. Proving the testimonies, crime scene photos and the claimed recovered evidence were a fabrication. Remember, Mrs. Mendez and Mrs. Franza claimed the shooting's occurred at the rear of the apartment, by one man. And, the crime scene photos reflecting the shooting's to have occurred at the rear of the apartment (Ex. "1" p. 57).

68. A Federal search warrant and affidavit dated, seven months after the shooting's, proved Mrs. Mendez was shot when she answered the door. The shooter proceeding to the rear of the apartment, shooting Mrs. Franza in the bathroom. Special Agent Raffa of A.T.F. claimed, he received the information from the investigating Detectives, Dets. Giorgio and Ortiz (Ex. "1" p. 59; Attached hereto as Ex. "29" [Search warrant and affidavit]; Attached hereto as Ex. "30" p. 55 [Special Agent Raffa's pre-trial testimony]).

69. A Crime Victim Board application prepared by Mrs. Franza less than two months after the shooting's, 9/12/90, proved when Mrs. Mendez opened the door she was pushed into the apartment by two men and shot. Shooting Mrs. Franza once when she came to the rescue. At trial she admitted she provided information in a crime victim board application. The circumstances were never revealed before the jury (Ex. "1" p. 58; Ex. "14" pp. 378-380 [Franza]; Attached hereto as Ex. "31" [Crime Victim Board application]).

70. A Puerto Rico Police report, dated seven months after the shooting's, 2/11/91, proved when Mrs. Mendez opened the door she was shot. Such information coming from Mrs. Mendez's Sister

in Puerto Rico, Miss Evelyn Figueroa Lamboy (Ex. "1" p. 60; Attached hereto as Ex. "32" [P.R.P.D. report]).

71. N.Y.P.D. reports proved two men were being sought in connection with the shooting's. One report dated within a month of the shooting's, 8/11/90. The information in this one report came from Mrs. Mendez's Son who stated, two men were in the apartment, using the ruse of delivering flowers to his Sister (Ex. "1" pp. 57-58; Attached hereto as Ex. "33 [N.Y.P.D. reports]).

72. An N.Y.P.D. C.A.T.C.H. Unit report, dated two months after the shooting's, 9/21/90, proved Mrs. Mendez gave descriptions for two perpetrators, pertaining to the shooting incident. Each description being different from one another (Ex. "1" p. 57; Attached hereto as Ex. "34" [N.Y.P.D. C.A.T.C.H. Unit report]).

73. A N.Y. County D.A. Data sheet, dated seven months after the shooting's, 2/12/91, proved Mrs. Mendez was shot when she answered the door, by a man claiming to have flowers for Mrs. Franza. Mrs. Franza being shot as she was exiting the bathroom (Ex. "1" pp. 58-59; Attached hereto as Ex. "35" [N.Y. County Data sheet]).

74. I now provide for the first time my arraignment transcript dated, 2/11/91. A.D.A. Albert Lorenzo stated, Mrs. Mendez was shot when she answered the door (Attached hereto as Ex. "36" [2/11/91 transcript]).

75. Most incriminating, A.D.A. Brancato in opening before the jury stated, Mrs. Franza was at the rear of the apartment when the Police arrived (Ex. "1" p. 126; Ex. "14" pp. 39-40). Didn't the Poilce state she was found at the front of the apartment. And, didn't Mrs. Franza state she crawled to the front of the apartment, writing on a wall and pad.

76. It is beyond dispute, all the above clearly proved Mrs. Mendez was shot when she answered the door, and there being two men involved, not one. And, what do the testimonies and crime scene photos reflect, the shooting's to have occurred at the rear of the apartment. Look at crime scene photos 1-3 of Ex. "17", where Mrs. Mendez was truly shot. There are no bullet holes or blood splattered anywhere. After all, these bullets went through her.

77. I further provided evidence that proved the crime scene was re-done. Proving the testimonies, crime scene photos and the evidence recovered were a fabrication. What could this be, the crime scene photos themselves. All the crime scene photos showed items were changed and missing in one photo to another.

78. I claimed there were no tall buildings to prevent daylight from shining in the street outside the crime scene (Ex. "1" p. 13). I now provide photos that reflect the street outside the crime scene. These photos clearly reveal I did not commit perjury before Judge Bookson (Attached hereto as Ex. "37" [Photos of street outside crime scene]). The purpose of this assertion will be apparent below.

79. I provided Certified Weather reports from the National Data Climatic Center, for the day of the shooting's, July 17th, 1990 (Attached hereto as Ex. "38" [Certified Weather reports]). I provided a Certified report from the Department of the Navy, U.S. Naval Observatory for the day of the shooting's. This report by the Chief Astronomer revealed Sunset for, 7/17/90, was at 8:24 P.M. (Attached hereto as Ex. "39" [Dept. of Navy report]). I concluded analyzing these various reports, that on 7/17/90, at 8:14 P.M. there was still daylight outside (Ex. "1" pp. 9-16).

80. I now provide a report from Compu-Weather Experts, Inc., who determined on 7/17/90, at 8:14 P.M., that there was still daylight outside (Attached hereto as Ex. "40" [Compu-Weather report]). This report clearly reveals I did not commit perjury before Judge Bookson in my analysis. Most surely, the prosecutor opposing my motion could have deduced the same conclusions as I, after reading these reports. After all, I am a layman.

81. Why is all the above significant. Well, look at crime scene photo 13 of Ex. "17", there is a radio clock on the table. Looking real good at this photo reveals the time to be 8:14. Looking at the blowup of this radio clock, that was attached to the rear of photo 13 before Judge Bookson, clearly reveals the time to be 8:14 (Attached hereto as Ex. "41" [Blowup of photo 13]). Now look at crime scene photos 4, 7, 9, 12 of Ex. "17". What do you see in the open and closed windows, darkness, its nighttime outside. A physical impossibility. You can actually see the flash of the camera in the windows (Ex. "1" pp. 16, 48). It

is clear these crime scene photos were not taken on the day of the shooting's.

82. To dis-spell any notion that the camera was not working properly. I claimed the camera was working fine, as it picked up a man standing in the dark across the street (Ex. "17" [Photo 9]). And, had there been any daylight outside it would have registered on the film as well. After all, film is light sensitive. The blowup of photo 9 is attached hereto as Ex. "42" (Ex. "1" pp. 23, 28-30, 39, 42-43, 46).

83. Photos 1 and 3 of Ex. "17" shows the same area of a wall with porcelain pictures in the same location. These photos are from opposite views. The door viewed in both photos is the entrance door to the apartment. Each porcelain picture in the same location is different from one another. The frames are different, one is oval the other round. The peaks and bottoms of the frames are different. Also, as you face photo 3 the left figurine is missing in photo 1 (Ex. "1" p. 53).

84. I make new mention which must be brought to this Court's attention. The blowup of photo 1 of Ex. "17" (Attached hereto as Ex. "43" [Blowup of photo 1]), reveals the left side of the porcelain picture having a vast black inlay, that is touching the left side border of the frame. To the right of the black inlay there is a gold space touching an outward protruding object from the picture. It should be noted, the black inlay touching the left side border of the frame has no open space at all, there is no gold at this abutment.

85. Now, the blowup of photo 3 of Ex. "17" (Attached hereto as Ex. "44" [Blowup of photo 3]), reveals as you face the photo, on the left side of the porcelain picture below the left figurine's left hand there is an open space, that goes all the way to touch the left side border of the frame. This space is gold colored, not black as in photo 1. What we have here are two different porcelain pictures in the same location, when these photos were claimed to have been taken after the shooting's.

86. Also, notice how the outward protruding object previously mentioned above in photo 1 of Ex. "17" is missing in photo 3 of Ex. "17".

87. Photo 20 of Ex. "17" reveals a bullet on the bathroom floor. Now, look at photos 14-15 of Ex. "17" the bullet is gone, and now there is a mat where the bullet was in photo 20 (Ex. "1" p. 48). Don't forget, Det. Osbourn testified he observed the bullet in that location when he first noticed it (Ex. "1" p. 48; ¶52). If so, why wasn't it in the same location in photos 14-15, which were taken earlier than photo 20. The answer should be simple, it was a plant.

88. Photos 14, 11, 5, 3 of Ex. "17" reveals the area from back to front, where Mrs. Franza would of have to of crawled across to get to the front of the apartment. Remember, P.O.'s Aponte and Alexander claimed Mrs. Franza was bleeding profusely. Mrs. Franza stating herself she could not stop the blood from coming out of her mouth. That, the paramedic's arrived three to five minutes after Mrs. Franza was found at the front of the apartment (¶41). Photos 1-3 of Ex. "17" reveals there is no blood

as described anywhere, where Mrs. Franza was claimed to have been found bleeding profusely (Ex. "1" pp. 62-64). A physical impossibility. If these testimonies were true there should have been a tremendous amount of blood viewed in these photos. By the way, Mrs. Mendez was shot numerous times at the front of the apartment, where is her blood on the floor and wall. Once again, where are the bullet holes in the wall.

89. Photos 12 and 14 of Ex. "17" reveals there are no footprints in the blood, where Mrs. Mendez claimed she was shot. It was a physical impossibility for E.M.S. not to have stepped in this blood to assist her, had she been shot there (Ex. "1" p. 64).

90. Photo 11 of Ex. "17" reveals a white rag on the floor with a blood stain in the shape of an "S" or "5". Photo 14 of Ex. "17" reveals the blood stain in the shape of an "S" or "5" is gone. There being a new blood stain, that cannot be made into an "S" or "5" (Ex. "1" p. 51).

91. Photo 4 of Ex. "17" reveals a gold chair next to the wall unit, without anything on the back rest. Photo 2 of Ex. "17" reveals the gold chair having a white object draped on the back rest (Ex. "1" p. 52).

92. Photo 5 of Ex. "17" reveals a black box under a table to the left. Notice, there is a ladder with a porcelain picture above the ladder. Photo 8 of Ex. "17" reveals the box is gone. Its the same area, just look at photo 8, and look at the mirror, the ladder and the porcelain picture above it can be seen (Ex. "1" p. 51).

93. Photo 4 of Ex. "17" reveals the chair containing the flower box, with a blue object draped over the back rest. The back rest butted tight front against the stereo cabinet. The blue object covering the side of the stereo cabinet. Photo 6 of Ex. "17" reveals the chair was considerably moved back, as the side of the stereo cabinet can be seen now (Ex. "1" p. 51).

94. Photo 15 of Ex. "17" reveals to the right center of the rug there being a white object on the grout of the tile line. Photo 14 of Ex. "17" reveals the white object is gone. Now you can see the whole line uninterrupted (Ex. "1" pp. 53A).

95. Photo 8 of Ex. "17" reveals two back objects and one silver object on a table. The black object to the left stands higher than the silver object. This is evident, as it blocks out the buttons on the silver object in front of it. Photo 7 of Ex. "17" reveals the black object that stood higher than the silver one is gone (Ex. "1" pp. 50-51).

96. Photo 11 of Ex. "17" reveals a lamp and table next to the wall having what appears to be two blood stains. The blue blanket touching the left leg of the table. Viewing the distance from the left leg that is touching the blue blanket to the baseboard of the wall, appears to put the table within a foot of the wall having the two blood stains. In sum, the table favor's the wall having the two blood stains. Within photo 13 of Ex. "17" you can see the wall having the two blood stains, with ample viewing in the area. Notice, the lamp and table are gone (Ex. "1" p. 52).

97. I make new mention which must be brought to this Court's attention. Photo 19 of Ex. "17" reveals not only red stains, but pencil marks on the wall, which Mrs. Franza was claimed to have written at the front of the apartment (¶¶41-42). Photo 3 of Ex. "17" reveals the pencil marks are gone. It should be noted, defense counsel made the marks on this photos.

98. I further make new mention which must be brought to this Court's attention. Remember, the Certified Medical records of Mrs. Mendez and Mrs. Franza revealed all the gunshot wounds were through and through (¶¶58-59). Look at photos 11 and 20 of Ex. "17". For bullets that supposedly went through a body, and obviously bouncing off a wall, there is hardly any damage on them. These are lead bullets, quite malleable, amazing. These bullets are not severely damaged, impossible.

99. I further make new mention which must be brought to this Court's attention. Remember, Mrs. Franza was claimed to have been found at the front of the apartment, bleeding profusely, as Mrs. Franza stated herself. She was claimed to have written on the wall and on a pad (¶41). Look at photos 3 and 19 of Ex. "17", there are clearly red stains on the wall. Look at Mrs. Franza's handwritten notes, there is no semblance of a smear on these pages. Red stains copy black on paper (Attached hereto as Ex. "45" [Mrs. Franza's notes]). Incidently, these notes were never entered into evidence (Ex. "14" pp. 148-154 [P.O. Aponte]).

100. I further make new mention which must be brought to this Court's attention. The property clerk's invoice for the floral box and delivery note claimed to have been

recovered and vouchered (¶46), does not reflect these items as having been delivered and accepted by the property clerk's office. There is no signature from the property clerk acknowledging the receipt of these items (Attached hereto as Ex. "46" [Property clerk's invoice]).

101. The physical impossibilities above prove Det. Osbourn did not take these crime scene photos after the shooting's. The floral box with a red ribbon, floral delivery note and bullets were a complete fabrication. This is an unquestionable fact.

102. In sum, these crime scene photos speak for themselves. What happened here was a frantic attempt to cover up exactly what happened at the shooting scene. A major cover up job. It is clear, the testimonies and evidence revolving around these crime scene photos were fraudulent.

103. A point of thought for this Court, not as a basis for this motion. Det. Osbourn claimed the floral box with the note on top was on a chair when he first noticed it. He claimed he placed the red ribbon inside of the floral box, and placed the floral box in a paper bag. Giving such to P.O. Alexander to voucher. Also, placing the floral delivery note in a plastic bag. Giving such to P.O. Alexander to voucher as well (Ex. "14" pp. 515-516, 518-519, 520-523 [Det. Osbourn]).

104. P.O. Alexander claimed when she arrived at the shooting scene prior to the crime scene unit arriving, she observed the floral box on the kitchen table, not on a chair. The top of the floral box not being completely off, sort of opened,

and seeing flowers inside. She further stated when she vouchered the floral box and floral delivery note, the two were still attached to one another. She did not remember if the note was taped or stapled to the floral box. She stated when she walked into the property clerks' room they were still attached (Ex. "14" pp. 190-195 [Alexander]).

105. Det. Gilbert Ortiz stated he saw the floral delivery note at the Pct., and that it was not attached to the box. Never seeing it attached to the floral box (Ex. "14" pp. 1478-1480 [Det. Ortiz]).

106. As for the state of this floral box and floral delivery note I was claimed to have written. Between Det. Osbourn, Det. Ortiz and P.O. Alexander who do you believe.

107. I further make new mention which must be brought to this Court's attention, such revolving around the fraudulent floral delivery note. In March or April of 1989, Mrs. Franza claimed she left me due to a physical argument. That, she lived in her Brother's basement apartment. The basement apartment being next to 485 West 187 Street, 495. That, I accompanied her to get her things, as we made up (Ex. "14" pp. 231-232, 236-237, 254 [Mendez], 290-304 [Franza]). Of course I knew where her Brother lived. The prosecutor made sure this point was understood (Ex. "14" pp. 1853-1855).

108. Why is the above mentioned. Look at the fraudulent floral delivery note (Ex. "16), it says, "or basement apartment in rear ring bell to left." What the prosecutors were trying to

do with the testimonies above was to show someone had knowledge of the basement apartment, where Mrs. Franza would be. Due to my handwriting matching this alleged floral delivery note, I was the someone who had this intimate knowledge of where Mrs. Franza would be in the event she was not at her Mother's apartment. All this in-spite of the fact the alleged floral delivery note does not even say what basement apartment, or where, the left of what. It does not even mention 495.

109. What the prosecutors presented was a complete misrepresentation. This botched direction was clearly a concoction to further link me to the shooting's. The prosecutors capitalized on a non-existent floral delivery note (Ex. "14" pp. 1853-1855).

110. Proof of the above is as follows. In order to gain access to the basement apartment at 495, you have to go to the rear of the building in the courtyard. Mrs. Mendez stated Mrs. Franza had to go outside and around the building to access the basement apartment (Ex. "14" pp. 254-258 [Mendez]). In order to gain access to the apartment you had to go past metal doors and a metal mesh gate. There is no button for any bell at this location for anyone to gain access (Attached hereto as Ex. "47" [Photos of courtyard, metal door and mesh gate]).

111. Notice, the metal doors are opened due to the floor being painted. The mesh gate closed. The only people having access to this area are the people living in the building, with a key. The basement apartment and laundry room are beyond the gate. When the floral delivery note was fabricated the inclusion of the

bell was error on their part. I will add, to get the attention of the occupants of the basement apartment, you had to knock on their window.

112. At 485, there is also a basement apartment where Mrs. Mendez lived. Mrs. Mendez lived in Apt. 1D, the Superintendent of the building lived directly beneath her apartment. Therefore, this is not the only basement apartment (Ex. "14" pp. 126-129 [Ferreria]).

PUERTO RICO INCIDENT

113. The fraudulent testimonies and evidence before Judge Bookson were as follows:

114. On February 7th, 1991, Mrs. Mendez was claimed to have received two letters from a Julio Ortiz. One addressed to her and Mrs. Franza. The other to her Son. Det's. Giorgio and Ortiz claimed to have taken these letters and envelopes into evidence. The letter to her Son made mention that a gift was sent to his Grandmother in Puerto Rico, who was claimed to have lived with Mrs. Mendez's Sister, Evelyn Lamboy. Such threatening letters were entered into evidence (Ex. "1" p. 102; Ex. "14" pp. 237-243, 274-277 [Mendez], 510-512 [Kidd], 607-613 [Giorgio], 755-758 [Lamboy]; Attached hereto as Ex. "48" [Letter and envelope to Mrs. Mendez and Mrs. Franza]; Attached hereto as Ex. "49" [Letter and envelope to her Son]).

115. On February 5th, 1991, Miss Evelyn Figueroa Lamboy claimed she received a notification slip from Federal Express on her gate. Such indicating, that she had a package. Miss Lamboy claimed such notification had her "name," address "2629 Paseo

Aguilla" and telephone number "1-800-784-1630." And, that the package was from "U.S.A. Electronics." The notification indicating she had to pay a certain amount of money in order to receive the package. Such notification was entered into evidence (Ex. "1" pp. 83-84, 86-87, 91, 101; Ex. "14" pp. 767-790 [Lamboy]).

116. On February 6th, 1991, Miss Lamboy's neighbor at 2630 Paseo Aguilla told her Federal Express had come by to deliver a package. Telling Miss Lamboy that she offered to receive the package, and was informed by the delivery man $45.00 was needed. Miss Lamboy left the money with her neighbor when she was informed of this. Miss Lamboy claimed she was not waiting for any package, finding it strange (Ex. "1" pp. 83-84, 87; Ex. "14" p. 760 [Lamboy]).

117. Miss Lamboy claimed to have made arrangements with Federal Express in order to receive the package through her neighbor at "2630 Paseo Aguilla." She was indeed told money was needed in order to receive the package, giving them the check number. Upon receiving the package from her neighbor on the 8th, she opened the package slightly, and saw a pipe with wires. She called the Police thereafter. Agents Jesus M. Garcia and Haddock dis-armed the device. Both were told another woman received the package, defense counsel objecting which was sustained by Judge Bookson (Ex. "1" pp. 79-80, 84, 87, 101; Ex. "14" pp. 762-766 [Lamboy], 1063-1102 [Garcia]).

118. A Law Enforcement authority claimed the package was sent to the "Roman Family" as reflected on the Federal Express Airways Bill (Ex. "1" pp. 78, 88, 98; Ex. "14" pp. 840-841 [Agent Behan of A.T.F.]); Attached hereto as Ex. "50" [Federal Express Airways Bill]). There was also an American Express money order claimed to have paid for the shipment of the package. Both documents were entered into evidence (Ex. "1" pp. 78, 88, 98; Ex. "14" pp. 856-858, 883-886 [Behan]; Attached hereto as Ex. "51" [American Express money order]). Didn't Miss Lamboy testify that the notification had her name.

119. Puerto Rico Police reports to Agent Garcia claimed the package was addressed to the "Roman Family" at "2629 Paseo Aguilla" (Attached hereto as Ex. "52" [P.R.P.D. reports]). Once again, didn't Miss Lamboy testify that the notification had her name. One P.R.P.D. report revealed Miss Lamboy paid $52.80 for the package by check. $45.00 plus $7.80 for a total of $52.80 (Ex. "1" p. 101).

120. Of mention, not only did the Federal Express Airways Bill reflect that the package was sent to the Roman Family. It also, reflected the package was addressed to 2629 Paseo Aguilla and the telephone number being 1-809-784-1630. Once again, didn't Miss Lamboy claim the notification had her name. Incidently, no one testified as to the name, address and telephone number on this document (Ex. "1" pp. 88, 97; Ex. "14" pp. 1104-1126 [Sullivan]).

121. On November 6th, 1991, Det. Giorgio received from me handwriting exemplars to compare to the handwritten envelopes containing the threatening letters, Federal Express Airways Bill and American Express money order. Such were entered into evidence (Ex. "1" pp. 96, 98, 102; Ex. "14" pp. 615-619 [Det. Giorgio], 1415-1416, 1419, 1453 [Det. Breslin]; Attached hereto as Ex. "53" [My exemplars]).

122. Det. Breslin claimed there were strong similarities between my handwriting and the handwriting on the envelopes (Ex. "1" p. 103; Ex. "14" pp. 1303-1306, 1450-1453 [Det. Breslin]).

123. Once again, Det. Breslin claimed my handwriting matched the Federal Express Airways Bill and the American Express money order. Thereby, connecting me to the Puerto Rico incident. Various exhibits were entered into evidence, which he used to demonstrate his conclusions (Ex. "1" pp. 96, 99, 103; Ex. "14" pp. 1211-1236 [Det. Breslin]).

124. It should be noted, Det. Breslin having approximately one hundred pages of my claimed handwriting, could not arrive at the conclusion, that my handwriting matched the envelopes, Federal Express Airways Bill and the American Express money order (Ex. "1" p. 96; Ex. "14" pp. 1328-1337, 1345-1350 [Det. Breslin]; Attached hereto as Ex. "54" [Det. Breslin's report, no I.D.]). But, when he received my exemplars he concluded my handwriting matched the Federal Express Airways Bill and the American Express money order (Ex. "1" p. 96; Ex. "14" pp. 1350-1355, 1416-1421 [Det. Breslin]; Attached hereto as Ex. "55" [Det. Breslin's report, I.D.]).

125. Once again, during opening statement and closing argument the prosecutor outlined the testimonies and evidence surrounding the Puerto Rico incident (Ex. "14" pp. 25, 31, 49-50, 52-53, 67-68, 1819-1829. 1881, 1904).

126. Once again, the above material testimonies and evidence were convincing, but in reality such were all a complete fabrication. The below evidence from the prosecutors as I claimed, which they did not admit to as coming from them before Judge Bookson, proved the fabrications.

127. Puerto Rico Newspapers dated, 2/9/91, the day after the package was received by Miss Lamboy revealed they were informed by Police Headquarter's, that the package had the name of Miss Lamboy, and was addressed to "2615 Paseo Aguilla" where the "Pantoja Family" reside. Who were willing to pay for the package, and take it to its owner. The courier having the package for a couple of days (Ex. "1" pp. 86, 94; Attached hereto Ex. "56" [P.R. Newspapers]; ¶¶115-117).

128. It is clear, the "Pantoja's" knowing of Miss Lamboy's address told the delivery man where to go. This is why the notification had Miss Lamboy's address, 2629 Paseo Aguilla. After all, they wanted to pay for the package and bring it to its owner. How else would the delivery man of known where to go. Any mention this package had the name of the Roman Family and having the address 2629 Paseo Aguilla are fabrications. Police Headquarter's proved this fact (Ex. "1" pp. 86, 94).

129. The Federal Express Package Tracking Inquiry revealed the package had an incorrect recipient address, not an incorrect recipient name (Ex. "1" pp. 78-79, 82, 93; Ex. "14" pp. 1105-1109 [Sullivan]; Attached hereto as Ex. "57" [Package Tracking Inquiry]).

130. There you have it, direct proof the package was addressed to another address other than 2629 Paseo Aguilla. Had this package of gone to the right address 2629 Paseo Aguilla to begin with, would such be incorrect, of course not. The package went to 2615 Paseo Aguilla as Police Headquarter's stated. The Package had Miss Lamboy's name, but the wrong address (Ex. "1" pp. 86, 88). It should be noted, this Package Tracking Inquiry was never entered into evidence. Nor was the jury apprised of the fact the package had an incorrect recipient address.

131. Further proof of the above is as follows. The very P.R.P.D. reports to agent Garcia previously mentioned (¶119; Ex. "52"), revealed Miss Lamboy called Mr. Pantoja, asking him to come over to view the package contents. Also, the Police asking Mrs. Pantoja to abandon her residence for her safety (Ex. "1" p. 81).

132. If this package had gone to the right address as testified too. Then why did Miss Lamboy call Mr. Pantoja and ask him to come over to view the package contents, had this package not of gone to the Pantoja Family to begin with. Common sense, because Miss Lamboy was not sure if the package was meant for her, as it had his address (Ex. "1" pp. 81-82, 86).

133. Also, why did the Police ask Mrs. Pantoja to abandon her residence for her safety, had this package not of gone to the Pantoja's to begin with. Common sense, because the package had the Pantoja's address, and the Police did not know what was going on. This was clearly a safety precaution (Ex. "1" pp. 81-82, 86).

134. When Miss Lamboy called Federal Express to arrange for her neighbor to receive the package. She made no mention, that she was informed by Federal Express that the package had the name Roman. She was quite adamant about the notification having her name. Does this Court honestly believe Federal Express would leave a package claimed to be worth $800.00 (Ex. "50") with anyone without verification that they are a member of the Roman Family, and that the residence is that of the Roman Family, of course not. Especially, with the last name Lamboy. Does this Court honestly believe if the package had gone to the right address to begin with, the package tracking inquiry would have stated there was an incorrect recipient address for the package (Ex. "1" pp. 86, 88, 94).

135. In further support of the above, a Puerto Rico Newspaper dated, 2/10/91, revealed Miss Lamboy informed the press, that she's lived alone at "2629 Paseo Aguilla for many years. And, that she does not know the origin of the "Roman Family" (Attached hereto as Ex. "58" [P.R. Newspaper]). Miss Lamboy stated her Mother lived with her all her life, and her Mother's last names were Lamboy Matos. Mrs. Mendez stated, her Mother never carried the name Roman. (Ex. "14" pp. 244-246, 279 [Mendez], 755-758 [Lamboy]). Would Federal Express leave a

package with a person who does not know the origin of the Roman Family.

136. An interesting fact. As previously mentioned, Miss Lamboy stated her Mother's name was "Rosa Lamboy Matos." That, her Mother lived with her all her life at "2629 Paseo Aguilla." Mrs. Mendez stated her Mother's name was "Rosa Lamboy." That, she never carried the name "Roman." That, her Mother lived at "1826 Paseo Aguilla." Mrs. Franza stated her Grandmother's name is variable, "Rosa Lamboy" and "Rosa Roman." Yet, she stated in her mind her Grandmothers' name was "Rosa Lamboy Roman", because it was her Mother's Maiden name (Ex. "1" pp. 83, 85, 88; Ex. "14" pp. 244-246, 279 [Mendez], 310, 366 [Franza], 755-758 [Lamboy]). Isn't it something, no one knows this woman's name.

137. Food for thought. Mrs. Franza stated in her mind her Grandmother's name was "Rosa Lamboy Roman", because it was her Mother's Maiden name. The name being variable "Rosa Lamboy" and "Rosa Roman." Well, Mrs. Mendez stated Miss Lamboy is her "younger Sister" (Ex. "1" p. 93; Ex. "14" p. 246 [Mendez]). Doesn't the name lamboy come after the name Roman. Don't think for a second Mrs. Franza did not know Miss Lamboy was her Mother's younger Sister. Does this Court honestly think that there was an elaborate plan by Mrs. Franza's Family in Puerto Rico for Mrs. Franza's benefit, to mislead her into thinking her Grandmother's name was Roman, when she went to Puerto Rico for her Brother's funeral (Ex. "1" pp. 89-90, 93; Ex. "14" pp. 280 [Mendez], 288, 334-337 [Franza]). After all, Mrs. Mendez claimed her Mother never carried the name Roman.

138. I further make new mention which must be brought to this Court's attention, such revolving around the Federal Express Airways Bill.

139. Mr. Cezar Rodriguez was the clerk who accepted the package for shipment. He claimed to have recognized the Federal Express Airways Bill and American Express money order used to pay for the shipment of the package. That, such documents having his handwriting on them. He further claimed the man who brought the package in for shipment was, short, dark skinned, 5'6" and had a Hispanic accent (Ex. "1" p. 99; Ex. "14" pp. 1717-1722 [Rodriguez]). This description does not fit me at all in any way. It should be noted, Mr. Rodriguez did not pick me out of a line up as the person mailing the package (Ex. "14" pp. 688-689 [Det. Giorgio]).

140. A fax from Agent Behan of A.T.F., as I am familiar with his handwriting, dated 2/12/91, revealed verbatim, "Package shipped by male who signed Julio Ortiz on shipping label" (Attached hereto as Ex. "59" [Fax]). There is only one person he could of gotten this information from, Mr. Rodriguez. Remember, Miss Lamboy received the package on, 2/8/91 (¶117), the fax was dated right after she received the package, 2/12/91.

141. An A.T.F. Investigative report from Agent Behan dated, 2/20/91, 11 days from the date Miss Lamboy received the package revealed verbatim, "The package had been sent from the Federal Express office on Broadway and 116st, New York, N.Y. on 2/4/91, by an unknown male who signed the name "Julio Ortiz" to the airbill" (Attached hereto as Ex. "60" [Investigative

report]). Once again, who could of given this information, only Mr. Rodriguez.

142. All the above clearly reveals the Federal Express Airways Bill I was claimed to have written on, claiming the package went to the Roman Family at 2629 Paseo Aguilla, and the telephone number 1-809-784-1630 was doctored to reflect such. I did not write on any Federal Express Airways Bill, as Det. Breslin claimed.

143. Would you believe in light of the above Mr. Rodriguez at the Grand Jury and trial testified, that the Airways Bill was already filled out when the man came in (Ex. "14" p. 1723 [Rodriguez]; Ex. "63" pp. 60-62 [Rodriguez's Grand Jury testimony]). Mr. Rodriguez's testimony was clearly tampered with.

144. As for the American Express money order I was claimed to have written on. The money order number claimed to have paid for the shipment was 21-212-545-289 (Attached hereto as Ex. "61" [American Express money order]). A letter from American Express revealed the same money order was purchased for college stationary. And that the money order was presented for payment on 2/8/91. A document from American Express revealed no such money order, 21-212-545-289, was presented for payment on 2/8/91 (Ex. "1" pp. 100, 102; Attached hereto as Ex. "62" [American Express documents]).

145. It is clear, this money order I was claimed to have written on was bogus. In any event, what juror would have believed Det. Breslin's analysis concluding I wrote on this money order, had they known of his false testimonies claiming I wrote

the Floral Delivery note and Federal Express Airways Bill. What credibility as to his expertise would he have, none. Would this Court find Det. Breslin credible under the circumstances.

146. Due to the fact Judge Bookson retired, I would like to bring to this Court's attention a ruling Judge Bookson made, as to the American Express money order. To bring this Court up to speed, only, not as a basis for this motion. Mr. Cesar Rodriguez testified at the Grand Jury on or about October or November of 1991 (Attached hereto as Ex. "63" [Mr. Rodriguez's Grand Jury testimony]). He testified the male who brought the package in for shipment filled out the American Express money order in his presence (Ex. "1" p. 99; Ex. "63" pp. 63-64).

147. Defense counsel called Mr. Rodriguez due to his Grand Jury testimony, which clearly revealed I did not write on the American Express money order, as Det. Breslin claimed I did. At trial he changed his testimony. Judge Bookson did not allow impeachment, over defense counsels arguments on the matter (Ex. "1" pp. 99-100; Ex. "14" pp. 1499-1525, 1528-1546; Attached hereto as Ex. "64" [Judge Bookson's decision on impeachment]). Once again, Mr. Rodriguez's testimony was tampered with by someone.

148. Isn't it so criminal how Mr. Rodriguez's Grand Jury testimony was withheld by the prosecutor until the last minute. Had there been timely disclosure, I would have sent an investigator to lock Mr. Rodriguez's testimony before he was tampered with (Ex. "14" pp. 1528-1546).

149. Now, why would the name Lamboy and address 2615 Paseo Aguilla be substituted with Roman Family and 2629 Paseo Aguilla. Also, why would Lamboy's telephone numbers 1-809-784-1623 and 1-809-786-5241 be substituted with 1-809-784-1630. As reflected on the Federal Express Airways Bill and in the P.R.P.D. reports.

150. Remember, Mrs. Franza stated, "in her mind her Grandmother's name was Rosa Lamboy Roman because it was her Mother's maiden name."

151. Mrs. Franza stated on November 4th or 5th of 1989, she went to the funeral of her Brother, Wilfred, in Puerto Rico, without me. In order for me to reach her, she claimed to have given me her Grandmother's "phone number" and "address" and the telephone number to another Aunt, Angeles in Rio-Predrias." Further, that her Grandmother lived with Evelyn Norris, Angeles Evelyn. Miss Lamboy having two names (Ex. "1" pp. 89-90; Ex "14" pp. 280 [Mendez], 288, 334-337 [Franza]).

152. Mrs. Mendez testified her Maiden name was "Roman." She claimed that when A.D.A. Brancato was at her apartment, with Mrs. Franza in attendance, that that's when she told Mrs. Franza her Grandmother never married her Father (Ex. "1" pp. 85, 92-93; Ex. "14" pp. 244-246 [Mendez]). Remember, Mrs. Mendez stated her Mother never carried the name Roman.

153. Mrs. Mendez stated her Mother was ill for a long time. Having terminal cancer prior to November of 1990. And, that her Sister was taking care of her. Her Mother being diagnosed as having cancer before Mrs. Franza left me. That, while Mrs. Franza and I were still together, she did not tell Mrs. Franza her

Grandmother had a disease which was killing her. Because, no one told her either? Lastly, when her Mother died 11/90, Mrs. Franza was not living with me (Ex. "1" p. 92; Ex. "14" pp. 245, 279-280 [Mendez). By the way, she never testified as to giving anyone her Families telephone numbers in Puerto Rico.

154. Mrs. Franza stated her Grandmother had "colon cancer" then retracted the word "colon." She claimed, contrary to her Mother's testimony, that while she and I were together she knew her Grandmother had cancer. That, she and I shipped her Grandmother a walker for her to get around. That, she was periodically informed of her condition (Ex. "1" pp. 92, 95; Ex "14" pp. 366-369 [Franza]). By the way, she never testified as to giving anyone her Families telephone numbers in Puerto Rico, as well.

155. It should be noted, Det. Giorgio stated when I was arrested he found on me telephone numbers and words, "809-784-1630," "Levittown" and "809-765-4792," "Rio-Predrias." He stated he did not find it unusual for me to have my wife's families telephone numbers. At trial the testimony was the same. The numbers found on me were entered into evidence (Ex. "1" pp. 90-91; Ex. "14" pp. 619-624, 732-733 [Det. Giorgio], 841-845 [Behan]; Ex "30" pp. 196-199, 270-272 [Det. Giorgio]).

156. By the way, he stated Mrs. Franza and Mrs. Mendez notified him of the package sent to Puerto Rico. And, that they gave him information pertaining to their Family in Puerto Rico, such as telephone numbers and a person'e name "Roman Figueroa" (Ex. "30" pp. 195-196, 271 [Det. Giorgio]).

157. The testimonies lead one to believe Mrs. Franza was lead to believe her Grandmother's name was Roman. And, Mrs. Franza giving me her Grandmother's address and telephone number.

158. The inference the above testimonies gave were since I was married to Mrs. Franza, I too would be lead to believe her Grandmother's name would be Roman. That I knew where to reach her Grandmother, not knowing she passed away. All the above pre-supposes I knew Mrs. Mendez's Maiden name. There were no testimonies that claimed I knew Mrs. Mendez's Maiden name.

159. In sum, the testimonies gave the inference I had the intimate knowledge to reach a Roman at a certain address and phone number. This is precisely the inference the prosecutor utilized in summation before the jury (Ex. "1" p. 93; Ex. "14" pp. 1904-1905):

> The information on the Federal Express air bill, I spoke of intimate family knowledge before. Julio Ortiz, better yet, the person who wrote his name on the bottom of that Federal Express air bill, that person knew you could reach a Roman at a certain address in Puerto Rico. What is Josephine Mendez' maiden name? It is Roman. The person who sent that Federal Express bill did not use the last name of the person living at that address. Lamboy, the person used the maiden name of Mrs. Mendez. That is intimate family knowledge.
>
> Harken to your own experience and harken to your own knowledge of the world. You know your friends, you know who their parents are. How many of you know the name of -- the maiden name of the Mother? That is intimate family knowledge.
>
> The person who wrote that express bill knew the maiden name of Mendez. The person who wrote that Federal Express air bill had the address down to the street and number, that's intimate family knowledge.

> And, Ladies and gentlemen, there is only one person throughout this entire event, that took place between July and February of 1990---1991, the defendant, who goes by the name in this case as Julio Ortiz.

160. Isn't it something for the prosecutor to say quote, "The person who sent that Federal Express bill did not use the name of the person living at that address, Lamboy, the person used the maiden name of Mrs. Mendez" *** "The person who wrote that Federal Express air bill had the address down to the street and number, that's intimate family knowledge" *** "The person who wrote that bill knew what the telephone number was." All the above in-spite of the fact Police Headquarter's reported the package had Miss Lamboy's name, and the package being addressed to 2615 Paseo Aguilla where the Pantoja Family reside. Also, the notification having Miss Lamboy's name, and the package tracking inquiry proving the package had an incorrect recipient address. Also, Miss Lamboy asking Mr. Pantoja to come over and view the package contents, and the police asking Mrs. Pantoja to abandon her residence for her safety (¶¶127-134). So much for intimate Family knowledge. Let's not forget the package went to 2615 Paseo Aguilla where the Pantoja Family reside. Not Roman Family and 2629 Paseo Aguilla (Ex. "1" pp. 93-94; ¶¶127-144).

161. As to Miss Lamboy's telephone number. Once again, the very P.R.P.D. reports to Agent Garcia previously mentioned (Ex. "52"; ¶119), revealed Miss Lamboy's numbers were 786-1923 and 796-5241, not 784-1630, as she testified too as being her's and reflected on the Federal Express Airways Bill (Ex. "1" p. 91; Ex. "50"; ¶115).

162. All the above and the inference from the testimonies are the reason's Miss Lamboy's name, address, and telephone number were substituted. This was nothing more than an elaborate scheme to further create a link to me.

163. Once again, as for the Federal Express Airways Bill, there was further deception. The Air Bill was claimed to have come from 1 Fordam Plaza in the Bronx. This location is about three miles from where I lived (Ex. "14" pp. 1115-1122 [Sullivan], 1593-1598 [Gonzalez]). The inference posed before the jury was, that I went to 1 Fordam Plaza and got the Airways Bill, that was claimed to have been used in connection with the shipment of the package in Manhattan (Ex. "1" pp. 97-98; Ex. "14" pp. 1107-1109 [Sullivan]). After all, my handwriting was claimed to have been on this document.

164. Lastly, as to the Federal Express Airways Bill. Once again, there was further deception. The Federal Express notification that Miss Lamboy received claimed, the sender was U.S.A. Electronics in Manhattan. The same reflected on the airways bill (Ex. "14" pp. 862-863 [Behan], Ex. "50). Mrs. Franza claimed she and I brought VCR's to get fixed at U.S.A. Electronics at 2561 Boston Road in the Bronx. A business card from U.S.A. Electronics was found in my apartment, pursuant to a search warrant. Such was entered into evidence (Ex. "14" pp. 338-339 [Franza], 862-863 [Behan]; Attached hereto as Ex. "65" [U.S.A. receipts]). The inference the prosecutor posed before the jury was, that I used the name of an establishment I did business with (Ex. "14" pp. 1891-1892).

165. In sum, the Federal Express Airways Bill and the American Express money order was changed. The package had Miss Lamboy's name and was addressed to 2615 Paseo Aguilla, where the Pantoja Family reside. Once again, what happened here was a frantic attempt to cover up exactly what happened. A major cover up job. It is clear, the testimonies and evidence revolving around this package were fraudulent (Ex. "1" pp. 102, 104). It goes without question, the fraudulent material testimonies and evidence were prejudicial.

166. Once again, under the circumstances presented by this motion, had the prosecutor presented the true state of affairs of his discovery materials, Judge Bookson would have clearly found I met the first three prongs of the four as to my CPL §440.10(1)(b)(c)(h) grounds. Judge Bookson would of never ruled my motion was completely unsubstantiated.

167. Before moving on to the fourth prong, the following must be noted. The D.A.'s office remarkably and ethically admitted that the shooting incident and Puerto Rico incident were uncontroverted at trial:

> At trial defendant did not contest that Franza and Mendez had been shot or that the pipe bomb was delivered to Puerto Rico. Disputing only proof of his culpability, defendant treated the details of the crimes as immaterial to his defense (Attached hereto as Ex. "66" ¶4 [D.A. opposition to my re-argument on direct appeal]).
>
> Here the details were contested for the first time in a post-conviction motion (Ex. "66" ¶5).

168. The D.A.'s office further admitted before the Court of Appeals:

> Defendant contested the minutuae of each crime for the first time in a pro se post-conviction motion (Attached hereto as Ex. "67" p. 2, ¶3 [D.A.'s opposition to my leave application to the Court of Appeals]).

169. As for the last prong, Judge Bookson would have held under the circumstances above the false material evidence and testimonies were prejudicial. And, that there was a reasonable likelihood or possibility that the false material testimonies and evidence affected and contributed to the judgment and verdict of the jury, as the case was not overwhelming. Su v. Filion, 335 F.3d 119, 127 (2nd Cir. 1997). After all, the jury's only request for a read back of testimony requested Det. Breslin's analysis concluding my handwriting matched the handwriting on the fraudulent floral delivery note. How much more prejudicial can it get than that.

170. Minus the false testimonies and evidence, the remaining testimonies and evidence were not overwhelming as follows:

171. Each letter claimed to have been received by Mrs. Mendez, had two .03¢ stamps and one .25¢ stamp. Mrs. Franza stated she brought .03¢ stamps. Det. Breslin stated the stamps found in my apartment matched the stamps on the envelopes. But he stated, he could not identify the handwriting on these envelopes as being mine. Only claiming there were strong similarities. Such stamps were entered into evidence (Ex. "1" p. 103; Ex. "14" pp. 374-376 [Franza], 855-856 [Behan], 1264-1306, 1450-1453 [Breslin]). The prosecutor hammered Det. Breslin's analysis claiming the stamps matched before the jury (Ex. "14" pp.

1894-1901).

172. Det. Breslin claimed he raised indented writings from an alleged document taken from my apartment. Such paper having Mrs. Franza's Brother's personal information and the word shoot, which he believes he saw. It should be noted, he could not tell how many pages were between the original writing and the indented writing. But the fact still remained, the word shoot was believed to have been seen. This coincided with the shooting's of Mrs. Mendez and Mrs. Franza. After all, the Brother is a member of the Family (Ex. "1" p. 104; Ex. "14" pp. 1241-1243, 1257-1263, 1424-1426 [Det. Breslin]). The prosecutor drew an inference before the jury (Ex. "14" pp. 1834-1840).

173. Once again, had the jury been apprised of the fraudulent nature of Det. Breslin's testimonies claiming my handwriting matched the fraudulent floral delivery note, the fraudulent Federal Express Airways Bill and the fraudulent American Express money order, would they of have believed him in any of his analyses. Does this Court honestly think the jury would have credited any of his analyses. Of course, they would of discredited his testimonies as a whole. There was more than a reasonable doubt existing against Det. Breslin. Det. Breslin's testimony is beyond resuscitation and cannot be saved by any means, period. No amount of cure.

174. By the way, if you compare the stamps taken from my apartment to those on the envelopes, you will see the holes don't line up no matter how you jig-saw them. Det. Breslin once again, with his voo-doo analyses fooled the jury into believeing his

credibility on this issue (Attached hereto as Ex. "68" [Stamps]; ¶171).

175. On the day of the shooting's, 7/17/90, my neighbor Mrs. Tracie Francis stated, shortly after arriving from work she observed me in her back yard, and that she went to speak to me, chit-chat. The conversation ending because I told her I had an errand to run. That, I was going to the drugstore. That, I thereafter went to her garage, which I rented, got into my "Red Mustang" and drove off. Her Husband Wayne Francis arriving from work shortly after I left. That, I returned 5 to 10 minutes later in my car, and that her Husband and I engaged in conversation for 15 to 20 minutes. Then, I went to my dwelling (Ex. "14" pp. 459-461 [Mrs. Francis]).

176. She further claimed, I came back out 10 minutes later, and that I was disoriented, shook up. That, I said I received a message on my answering machine, that said something happened to my Wife. Her Husband standing next to her, when I was alleged to of said this. That, after I said that I got into my car, which was parked behind her Husband's car, and drove away around 7:00 P.M.. She stated, she did not see a Mr. Tracy Jenkins, a black friend of mine at all, and for the rest of the night (Ex. "14" pp. 444-449, 451-452, 456 [Mrs. Francis], 469-470, 472, 474 [Mr. Francis]).

177. Mrs. Francis further stated, she received all the information on what happened probably the next day from me. That, I had numerous discussions with her on what happened. Lastly, she claimed Det.'s Giorgio and Ortiz had come by to see her, seven

months after the shooting's (Ex. "14" pp. 452-453, 456-458 [Mrs. Francis]).

178. Mrs. Francis in a written statement she gave to Det's. Giorgio and Ortiz stated, I got into my car, which was parked in her garage and drove off. Thereafter, her Husband returning from work. Shortly thereafter, I arrived. She believes I may have had a white paper bag in my hand. And, that her Husband and I engaged in conversation (Ex. "14" pp. 1870 [Mrs. Francis]; Attached hereto as Ex. "69" [Signed statement]).

179. It should be noted, while the prosecutor utilized the testimony above, he discredited Mrs. Francis's testimony. Directing focus on Mr. Francis's testimony who claimed, I said Mrs. Franza was shot (Ex. "14" pp. 1870-1873).

180. Mr. Francis stated, when I came back out from my dwelling I said my Wife was shot, but that I did not know what happened. He claimed, when I said this he could not recall if his Wife was standing next to him. Thereafter, I got into my car and drove away. That, he received information from me on what happened later on. He stated, he did not see my friend Tracy Jenkins at all. That, Det's. Giorgio and Ortiz came to see him, seven months after the shooting's (Ex. "14" pp. 462-469, 471, 473-476 [Mr. Francis]; Attached hereto as Ex. "70" [Mr. Francis's signed statement and P.O. report for both Mr. & Mrs. Francis]).

181. The message I received on my answering machine came from Mrs. Ferreira, at the direction of her Daughter, Mrs. Theis. Mrs. Ferreira's message was, "Myra please, Myra this is Hilda, the super from the house you live in. Something happened to your

Mother. Please come as soon as possible." She left the number for Myra to call, not knowing Myra was one of the victims. That, I called her and informed her I was on my way (Ex. "14" pp. 111, 113, 119-121, 123-124 [Mrs. Theis], 131-132, 134-137 [Mrs. Ferreira]).

182. You see, Mrs. Ferreira's message did not mention that Mrs. Franza was shot. Mr. Francis stated I said my Wife was shot. The prosecutor presented Mr. & Mrs. Francis's testimonies to show I had knowledge of the shooting's, when I shouldn't of have had, had I not been involved in the shooting's. These testimonies were highly incriminating (Ex. "14" pp. 1870-1873).

183. Well, while the Francis's claimed I told them I received a message on my answering machine, informing me that Mrs. Franza was shot, and that I left in my "Red Mustang" alone, not seeing Mr. Jenkins. Guess what, I arrived at the shooting scene with Mr. Jenkins. Exiting a black car with New Jersey plates from the passenger side, a black male exiting from the driver side. This car belonged to Mr. Jenkins. That, when I left the car being punched in the face by Mr. Dacosta, Mrs. Franza's Brother. Lastly, when Det. Bourges took me home from the Pct., he escorted me to a garaged area, and that I got into my car and drove away (Ex. "14" pp. 151-153 [P.O. Aponte], 420-421, 424-427, 434 [Det. Bourges], 631-633 [Det. Giorgio]).

184. The prosecutor tried to capitalize on mistaken testimony on purpose. These testimonies are not overwhelming as to guilt. The Francis's were clearly wrong. They got their days

mixed up. I submit, Det's. Giorgio and Ortiz intentionally waited seven months to go see them. Clearly, hoping their memories would fade as to what happened on 7/17/90, which did happen. Det's. Giorgio and Ortiz knew of them on 7/17/90, as I told them I was with them on 7/17/90 at 7:00 P.M.. Why else would they ask about the day in question, 7/17/90.

185. I would like to bring to this Court's attention the following facts. At the drugstore I brought cotton balls and peroxide, as I was low on peroxide. You see, I had two white dogs and had to clean the fur around their eyes. Anyone with a white animal knows a white animals fur must be cleaned. The tears discolor the fur if not cleaned with frequency.

186. When I arrived from the drug store, I indeed had a white paper bag in my hand, which Mrs. Francis correctly saw.

187. When I arrived at the shooting scene with Mr. Jenkins, Det. Giorgio asked me if I would go to the Pct.. At the Pct. Det. Giorgio asked me about my movements for the day. I gave him a statement. Within the statement I said I went to the drugstore to buy golden trojans (Ex. "14" pp. 568-578, 744 [Det. Giorgio]; Ex. "30" pp. 126-127, 129-135 [Det. Giorgio]). Why did I say this, when I brought cotton balls and peroxide. You see, I wanted to go to the Hospital and Det. Giorgio wanted to keep on talking. I was pissed off. What I did was call Det. Giorgio a s--m bag, he did not pick up on this. I was kept at the Pct. for six hours, while my Wife was at the Hospital (Ex. "14" pp. 637-638, 652 [Det. Giorgio]; Ex. "30" pp. 154, 230-231 [Det. Giorgio]).

188. By the way, the prosecutors never called Mr. Jenkins at trial, or any proceeding for the matter.

189. As for any Forensic evidence connecting me to the pipe bomb sent to Puerto Rico and the pipe bomb found in front of Mr. Dacosta's apartment door. There was no conclusive finding exclusively linking me to these pipe bombs. A careful reading of the testimonies proves this fact. (Ex. "14" pp. 925-928 [Behan], 951-1021 [A.T.F. Chemist, Gregory P. Czarnopys], 1026-1061 [Det. Sadowy N.Y.P.D. Bomb Squad], 1148-1186 [A.T.F. Explosive Technology Branch, Joseph C. Lund], 1651-1690 [A.T.F. Firearms and Tool Mark Examiner, Carlos J. Rosati]). There is no overwhelming evidence of guilt here, at all.

190. It should be noted, it was established I belonged to a gun club, And that I reload my own ammo for use at the range (Ex. "14" pp. 328-331, 334, 352-353, 376 [Franza], 423, 432-433 [Det. Bourges], 657-658, 736 [Det. Giorgio], 811-812, 815-816 [Det. Raymond], 921-924 [Behan], 1588-1590 [Miss Gonzalez]). Just because I am a gun enthusiast does not make me guilty for owning reloading equipment and the components, such as gunpowder, which did not match the powders in the pipe bombs. No inference of guilt should be drawn here at all. This is not overwhelming evidence.

191. It should be noted as well, there were no testimonies that claimed my fingerprints or DNA were found on any items or documents connected with this case. There is no overwhelming evidence in this regard.

192. As for a two page list found in my apartment during a search, it is meaningless. This list which was entered into evidence had books on gunsmithing, silencers, special weapons and various topics on explosives, including WWI and WWII (Ex. "14" pp. 850-855, 921-923 [Behan], 1155-1160 [Lund]; Attached hereto as Ex. "71" [List]). None of these books in the list were found in my apartment. Nor, were there any testimonies showing the pipe bomb designs came from any of these books. The only book found was a book on silencers, which was never claimed to have been in the list (Ex. "14" pp. 861-862 [Behan]). Once again, there was no overwhelming evidence of guilt here.

193. It should be noted, Agent Behan did not even look at these books. He never made an effort to inquire if I purchased or owned these books. In sum, no investigation was made at all (Ex. "14" pp. 1696-1697, 1699-1702 [Behan]). Just because I am a gun enthusiast does not make me guilty for owning any of these books, had I owned them. These books are available to the General Public (Ex. "14" pp. 1172-1174 [Lund]). Once again, there was no overwhelming evidence of guilt here.

194. As for the pipe bomb found outside Mr. Dacosta's apartment door. This device had a firecracker as a detonator. During a search of my apartment unopened packs of firecrackers were found (Ex. "14" pp. 875-876, 879-880, 941 [Behan], 1040 [Det. Sadowy]). It was claimed the firecrackers found in my apartment were similar to the firecracker found in the pipe bomb. Czarnopys did not investigate where the firecracker was manufactured or sold (Ex. "14" pp. 982-984, 994-995 [Czarnopys]).

195. There were no testimonies, that these firecrackers were sold in limited quantities or that they were not sold in N.Y.C. or N.Y. State, making them exclusive. There are clearly 100's of millions of the same type of firecrackers sold in the U.S.. The prosecutor told the jury why would a man of my age have firecrackers. This has no relevancy, or does the ownership of firecrackers infer one makes bombs. (Ex. "14" pp. 1879-1881). Once again, there is no overwhelming evidence of guilt here. By the way, I was never charged for this pipe bomb.

196. As for Mrs. Franza's testimony. She stated she did not know I had a Federal Firearms Licence. And, that she knew nothing about being a co-proprietor in a business called "Nick's Gun Store" (Ex. "14" pp. 352 [Franza]). Well, look at the A.T.F. application for a F.F.L., whose handwritten name do you see signing the application, Mrs. Franza, which, I crossed out and initialed. Look at a check written by Mrs. Franza. Its the same signature (Attached hereto as Ex. "72" [F.F.L. application]; Attached hereto as Ex. "73" [Check]).

197. Mrs. Franza made numerous accusations, that I numerously beat her on different occasions saying, if she left or I caught her with someone I would kill her and bury her in the park. Also, that I would take care of her Parent's. That, I would find her even if she went to Puerto Rico (Ex. "1" pp. 66-67; Ex. "14" pp. 290-300, 304-310 [Franza]).

198. Well, Mrs. Franza stated on June 25th, 1990, at 4:30 P.M., she got out of work, and that I directed her to wait for my Father by the steps of the subway entrance. That, she engaged in

a conversation with a male co-worker for about 15 minutes. That, I called her over and screamed at her, telling her she disrespected me for not introducing this man to me. That, I pushed her into the car. That, I hit her in the car while I was driving home. Arriving home at five or six. That, I threatened her at home. Lastly, that she and I spent the night at home (Ex. "14" pp. 304-310, 357-358 [Franza]).

199. Mrs. Franza remembered in June of 1990, my Mother went to the Hospital, and that I was at the Hospital for the entire day and night with my Mother. She then retracted saying, she was not sure if it was the entire night. She further stated, that she and I took her to the Hospital. Well, Mrs. Franza was shown a Hospital bill, which revealed my Mother was in the Hospital on June 25th, 1990. She admitted the date was June 25th, the date I was claimed to have beat her and threatened her (Ex. "14" pp. 359-361 [Franza], 389 [Court]; Attached hereto as Ex. "74" [Hospital bill]). Amazingly, Mrs. Franza in-spite of the Hospital bill still claimed the occurrence happened on the 25th (Ex. "14" pp. 364, 388 [Franza]).

200. By the way, as previously mentioned she stated when she got out of work I directed her to wait for my Father by the subway entrance, my getting upset, resulting in us going home. I would never leave my Father flat. If I told him I would meet him, I would not of left there without him!!!!

201. Minus the fraudulent testimonies, floral box with a red ribbon, floral deliver note, bullets, Federal Express Airways Bill, American Express money order, there was no circumstantial

evidence connecting me to these crimes. The remaining testimonies were not overwhelming as to guilt. Had the jury known of the fraudulent nature of this case, no jury would have believed any of the prosecutors witnesses or evidence. The standard of materiality that must be satisfied in order for a conviction based upon false testimonies and evidence to be reversed is easily met in my case.

202. Once again, Judge Bookson would have held under the circumstances above the false testimonies and evidence were prejudicial. And, that there was a reasonable likelihood or possibility that the material false testimonies and evidence affected and contributed to the judgment and verdict of the jury, as the case was not overwhelming. Su v. Filion, supra, at 127; People v. Pressley, 91 N.Y.2d 825, 827 (1997). The verdict was clearly affected (¶55):

> [W]e might well conjecture that any request for a readback would not be the result of a confused jury attempting to sort through reams of evidence, but rather such a request could indicate that the jury had a genuine inability to resolve serious questions of fact. U.S. v. Criollo, 962 F.2d 241, 244 (2nd Cir. 1992).

203. Once again, in light of all the circumstantial evidence against me, during deliberations the jury's only request for a readback requested Det. Breslin's testimony, claiming my handwriting matched the handwriting on the floral delivery note. Thereafter, convicting me (¶55). The jury resolved a serious question of fact based upon a fraudulent floral delivery note. It does not get anymore prejudicial than this. This cannot be spurned, its a fact. The verdict and judgment were clearly affected.

204. The fraudulent floral delivery note seriously impaired the jury's ability to pass upon the vital issue. To decide whether if in fact I was involved in the crimes. After all, the shooting incident was the premise for the Puerto Rico incident. This is precisely the infirmity under which the juror's labored in my case.

205. Not only did the prosecutor's conduct above run afoul, and interfere with Judge Bookson's ability to render a proper ruling, under the true state of affairs, as outlined above. Such conduct also ran afoul, and interfered with Judge Bookson's ability to render a proper ruling, as to my Ineffective Assistance of Counsel claim (Ex. "1" pp. 75-77, 97-98, 100-101, 105, 113, 119, 121, 125, 128-132, 134-135, 139).

206. A defendant has received effective assistance of counsel if his attorney has provided him with meaningful representation. People v. Flores, 84 N.Y.2d 184 (1994); People v. Satterfieid, 66 N.Y.2d 796 (1985); People v. Baldi, 54 N.Y.2d 137, 147 (1981). Whether an attorney has provided meaningful representation is to be determined from examining "the evidence, the law and the circumstances of a particular case, viewed in totality and as of the time of representation." People v. Flores, 84 N.Y.2d, at 187; see also, People v. Satterfield, 66 N.Y.2d, at 798-799; People v. Baldi, at 147. The ultimate test is not whether a defendant had a perfect trial, but whether he had a fair trial. People v. Flores, at 187.

207. Furthermore, an attorney is strongly presumed to have rendered effective assistance to his or her client. Strickland v. Washington, 466 U.S. 688, 690 (1984); People v. Rivera, 71 N.Y.2d 705, 709 (1988). To rebut this presumption, a defendant must allege facts to demonstrate that his counsel's assistance lacked reasonable competence, People v. Satterfield, at 799, and that he was deprived of a fair trial by less than meaningful representation. People v. Flores, at 187.

208. In People v. Stultz, 2 N.Y.3d 277, 283-284 (2004), the Court of Appeals further stated as to Baldi:

> In Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 [1984], the Supreme Court established a standard for evaluating defendants' Sixth Amendment claims of ineffective assistance of trial counsel. To prevail, the defendant must prove that trial counsel did not render reasonably competent assistance and that there is a reasonable probability that, but for the counsel's inadequacy, the outcome of the trial would have been different. Strickland's prejudice prong is what chiefly separates it from Baldi. At 283.
>
> From time to time, we have referred to the Strickland standard and measured counsel's performance under it, but have never applied it with such stringency as to require a defendant to show that, but for counsel's ineffectiveness, the outcome would probably have been different. Under our Baldi standard, we are not indifferent to whether the defendant was or was not prejudiced by trial counsel's ineffectiveness. We would, indeed, be skeptical of an ineffective assistance of counsel claim absent any showing of prejudice. But under our Baldi jurisprudence, a defendant need not fully satisfy the prejudice test of Strickland. We continue to regard a defendant's showing of prejudice as a significant but not indispensible element in assessing meaningful representation. Our focus is on the fairness of the proceedings as a whole. At 283-284.

> Based in part on our State Constitution, this Court had decided Baldi three years before Stickland, and in two later cases declined to abandon the Baldi standard for Strickland's. At 284.

209. In United States v. Cronic, 466 U.S. 648, 656-657, 659 (1984), the United States Supreme Court held:

> Similarly, if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable. At 659.

210. Under the circumstances of my case, trial counsel's representation under the Baldi standard and Strickland's two prong standard, was clearly ineffective. Here, trial counsel's conduct fell outside the wide range of professional competent assistance. It is reasonably likely that the jury's verdict would have been different but for counsel's omissions. See, Strickland v. Washington, at 690.

211. A review of the record reveals, trial counsel did not possess an in-depth familiarity with the facts and the discovery materials surrounding my case, as a result failing to develope and execute a sound trial strategy. It strains the imagination to the point of insanity, to conceive that trial counsel's trial strategy to omit the evidence provided by the two prosecutors, which revealed the prosecution's witnesses were presenting false evidence and testimonies, was a sound trial strategy, and reasonable professional judgment.

212. It is unquestionably clear, the testimonies and evidence revolving around the shooting incident (¶¶35-55), were proven to be a fabrication, by the conceded documents from the

two prosecutors (¶¶20-21, 56-112). In particular, the Medical records alone completely destroys the prosecution's case (¶¶56-66). To further highlight counsel's ineffectiveness, counsel stipulated that Mrs. Mendez only received five gunshot wounds, as she testified too (Ex. "1" pp. 75-76; Ex. "14" pp. 1471-1474), when these Medical records completely destroy the prosecution's case (¶¶56-66).

213. Equally, the testimonies and evidence revolving around the Puerto Rico incident (¶¶113-125), were proven to be a fabrication, by the conceded documents from the two prosecutors (¶¶20-21, 126-165).

214. Trial counsel omitting the evidence, thereby, failing to controvert the crimes, as conceded by the people (¶¶167-168), opted to present a losing defense, when he could have destroyed the prosecution's case, with their own documents. What trial counsel did was leave the fraudulent facts and evidence of the case intact, which affected the juror's fact finding, as evidenced at ¶¶55, 202-204. How is it, that I at the time of trial knew nothing about the law, and I saw the false testimonies and evidence when I looked at the discovery materials, while I was incarcerated up north, and trial counsel didn't.

215. Trial counsel's omission of the evidence as outlined herein this affidavit, was not the result of reasonable professional judgment. As a result of counsel's actions, all of the factual finding made by the jurors were affected. Trial counsel allowed the jury to pass upon my faith on the basis of false testimonies and evidence. This is what precisely happened

(¶202-204; Ex. "1" pp. 137-138). It does not get anymore prejudicial than this. What juror would have believed the prosecution's case against me, had trial counsel not of omitted the evidence as outlined herein, and presented a defense revolving around such evidence, from the two prosecutors. Every prosecution witnesses credibility would have been destroyed before the jurors. What juror would have believed the prosecution's case under the circumstances. It is evident under the circumstances, there was more than a reasonable likelihood that the decision would have been different.

216. Trial counsel's omission of the evidence herein, as outlined, was not the result of reasonable professional judgment. Trial counsel completely failed to exercise the skill, judgment and diligence of a reasonably competent defense attorney. There was a complete breakdown of the adversary process, due to trial counsel's deficiencies. Trial counsel's representation reeks with prejudice. The threshold requirement for a conviction to be reversed for ineffective assistance of counsel, is easily met in my case.

217. As the State and Federal Courts have stated, the focus of inquiry must be on the fundamental fairness of the proceeding as a whole. Taking the unaffected findings as a given, and taking due account of the effect of counsel's omissions as to the remaining findings, once again, there was more than a reasonable likelihood the decision would have been different. The fairness of my conviction was rendered unreliable by the breakdown in the adversary process caused by deficiencies of counsel.

218. It is clear, the prosecutor's conduct in opposition to my initial CPL §440.10 ran afoul, and interfered with Judge Bookson's ability to render a proper ruling, under the true state of affairs of my motion. Judge Bookson was clearly denied the opportunity to properly rule under the substantive predicates of CPL §440.30, and render a proper decision. It is beyond dispute, the prosecutor's conduct and D.A's office violated the principles of law, and the accepted standards of conduct mentioned herein. The D.A.'s office has completely lost credibility in my case.

219. Once again, the within motion presents an opportunity for this Court, not only to avert a tragically unjust outcome, but to reaffirm its commitment to neutral and independent adjudication and to a balanced adversary process. Dispelling any semblance of an impropriety. As the conduct of the prosecutor in opposition to my initial CPL §440.10 had a direct and palpable effect in preventing Judge Bookson from fully and fairly adjudicating the validity of my previous CPL §440.10.

220. To uphold Judge Bookson's previous decision under the circumstances, when he would clearly would not have rendered the decision he made would be a travesty of justice. I am quite confident this Court agrees I am quite correct. The semblance of an impropriety must be lifted from Judge Bookson's head. Which is not the fault of Judge Bookson. The administration of justice must be beyond reproach, it must be beyond the suspicion of reproach. This Court must uphold the law. This Court must use its inherent power to vacate the previous judgment, under the circumstances and grant such, as the prosecutor has tarnished the

dignity of Judge Bookson. Making a mockery of this Court and Justice. People v. Calderon, 79 N.Y.2d 61, 65 (1992).

221. I would like to say, should the prosecutor in opposition to this motion state that the post rulings of the State and Federal Courts bar this Court from vacating the previous judgment, they would be wrong. Appellate and federal courts do not render initial judgments on CPL §440.10 motions, they only review them. E.g., People v. Saldana, 161 A.D.2d 441, 556 N.Y.S.2d 539, 537 (1st Dept. 1990). Therefore, the post rulings of these courts are not germane. Its the fraud and misrepresentation in opposition to my previous CPL §440.10 that's in issue. Anyhow, Calderon and Stewart proves them wrong.

222. I would also like to say, should the D.A.'s office say in opposition to this motion, that it was defense counsel's trial strategy to proceed the way he did, such a claim must fall. As it was the prosecution's duty, not defense counsel's, to correct the false evidence and testimonies and elicit the truth. Napue v. Illinois, 360 U.S. 264, 269-270 (1959), citing, People v. Savvides, 1 N.Y.2d 554, 557.

223. As for a hearing under the law, People v. Baxley, 84 N.Y.2d 208, 214 (1994); People v. Fernandez, 183 A.D.2d 605, 586 N.Y.S.2d 246, 248-249 (1st Dept. 1992); People v. Sessions, N.Y.2d 254, 256 (1974); People v. Picciotti, 4 N.Y.2d 340, 345 (1958); People v. Lain, 309 N.Y. 291-293 (1955), such might arise. I submit, it is highly unlikely, due to the conceded documents. In particular, the Certified Medical records, which are conclusive unquestionable documentary proof, that destroys

the prosecution's case.

224. I submit, under the circumstances, the threshold requirement for relief under CPL §440.30 (3)(a)(b)(c) has been met.

225. Please take note, I will file a reply as soon as I receive the opposition.

226. Lastly, I would like to say, I call upon the D.A.'s office to ethically remedy this injustice. As it is their duty to seek justice, not to protect fraudulent convictions, Judiciary Law EC 7-13. The D.A.'s office should not have to put this Court in a position to rule on this motion. It would be ethical and just to seek my release. Or, does the D.A.'s office condone the actions of these two prosecutors. I should hope not as this Court. The integrity of the D.A.'s office is at stake.

WHEREFORE, I respectfully ask this Court to vacate the previous judgment and order as it was procured by fraud and misrepresentation and that a new decision be rendered and or a hearing be ordered. In the event this Court orders a hearing I wish to be present.

Dominic M. Franza
DOMINIC M. FRANZA
92A3659

SUBSCRIBED TO AND SWORN TO BEFORE ME
THIS 29th DAY OF SEPTEMBER, 2005

Patricia M Mundell

NOTARY PUBLIC

PATRICIA M. MUNDELL
NOTARY PUBLIC STATE OF NEW YORK
Qualified In ~~Cattaraugus~~ County 4732564
My Commission Expires 2/31/2009