

Ex. 44

THE FOREPERSON: Kindly raise your right hand please and repeat after me.

M Y R A F R A N Z A,

called as a witness, having been first duly sworn, responded to the oath and testified as follows:

THE WITNESS: Yes.

THE FOREPERSON: Thank you. You may be seated.

BY MR. BRANCATO:

Q. Okay. In a loud voice so we can hear you over the fireworks that are outside, tell us your name.

A. My name is Myra Franza.

Q. Ms. Franza, how old are you?

A. I'm 27 years old.

Q. And are you married to Dominic Franza?

A. Yes, I'm married to Dominic Franza.

Q. When did you marry Dominic?

A. May 12, 1987.

Q. Ms. Franza, can you tell the grand jurors where were you living with Mr. Franza back in 1988, 1989?

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A. I was living in the Bronx, 3320 Barker Avenue in a private house.

Q. And could you please tell us something about your marriage over the past 18 months. How would you characterize your relationship with Mr. Franza over the past 18 months?

A. Over the past 18 months, it was living hell.

Q. Why don't you just tell us.

A. It was a fight everyday. He was extremely violent, physically abused me, verbally.

Q. Ms. Franza, did there come some point that you sought an order of protection against Dominic Franza?

A. Yes. I kept running away from him and at one point I got in an order of protection in '89.

Q. Okay. Could you please tell us did he threaten you in any way at that time that caused you to get the order of protection?

A. He said that he was going to kill me and bury me in the park and then he was

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going to take care of my parents. That's when I said to myself he is not playing with a full deck.

Q. Wait a minute, Ms. Franza. Please disregard that comment. What we would like you to do is answer the questions that we pose.

After getting that order of protection, did you live at Barker Avenue or did you live at a different address?

A. I went to live with my mother and my brother. I would sleep at my brother's and I go eat at my mother's.

Q. And where is that located?

A. 485 West 187th Street in Manhattan.

Q. And how long did you stay with your mother back then after you got the order of protection?

A. About three weeks.

Q. Now, did there come some point that you got together again with Dominic Franza and lived with him?

A. About three weeks later he -- we got in contact and he said let's try one more

April 1989

May 1989

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time. I promise never to lay a hand on you. I am going to treat you different and we'll only go back on the condition that we go for counseling. That was the only condition I would go back with him.

Q. And how long did you live with him at this point?

A. Up until June -- June 28, 1990.

Q. And what happened on June 28, 1990 that caused you to move out?

A. On June 28, 1990 I had planned to move out. I called -- I called my brother and my father to come pick me up, that I wanted to leave the house. He wouldn't let me.

Q. On June -- I'm sorry.

A. On June 25th he had given me another beating, that's why I wanted to leave. He wasn't going to change.

MR. BRANCATO: Please disregard that comment.

Q. Ms. Franza, what we need you to do is what happened as opposed to what you think might or might not happen.

When you moved out in June of 1990, where did you go live?

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A. I went back with my mother and brother. I slept at my brother's and I ate at my mother's.

Q. Could you tell us now your mother and brother, where in relation to each other do they live, are they in the same building?

A. The two buildings are connected. My brother lives in the basement and my mother lived on -- lives on the first floor. The building -- one is 485. The other one is 490 West 187th.

Q. Okay. One is in the basement and one is on the first floor?

A. Yeah, my mother is on the first floor.

Q. And at this point that you moved out in June of 1990, did Dominic Franza threaten you in any way at that point?

A. Yes. June 25, 1990 he said if I ever tried to leave, anywhere I go he would get me. He would find me anywhere, including Puerto Rico.

Q. You have family in Puerto Rico?

A. Yes, my grandmother.

Q. And then let me go ahead now.

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Let's go to June -- July 17, 1990 at about 7:20 in the evening at 485 West 187th Street. Were you still living at your mother's?

A. Yes.

Q. And your mother's apartment, is that on the first floor?

A. Yes.

Q. Now, where were you? Where were you at about 7:20 that night?

A. I was in the bathtub taking a shower.

Q. Let me just break in from that day. Prior to -- prior to June of 1990, when you went back to live with Dominic after that event in 1989 did he -- did he help you in any way, help you bring your stuff back to your apartment?

A. I had stayed with him -- I went back with him three weeks after the order of protection. He had to pull up the car to the basement and help me get my stuff out to move back in with him.

Q. So, Dominic was aware where your mother and brother lived?

A. Yes.

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Q. And your brother?

A. Yes.

Q. Let's go to the night of July 17, 1990 at about 7:20 in the evening at your mother's apartment here in New York County. You said that you were taking a shower. Okay. You have to speak up so they can hear you over the noise outside. What did you hear at this point that you are taking a shower?

A. I was taking a shower and my mother goes, "Myra, open the door. There's flowers for you." I said, "What? I don't want no flowers."

Then she started to scream. I heard five shots. I was trying to open the door but my mother kept holding onto the door. She didn't want to let me out of the bathroom. She was just holding on and I finally open the door. When I open the door, the guy is standing there and he looked surprised to see me and he stares at my face. He raises his hand and he shoots me in the face. I fell. I was conscious and he was still standing over me and I made belief I was dead cause I didn't want to get shot no more.

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When I felt the coast was clear, I got up and I heard my mother coughing. She was just dying on me. And I crawl to the phone. I called 911, as best I could, I gave the address. Then I crawled to the door and tried to get the neighbors to help me and then I -- then all the police and everybody came.

Q. Were you taken to the hospital that night?

A. They took -- yeah, they took us both to Harlem -- the trauma unit in Harlem Hospital.

Q. How long were you at the hospital, were you there overnight?

A. I was in the hospital for a good two months. I can't remember.

Q. Now, where were you shot? Show the grand jurors where you were shot.

A. I was shot here and the bullet came out the back of my head and missed my brain by half an inch.

Q. Okay. You're indicating to the -- your left cheek?

A. Right here.

Q. That is what that round circle is

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on your face?

A. Yes.

Q. You indicated the bullet came out the back of your neck?

A. The back of my head, yeah.

Q. And your mother, how long was she in the hospital?

A. About the same time we both recuperated. She got out first and I got out last. She got shot five times.

Q. Just one or two more questions, Ms. Franza.

Did Dominic belong to a -- a shooting club?

A. Yes.

Q. A gun club?

A. Yes, he was a member.

Q. Would he go there to take target practice?

A. Yes. He would go and practice two, three times a week. He was a gun buff. Is a gun buff.

MR. BRANCATO: I have no further questions for Ms. Franza. Just remain seated.

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Q. Oh, Ms. Franza, the man who came into -- the man who came into the apartment, did you recognize him? Did you see him prior to that date?

A. No.

GRAND JUROR: That was my question.

Q. Did the man say anything to you when he fired the shot at you?

A. No, he just looked at me.

Q. Do you know whether, or not the man said any -- Did you hear a man's voice after you heard your mother scream?

A. No.

MR. BRANCATO: Okay. Thank you, Ms. Franza.

(WITNESS EXCUSED)

MR. BRANCATO: Next we will have Ms. Josephina Mendez.

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THE FOREPERSON: Would you mind raising your right hand please to take the oath.

JOSEPHINE MENDEZ, called as a witness, having been first duly sworn, responded to the oath and testified as follows:

THE WITNESS: I do.

THE FOREPERSON: Thank you.

Please be seated.

BY MR. BRANCATO:

Q. Ms. Mendez, in a loud voice so the fellow in the last row can hear you, tell us your name.

A. Josephine Mendez.

Q. And you are Myra Franza's mother, am I correct?

A. Correct.

Q. Now, Ms. Mendez, let me direct your attention back to July 17, 1990, the night that Myra was taking a shower in your apartment at 485 West 187th Street, apartment 1-D. Did you hear a knock on the door?

A. Yes, sir.

Q. And could you please tell us when

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you went to the door what did you see?

A. I saw this guy with dressing in white with a white coat on, a painting cap.

Q. A painting cap?

A. Ah-huh. A hat, like a hat. And he didn't look at my face but I thought it wasn't an innocent delivery. And then he asked me, "Flowers for Myra Franza."

Q. Did he have a box of flowers for Myra Franza?

A. Yes, sir.

Q. And what happened?

A. I shut the door but I didn't lock it.

Q. So, you closed the door?

A. I push the door and I didn't lock it with the key. So, I went back to the hallway where she was taking a shower in the bathroom. She was locked.

Q. Where Myra was?

A. Where Myra was. Then I knock on the bathroom. She had the shower running and I said, "Myra, do you accept flowers? Do you want the flower?" And she said, "What flower?" But in the seconds that guy was over

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me.

Q. Okay. The man?

A. The man came -- came after me. I heard the door slam. Then I knew that something was wrong.

Q. So, tell us what happened then.

A. Then he start shooting without any -- without any word. He shot me in the face. He shot me on -- twice in the arm. He shot me on the chest and he shot me on the arm.

Q. Okay.

A. Then my daughter by that time she already open the door and I tried to pull the door. And I tried to pull the door so my daughter don't get hurt. And at this time I already -- my jaw was broken in three times. And I fall on the floor. It was a small hallway. And then my daughter said, "Please, mommy." And then she got shot on the face.

Q. Okay. Ms. Mendez, let's slow down now. Just relax. You got shot. Let's get it all down. You said you got shot in the jaw?

A. Yes.

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Q. Which side did you get shot on?

A. On the right side over here.

Q. Did the bullet come out the other side?

A. Over here.

Q. It came out the back of your head?

A. Ah-huh.

Q. You said you got shot in your right arm?

A. In the right arm twice over here, over here.

Q. Pointing somewhere at about your shoulder level and down about halfway.

A. It's here.

Q. About seven inches off of your wrist.

A. And over here.

Q. Okay. On the inside approximately where the elbow --

A. And over here.

Q. And right chest.

A. And over here on the left arm which is crippled.

Q. Were you taken to the hospital

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that night?

A. My daughter -- after he run away, my daughter run bleeding. I was -- I was conscious and she went to the room and called 911 right away and said, "My mother has been shot", right away. I don't know what happened then.

Q. Now, did the man -- After shooting you did the man have a knife too, a dagger?

A. Oh, yes, he had a dagger. He push me with the dagger here and here.

Q. Was this after he had already shot Myra or before?

A. No, before. He had a dagger like a solider use, like a bayonet like.

Q. About how big was it? Hold your hands apart.

A. It looks like this and this kind of color.

Q. About eight inches long?

A. Well, I couldn't tell, you know, but it was long.

Q. About two inches down off your wrist.

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Now, did you recognize the man who had came to the door? Had you seen him before that day?

A. No, never in my life.

Q. How long were you in the hospital, Ms. Mendez?

A. I was 17 days in coma.

Q. And after coming out of the coma, how long were you in the hospital?

A. I had two operations.

Q. Okay. About how long were you there?

A. In the hospital?

Q. Yes.

A. 17 days.

Q. 17 days?

A. Yes. I came out the 31st of August.

Q. So, you were there from July 17th to the 31st of August?

A. Yes. Harlem Hospital trauma center.

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MR. BRANCATO: Okay. Thank you, Ms. Mendez. Okay, Ms. Mendez, have a seat outside.

(WITNESS EXCUSED)

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THE FOREPERSON: Officer, thank you very much.

G E N N A R O G I O R G I O,

called as a witness, having been first duly sworn, responded to the oath and testified as follows:

THE WITNESS: I do.

THE FOREPERSON: Thank you very much.

THE WITNESS: Detective Gennaro, G E double N A R O, Giorgio, G I O R G I O, shield 1335, 34th Squad, Homicide Team.

BY MR. BRANCATO:

Q. Detective Giorgio, back on July 17, 1990 within the confines of the 34th Precinct, did you have occasion to go to the apartment of Josephine Mendez, the lady who just went out of the grand jury?

A. I did.

Q. And upon getting there could you please describe the condition of both Ms. Mendez and her daughter, Ms. Myra Franza.

A. As I arrived, Ms. Mendez was being placed into an ambulance. I believe she had an oxygen mask attached to her face.

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There was blood on her face.

We stopped the attendant just for a second to ask him the condition and they told us that she had been shot numerous times, once in the face, and that she was critical.

Q. This is Ms. --

A. This is Mrs. Mendez.

As we entered the building and as I arrived at apartment 1-D Mrs. Myra Franza was being wheeled out on a stretcher. She too she was wrapped in a blanket. I believe she too had a mask on her face, a quite of bit of blood on her face. I was told by the EMS she too was in critical condition and that they could see she was shot once in the face.

Q. Did you go into the apartment 1-D?

A. I did.

Q. Upon going in, did you see a box of flowers?

A. I saw a white box which I later learned contained a dozen roses.

Q. Was there a note on top of the box of flowers?

A. There was what appeared to be a

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handwritten note. I am not sure if it was taped or stapled to the top of this box.

Q. When you say "what appeared to be a handwritten note" --

A. It was a handwritten note.

Q. Yes. Was there any printing of a florist's name and address on that note?

A. The -- you mean printing by -- machine printed.

Q. Machine printed?

A. No, there was not.

Q. Was there handwritten printing?

A. Yes. R & R Florist, I believe, Incorporated. I have a copy of that paper.

Q. Would it refresh your recollection if you looked at the copy?

A. Yes.

Q. Okay.

A. It's a R & R Florist, FTD.

Again, handwritten to the right of that on the same line it said order number 3792. Beneath that it said person said Myra Franza. Beneath that was written address, 485 West 187th Street, apartment 1-D, as in David, or basement apartment in rear. Ring bell.

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Apartment to left.

Q. So, aside from the apartment of the mother --

A. Yes.

Q. --it also had handwritten instructions as to another apartment in the rear?

A. In the basement, correct.

Q. Whose apartment is that?

A. That's Myra Franza's brother's apartment where she would stay.

Q. And was there some spot on that that requested that the person receiving the flowers sign for them?

A. Yes, beneath the above writing that I just read it stated "Confirmed Delivery", and it has an X and a line drawn next to the X.

Q. Did you take that note into your care and custody?

A. We did.

Q. And did there come some point during the course of your investigation that you requested that Dominic Franza, the defendant in this case, wrote ten copies like

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that note so that you could send them to the cryptographic center in the Police Department for handwriting analysis?

A. Yes. I wrote that same note. I wrote it out in my hand and I asked Dominic Franza if he would copy what I wrote out ten times in his own handwriting, which he did that was on August 24th of 1990.

Q. In his handwriting?

A. In his handwriting, that's correct.

Q. When you say you wrote it, did you write it exactly the way it appeared in the note or did you change it?

A. No, I made certain changes.

Q. So, he was unaware as to the changes?

A. Yes. He did not have the original before him.

Q. Did he write those ten copies for you?

A. Yes.

Q. Initially, how long did it take him to write the first one?

A. I gave him the sample copy and I

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left him in a room by himself and some paper. I believe I returned within maybe five minutes, maybe ten minutes and he was still writing out the first one and I explained to him was he -- I asked him was he having some difficulty. He said, "No, not really."

So, I proceeded to sit there and I asked him if there are any questions I would be happy to answer them. He then proceeded to write them more quickly than he had before.

Q. Were those ten copies that Mr. Franza wrote, were they sent to the lab so that John Breslin (ph), Detective Breslin of cryptographic could compare them against the note on the box?

A. Yes. I took the note from the box. I am not sure if I took that. That may have been down there already. I took my handwritten copy and the ten handwritten copies by Mr. Franza and delivered them to the document section in our police lab and personally delivered them to Detective Breslin.

Q. And do you have a typed copy of his report?

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A. I do.

Q. With his typed signature block on the bottom?

A. I do.

MR. BRANCATO: If you would hand that to me, I am going to mark this Grand Jury Exhibit No. 1 for identification.

The upper left-hand portion states: Police Laboratory Analysis Report. Laboratory Classification Question. Document dated 9/6 of '90. Received from Detective Gennaro Giorgio of the 34th Squad.

Lower right-hand portion it bears signature block typed of Detective John E.F. Breslin, 608. Document reads: I hereby certify that the foregoing report is a true full copy of the original report. False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law. There's the electronic transmittal memorandum. That is a laboratory report, consists of one page and it is hereby notified that it is a true and full copy transmitted. Certified by R. -- it looks like C O L P I N.

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I move it into evidence and it reads as follow: The questioned document, one two-page note on white-lined paper, the beknowst documents, four sheets of white-lined paper bearing ten handwritten exemplars. The questioned document is marked Q-1. The ten known documents are marked K-1 through 10. Results of examination and analysis. Examination and comparison of the above-described evidence caused the following opinion to be formed:

The questioned writing appearing on evidence Q-1 was written by the author of the known writing appearing on evidence K-1 through K-10. And then it says the evidence described above will be sent to the property clerk division and it is Detective John F. Breslin, document examiner.

Q. Now, Detective Giorgio, are you aware if bullets -- bullet fragments were recovered from inside the apartment?

A. Yes, they were.

Q. And were they sent to the lab for ballistics analysis?

A. They were sent to the ballistics

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squad, yes.

Q. Could you please tell us what kind of bullets were these.

A. They were described as wadcutters.

Q. Now, what is a wadcutter bullet?

A. It's the type of round or bullet that we use when we go to fire at the targets, target ranges or at the Police Department range.

Q. They use for target practice then?

A. Yes.

Q. Okay. Are you aware of the caliber of the bullets that were fired?

A. .38-caliber.

MR. BRANCATO: I have no further questions of Detective Giorgio. Sir, if you would have a seat outside.

GRAND JUROR: I have a question.

MR. BRANCATO: Detective, just please remain for a minute.

I have no further questions of Detective Giorgio.

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Detective, one last question.

BY MR. BRANCATO:

Q. When was the defendant in this case apprehended?

A. On February 11th of this year.

Q. Okay.

THE FOREPERSON: What was that question? I'm sorry, I didn't hear that.

Q. The last question was, when was the defendant in this case apprehended and your answer?

A. February 11th of this year.

THE FOREPERSON: Thank you.

(WITNESS EXCUSED)

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