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SUPREME COURT NEW YORK COUNTY
TRIAL TERM PART 32

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

DOMINIC FRANZA,
Defendant.

: INDICTMENT #
:
: 11987/91
:
: CHARGE:
:
: Att. Murd. 2
:
:
: Sentence

-----X
NYSID # 06632501 Q

111 Centre Street
New York, New York 10013
April 8, 1992

BEFORE:

HONORABLE PAUL BOOKSON,
Justice of the Supreme Court

OCT 06 2010

APPEARANCES:

For the People:

ROBERT MORGENTHAU,
New York County District Attorney
One Hogan Place
New York, New York 10013
By: Gregory Sheindlin and John Brancato,
Assistants District Attorney

For the Defense:

Alan Brenner, Esq.
260 Madison Avenue
New York, NY

CC: Carole
Cent. File
10/4/10
BP

1 THE CLERK: This is Number 6 on the Part 32
2 calendar, Dominic Franza.

3 The defendant, his counsel and the assistant
4 district attorneys are present, your Honor.

5 MR. BRENNER: For the defendant, Alan Brenner, 260
6 Madison Avenue.

7 MR. SHEINDLIN: Gregory Sheindlin, for the People.

8 MR. BRANCATO: John Brancato, for the district
9 attorney.

10 THE CLERK: Your Honor, the defendant appears for
11 sentence. Shall I arraign him for sentence?

12 THE COURT: Yes.

13 Stand up.

14 THE DEFENDANT: Okay.

15 THE CLERK: Are you Dominic Franza, and is Mr.
16 Brenner, who is standing alongside you your attorney?

17 THE DEFENDANT: Yes.

18 THE CLERK: Mr. Franza, you are being arraigned for
19 sentence on your conviction after trial under Indictment
20 11987 of 1991 to three counts of the crime of attempted
21 murder in the second degree and one count of the crime of
22 criminal possession of a weapon in the first degree.

23 You are advised before sentence is pronounced that
24 you, your counsel and the People have the right to make
25 statements to this Court as to matters relevant to sentence.

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1 Who's appearing for the People, Mr. Brancato?

2 MR. BRANCATO: Mr. Sheindlin.

3 THE CLERK: Mr. Sheindlin, do the People wish to
4 address the Court?

5 MR. SHEINDLIN: Yes.

6 Your Honor, this defendant stands before you
7 convicted of three counts of attempted murder and also
8 possession of a weapon which specifically was, possession of
9 a bomb with intent to use.

10 And I submit to the Court that the issue which is
11 before this Court, or the only issue before this Court,
12 based upon the facts of this case, is whether or not this
13 defendant should receive the maximum punishment authorized
14 by law.

15 And if this Court considers the nature and the
16 circumstances of this defendant's crime and the danger that
17 this defendant possesses to the community, the only
18 conclusion is that this defendant deserves the maximum
19 punishment authorized by law.

20 This defendant, in a deliberate and planned manner,
21 planned the deaths of and planned to execute three people.
22 And in addition to that, he expended an enormous amount of
23 criminal energy to try to protect himself from being
24 detected.

25 If it was not for the diligence and intelligence of

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1 Detective Giorgio and the special officers and agents
2 involved in this case this defendant would not be sitting
3 here now and would have been free to continue to try to
4 achieve his goal.

5 In deciding what sentence to give to this defendant
6 and what the true gravity of his crimes are, this Court
7 should consider, first of all, from the evidence the
8 apparent reasons for his crimes.

9 Myra Franza lived with this defendant, was married
10 to this defendant for approximately three years, and she was
11 the subject of psychological abuse and physical abuse, and
12 she left the defendant because she no longer wanted to be
13 subject to these different abuses, and she tried to rectify
14 the marriage, and she tried to get the defendant
15 counselling. And when none of this worked, and she
16 continued to be subjected by this defendant to physical and
17 psychological abuse, she did the only thing she could do and
18 she left him.

19 And for that, this defendant, in his own mind -- in
20 his own mind, handed down a death sentence against Myra
21 Franza and against members of her family.

22 In considering the gravity of this defendant's
23 crimes, this Court should consider what Myra Franza and what
24 her mother, Josephine Mendez, and what her Aunt Evelyn
25 Lamboy were subjected to.

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1 Starting with Josephine Mendez, what happened to
2 her back in her apartment on July 17, 1991 was an event that
3 brings the human imagination to its very, very limits.

4 The fact that this woman who was a mother who was
5 facing a man that was holding a gun, an assassin, held by
6 this defendant and was shot five times goes beyond all
7 bounds, all bounds of that conduct which can't even be
8 understood in a civilized society.

9 Josephine Mendez was shot five times, and it was
10 more than her just being shot. She thought she was on the
11 brink of death, and her last thoughts were not only that she
12 was going to die but that she was afraid her daughter would
13 be killed and that her daughter might be subjected to a
14 rape. And no parent should ever have to be subjected to that
15 type of conduct. No parent should ever have to live through
16 what Josephine Mendez lived through. And as a testament to
17 her and her character, she showed just exactly how powerful
18 the bonds can be between a parent and child. Because in
19 what she thought were her last moments of life, Josephine
20 Mendez didn't even think of herself. Her only thought was
21 holding closed the bathroom door so the assassin in the
22 apartment can't get to her daughter.

23 And this assassin had to shoot her five times in
24 order to get her out of the way.

25 With respect to Myra Franza, the gravity of what

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1 she had to experience was just as great because she had to
2 see her mother lie on the floor after she was shot five
3 times, and she was also shot by this assassin that was sent
4 by this defendant.

5 Just after looking at these facts alone, this Court
6 must ask what type of sentence, what type of punishment does
7 a person deserve who sends an assassin to someone's
8 apartment to shoot people in this type of manner?

9 And the only thing this defendant deserves as
10 someone who does that is the maximum punishment that is
11 authorized by law.

12 This defendant, in his place of business, in an
13 accurate and planned manner with this plan made up of
14 nothing but pure evil because there is no other way to
15 describe it, no other way to understand it, continued in his
16 plan.

17 He caused a boobie-trap pipe bomb to be sent to
18 what he thought was the victim's grandmother, and he in his
19 own mind in carrying out the death sentences that he handed
20 down, in his own mind wanted to execute the grandmother by
21 having a letter bomb exploding immediately in front of her.
22 And this is the death that he planned for this person.

23 Considering that alone, or even considering that
24 the other two events, a person who engages in this type
25 conduct deserves nothing but the maximum that this Court

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1 could hand down to this person, the maximum sentence.

2 THE CLERK: Mr. Brenner, do you wish to address the
3 Court?

4 MR. SHEINDLIN: I'll be done in a moment. I have a
5 few more.

6 THE CLERK: Sorry.

7 MR. SHEINDLIN: What also stands out in this case,
8 just as great as every other act I described, which is also
9 evidence the Court heard at length, is that this defendant
10 knew no bounds to his conduct. There were no people to
11 stand in his way. There was no risk he was not willing to
12 take in order to carry out his plans.

13 This defendant caused an explosive device to be
14 shipped over to Puerto Rico, and it was shipped over by
15 plane, and those devices were shipped over sometimes in
16 passenger planes.

17 So, what we saw here in this case was three actual
18 victims who were by -- as Mr. Brancato stated -- either by
19 divine province or natural luck, were able to take this
20 witness stand and testify for a multitude of reasons, except
21 for one which was the defendant's intent that this defendant
22 was willing to risk the lives of an undefined proportion in
23 order to have a bomb sent over to Puerto Rico. Not to
24 mention the risk to the people that had to deal with the
25 bomb and diffuse this device.

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1 So, the Court must ask what type of danger does
2 this person pose to the community and what could be done to
3 prevent this from happening in the future?

4 I submit to this Court, based upon this defendant's
5 actions, his attempt to execute three people, his risking of
6 possibly hundreds of lives that this defendant should be
7 sentenced to the maximum period of imprisonment that is
8 authorized, which is one hundred years.

9 THE COURT: Mr. Brenner.

10 THE CLERK: Mr. Brenner, do you wish to address the
11 Court?

12 MR. BRENNER: Your Honor, I am not in a position to
13 call upon the emotion that is evoked by some of the
14 references Mr. Sheindlin made.

15 I cannot do anything but concede the violent nature
16 of the crimes that the People allege in the indictment, and
17 which according to the jury was proven beyond a reasonable
18 doubt.

19 I would point out the defendant's prior unblemished
20 record, his record with regard to employment, his record
21 with regard to his military experience, and his record
22 significantly that apart from the acts which Mr. Sheindlin
23 suggests posed such a grave threat to the community, there
24 is no other evidence that Mr. Franza was ever a threat to
25 anyone else. I would do all those things if I believed for a

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1 moment that they would undercut the seriousness of the
2 crimes against him which the People allege in the indictment
3 and the jury believed they proved beyond a reasonable doubt.

4 However, I must state that Mr. Franza's position at
5 the outset at the time he was arrested and arraigned was
6 that he was not guilty of these crimes, that this continued
7 throughout the trial and that continues now.

8 It is not an unusual occurrence for a defendant
9 --for an individual who has been convicted of crimes or pled
10 guilty to stand before the Court and express remorse for
11 those crimes, either genuine or professed, in the effort to
12 have the Court consider that in mitigation of the maximum
13 sentence.

14 On Mr. Franza's behalf, the only remorse that I can
15 express is that these terrible crimes ever took place; that
16 Myra Franza and Josephine Mendez and that the people who
17 were put at risk in Puerto Rico were indeed victims.

18 Mr. Franza's position continues to be that they
19 were not his victims. The remorse he feels is that these
20 things ever happened.

21 Mr. Franza maintains his innocence to the degree
22 that the Court can believe that be mitigation, I offer that.

23 Beyond that, there is nothing I can say on Mr.
24 Franza's behalf.

25 I believe Mr. Franza himself wishes to address the

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1 Court.

2 I am constrained to note that I have advised Mr.
3 Franza on what I believe the parameters of this particular
4 statement are relative to sentence. There are things which
5 are appropriate to say and appropriate not to say. And I
6 have also advised him that there are things which he might
7 say which are not in his best interest.

8 I believe he understands those advisements, and I
9 believe he wishes to address the Court.

10 THE COURT: Mr. Franza.

11 THE DEFENDANT: Yes.

12 Your Honor, first of all, I would like to know what
13 latitude do I have and what are my limitations, as well as
14 what am I allowed to speak on beside pleading my innocence?
15 May I speak on things beyond wrongdoings? Will I be given
16 the great latitude due to my final chance to go on record
17 before this Court? I want to exercise my constitutional
18 rights.

19 Most of what I have to say is based on events of
20 this case which at the conclusion will be followed by a
21 question. While I speak, if there is anything you want to
22 say, please let me know, and I await your answer.

23 THE COURT: Well, technically, I'm not here to
24 respond to questions, but I'll say this.

25 You can say anything which would help the Court in

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1 determining what sentence to impose, not on the question of
2 your guilt or nonguilt.

3 I have no intention of disturbing the verdict of
4 the jury. The jury has spoken.

5 So, the only thing to address yourself to are those
6 factors which you believe will impact upon the Court in
7 terms of sentence.

8 THE DEFENDANT: Well, basically, it revolves around
9 innocence in general.

10 THE COURT: I'm not arguing the merits of the case
11 now. I'm sure your attorney advised you that we are not
12 retrying the case now.

13 THE DEFENDANT: I understand that.

14 THE COURT: We spent almost five weeks trying the
15 case.

16 THE DEFENDANT: Well, I'll kind of basically put it
17 all together as close as I can. It's dealing with --

18 It's dealing with the case. So, basically, my
19 understanding is, as far as things about the case in a
20 general nature I won't be allowed to speak on. Am I
21 correct?

22 THE COURT: It serves no purpose. We are not
23 retrying the case.

24 THE DEFENDANT: I understand that, but would I be
25 allowed to speak on it?

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1 THE COURT: I have no way of censoring in advance
2 what you will say or whether it's appropriate.

3 THE DEFENDANT: Okay. Well, I guess I'll start and
4 let you decide if I have exceeded the bounds or feel that I
5 shouldn't.

6 Okay, the first thing I would like to say is that
7 the stipulation that came about the injuries during the
8 course of the trial or at the beginning of the trial, it was
9 done really without my consent.

10 During the trial --

11 THE COURT: That's not an area to discuss today
12 with respect to any stipulations during the course of the
13 trial.

14 THE DEFENDANT: Well, okay.

15 I would like to touch on the warrant. I see these
16 are things that are along those lines. I'll put it all in a
17 nutshell.

18 THE COURT: Yes.

19 THE DEFENDANT: Could I have a moment, your Honor?
20 (Pause).

21 THE DEFENDANT: Well, three very brief things then,
22 your Honor.

23 First, Brancato's contention is one thing that I
24 would like to say to this Court. As far as Mr. Brancato
25 saying that I used my girlfriend, Rosemarie Gonzales, here

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1 as a guise, okay, to -- In other words, that I was with her
2 trying to throw suspicion off me by mailing a bomb. I don't
3 appreciate that statement because I would never, never
4 implicate her or use her to such a degree.

5 Second of all, there have been a lot of lies in
6 this trial, okay, and there's really no way for me to be
7 proving these things.

8 But what I will mention to the Court, one thing
9 that I will like to mention is that on the note that was
10 left at the scene of the shootings, there was a mention
11 there that there was a bell, to go to the apartment in the
12 rear and ring the bell.

13 There is no bell there, your Honor.

14 Your Honor, if I wrote that note I would know that.

15 Second of all, I did my own investigation. I did
16 my own investigation which Detective Giorgio, Detective
17 Ortiz and all the other people did not assist me.

18 I understand that the 34th Precinct is a very,
19 very, very busy precinct. And as soon as one homicide
20 happens you get another one.

21 The point that I'm trying to make is that I had
22 information by going around the neighborhood and talking to
23 people, which is why the writing happens to be there along
24 with a picture that I had of Nelson Acosta, is that I
25 ascertained certain information very crucial to this case

1 that might well could have been -- and I want Detective
 2 Giorgio and everyone to go on notice here that every
 3 conversation I had with everyone, every detective involved
 4 in this case is on this type case.

5 That's all I have to say, your Honor.

6 THE COURT: Very well, Mr. Franza, please stand up.
 7 Mr. Franza.

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Love is very precious, but life is more
 10 precious.

11 Now, what started out as something very beautiful
 12 for you, your family, your wife, there was a big celebration
 13 of a union, I believe, at the Astoria Manor. Many guests
 14 attended and all wished you and your wife well. And I'm
 15 sure at that moment the degree of love that existed between
 16 you and your wife no one could ever foretell that either
 17 that love, that admiration, that love for each other, that
 18 special relationship, would ever go asunder.

19 This Court, obviously, is not engaged as a marriage
 20 counselor, nor is it the function of this Court. But there
 21 came a time -- and I'm not going into who was at fault or
 22 who wasn't at fault, who contributed or who instigated this.
 23 The fact is that that special relationship deteriorated, and
 24 it deteriorated to the point that your wife left your home.

25 But that did not satisfy you. You refused to give

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1 up. You refused to believe that that love was no longer in
2 existence, and so you embarked on a very interesting
3 criminal destructive scheme endangering the lives of many
4 people, and in the pursuing of that scheme your wife was
5 shot, but for the grace of God survived.

6 Your mother-in-law was shot multiple times, and to
7 this day, not only has sustained an injury but carries a
8 lifetime disfigurement and a diminution of the strength of
9 the hand that received that shot and explosive device was
10 transported through the Federal Express by air to Puerto
11 Rico. You never calculated for a moment how many other
12 people could have been, if not killed, seriously harmed.
13 Once again, for the grace of God, nobody was hurt with
14 respect to that bomb.

15 Anyone can understand a love gone asunder.

16 No one has to understand, nor does society tolerate
17 someone who determines what the punishment for that would
18 be. And to threaten life and limb, which is not only beyond
19 acceptable conduct, it is conduct which must be dealt with
20 firmly.

21 Accordingly, Mr. Franza, the sentence of this Court
22 with respect to the first count, attempted murder in the
23 second degree, you are sentenced to be incarcerated for a
24 period not more than twenty-five years, nor less than eight
25 and a third years.

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1 With respect to count two, likewise, you are
2 sentenced to a maximum term of incarceration of twenty-five
3 years but not less than eight and a third years.

4 And with respect to count three, you are sentenced
5 to be imprisoned for a maximum of 25 years but not less than
6 eight and a third years.

7 Each of those sentences are to run consecutive.

8 And in addition thereto on the fourth count, the
9 criminal possession of a weapon in the first degree, it is
10 the sentence of this Court that you be incarcerated for a
11 period not to exceed nine years, nor less than three years.

12 Again, that sentence is to run consecutive to the
13 three previously imposed sentences.

14 And I just might indicate for the record, the Court
15 is mindful of Penal Law Section 70.30, Subdivision C,
16 Subdivision iii. The application of that section will be
17 further explained to you by your attorney.

18 That completes the sentence of the Court.

19 Advise the defendant of his right to appeal.

20 THE CLERK: The total is 28 to 84, as further
21 affected though by the application of the section that the
22 Court made reference to.

23 Advise the defendant.

24 (Handing).

25 THE CLERK: Written notice of a right to appeal this

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sentence has been handed to Mr. Franza.

THE COURT: I might add by way of an addendum, that this tragedy, just like an attempt to send a bomb through public channels or to construct a bomb, the magnitude is so great, but in a sense it's like everything else in this case.

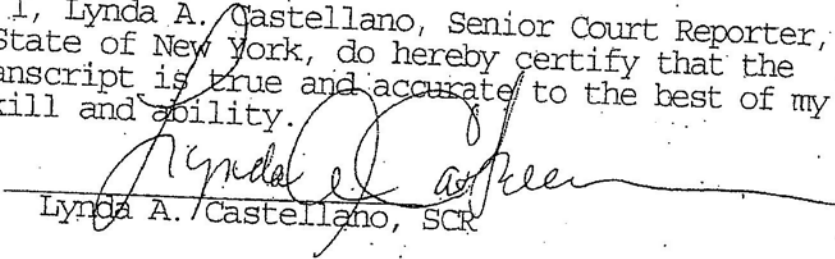
Not only was your wife's family so seriously affected by all these events, but the Court observed and sympathizes with the fact that your family as well, they too have been affected by this case and have paid a very severe price. It is a tragedy.

That concludes the sentence.

MR. BRENNER: Thank you, your Honor.

* * *

I, Lynda A. Castellano, Senior Court Reporter, in and for the State of New York, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.


Lynda A. Castellano, SCR

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